Alaska State Legislature

Senate

JUNEAU, ALASKA

TO: Senator Ziegler, Chairman,
and all members of the Senate Judiciary Committee

FROM: Senator Brad Bradley, Chairman
Senate Commerce Committee

DATE: January 23, 1980

SUBJECT: Senate Bill 42

In consonance with my conversation with the Senate Judiciary Committee on January 22, enclosed please find a copy of Senate Bill 42, an amendment to Senate Bill 42, and the appropriate Statute (Sec. 34.03.225).

Enclosures

Amendment to Senate Bill 42:

Line 10: Section 1. AS 34.03.225 (3) is amended to read:

(3) The mobile home dweller or tenant has violated a provision of the rent agreement or lease signed by both parties and not prohibited by this chapter or by law, including rent, terms of agreement, or other provisions covering the rights and obligations of the parties.

REF: CSSB 570
Sen. A. L. (Brad) Bradley

Article 6. Landlord Remedies.

Section
225. Limitations on mobile home park operator's right to terminate

Sec. 34.03.225. Limitations on mobile home park operator's right to terminate. A mobile home park operator may evict a mobile home or a mobile home park dweller or tenant only for one of the following reasons:

(1) the mobile home dweller or tenant has defaulted in the payment of rent owed;

(2) the mobile home dweller or tenant has been convicted of violating a federal or state law or local ordinance, and that violation is continuing and is detrimental to the health, safety or welfare of other dwellers or tenants in the mobile home park;

(3) the mobile home dweller or tenant has violated a ~~reasonable~~ rule or regulation properly established by the operator; and

(4) a change in the use of the land comprising the mobile home park, or the portion of it on which the mobile home to be evicted is located; however, all dwellers or tenants so affected by a change in land use shall be given at least 90 days notice, or longer if a longer notice period is provided in a valid lease. (§ 5 ch 138 SLA 1976)

Legislative committee report. — For report on ch. 138, SLA 1976 (SCS CSHB 829 am S (re-engrossed)), see 1976 Senate Journal, p. 1368.

Sec. 34.03.240. Waiver of landlord's right to terminate.

Section is limitation on remedies of landlord. — Rather than giving a right or remedy to the tenant, this section acts as a limitation upon the remedies of the landlord. McCall v. Fickes, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

Rights which may be waived. — This section should be so interpreted that waiver of the "right to terminate" a rental agreement refers to rights which arise as a consequence of a breach, and does not concern rights of termination which exist regardless of whether or not a tenant breached a condition of the agreement. McCall v. Fickes, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

Right to terminate month-to-month agreement not waived. — Since a landlord always has the right to terminate the month-to-month rental agreement with the tenant, even without cause, by giving a month's notice, he does not waive this right by accepting the late rental payment. McCall v. Fickes, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

Sec. 34.03.270. Remedy after termination.

Landlord could bring action for forcible entry and detainer seeking restitution of trailer space from tenants. — See McCall v. Fickes, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

Quoted in McDowell v. Lenarduzzi, Sup. Ct. Op. No. 1242 (File No. 2413), 546 P.2d 1315 (1976).

SB

52

COMMITTEE REPORT

SENATE

1/16/79

FURTHER: None

Date: _____

Mr. President:

The Committee on JUDICIARY has had SB 52

relating to float planes under Fish and Game Code

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

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

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

and recommends _____

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

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

_____

_____

_____

_____

_____

_____

_____

_____

MEMBERS HAVING OTHER RECOMMENDATIONS:

_____

_____

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_____

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_____

CHAIRMAN

S 60 (Rev. 12/78)

SB 52 Governor's transmittal letter accompanying SENATE BILL NO. 52 follows:

"January 15, 1979

President of the Senate
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. President:

Under the authority of art. III, sec. 18 of the Alaska Constitution, I am transmitting a bill amending the definition of vessel in the Fish and Game Code (AS 16.05) to exclude float planes. The bill would eliminate the present requirement for commercial fishing vessel licenses for float planes used for delivering fish. The general consensus is that this requirement is unnecessary, burdensome, and unintended.

Sincerely,

Jay S. Hammond
Governor"

UNFINISHED BUSINESS

Senator Sackett requested an additional referral to the Finance Committee on the following bills:

SB 8 SENATE BILL NO. 8 (creating the technical services contract fund)

SB 13 SENATE BILL NO. 13 (creating the Department of Renewable Resources)

SB 14 SENATE BILL NO. 14 (relating to agricultural development)

Without objection, it was so ordered.

SB

54

COMMITTEE REPORT

SENATE

FURTHER:

1/17/79

Date: 3/4/80

Mr. President:

The Committee on JUDICIARY has had SB 54
international wills under the Uniform Probate Code

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

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

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

and recommends _____

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

[✓] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____ CHAIRMAN

S 60 (Rev. 12/78)

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

December 5, 1978

M E M O R A N D U M

SUBJECT: International Wills Act

TO: Representative Mike Miller, Chairman
Alaska Legislative Council

FROM: John W. Abbott, Chairman
Code Revision Commission

Pursuant to the authority granted in AS 24.20.075(c), the Code Revision Commission has prepared the attached International Wills Act for introduction at the next session of the legislature. The Act was drafted by the National Conference of Commissions on Uniform State Laws in 1977, and is intended to be a part of the Uniform Probate Code, AS 13.06. - 13.36. It is intended to prescribe the form a will must take in order to be valid in all countries that are party to the "Convention Providing a Uniform Law on the Form of an International Will", to which the United States is a party. At the present time, only North Dakota has enacted the International Wills Act.

JWA/bb/jms

Attachment

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM January 29, 1979

SUBJECT: SB 54 -- International Wills under the Uniform Probate Code -- Sectional Analysis (Work order No. 6160)

TO: Senator Robert H. Ziegler, Sr.

FROM: Kenneth M. Rosenstein, Legislative Counsel

The Uniform International Wills Act is an addition to the Uniform Probate Code (UPC) and is intended to prescribe the form that a will must have in order to be valid in all countries signatory to the Washington Convention of 1973. The U.S Senate has not yet ratified this international agreement.

Sec. 13.11.350 (UPC §2-1002) provides that a will executed in compliance with Secs. 13.11.350 -- 13.11.440 is valid as an international will, i.e., without regard to the place where the will is executed, the location of the testator's assets, or his nationality, domicile, or residence. A will that is invalid as an international will may still be valid as some other type of will so long as it conforms to the requirements of that type of will. Lastly, a joint will may not be an international will.

Sec. 13.11.360 (UPC §2-1003) prescribes the formal requirements of an international will. To be valid as an international will it must be (1) in writing; (2) declared by the testator, before two witnesses and a person authorized to supervise the execution of international wills, to be his will (he must also acknowledge its contents); (3) signed by the testator, and (4) attested to by the witnesses and by the authorized person.

Sec. 13.11.370 (UPC §2-1004) prescribes additional formal requirements. The testator must sign each page and at the end of the will. The signatures of the witnesses and authorized person must be at the end of the will. The will must be dated with the date it was signed by the authorized person. The authorized person must ask the testator if he wishes to make a declaration concerning the safekeeping of the will, and if so, the place where he intends to keep it.

Sec. 13.11.380 (UPC §2-1005) provides that the authorized person shall attach to the will a certificate signed by him that establishes that the will has been executed in accordance with the requirements of an international will.

Sec. 13.11.390 (UPC §2-1006) provides that the certificate issued under sec. 380 shall presumptively establish the validity of the will to which it is attached as an international will. Absence of or a defect in the certificate does not affect the validity of the will as an international will.

Sec. 13.11.400 (UPC §2-1007) provides that an international will is subject to the ordinary rules relating to revocation of wills.

Sec. 13.11.410 (UPC §2-1008) cites the source of the previous section as the Annex to the Washington Convention of 1973. This is intended to avoid an interpretation of the International Wills Act solely in terms of the internal law of the interpreting jurisdiction, since this would prejudice the international unification sought by the act.

Sec.13.11.420 (UPC §2-1009) establishes who may act as authorized persons with regard to the execution of international wills.

Sec. 13.11.430 (UPC §2-1010) requires the lieutenant governor to establish a registry in which authorized persons may submit information regarding the execution of international wills. Such information is limited to the name, address, place and date of birth, and individual identification number of the testator, and the intended place of safe-keeping of the will, if any. This information is to be kept strictly confidential until the time of testator's death. It may then be released to any person desiring information about any will upon the presentation of a death certificate or other satisfactory evidence of the testator's death.

