CS FOR HOUSE BILL NO. 287(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/19/10
Referred: Rules

Sponsor(s): REPRESENTATIVES RAMRAS AND GRUENBERG

A BILL

FOR AN ACT ENTITLED

"An Act relating to the adoption of the Uniform Disclaimer of Property Interests Act, and to the disclaimer of property rights under the Uniform Probate Code."

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

*** Section 1.** AS 13 is amended by adding a new chapter to read:

Chapter 70. Disclaimer of Property Interests.

Sec. 13.70.010. Scope. This chapter applies to disclaimers of any interest in or power over property, whenever created.

Sec. 13.70.020. Supplemented by other law. (a) Unless displaced by a provision of this chapter, the principles of law and equity supplement this chapter.

(b) This chapter does not limit any right of a person to waive, release, disclaim, or renounce an interest in or power over property under a law other than this chapter.

Sec. 13.70.030. Power to disclaim; general requirements; when irrevocable. (a) A person may disclaim, in whole or part, conditionally or

unconditionally, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction, prohibition, or limitation on the right to disclaim. A disclaimer shall be considered to be unconditional and not subject to modification or revocation unless the disclaimant provides otherwise in the disclaimer.

(b) With court approval, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment. Without court approval, a fiduciary may not disclaim, in whole or in part, any interest in or power over property, including a power of appointment, except that

(1) a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment, if and to the extent that the instrument creating the fiduciary relationship grants the fiduciary the right to disclaim;

(2) in the absence of a court-appointed guardian, notwithstanding a provision in AS 13.26 to the contrary, an individual having legal custody of a minor child may disclaim on behalf of the minor child, in whole or in part, any interest in or power over property, including a power of appointment, that the minor child is to receive solely as a result of another disclaimer, but only if the interest or power disclaimed by the individual having legal custody does not pass, as a result of the disclaimer, to or for the benefit of the individual having legal custody.

(c) To be effective, a disclaimer must be in writing, declare that the writing is a disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the manner provided in AS 13.70.100.

(d) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

(e) A disclaimer becomes irrevocable when

(1) any conditions to which the disclaimant has made the disclaimer subject are satisfied; and

(2) the disclaimer is delivered or filed under AS 13.70.100, or becomes

effective as provided in AS 13.70.040 - 13.70.090, whichever occurs later.

(f) A disclaimer made under this chapter is not a transfer, assignment, or release.

Sec. 13.70.040. Disclaimer of interest in property. (a) Except for a disclaimer governed by AS 13.70.050 - 13.70.065, the following rules apply to a disclaimer of an interest in property:

(1) the disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death;

(2) the disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general;

(3) if the instrument does not contain a provision described in (2) of this subsection, the following rules apply:

(A) if the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist;

(B) if the disclaimant is an individual, except as otherwise provided in (C) and (D) of this paragraph, the disclaimed interest passes as if the disclaimant had died immediately before the interest was created, unless under the governing instrument or other applicable law the disclaimed interest is contingent on surviving to the time of distribution, in which case the disclaimed interest passes as if the disclaimant had died immediately before the time for distribution;

(C) if by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution;

(D) if the disclaimed interest would pass to the disclaimant's estate had the disclaimant died before the time of distribution, the disclaimed interest instead passes by representation to the descendants of the disclaimant

who survive the time of distribution; if no descendant of the disclaimant survives the time of distribution, the disclaimed interest passes to those persons, including the state but excluding the disclaimant, and in the shares as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's domicile had the transferor died at the time of distribution; however, if the transferor's surviving spouse is living but is remarried at the time of distribution, the transferor is considered to have died unmarried at the time of distribution;

(4) on the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment as a result of the disclaimer.

(b) For the purposes of (a)(3) of this section, a disclaimed interest

(1) is created at

(A) the death of the benefactor; or

(B) an earlier time, if any, when the benefactor's transfer of the interest is a completed gift for federal gift tax purposes; and

(2) in a revocable trust is treated as if the interest had been created under a will.

(c) In this section,

(1) "benefactor" means the creator of the interest that is subject to a disclaimer;

(2) "future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation;

(3) "time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.

