

27-LS0860A
Bannister
4/25/11

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the community property of married persons; and amending Rule
2 301(a), Alaska Rules of Evidence."

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

4 * **Section 1.** AS 34.77.030(g) is amended to read:

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

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

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

1 (3) from appreciation or income of the spouse's individual property
2 except to the extent that the income or appreciation is classified as community
3 property under AS 34.77.130;

4 (4) by a decree, community property agreement, written consent, or
5 reclassification under AS 34.77.060(b) designating it as the individual property of the
6 spouse;

7 (5) as a recovery for damage to property under AS 34.77.140, except
8 as specifically provided otherwise in a decree, community property agreement,
9 **community property trust**, or written consent; [OR]

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

13 **(7) as a transfer to a community property trust and declared by**
14 **the trust to be the individual property of the spouse.**

15 * **Sec. 2.** AS 34.77.050(b) is amended to read:

16 (b) A gift of community property to a third person that is not allowed under
17 (a) of this section is subject to **AS 34.77.140(e) - (h)** [(d) OF THIS SECTION] unless
18 both spouses act together in making the gift or the other spouse ratifies the gift.

19 * **Sec. 3.** AS 34.77.110 is amended by adding new subsections to read:

20 (f) Property that spouses agree in a community property agreement is
21 community property or property that is transferred to a community property trust and
22 expressly declared by the trust to be community property is owned as community
23 property regardless of the form of title to the property, even if the title indicates that
24 the property is owned unequally by the spouses or is only in the name of one spouse.

25 (g) If the title to community property is in a form that provides for ownership
26 by survivorship between the spouses, then ownership by survivorship is presumed to
27 have been made with the consent of both spouses.

28 (h) If a spouse with management and control of community property
29 designates a beneficiary for the property on the death of one or both of the spouses,
30 and if the community property is held in a form of title that permits a beneficiary
31 designation, the beneficiary designation is effective only for the designating spouse's

1 one-half interest in the community property unless the other spouse consents in
2 writing to the designation. A designation of the following as the beneficiary is
3 presumed to have been made with the consent of the other spouse:

4 (1) the other spouse or an ancestor or descendant of either spouse;

5 (2) a charity; or

6 (3) a trust, to the extent that the beneficiaries consist of persons or
7 entities identified in (1) or (2) of this subsection.

8 (i) The testimony of one spouse is sufficient to rebut a presumption
9 established under this section.

10 (j) A disposition of community property contrary to (e) - (h) of this section is
11 voidable. An action in court to void the disposition must be commenced within the
12 time specified by AS 34.77.140(e).

13 * **Sec. 4.** AS 34.77.140(d) is amended to read:

14 (d) Except as provided otherwise in (e) - (h) of this section
15 [AS 34.77.050(d)], a spouse must begin an action against the other spouse under (a) of
16 this section within three years after acquiring actual knowledge of the facts giving rise
17 to the claim.

18 * **Sec. 5.** AS 34.77.140 is amended by adding new subsections to read:

19 (e) Except as provided by (f) - (h) of this section, if a gift of community
20 property during marriage by a spouse does not comply with AS 34.77.050(a), the
21 nondonor spouse may bring an action to recover the property or the amount of money
22 by which the gift exceeded the limit under AS 34.77.050(a). The nondonor spouse
23 may bring the action against the donor spouse, the gift recipient, or both. The
24 nondonor spouse must commence the action within the earliest of the following times:

25 (1) one year after the nondonor spouse receives notice of the gift;

26 (2) one year after dissolution of the marriage; or

27 (3) on or before the deadline for filing a claim under AS 13.16.460
28 after the death of the donor spouse.

29 (f) If a recovery under (e) of this section occurs during the marriage of the
30 donor spouse and the nondonor spouse, the property or money that is recovered is
31 considered community property. If the recovery occurs after the dissolution of the

1 marriage of the donor and nondonor spouses or after the death of either the donor or
2 the nondonor spouse, the recovery is limited to 50 percent of the property or money
3 that would have been recovered if the recovery had occurred during the marriage.

4 (g) If a transfer of community property to a third person during marriage by a
5 spouse acting without the other spouse becomes a completed gift on the death of the
6 donor spouse, or if an arrangement involving community property during marriage by
7 a spouse acting without the other spouse is intended to be and becomes a gift to a third
8 person on the death of the donor spouse, the surviving spouse may bring an action in
9 court against the gift recipient to recover one-half of the gift. To bring an action under
10 this subsection, the surviving spouse must commence the action on or before the
11 deadline for filing a claim under AS 13.16.460.

12 (h) If a spouse who would have been entitled to bring an action under (e) - (g)
13 of this section predeceases the donor spouse, the deceased spouse's successor in
14 interest may bring an action for recovery under (e) - (g) of this section, but the action
15 must be commenced within one year after the deceased spouse's death. Recovery in an
16 action under this subsection is the same as if the donor spouse had predeceased the
17 spouse entitled to the recovery, but the amount of the recovery is calculated as of the
18 date of the death of the spouse entitled to the recovery.

19 * **Sec. 6.** AS 34.77.050(d) and 34.77.110(d) are repealed.

20 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 **INDIRECT COURT RULE CHANGE.** AS 34.77.110(i), enacted by sec. 3 of this Act,
23 has the effect of amending Rule 301(a), Alaska Rules of Evidence, by specifying the evidence
24 that is sufficient to rebut a presumption under AS 34.77.110(i), enacted by sec. 3 of this Act.

25 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 **CONDITIONAL EFFECT.** AS 34.77.110(i), enacted by sec. 3 of this Act, takes effect
28 only if sec. 7 of this Act receives the two-thirds majority vote of each house required by art.
29 IV, sec. 15, Constitution of the State of Alaska.