Sec. 13.11.440 (UPC §2-1020) defines the terms "authorized person" and "international will." An authorized person is a person who, under sec. 420 or a provision of federal law, is authorized to supervise the execution of international wills. An international will is a will executed under the provisions of the act.

KMR:nem

CODE REVISION COMMISSION

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

March 5, 1980

MEMORANDUM

TO: Senator Patrick M. Rodey

FROM: Joyce M. Roloff, Secretary
Code Revision Commission

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

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

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

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

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

JMSR/s
Enclosures

cc: Code Revision Commission
Senator Robert Ziegler

SB

56

COMMITTEE REPORT

SENATE

FURTHER: None

1/17/79

Date: 1/17/79

Mr. President:

The Committee on JUDICIARY has had SB 56

effect of homicide under the Uniform Probate Code

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

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

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

and recommends _____

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

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

CODE REVISION COMMISSION

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

March 5, 1980

MEMORANDUM

TO: Senator Patrick M. Rodey

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Code Revision Commission

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SB 58 -- Uniform Disposition of Community Property Rights at Death Act

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JMSR/s
Enclosures

cc: Code Revision Commission
Senator Robert Ziegler

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Attorneys at Law

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Please reply to ANCHORAGE

March 8, 1979

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

Re: Senate Bills Nos. 54, 56 ad 58

Dear Mr. Davis:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

John C. Hughes

JCH:jb

cc: Robert Zigler

CODE REVISION COMMISSION SB 56

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

December 5, 1978

M E M O R A N D U M

SUBJECT: Uniform Probate Code - Effect of Homicide

TO: Representative Mike Miller, Chairman
Alaska Legislative Council

FROM: John W. Abbott, Chairman
Code Revision Commission

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

JWA/bb/jms

Attachment

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM August 1, 1978

SUBJECT: Uniform Probate Code

TO: Alaska Code Revision Commission

FROM: Kenneth M. Rosenstein, Legislative Counsel KMR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

KMR:hjd

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

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

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

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

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

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

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

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

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

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

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

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

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

Comment

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

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

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

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

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

* * * * *

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

* * * * *

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

In this part, unless the context otherwise requires:

* * * * *

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

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

* * * * *

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

COMMENT

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

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

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

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

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

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

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

Effect of amendment. — The 1973 amendment [illegible]

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

Section 3-910. [Purchasers from Distributees Protected]

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

Comment

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

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

Sec. 13.16.580. Purchasers from distributees protected. If property distributed in kind or a security interest in it is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order and whether or not the authority of the personal representative was terminated before execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution. Any instrument described in this section which is recorded under AS 31.15 or AS 45.05 and which bears a notation of that recordation is prima facie evidence that the transfer described in it was made for value. (§ 1 ch 78 SLA 1972; am § 17 ch 154 SLA 1975)

Effect of amendment. — The 1975 amendment, in the first sentence, substituted "by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such distributee" for "by a purchaser from or lender to a transferee from a distributee who has received an instrument or deed of distribution from the personal representative" and "rights of any interested person in the estate" for "rights of any person interested in the estate" in the first sentence, added the second sentence, substituted "a purchaser from or lender to any other distributee or his transferee" for "a transferee from a distributee" in the third sentence, and added the last sentence.

Legislative committee report. — For [illegible] ch 154, SLA 1975 see 1975 House Journal, p. 1599.

Section 3-915. [Apportionment of Estate Taxes]

• • • • • • • • • • • • • •

(c)(1) • • • • •

• • • • • • • • • • • • • •

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

• • • • • • • • • • • • • •

Sec. 13.16.610. Apportionment of estate taxes.

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

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

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

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

(Identical to UPC §3-916(a)(3))

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

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

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

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

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

DEPARTMENT OF LAW
Office of the Attorney General
Fourth F - State Capitol
Juneau 99811

March 25, 1976

The Honorable Robert Ziegler
Chairman
Senate Judiciary Committee
Alaska State Legislature
[illegible]
Juneau, Alaska 99811

Re: 1975 Uniform Probate Code Amendments

Bob

Dear Senator Ziegler:

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

You may find the information in this letter and in the attached statement to me by Professors Edward W. Kelliher, educational director for the Joint Editorial Board for the Uniform Probate Code, helpful in preparing a committee report to be printed in the Senate Journal. Such a report, including reference to the NCCUSL official commentary, would provide an indication of legislative intent and a guide to future interpretation.

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

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

2. AS 13.11.325 (U.P.C. section 2-602) was amended in 1973, adopting the same change now promulgated by the NCCUSL. See ch. 16 SLA 1973; 1973 Senate Journal Supplement No. 9; and 1973 House Journal, page 616.

3. AS 13.11.355 (U.P.C. section 2-608) is not proposed for change here because an intent statement in your committee report should suffice. The NCCUSL change would merely have reorganized the existing language of the section to forestall a possible interpretation question. I assume that Alaska would agree with the interpretation intended by the NCCUSL.

4. AS 13.11.370 (U.P.C. section 2-611) is not proposed for amendment because the proposed change is also one merely intended to provide an option for states which have enacted the Uniform Parentage Act.

5. AS 13.11.380 (U.P.C. section 2-612) was amended in 1973 in the manner suggested by the NCCUSL (see item 2, above).

6. In AS 13.16.010 (U.P.C. section 3-101), I have slightly changed the NCCUSL wording for clarity; no substantive difference from the intent expressed by the NCCUSL is intended.

7. AS 13.16.105(b) (U.P.C. section 3-106) is offered for legislative consideration, although the NCCUSL merely presents it as an optional provision.

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

AS 13.16.490 (U.P.C. section 3-605)
AS 13.21.055 (U.P.C. section 4-301)
AS 13.26.035 (U.P.C. section 5-202)
AS 13.26.040 (U.P.C. section 5-203)
AS 13.26.170 (U.P.C. section 5-306)
AS 13.26.300 (U.P.C. section 5-428)
AS 13.26.320 (U.P.C. section 5-432)

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

Yours truly,

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

AHP:md

JOURNAL

SUPPLEMENT

March 7, 1973 SENATE No. 9

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

"March 1, 1973

LETTER OF LEGISLATIVE INTENT

Re: Senate Bill 140 (Uniform Probate Code)

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

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

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

"February 27, 1973

MEMORANDUM

TO: Senator Ziegler, Chairman
Senate Judiciary Committee

FROM: Russell E. Mulder, Deputy Director

SUBJECT: Amendments to Uniform Probate Code (SB 140)

Pursuant to your request, the following sectional [illegible]

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

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

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

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

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

(Suggested by Professor Wellman and LAA staff).

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

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

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

(Suggested by Professor Wellman and LAA staff)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"March 1, 1973

LETTER OF LEGISLATIVE INTENT

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

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

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

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

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

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

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

TO: Senator Robert H. Ziegler, Sr.

FROM: Kenneth M. Rosenstein, Legislative Counsel KMR

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

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

KMR:nem

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM January 29, 1979

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

TO: Senator Robert H. Ziegler, Sr.

FROM: Kenneth M. Rosenstein, Legislative Counsel KMR

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

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KMR:nem

SB

58

COMMITTEE REPORT

SENATE

FURTHER: None

1/17/79

Date: 3/4/80

Mr. President:

The Committee on JUDICIARY has had SB 58
uniform diposition of community property rights at death

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

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

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

and recommends _____

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

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____ CHAIRMAN

S 60 (Rev. 12/78)

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM January 29, 1979

SUBJECT: Sectional Analysis of SB 58 -- Uniform Disposition Community Property Rights of Death Act (Work Order No.6160)

TO: Senator Robert H. Ziegler, Sr.

FROM: Kenneth M. Rosenstein, Legislative Counsel KMR

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

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

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

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

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

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

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

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

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

AS 13.41.050 and 13.31.055 provide for uniform construction and application and for citation for short title respectively.

KMR:nem

CODE REVISION COMMISSION

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

February 27, 1980

Robert E. Ziegler, Sr., Chairman
Senate Judiciary Committee
Room 128 -- Capitol Building
Juneau, Alaska 99811

Dear Mr. Chairman:

First, thank you for taking the time to attend the commission luncheon last Thursday to discuss commission bills pending in your committee and future projects. As you know, the commission is certainly receptive to future directions from the Legislature.