Sec. 13.70.050. Disclaimer of rights of survivorship in jointly held property. (a) On the death of a holder of jointly held property, a surviving holder may disclaim, in whole or part, the greater of

(1) a fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the

holder to whose death the disclaimer relates; or

(2) all of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

(b) A disclaimer under (a) of this section takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

(c) An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

Sec. 13.70.060. Disclaimer of interest in property held as a tenancy by the entirety. (a) The survivorship interest in property that is held as a tenancy by the entirety and to which the survivor succeeds by operation of law on the death of the cotenant may be disclaimed as provided in this chapter. For the purposes of this chapter only, the deceased tenant's interest in property held as a tenancy by the entirety is considered to be an undivided one-half interest.

(b) A disclaimer under (a) of this section takes effect as of the death of the deceased tenant to whose death the disclaimer relates.

(c) The survivorship interest in property held as a tenancy by the entirety and disclaimed by the surviving tenant passes as if the disclaimant had predeceased the tenant to whose death the disclaimer relates.

Sec. 13.70.065. Disclaimer of interest by trustee. If a trustee who has the power to disclaim under a court order or under the instrument creating the fiduciary relationship disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

Sec. 13.70.070. Disclaimer of power of appointment or other power not held in fiduciary capacity. If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules apply:

(1) if the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable;

(2) if the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power;

(3) the instrument creating the power is construed as if the power expired when the disclaimer became effective.

Sec. 13.70.080. Disclaimer by appointee, object, or taker in default of exercise of power of appointment. (a) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(b) A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

Sec. 13.70.090. Disclaimer of power held in fiduciary capacity. (a) If a fiduciary disclaims a power held in a fiduciary capacity that has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(b) If a fiduciary disclaims a power held in a fiduciary capacity that has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(c) A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

Sec. 13.70.100. Delivery or filing. (a) Subject to (b) - (*l*) of this section, delivery of a disclaimer may be effected by personal delivery, first class mail, or any other method likely to result in its receipt. A disclaimer sent by first class mail is considered to have been delivered on the date it is postmarked. Delivery by personal delivery or any other method is effective on receipt by the person to whom the disclaimer is to be delivered under this section.

(b) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust,

(1) a disclaimer shall be delivered to the personal representative of the decedent's estate; or

(2) if a personal representative is not then serving, it shall be filed with a court having jurisdiction to appoint the personal representative.

(c) In the case of an interest in a testamentary trust,

(1) a disclaimer shall be delivered to the trustee then serving, or if a trustee is not then serving, to the personal representative of the decedent's estate; or

(2) if no personal representative is then serving, a disclaimer shall be filed with a court having jurisdiction to enforce the trust.

(d) In the case of an interest in an inter vivos trust,

(1) a disclaimer shall be delivered to the trustee then serving;

(2) if no trustee is then serving, a disclaimer shall be filed with a court having jurisdiction to enforce the trust; or

(3) if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, the disclaimer shall be delivered to the settlor of a revocable trust or the transferor of the interest, or the legal representative of the settlor or transferor.

(e) In the case of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, a disclaimer shall be delivered to the person making the beneficiary designation.

(f) In the case of an interest created by a beneficiary designation made after the time the designation becomes irrevocable, a disclaimer shall be delivered to the person obligated to distribute the interest.

(g) In the case of a disclaimer by a surviving holder of jointly held property, or by the surviving tenant of property held as a tenancy by the entirety, the disclaimer shall be delivered to the person to whom the disclaimed interest passes, or, if the person cannot reasonably be located by the disclaimant, the disclaimer shall be delivered as provided by (b) of this subsection.

(h) In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created,

(1) the disclaimer shall be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(2) if no fiduciary is then serving, the disclaimer shall be filed with a court having authority to appoint the fiduciary.

(i) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment,

(1) the disclaimer shall be delivered to the holder, the personal representative of the holder's estate, or to the fiduciary under the instrument that created the power; or

(2) if no fiduciary is then serving, the disclaimer shall be filed with a court having authority to appoint the fiduciary.

(j) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer shall be delivered as provided in (b) - (d) of this section, as if the power disclaimed were an interest in property.

(k) In the case of a disclaimer of a power by an agent, except a power exercisable by a fiduciary over a trust or estate, the disclaimer shall be delivered to the principal or the principal's representative.

(*l*) When a disclaimer of an interest in or relating to real property is recorded in the judicial district where the real property is located, there is a rebuttable presumption that the disclaimer has been delivered.