I have received your letter and enclosure of February 22 and it has been distributed to commission members. We appreciate your prompt attention to scheduling hearings on SB 54 -- International Wills Act (Uniform Probate Code) and SB 58 -- Uniform Disposition of Community Property Rights at Death Act. Assistant Attorney General Arthur Peterson, formerly the Vice Chairman of the commission, will be attending the hearings on March 4 to present testimony on behalf of the commission.

I am enclosing, for your information, additional background material on SB 58. Enclosed are (1) a memorandum prepared by the Division of Legal Services reflecting changes that would be made to Alaska law; (2) a copy of the official version of the draft as prepared by the National Conference of Commissioners on Uniform State Laws, including the official commentary; and (3) a copy of the galley proof of an article from the Winter 1977/1978 edition of the Uniform Law Memo discussing community property conflicts.

Your office should have on hand copies of both bills and transmittal letters from the commission to Legislative Council. This material was distributed to your office prior to the luncheon.

Another commission bill that was discussed at the luncheon and is to be considered by your committee is SB 55 -- Uniform Commercial Code, Articles 8 and 9. However, this bill is still pending in the Senate Commerce Committee awaiting action. We are hopeful that that bill will be reported out of the Commerce Committee. Once that action has been taken, I will again be in touch with you regarding additional background information.

With regard to SB 339 -- guardians and conservators, I have already started gathering material on this bill. At your convenience I would appreciate getting copies of any information you have available for future distribution to the commission.

If you need further information regarding our work or find that we can be of any other assistance, please do not hesitate to let us know.

Sincerely,

Joyce M. Roloff, Secretary
Code Revision Commission

JMSR/s
Enclosures

cc: Code Revision Commission
Arthur H. Peterson

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM November 16, 1978

SUBJECT: Uniform Disposition Community Property Rights at Death Act (Work Order #5748)

TO: Code Revision Commission

FROM: Kenneth M. Rosenstein
Legislative Counsel

Attached please find a draft of the Uniform Disposition of Community Property Rights at Death Act prepared for introduction at the next session of the legislature. The act is intended to prescribe the rights, at death, of a married person who has community property acquired prior to a change in domicile to Alaska, or which is traceable to community property, where the spouses have not indicated an intention that their community rights be severed.

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

AS 13.41.010 establishes rebuttable presumptions intended to assist a court in applying the definitions of sec. 5. The

presumptions are that (1) property acquired by a married person while domiciled in a community property state is and remains community property, and (2) property acquired by a married person while domiciled in a common law state, title to which included a right of survivorship, is not community property.

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

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

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

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

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

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

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

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

KMR:jdm

Attachment

UNIFORM DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH ACT

Prefatory Note

Frequently spouses, who have been domiciled in a jurisdiction which has a type of community property regime, move to a jurisdiction which has no such system of marital rights. As a matter of policy, and probably as a matter of constitutional law, the move should not be deemed (in and of itself) to deprive the spouses of any preexisting property rights. A common law state may, of course, prescribe the *dispositive* rights of its domiciliaries both as to personal property and real property located in the state. California's development of its "quasi-community property" laws illustrates the distinction.

The common law states, as contrasted to California, have not developed a statutory pattern for disposition of estates consisting of both *separate* property of spouses and property which was community property (or derived from community property) in which both spouses have an interest. In these states there have been relatively few reported cases (although the number has been increasing in recent years); the decisions to date show no consistent pattern and the increasing importance of the questions posed suggests the desirability of uniform legislation to minimize potential litigation and to facilitate the planning of estates.

This Act has a very limited scope. If enacted by a common law state, it will only define the dispositive rights, at death, of a married person as to his interests at death in property "subject to the Act" and is limited to real property, located in the enacting state, and personal property of a person domiciled in the enacting state. The purpose of the Act is to preserve the rights of each spouse in property which was community property prior to change of domicile, as well as in property substituted therefor where the spouses have not indicated an intention to sever or alter their "community" rights. It thus follows the typical pattern of community property which permits the deceased spouse to dispose of "his half" of the community property, while confirming the title of the surviving spouse in "her half."

It is intended to have no effect on the rights of creditors who become such before the death of a spouse; neither does it affect the rights of spouses or other persons prior to the death of a spouse. While problems may arise prior to the death of a spouse they are believed to be of

relatively less importance than the delineation of dispositive rights (and the correlative effect on planning of estates). The prescription of uniform treatment in other contexts poses somewhat greater difficulties, thus this Act is designed solely to cover dispositive rights at death, as an initial step.

The key operative section of the Act is Section 3 which sets forth the dispositive rights in that property defined in Section 1, which is subject to the Act. Section 2 follows Section 1's definition of covered property and is designed to provide aid, through a limited number of rebuttable presumptions, in determining whether property is subject to the Act. No negative implications were intended to be raised by lack of inclusion of other presumptions in Section 2; areas not covered were simply left to the normal process of ascertainment of rights in property.

The first three sections form the heart of the Act; the succeeding sections might almost be described as precatory and have been added to clarify situations which would probably follow from the first three sections but which might raise questions. Thus, Section 8 makes it clear that nothing in the Act prevents the spouses from severing any interest in community property or creating any other form of ownership of property during their joint lives; and, such action on their part will effectively remove any property from classification as property subject to this Act. Similarly, Section 9 makes it clear that the Act confers no rights upon a spouse where, by virtue of the property interests existing during the joint lives of the spouses, that spouse had no right to dispose of such property at death. By way of illustration, in at least one community property jurisdiction, the wife has no right to dispose of any part of the community property if she predeceases her husband. If the law of that jurisdiction is construed so as to treat this as a rule of property, then the move to the common law state should not alter the "property interest" of the spouses by conferring a right on the wife which she did not previously possess. On the other hand, if the provision is treated as simply establishing a pattern of dispositive rights on death of a wife who predeceases her husband, rather than a property right, the common law state of new domicile could prescribe an alternative pattern of dispositive rights. The Act does not resolve this question; rather it simply makes clear that it does not affect existing "property rights," leaving to the courts the interpretation of the effect of the community property state's law.

UNIFORM DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH ACT

Sec. 13.41.005 Caps

~~Section 1.~~ [*Application.*] This Act applies to the disposition at death of the following property acquired by a married person:

(1) all personal property, wherever situated:

(i) which was acquired as or became, and remained, community property under the laws of another jurisdiction; or,

(ii) all or the proportionate part of that property acquired with the rents, issues, or income of, or the proceeds from, or in exchange for, that community property; or

(iii) traceable to that community property;

(2) all or the proportionate part of any real property situated in this state which was acquired with the rents, issues or income of, the proceeds from, or in exchange for, property acquired as or which became, and remained, community property under the laws of another jurisdiction, or property traceable to that community property.

COMMENT

This section defines property subject to the Act.

Subsection (1): Personal Property

Subsection (1) is designed to cover all personal property which was acquired while the spouses were domiciled in a community property state, to the extent that it would have been treated as community property by that state at the time of acquisition and that no further action terminated the community character of the property. It also includes any property which was not originally community property but became such by agreement and, further, brings within the Act any personal property which can be traced back to a community source. Again, the Act only applies if there was no severance of the community interests [Section 8]. [While Section 3 applies to the dispositive rights of persons domiciled in the enacting state, the Act, as a practical matter, may be effective as to property located outside the state only to the extent that the state of the situs of the property is willing to recognize the policy of the domiciliary state.]

Example 1. H and W, while domiciled in California, purchased 100 shares each of A Co., B Co. and C Co. stock with community property (earnings of H). H and W were transferred to a common law state which had not enacted this Act; while domiciled there H sold the 100 shares of A stock and with the proceeds purchased 100 shares of D stock. Subsequently H and W became domiciled in Michigan which had enacted this Act; H sold the B stock and 50 shares of D Co. stock and purchased 150 shares of E stock. H died domiciled in Michigan with 100 shares of C Co., 50 shares of D Co. and 150 shares of E Co. stock; all

of the stock had always been registered in H's name. All of the shares, traceable to community property or the proceeds therefrom, constitute property subject to this Act.

Subsection (2): Real Property

Subsection (2) deals with real property and is confined to real property located within the enacting state (since presumably the law of the situs of the property will govern dispositive rights). The policy and operation of this subsection are intended to be the same as those set forth in subsection (1).

Example 2. H and W, while domiciled in California, purchased a residence in California. They retained the residence in California when they were transferred to Wisconsin. After becoming domiciled in Wisconsin they used community funds, drawn from a bank account in California, to purchase a Wisconsin cottage. H and W subsequently became domiciled in Michigan; they then purchased a condominium in Michigan for $20,000 using $15,000 of community property funds drawn from their bank account in California and $5,000 earned by H after the move to Michigan. H died domiciled in Michigan; title to all of the real property was in H's name. Assuming Michigan had enacted this Act, three-fourths of the Michigan condominium would be property subject to this Act; the Michigan statute would not, however, apply to either the Wisconsin or California real estate. If Wisconsin had enacted this Act, the Wisconsin statute would apply to the Wisconsin cottage.

Subsections (1) and (2): Apportionment

In both subsections (1) and (2) an apportionment is required by the phrase "all or the proportionate part" where personal property, or real property situated in the enacting state, has been acquired partly with property described as subject to the Act and partly with other (separate) property. To put it succinctly, the phrase represents a condensation of an idea covered by many pages in a prior draft and is simply a statement of policy; it leaves to the courts the difficult task of working out the precise interest which will be treated as the "proportionate part" of the property subject to the dispositive formula of Section 3. Simply by way of illustration, assume that a single man (domiciled in a community property state) purchased a life insurance policy with a face amount of $100,000 and an annual premium of $1,000. Assume further that he paid three premiums and then entered into marriage. Further assume that the next seven premiums were paid with his earnings while domiciled in the community property state and that he and his wife then moved to a common law state where the next ten premiums were paid from his earnings in that common law state; he then died after the payment of the twenty premiums. Under one interpretation of the law of Texas the contract would remain the separate property of the insured; the community would have a claim for community funds advanced to pay premiums and, during interest, it would appear that $7,000 of the proceeds would be treated as community property and the remaining $93,000 would be treated as the separate property of the deceased spouse. On the other hand, a state like California would probably treat the proceeds as being 85% separate and 15% community (being the allocation of proceeds upon the percentage of separate and community funds contributed). Further variations could be mentioned. The illustration is one of the simpler problems. Much more difficult problems are encountered where benefits under a qualified pension and profit-sharing plan are involved and the employee has been domiciled in both community property and common law jurisdictions during the period in which benefits have accrued. Attempts to discuss the various types of situations which could arise and the

varying approaches which could be taken, depending upon the state, suggest that the matter simply be left to court decision as to what portion would, under applicable choice of law rules, be treated as community property. The principle suggested is that at least a portion should be treated as community, if the appropriate law so treated it. Ordinarily, such questions should not arise if the problem is foreseen and effective planning takes place prior to death of a spouse.

SECTION 2. [*Rebuttable Presumptions.*] In determining whether this Act applies to specific property the following rebuttable presumptions apply:

(1) property acquired during marriage by a spouse of that marriage while domiciled in a jurisdiction under whose laws property could then be acquired as community property is presumed to have been acquired as or to have become, and remained, property to which this Act applies; and

(2) real property situated in this State and personal property wherever situated acquired by a married person while domiciled in a jurisdiction under whose laws property could not then be acquired as community property, title to which was taken in a form which created rights of survivorship, is presumed not to be property to which this Act applies.

COMMENT

The purposes of the rebuttable presumptions are simply to assist a court in applying the definitions in Section 1, through a process of tracing the property to a community property origin.

Subsection (1)

Subsection (1) of Section 2 deals with property acquired by the spouses while domiciled in a community property state. It thus provides that if one of the spouses acquired property while so domiciled, such property is "presumed" (a rebuttable presumption) to have been and remained community. It may be shown, of course, that such property was the separate property of the spouse and the law of the state of domicile may furnish the rule. For example the law of community domicile may provide the rule that property acquired in the name of the wife shall be deemed to be her separate property or that a particular subsequent act effectively severed the community property interests.

Example 1. H, married to W and domiciled in California, acquired stock; later H and W became domiciled in Michigan. Such property, if retained, is presumed to be property subject to this Act. By operation of Section 1 the proceeds of sale or exchange of such stock, and property acquired with the proceeds or income of such stock, would be deemed subject to the Act. If, however, upon the death of H, H's personal representative rebutted the presumption by evidence that the stock was acquired by H with his separate property (or by inheritance) neither the stock nor property acquired with that property or the income therefrom (unless the income itself would be subject to the Act because, under the applicable law, income from separate property is deemed to be community property) would be subject to this Act. Similarly the presumption may be rebutted by showing that such property, though originally community property, was effectively severed by an act of the spouses. It should be emphasized that the

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presumption is simply one of procedural convenience and neither changes the nature of the property interests nor prevents an interested person from showing the separate nature of the property.

Subsection (2)

Subsection (2) sets up a rebuttable presumption that where a domiciliary of a common law state acquired property in such form as to indicate that title was in joint tenancy, tenancy by the entireties, or some other form of joint ownership with right of survivorship, it will be presumed that the property is not subject to the Act. This presumption was deemed appropriate as expressing the normal expectations of the spouses and to facilitate ascertainment of title to real property located in the enacting state, as well as personal property wherever located.

Example 5. John and Mary Jones, formerly domiciled in California, became domiciled in Illinois and purchased a residence, taking title in the names of "John and Mary Jones as joint tenants, and not as tenants in common, with right of survivorship." Regardless of the source of the funds, the Illinois residence would be presumed to be held in joint tenancy and not subject to this Act.

Section 8. [*Disposition upon Death.*] Upon death of a married person, one-half of the property to which this Act applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this State. One-half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this State. With respect to property to which this Act applies, the one-half of the property which is the property of the decedent is not subject to the surviving spouse's right to elect against the will [and no estate of curtesy or curtesy exists in the property of the decedent.]

Comment

This section deals with the dispositive rights at death of (1) a married person domiciled in the enacting state as to personal property and (2) of any married person domiciled in a noncommunity property state, as to real property owned in the enacting state; it also sets forth rules for intestate succession to property subject to this Act.

Testate Disposition

The dispositive pattern is the usual one encountered in the community property states: the deceased spouse may dispose of his one-half of the community property subject to the provisions of Section 9.

Example 1. H and W were formerly domiciled in California and are now domiciled in Michigan. All of their property was community property prior to the move from California to Michigan. At H's death he held title to a home in Michigan which had been purchased with the proceeds of the sale of a home [illegible] and was community property. Stock acquired as community property was held in his name in safety deposit boxes located in Michigan. H and W had acquired a cottage in California as community property held in the name of H, and it was so held at the time of his death. H had acquired a Nevada resort condominium, taking title as tenants by the

entireties. H acquired bonds issued by his employer with earnings in Michigan and held title in his own name.

The Michigan residence and the stock would be deemed property subject to this Act and H would have the right under Section 3 to dispose of half of that property by his will. The remaining property would not be deemed subject to this Act.

Intestate Succession

If the property subject to this Act passes by intestate succession, the law of the enacting state applies to the decedent's one-half, again subject to Section 9. If under the law of the enacting state, a surviving spouse is entitled to one-third of the decedent's property by intestate succession, the result of the Act is to give to her two-thirds of the property subject to the Act. For example, if the spouses had recently moved to a common law state and owned $300,000 of property (all being personal property held in the husband's name and acquired as community property), the wife would be entitled to one-half of the property ($150,000) and would receive a ⅓ share of the husband's half ($50,000) for a total of $200,000. It is clearly within the power of the enacting state to prescribe any pattern of intestate succession deemed appropriate, and views may differ. In some community property states, the surviving spouse receives all of the decedent's community property upon intestate succession; in another she would receive none. Similarly, the common law state may alter the pattern to fit its own policy determination.

Dower, Curtesy, Elective Share

Dower and curtesy do not exist in community property and have been abolished in many common law states; policy considerations suggest that no such interest should exist in property subject to this Act, since the surviving spouse already has a one-half interest in such property. Similar reasons suggest a denial of any right to the surviving spouse to elect a statutory share in the one-half of the property over which the decedent had a power of disposition.