(m) In this section, "beneficiary designation" means an instrument, other than an instrument creating or amending a trust, naming the beneficiary of

(1) an annuity or insurance policy;

(2) an account with a designation for payment on death;

(3) a security registered in beneficiary form;

(4) a pension, profit-sharing, retirement, or other employment-related benefit plan; or

(5) any other nonprobate transfer at death.

Sec. 13.70.110. When disclaimer permitted, barred, or limited. (a) A disclaimer is permitted unless barred under (b) - (f) of this section. A disclaimer is permitted even though the disclaimant is insolvent.

(b) A disclaimer is barred by a written waiver of the right to disclaim.

(c) A disclaimer of an interest in property is barred if any of the following events occurs before the disclaimer becomes effective:

(1) the disclaimant accepts the interest sought to be disclaimed;

(2) the disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to assign, convey,

encumber, pledge, or transfer the interest sought to be disclaimed; or

(3) a judicial sale or a nonjudicial foreclosure sale of the interest sought to be disclaimed occurs.

(d) A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

(e) A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

(f) A disclaimer of an interest in or power over property under this chapter is barred and is not effective

(1) to the extent the disclaimant is in arrears in child support payments; or

(2) if the disclaimant is involved in a pending court or administrative proceeding to establish or modify the disclaimant's child support obligation or to establish whether the disclaimant is the biological father or mother of a child.

(g) A disclaimer of a power over property that is barred by this section is ineffective. A disclaimer of an interest in property that is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this chapter had the disclaimer not been barred.

Sec. 13.70.120. Tax qualified disclaimer. (a) Notwithstanding any other provision of this chapter, if, as a result of a disclaimer or transfer, the disclaimed or transferred interest is treated under the provisions of 26 U.S.C. (Internal Revenue Code) as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under this chapter. In this section, "26 U.S.C. (Internal Revenue Code)" includes 26 U.S.C. as amended, any successor statute to 26 U.S.C. or 26 U.S.C. as amended, and regulations adopted under 26 U.S.C., 26 U.S.C. as amended, and any successor statute to 26 U.S.C. or 26 U.S.C. as amended.

(b) A tax-qualified disclaimer under 26 U.S.C. (Internal Revenue Code) is subject to the time limits under 26 U.S.C., as amended, even though time limits are not specified under this chapter.

Sec. 13.70.130. Recording of disclaimer. If an instrument transferring an

interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered, the disclaimer may be filed, recorded, or registered as required or permitted by law. Failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

Sec. 13.70.140. Application to existing relationships. Except as otherwise provided in AS 13.70.110, an interest in or power over property existing on the effective date of this chapter as to which the time for delivering or filing a disclaimer under law superseded by this chapter has not expired may be disclaimed after the effective date of this chapter.

Sec. 13.70.150. Uniformity of application and construction. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 13.70.190. Definitions. In this chapter,

(1) "disclaimant" means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made;

(2) "disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made;

(3) "disclaimer" means the refusal to accept an interest in or power over property and includes a renunciation;

(4) "fiduciary" means a personal representative, a trustee, an agent acting under a power of attorney, a guardian, an individual having legal custody of a minor child, or another person authorized to act as a fiduciary with respect to the property of another person;

(5) "individual having legal custody of a minor child" means an individual who, under the law of this state, has legal custody of a minor child as a matter of law or court decree;

(6) "jointly held property"

(A) means property held in the name of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property;

(B) does not include property held as a tenancy by the entirety;

(7) "person" means an individual, whether the individual is ascertained or unascertained, whether the individual is living or not living, and whatever the basis, including intestacy, for the individual's being entitled to an interest in property; a corporation; a business trust; an estate; a trust; a partnership; a limited liability company; a limited liability partnership; an association; a joint venture; a government; a governmental subdivision, agency, or instrumentality; a public corporation; or any other legal or commercial entity;

(8) "trust"

(A) means

(i) an express trust, charitable or noncharitable, with additions to the express trust, whenever and however created; and

(ii) a trust created under a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust;

(B) does not include a constructive trust or a resulting trust.

Sec. 13.70.195. Short title. This chapter may be cited as the Uniform Disclaimer of Property Interests Act.

*** Sec. 2.** AS 13.12.801 is repealed.