SECTION 4. [*Perfection of Title of Surviving Spouse.*] If the title to any property to which this Act applies was held by the decedent at the time of death, title of the surviving spouse may be perfected by an order of the [court] or by execution of an instrument by the personal representative or the heirs or devisees of the decedent with the approval of the [court]. Neither the personal representative nor the court in which the decedent's estate is being administered has a duty to discover or attempt to discover whether property held by the decedent is property to which this Act applies, unless a written demand is made by the surviving spouse or the spouse's successor in interest.

Comment

This section simply provides for perfection of title interests of the surviving spouse (e.g. where title was in the name of the deceased spouse) by order of the court of appropriate jurisdiction (e.g. the probate court) in the enacting state. This section is designed to eliminate any liability of the personal representative for a breach of his fiduciary duty by failing to search for or to discover whether property held by the decedent is property defined in Section 1, unless a written

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demand is made by the surviving spouse or the spouse's successor in interest. In several states the Court administering a decedent's estate has a duty or undertakes to advise parties in interest of their legal and equitable rights, and this section is similarly designed to eliminate such Court's liability for failing to discover the community rights and to advise the interested party of his rights. Nothing contained in this section is to be construed to interfere with the Court's jurisdiction in a proper proceeding to perfect the title of the surviving spouse in and to property to which this Act applies.

13.41.025

SECTION 5. *[Perfection of Title of Personal Representative, Heir or Devisee.]* If the title to any property to which this Act applies is held by the surviving spouse at the time of the decedent's death, the personal representative or an heir or devisee of the decedent may institute an action to perfect title to the property. The personal representative has no fiduciary duty to discover or attempt to discover whether any property held by the surviving spouse is property to which this Act applies, unless a written demand is made by an heir, devisee, or creditor of the decedent.

COMMENT

This section is a corollary to Section 4. Since title is apparently in the surviving spouse, the section simply provides for an action by the personal representative, heirs, or devisees and is again designed to eliminate any liability of the personal representative for a breach of his fiduciary duty by failing to discover or to attempt to discover whether property held by the surviving spouse is property subject to this Act, absent a written demand by an heir, devisee or creditor of the decedent.

13.41.030

SECTION 6. *[Purchaser for Value or Lender.]*

(a) If a surviving spouse has apparent title to property to which this Act applies, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the personal representative or an heir or devisee of the decedent.

(b) If a personal representative or an heir or devisee of the decedent has apparent title to property to which this Act applies, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the surviving spouse.

(c) A purchaser for value or a lender need not inquire whether a vendor or borrower acted properly.

(d) The proceeds of a sale or creation of a security interest shall be treated in the same manner as the property transferred to the purchaser for value or a lender.

COMMENT

This section is designed to protect purchasers and lenders taking a security interest, who acquire such interest for value, after the death of the decedent, from a person who appears to have title to property to which this Act applies. The

only requirement is that the purchaser or lender have acquired his interest for value; there is no requirement of good faith absence of notice. The purpose of the section is to permit reliance upon apparent title and facilitate both ascertainment of title and disposition of assets where adequate consideration is paid. Since, during the joint lives of the spouses, the spouse with apparent title would have been able to convey title (at least as to community property) though being held accountable to the other spouse for an appropriate allocation of the proceeds or any breach of fiduciary obligation, the Act simply extends this treatment to disposition of the assets after the death of a spouse.

13.41.035 CAPS

SECTION 7. [*Creditor's Rights.*] This Act does not affect rights of creditors with respect to property to which this Act applies.

13.41.040 CAPS

SECTION 8. [*Acts of Married Persons.*] This Act does not prevent married persons from severing or altering their interests in property to which this Act applies.

COMMENT

The rights, and procedures, with respect to severance of community property vary markedly among the community property states. The Act simply makes clear that nothing in the Act itself in any way limits the rights of the spouses to sever community property or to create a form of ownership not subject to this Act.

13.41.045 CAPS

SECTION 9. [*Limitations on Testamentary Disposition.*] This Act does not authorize a person to dispose of property by will if it is held under limitations imposed by law preventing testamentary disposition by that person.

13.41.050 CAPS

SECTION 10. [*Uniformity of Application and Construction.*] This Act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this Act among those states which enact it.

13.41.055 CAPS

SECTION 11. [*Short Title.*] This Act may be cited as the Uniform Disposition of Community Property Rights at Death Act.

SECTION 12. [*Repeal and Effective Date.*] The following acts and laws are repealed as of the effective date of this Act:

(1)

(2)

SECTION 13. [*Time of Taking Effect.*] This Act shall take effect

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From
Winter 1977/1978
Uniform Law Ma
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Community property conflicts

When deciding if uniform legislation is needed to solve a problem common to all states, the Conference places major emphasis on the legal problems of that increasing number of Americans who move from one state to another.

For example, the Uniform Disposition of Community Property Rights at Death Act is aimed at the problems of spouses moving from the eight "community property" states to one of the 42 "common law" states. Community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington.

In those states, all property owned by married persons is classified as either "separate" or "community" property. Separate property is the exclusive possession of one spouse. This would include property acquired before marriage or during marriage through a personal gift, bequest, devise or descent. Separate property is "owned" by one spouse who has the right—except for the forced heirship statutes of Louisiana—to decide who to "leave" it to.

Community property

All other property acquired by the spouses during the marriage relationship becomes community property of both spouses without regard to whose name is on the title or bank account. From the date of acquisition, each spouse has a "present existing and equal interest" which can be characterized as a "vested interest."

In community property states, the law provides equal management and control of community property. In most cases, they manage and control property each owns if single. In some cases, joint management of community property is required.

heirs of his choice, but the surviving spouse retains complete control over the other half interest. In most community property states, if the spouse makes no formal arrangements through a will or trust and dies intestate, the half interest passes to the other spouse.

Problem illustrated

W.S. McClanahan, chairman of the Committee on Property Problems of the Migrant Client of the American Bar Association's Section of Real Property, Probate and Trust Law, used this illustration to show why the act is needed.

A husband and wife, married 20 years and having two children, acquire $300,000 worth of personal property while they live in California. All of it is community property held in the name of the husband. If he should die while living in California, he could bequeath only his half interest in that property and only that half would be subject to federal and California taxes.

But if the husband were transferred by his firm to Illinois—a common law state—still thinking all community property along while continuing to hold it only in his name, the rules would change. But the husband probably wouldn't realize that the will, made in California leaving a substantial share of his estate—half of the community property—to heirs other than his wife, would take on new meaning in Illinois. There she would be "left out" and Illinois law would grant her only a right to opt for a "statutory share" of a third of the estate—$100,000. This would deprive her of a portion of the property which she had earned as a "present, existing and equal interest" and the entire estate would be subject to federal and Illinois taxes.

Surviving Spouse shortchanged

Details would vary. But in most common law states the results would be the same. McClanahan said. The surviving spouse would receive substantially less than her vested half-interest.

The Uniform Act solves this problem by providing that:

"Upon the death of a married person, one-half of the property to which this act applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this state." A spouse can't claim a common law right—such as dower, courtesy or statutory interests—in addition to the half interest.

McClanahan said enactment of the Uniform Disposition of Community Property Rights at Death Act in a common law state eliminates "inequitable results which flow from non-recognition of the nature of community property and the rights and interests of the spouses in that property during life and at death."

Some states act

Colorado, Hawaii, Kentucky, Michigan and Oregon have adopted the act since it was completed by the Conference in 1972. Legislative interest is reported in a number of states including New York, Pennsylvania, Wisconsin and Arkansas.

"While few situations involving this problem have reached the reviewing courts in common law states, recognition of the problem will probably cause increasing litigation," McClanahan said. "More than 20 per cent of the population of the U.S. now lives in the eight community property states, which means that one of every five families is acquiring and accumulating its property under the community property system. Considering the increasing mobility of American families, it seems certain that this problem will be presented to the trial courts and the reviewing courts of the common law states with increasing frequency. Enactment of this act in all common law states would avoid this antici-

CODE REVISION COMMISSION

128

Senate Judiciary Comte
Re: SB 58
FYI

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

December 5, 1978

M E M O R A N D U M

SUBJECT: Uniform Disposition of Community Property Rights at Death Act

TO: Representative Mike Miller, Chairman
Alaska Legislative Council

FROM: John W. Abbott, Chairman
Code Revision Commission

Pursuant to the authority granted in AS 24.20.075(c), the Code Revision Commission has reviewed the proposed Uniform Disposition of Community Property Rights at Death Act. The proposed Act does not create community property in Alaska. It prescribes the rights, at death, of a married person who has community property acquired prior to a change in domicile to Alaska or property which is traceable to community property where the spouses have not indicated an intention that the community property rights be severed. Many Alaskans resided in a state which has community property rights before moving to Alaska. In order to have specific, uniform provisions for dealing with this property at death the Code Revision Commission recommends that the attached bill be introduced.

JWA/bb/jms

Attachment

Re: Senate Bills Nos. 54, 56 ad 58

Dear Mr. Davis:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3830

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM January 29, 1979

SUBJECT: Sectional Analysis of SB 58 -- Uniform Disposition Community Property Rights of Death Act (Work Order No.6160)

TO: Senator Robert H. Ziegler, Sr.

FROM: Kenneth M. Rosenstein, Legislative Counsel KMR

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

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

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

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

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

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

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

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

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

AS 13.41.050 and 13.31.055 provide for uniform construction and application and for citation for short title respectively.

KMR:nem

SB

77

COMMITTEE REPORT

SENATE

1/26/79

FURTHER: Finance

Date: 2-1-79

Mr. President:

The Committee on JUdiciary has had SB 77

relating to compensation for criminal injuries

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

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

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

and recommends _____

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

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

VIOLENT CRIMES COMPENSATION BOARD

Fifth Annual Report

STATE OF ALASKA

STATE OF ALASKA

VIOLENT CRIMES COMPENSATION BOARD

FIFTH ANNUAL REPORT

1978

Mrs. Patricia Moore
Chairman

Russellyn S. Carruth
Member

Dr. Alistair C. Chalmers
Member

Nola K. Capp
Administrator

STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
VIOLENT CRIMES COMPENSATION BOARD
POUCH H02A
Juneau, Alaska 99811

THE HONORABLE JAY HAMMOND
GOVERNOR OF THE STATE OF ALASKA

MEMBERS OF THE ALASKA STATE LEGISLATURE

Ladies and Gentlemen:

I have the honor to submit the Fifth Annual Report of the Violent Crimes Compensation Board for the period July 1, 1977 through June 30, 1978. Annual Reports are required under the provisions of Section 18.67.170 of the Laws of Alaska.

Respectfully,

Patricia Moore

(Mrs.) Patricia Moore
Chairman

BOARD MEMBERS

Mrs. Patricia Moore, Chairman
Alistair C. Chalmers, M.D.
Russellyn S. Carruth, Attorney
Nola K. Capp, Administrator

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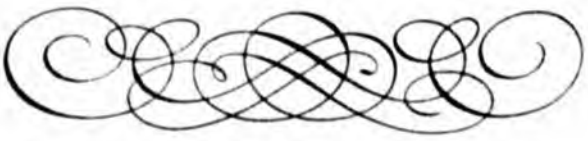

THE FIFTH ANNUAL REPORT OF THE VIOLENT CRIMES COMPENSATION BOARD

AS 18.67.010 PURPOSE

It is the purpose of this chapter to facilitate and permit the payment of compensation to innocent persons injured, to dependents of persons killed, and to certain other persons who by virtue of their relationship to the victim of a crime incur actual and reasonable expense as a result of certain serious crimes or in attempts to prevent the commission of crime or to apprehend suspected criminals.

GENERAL INFORMATION

Alaska Statute 18.67, establishing a Violent Crimes Compensation Board, was adopted by the State Legislature in 1972. Its purpose was to alleviate the financial hardships caused by crime related medical expenses or loss of income sustained by innocent victims of violent crimes in Alaska. Additionally, it provides for the payment of pecuniary loss to dependents of deceased victims to mitigate the loss of a loved one.

The need for this legislation is reflected in the fact that almost daily there is a report of some act of violence against a person in this State. If the offender is apprehended, the concern for his dignity and rights as an accused are not forgotten and, after

his imprisonment, the concern continues as to his rehabilitation and training programs. The efforts are praiseworthy, however, the problems and needs of the victim are overlooked. To address this need, the Violent Crimes Compensation Board was established.

The Board is appointed by the Governor and consists of three members who are compensated on a per diem basis for meetings only. It is mandatory to have a licensed medical doctor and an attorney on the Board thus providing the expertise in these fields necessary to determine claims.

The original statute provided a maximum payment of $10,000 and other collateral source receipts were required to be deducted from any award the Board determined. Other collateral receipts were defined as life insurance payments, medical and hospital insurance, VA benefits, Social Security, Workmen's Compensation, to mention just a few. Due to this restriction, many needy victims received only a partial award, or, in some cases, no award because they had already received benefits in excess of the $10,000. The Ninth Legislature recognized the inadequacy in this area of the statute and remedied it through an amendment permitting the payment of expenses or losses over and above the amount received from other sources to the maximum allowable under the amendment and exempted consideration of life insurance proceeds.

The amendment further provides for the increase in the maximum award allowable per victim per incident to $25,000; however, in the case of the death of a victim who has numerous eligible dependents, the maximum allowable is $40,000. The Board feels that the increase in the maximums is compatible with today's increased medical expenses, increased earnings and the general increase in the cost of daily living.

The additional compensation for multiple dependents of deceased victims is most commendable. In the majority of claims involving minor dependents, the Board suggests that, if necessary, the award be used for support and maintenance or any medical emergencies that might arise but the primary purpose of the award is for future education and, if not so used, that it be given to each child upon reaching the age of majority.

Modifications included in the amendment:

(a) Attorney fees to be paid in addition to an award rather than deducted from the award;

(b) An increase in the Emergency Award from $500 to $1,500;

(c) Exemption of life insurance proceeds received by the survivors of deceased victims,

(d) Compulsory display of information by hospitals and law enforcement agencies;

(e) Requirement of law enforcement agencies to advise victims of the availability of compensation;

(f) Reimbursement of expenses incurred because of the death of a victim to persons who were responsible for his support;

(g) The Board was given the discretion of making or denying an award without hearing on the claim but allowing the claimant the right to request a hearing if he disagrees with the determination.

PROCESSING OF APPLICATIONS

Upon receipt of a claim, it is necessary to initially determine minimal eligibility. Therefore, compliance with the following statutory requirements must be in evidence within the claim application:

(1) A crime, as defined in Section AS 18.67.100, must have been committed.

(2) The crime must have been reported to proper authorities within the time period designated in Section AS 18.67.130.

(3) The claim must have been filed within the two-year limit set by the law in Section AS 18.67.130.

If the claim does not meet the above standards, it is determined to be ineligible and the claimant is so notified.

When a claim meets these initial tests, it is then necessary to:

(1) acknowledge receipt of the claim and request any additional documentation which the claimant did not attach, such as doctor's reports, hospital reports, and employment information, and advise the claimant that such material must be received prior to any action on the claim;

(2) check with the respective District Attorney's office to determine if proceedings against the offender are imminent and, if so, to determine the advisability of a request to suspend the Violent Crimes Compensation Board investigation until the case is adjudicated, and, if the case has been adjudicated, request copies of the judgement;

(3) obtain a detailed description of the incident from police records to determine if any provocation by the victim is indicated and, if so, to contact any witnesses to the incident for their statements. (If the offender has been prosecuted, a review of the transcript of the trial might be advisable.);

(4) verify the victim's relationship, if any, to the alleged offender;

(5) verify the dependence of the claimant as well as his relationship to the victim, in the case of the death of the victim, to determine eligibility; and, finally, to

(6) consider other collateral sources reported as received by the claimant as a result of the incident, for example, Workmen's Compensation, Social Security, private insurance, etc.

Upon receipt of the requested information, further investigation is necessary to verify:

(1) the employment of the victim and/or the claimant;

(2) the income reported and documentation, if the victim is/was self-employed;

(3) hospital and doctor bills which were paid by insurance and their relevance to the claim;

(4) that a crime as defined in Section AS 18.67.100 is the basis for the claim and the applicant is an innocent victim thereof.

When the Administrator certifies the claim complete, the file is copied and submitted to the Board for their review and recommendations. They, in turn, may:

(a) find the claim cannot be determined due to lack of documentation or information which the Board feels necessary to make a decision.

(b) find the claim eligible under the statute for the award requested and advise a warrant be issued.

(c) find the claim eligible under the statute for a lesser amount than requested and advise that the claimant be so notified indicating that he may request a hearing.

(d) find the claim cannot be determined due to conflicting data therein and advise that a hearing is required prior to a final decision.

(e) find the claim ineligible under the statute and advise that the claimant be so notified indicating that he may request a hearing.

Upon being informed of the Board's actions, the Administrator carries out their request through:

(1) making the additional contacts in order to obtain further documentation.

(2) requesting a warrant, if an award is determined, in the amount specified, or upon the Board's recommendation, if outstanding balances are due a hospital, doctor or other service agency as a result of the incident, requests joint warrants. The Board feels that any services provided the claimant due to the incident upon which the claim is based should be cleared or arrangements made between the claimant and the obligee for a satisfactory settlement.

(3) In the event the award granted is less than was requested by the claimant, a letter is written enclosing the warrant and explaining the Board's decision noting the claimant's right to request a hearing.

(4) If the Board finds conflicting data in a claim or is in doubt about any part of the claim, a hearing is scheduled.

(5) If the claim is found ineligible, the claimant is so notified by letter stating the reason for ineligibility and advising him of the opportunity to request a hearing. The request for a hearing is to be received in the Board office within thirty days.

In order to schedule a hearing, the volunteer hearing officer is contacted to establish a date to his convenience. Arrangements are made and all parties are notified of the date and location of the hearing twenty days prior to the date set. Subpoenas are issued if witness testimony is necessary to establish eligibility or to clear up any contradictions.

Within seven days after the hearing, the Administrator furnishes the hearing officer with a transcript of the hearing and he has a reasonable time (within thirty days) to submit his findings and conclusions to the Board. The Board reviews the hearing officer's report and makes a final decision on the claim.

The Board is subrogated to the cause of action of the applicant against the person responsible for the injury or death of the victim and can also bring an action against the offender for the amount of the damages sustained by the applicant. The Board encourages claimants to institute civil proceedings where, if after investigation, it appears there may be a chance of recovery; however, very few recoveries are made due to the financial position of the offender.

Few claims are received that can be immediately determined as eligible. Many perplexing situations have to be considered by the Board in arriving at their decision; for example: Should a person who has sustained permanent disability through a criminal incident in which he bears some of the responsibility of provocation be considered for an award? Did the actual provocation warrant the final results of permanent disability? These are just a few of the problems encountered by the Board.

It is not difficult to reach an immediate decision as to eligibility on a claim where a widow and her children have lost their main support through an entirely innocent set of circumstances, but the amount of the award to be given poses a problem. All factors must be considered to be certain that the award will be helpful in maintaining an adequate living standard as a supplement to receipts from other sources. The Board must always bear in mind the appropriation available and the cost to the State, but if the program is to fulfill its objectives, compensation must be more than nominal.

The Board soon realized that it would be unfair as well as very costly to reimburse for actual wages lost, therefore, a set of Standards of Compensation was developed. The standards are based on a percentage of the rates established under Workmen's Compensation, applicable to permanent partial,

temporary partial or total disability. Reimbursement of loss of wages is based on a percentage of the average weekly wage for Alaska as established periodically by the Department of Labor. As all awards are required to be paid in a lump sum, there is no opportunity for re-evaluation after the award is granted should circumstances change. Those states with statutes allowing periodic payments can modify their awards as conditions change.

STATISTICAL AND ANALYTICAL INFORMATION

The growth in the awareness of Violent Crimes Compensation is evidence by the number of applications received in this fiscal year. Each inquiry and letter requesting application forms is handled individually and personally answered explaining the program and enclosing a copy of the statute or an application form and a brochure which simply explains the eligibility requirements. In instances wherein the writer has described the incident and other relevant facts surrounding the crime and it is determined from these facts that the claim might be ineligible, if filed, the Administrator replies and cites the particular requirement of the statute which may cause ineligibility but still encourages the writer to send in a claim.

In all cases, a claimant is instructed to attach all the necessary documentation to support his claim, explaining that in so doing it will expedite his claim to an early Board decision.

COST OF ADMINISTRATION

The costs to administer the Act for FY78 were as follows:

Staff salaries (2 persons) and benefits:	$57,315.37
Travel includes Board Member travel and per diem:	5,195.44
Attorney fees, office expenses, equipment, etc.:	11,372.97
Total Costs:	$73,883.78

TYPES OF CRIMES *NUMBER OF CLAIMS FILED						
TYPE OF CRIME	FY73	FY74	FY75	FY76	FY77	FY78
Homicide	8	15	17	14	31	23
ADW (Stabbing)	4	7	6	7	14	5
Armed Robbery	1	1	5	-0-	1	2
ADW (Shooting)	2	17	11	5	5	16
Other Assault	-0-	2	24	34	30	38
Rape	-0-	4	7	5	9	9
No Evidence of a Crime	-0-	4	1	3	3	7

*The foregoing chart merely indicates the trend in crime by the applications filed. It is difficult to compare and relate claims against crimes as claimants have two years to file claims and our statistics are on a fiscal year basis while crime figures are on a calendar year basis.

APPLICATIONS AND AWARDS

	FY73	FY74	FY75	FY76	FY77	FY78
Applications Received	15	50	71	68	93	100
Applications Heard	-0-	37	51	82	81	99
Total Amount Awards Granted	-0-	36,025.60	125,266.20	272,948.29	120,968.07	285,672.63*
Pending Claims At End Of FY	13	38	44	8	28	33

*The Legislature approved a supplemental appropriation of $75,000.00 for awards for FY78. $94,379.30 of the FY78 award money was spent on prior year claims.

ACTUAL NUMBER OF CRIMES REPORTED IN ALASKA (Based on a Calendar Year)					
Type of Crimes	1973	1974	1975	1976	1977
Homicide	33	46	39	41	43
Rape	147	166	177	192	211
Aggravated Assaults	868	1,017	1,176	1,264	1,147
Robbery	221	298	467	486	394

PUBLIC AWARENESS

The Board has stressed publicity of the program through the continued distribution of brochures and posters throughout the state. With the additional requirement placed on law enforcement agencies to alert victims of crimes to the program and the requirement that ' itals display information, it is encouraging that the actual receipt of applications has increased over last year.

The Board will continue to inform the public, setting as their goal statewide awareness of the program.

ACKNOWLEDGEMENTS

In the past year the Board has enjoyed the help and support of many individuals and agencies.

To make a final determination on any claim, the direct help of the law enforcement agency is vital and the Board has had excellent cooperation from the many municipal police departments throughout the state and the Alaska State Troopers. Special recognition is given to the Alaska State Troopers in Anchorage and Fairbanks and the municipal police departments of these two cities as the majority of claims originate in these areas.

Special recognition is also given to the Social Service Directors of Providence Hospital, Alaska Hospital and the Fairbanks Memorial Hospital who have referred victims to the program and have, in many instances, aided the victim in completing the application. They have been most accommodating in responding to requests for medical records, following those requests through the various departments to insure that they are sent to the Board office.

The Department of Law, through the Attorney General's office and the District Attorneys throughout the State, has been most cooperative in informing innocent victims of the program and in responding to the Board's many requests for legal interpretation and basic information necessary to make final determinations on claims.

Further, The Board recognizes the services of the following attorneys who have served as hearing officers on a voluntary basis from July 1, 1977 to June 30, 1978:

Mr. William H. Bittner, Anchorage
Mr. James E. Fisher, Kenai
Mr. Joe M. Huddleston, Anchorage
Ms. Mary A. Nordale, Fairbanks
Mr. Samuel J. Roser, Anchorage
Ms. Sandra K. Saville, Anchorage

Without the help of the above people, the program would be seriously hindered. The Board would be required to hold the hearings as, thus far, the appropriation level of the program does not support the engagement of attorneys on their regular fee basis.

There are numerous other agencies, both State and Federal, as well as individuals who have given their time and support to the Board informing victims of crime and helping to publicize the program. The Board, through this report, expresses their appreciation to them.

CLAIMS

SUMMARY OF DECISIONS

7/1/77 - 6/30/78

All awards are made under Section 18.67.110

(1) expenses actually and reasonably incurred as a result of the personal injury or death of the victim;

(2) loss of earning power as a result of total or partial incapacity of the victim, and reasonable expenses of job retraining of or similar employment-oriented rehabilitative services for the victim;

(3) pecuniary loss to the dependents of the deceased victim; and

(4) any other loss resulting from the personal injury or death of the victim which the board determines to be reasonable.

In the summary of each case, one or more of the above numbers will be used to signify the authority under which the award was granted. Please refer to the above for a full explanation.

Claim No. 76-057

The claimant, a 24 year old female, was working in an all night cafe when a male came in with a drink in his hand. The claimant requested he leave the cafe and, at this point, he slapped her, causing her to hit her head on a metal waitress stand. The claim had been pending for some time awaiting a decision from Workmen's Compensation. It was the decision of the Board to deny the claim on the grounds that (1) the claimant had not exhausted her Workmen's Compensation remedy, (2) she is receiving S.S.I. of $259.00 per month, and (3) the information does not clearly establish the causal relationship between the attack and the disability, nor the extent of the disability. The Board denied the claim under Section 18.67.080(c).

Award: Denied

Claim No. 77-025

The claimant, a 24 year old male, arrived at a car wash and pulled around a car which was in line but had no driver. Apparently, the driver returned and attacked the claimant leaving him with a broken nose, facial lacerations and a bruised eye. The claimant requested compensation for his loss of earnings. He was sent several letters requesting further information but did not respond. The claim was left open for quite some time but, as the claimant did not pursue the claim, the case was closed.

Award: Case Closed

Claim No. 77-026

The claimant, a 26 year old female, was involved in an incident whereby she left her husband in a hotel and walked down the street to get something to eat. She was allegedly assaulted by an unknown assailant and

sustained a fractured jaw. Because of the conflicting evidence, the Board ordered a hearing prior to making a determination. A hearing was held and the Board reviewed the hearing officer's Findings and Conclusions. It was the decision of the Board to concur with the hearing officer' findings and deny the claim under Section 18.67.080(c) on the grounds that there were inconsistencies with the police report which led to lack of conclusive evidence and insufficient proof to show the claimant was an innocent victim of an unprovoked criminal attack.

Award: Denied

Claim No. 77 J30

The claimant, a 26 year old male, was involved in an incident where he entered a bar in the early hours of the morning and, before ordering a drink, went to the restroom. When he was about to leave the restroom, three men rushed in and attacked him. He suffered two knife wounds in the chest and lungs. It was the determination of the Board that he was an innocent victim of a violent crime and it was their decision to award loss of earnings under Section 18.67.110(2).

Award: $1,610.00

Claim No. 77-036

The claimant, a male (unknown age), was allegedly assaulted by four men and received a cut above the nose and a blackened eye. The application was not completed and, after several letters were written with no reply, the case was closed.

Award: Case Closed

Claim No. 77-039

The victim, a 27 year old male, was apparently asleep when an assailant entered and killed him with one shot from a .22 caliber pistol. The claimant is the wife of the victim and requested compensation for herself and five children because of the death of her husband. It was the determination of the Board that the husband was an innocent victim of a violent crime and the claimant was eligible for compensation. The Board granted an award for loss of support under Section 18.67.110(3).

Award: $23,400.00

Claim No. 77-040

The claimant, a 16 year old female, was attacked and raped while walking to a girlfriend's house. As the claimant was a minor, the claim was filed on her behalf by her parent. It was the determination of the Board that the claimant was an innocent victim of a violent crime and it was their decision to grand an award for medical expenses under Section 18.67.110(1).

Award: $336.00

Claim No. 77-045

The claimant, a 42 year old male, alleged that an assailant tried to break into his home. The claimant turned on the outside light and opened the door, at which time, the assailant shot him in the hand. The claimant returned fire, hitting the assailant in the head and killing him. It was the decision of the Board to deny the claim on the grounds that there was lack of information to establish that the claimant was an innocent victim. The claimant failed to appear at a hearing to produce any information which might aid the Board. The claim was denied under Section 18.67.080(c).

Award: Denied

Claim No. 77-046

The victim, a 36 year old male, was shot to death in the home of his wife's uncle by the uncle. The claimant was the wife of the victim and mother of their four children. The Board had previously denied the claim on the grounds that the evidence was conflicting and the Board was not convinced that he was an innocent victim. It particularly appeared that the social history could have provided provocation for the shooting. A hearing was held and the Board reviewed the hearing officer's findings. It was the decision of the Board to concur with the hearing officer's findings and award the claimant and her children loss of support under Section 18.67.110(3) and to pay the out of pocket funeral expenses under Section 18.67.110(1).

Award: $31,516.80

Claim No. 77-048

The victim, a 23 year old male, was found in his trailer dead from a gunshot wound. The claimant is the ex-wife of the victim filing on behalf of their small son. The Board denied the claim on the grounds that the weight of the evidence indicated it was a self inflicted gunshot wound. The attorney for the claimant submitted a copy of the inquest proceedings in lieu of a hearing. It was the Board's decision to reaffirm the denial under Section 18.67.130(a) on the grounds that the weight of the evidence indicated it was a self inflicted gunshot wound.

Award: Denied

Claim No. 77-049

The claimant, a 29 year old male, alleged he was injured when he was struck in the face with a chair by a woman. The police report indicated that the claimant had bumped into an elderly couple who advised him to watch where he was going. The older man and a female got into an argument with the claimant. It was the decision of the Board to deny the claim under Section 18.67.080(c) on the grounds that the victim appeared to be engaged in a fight and there appeared to be provocation on his part. The claimant requested a hearing on his claim but, as he did not pursue his claim, the case was closed.

Award: Denied

Claim No. 77-051

The claimant, a 22 year old male, was involved in an altercation in a bar and was taken to the hospital with head injuries and multiple bruises. It was the decision of the Board to deny the claim under Section 18.67-.080(c) on the grounds that there was an indication of consent to the fight. There was no evidence, even if it were an unprovoked attack, that it is a crime covered under Section 18.67.100.

Award: Denied

Claim No. 77-054

The victim, a 31 year old male, was found dead of a massive skull injury caused by a tremendous blow. The claimant, mother of the victim, requested compensation for funeral expenses. It was the determination of the Board that he was an innocent victim of a violent crime and awarded the claimant funeral expenses under Section 18.67.110(1).

Award: $1,058.50

Claim No. 77-055

The victim, a 24 year old female, was found dead in her apartment of a single gunshot wound to the abdomen. The claimant was the husband of the victim and father of their young daughter. There was a question of whether the gunshot wound was self inflicted or by an unknown assailant. The Board requested more information from the claimant and a copy of the coroner's report. After reviewing the information and transcript, it was the decision of the Board to deny the claim under Section 18.67.130(a) on the grounds that the weight of the evidence indicated that it was a self inflicted gunshot wound.

Award: Denied

Claim No. 77-069

The victim, a 44 year old male, was shot and killed in an incident where two children were throwing snowballs at a man's window when the man came out of the apartment with a gun and threatened to shoot the children. The victim attempted to talk to the man and the man shot and killed the victim. The claimant was the brother of the victim and requested funeral expenses. It was the determination of the Board that the victim was an innocent victim of a violent crime and it was their decision to award the claimant funeral expenses under Section 18.67.110(1).

Award: $1,848.69

Claim No. 77-071

The claimant, a 31 year old male, was involved in an incident wherein a truck stopped in front of him. He got out to see what was the matter and a man got out of the truck and hit him. The victim suffered the loss of

an eye. It was the determination of the Board that the claimant was an innocent victim of a violent crime and it was their decision to award loss of earnings under Section 18.67.110(2).

Award: $8,510.00

Claim No. 77-072

The claimant, a 21 year old female, was a passenger in a vehicle that struck the rear of another vehicle. An argument ensued and the claimant was struck about the face and head. It was the decision of the Board to deny the claim under Section 18.67.080(c) on the grounds that the evidence was controverted and the weight of the evidence does not go in either direction.

Award: Denied

Claim No. 77-073

The claimant, a 22 year old male, alleged that he came around the corner of a house and a man started shooting. He was shot once in the stomach and once in the leg. Further information was needed and several letters were sent to the claimant. All of the letters were returned and, as no contact could be made with the claimant, the case was closed.

Award: Case Closed

Claim No. 77-077

The victim, a 25 year old male, was shot to death by a man who thought the victim had stolen his snowmobile keys. The claimant was the mother of the victim and requested compensation as a dependent. It was the determination of the Board that the claimant was a depen-