

## Alaska Statutes

### Title 34 – Property

#### Chapter 77 – Community Property Act

##### Sec. 34.77.030 Classification of property of spouses.

- (a) Except for property that is classified otherwise in this chapter, property of spouses is community property under this chapter only to the extent provided in a community property agreement or a community property trust.
- (b) If a community property agreement provides that all property acquired by either or both spouses during the marriage is community property, the property of the spouses acquired during the marriage and after the determination date is presumed to be community property.
- (c) A spouse has a present undivided one-half interest in community property.
- (d) If the community property agreement provides that all property acquired by either or both spouses during the marriage is community property, income earned or accrued by a spouse or attributable to property of a spouse during marriage and after the determination date is community property.
- (e) Community property transferred to a trust remains community property.
- (f) Whether or not the community property agreement provides that all property acquired by either or both spouses during the marriage is community property, property that is owned by a spouse at the time of a marriage but before the determination date is not community property except to the extent otherwise expressly provided in the community property agreement.
- (g) Whether or not the community property agreement provides that all property acquired by either or both spouses during the marriage is community property, and except to the extent otherwise expressly provided by the spouses in the community property agreement or by the settlors in a community property trust, property acquired by a spouse during marriage and after the determination date is individual property if acquired
  - (1) by gift or a disposition at death made by a third person to the spouse and not to both spouses;
  - (2) in exchange for or with the proceeds of other individual property of the spouse;
  - (3) from appreciation or income of the spouse's individual property except to the extent that the income or appreciation is classified as community property under [AS 34.77.130](#);
  - (4) by a decree, community property agreement, written consent, or reclassification under [AS 34.77.060\(b\)](#) designating it as the individual property of the spouse;
  - (5) as a recovery for damage to property under [AS 34.77.140](#), except as specifically provided otherwise in a decree, community property agreement, community property trust, or written consent;
  - (6) as a recovery for personal injury, except for the amount of the recovery attributable to expenses paid or otherwise satisfied from community property; or
  - (7) as a transfer to a community property trust and declared by the trust to be the individual property of the spouse.
- (h) Appreciation and income of property transferred to a community property trust is community property if declared in the trust to be community property.
- (i) Community property held by a community property trust or another trust remains community property of the spouses if distributed to the spouses.

(j) Except as provided otherwise in this chapter, this chapter does not alter the classification and ownership rights of property acquired before or during the marriage.

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### **Sec. 34.77.100 Community property trust.**

(a) An arrangement is a community property trust if one or both spouses transfer property to a trust, the trust expressly declares that some or all the property transferred is community property under this chapter, and at least one trustee is a qualified person whose powers include or are limited to maintaining records for the trust on an exclusive or a nonexclusive basis and preparing or arranging for the preparation of, on an exclusive or a nonexclusive basis, any income tax returns that must be filed by the trust. A community property trust is enforceable without consideration. Both spouses or either spouse may be a trustee. The trust must be signed by both spouses. In this subsection, “qualified person” means

(1) an individual

(A) who, except for brief intervals, military service, attendance at an educational or training institution, or absences for good cause shown, resides in this state;

(B) whose true and permanent home is in this state;

(C) who does not have a present intention of moving from this state; and

(D) who intends to return to this state when away;

(2) a trust company that is organized under AS 06.26 and that has its principal place of business in this state; or

(3) a bank that is organized under AS 06.05 or a national banking association that is organized under [12 U.S.C. 21--216d](#) if the bank or national banking association possesses and exercises trust powers and has its principal place of business in this state.

(b) A community property trust must contain the following language in capital letters at the beginning of the trust:

THE CONSEQUENCES OF THIS TRUST MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE BOTH DURING THE COURSE OF YOUR MARRIAGE AND AT THE TIME OF A DIVORCE. ACCORDINGLY, THIS AGREEMENT SHOULD ONLY BE SIGNED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS AGREEMENT, YOU SHOULD SEEK COMPETENT ADVICE.

(c) A community property trust may not adversely affect the right of a child to support.

(d) Except as provided in [AS 34.77.010](#), [34.77.070\(h\)](#), [34.77.080\(b\)](#), and in (c) of this section, in a community property trust spouses may agree on

(1) the rights and obligations in the property transferred to the trust, notwithstanding when and where the property is acquired or located;

(2) the management and control of the property transferred to the trust;

(3) the disposition of the property transferred to the trust on dissolution, death, or the occurrence or nonoccurrence of another event;

(4) the choice of law governing the interpretation of the trust; and

(5) any other matter that affects the property transferred to the trust and does not violate public policy or a statute imposing a criminal penalty.

(e) A community property trust may not be amended or revoked unless the agreement itself provides for amendment or revocation, or unless the agreement is amended or revoked by a later community property trust. To amend or revoke the trust, the later community property trust is not required to declare any property held by the trustee as community property. The amended trust or the revocation is enforceable without consideration. However, notwithstanding the other provisions of this subsection, unless the community property trust expressly provides otherwise, at any time after the death of the first spouse the surviving spouse may amend the community property trust with regard to the surviving spouse's property to be disposed of at the surviving spouse's death. In this subsection, "surviving spouse's property" means the property that consists of the surviving spouse's separate property and the surviving spouse's share of the community property determined as of the date of the first spouse's death.

(f) A community property trust executed during marriage is not enforceable if the spouse against whom enforcement is sought proves that

(1) trust was unconscionable when made; or

(2) the spouse against whom enforcement is sought did not execute the community property trust agreement voluntarily; or

(3) before execution of the community property trust agreement, the spouse against whom enforcement is sought

(A) was not given a fair and reasonable disclosure of the property and financial obligations of the other spouse;

(B) did not voluntarily sign a written waiver expressly waiving right to disclosure of the property and financial obligations of the other spouse beyond the disclosure provided; and

(C) did not have notice of the property or financial obligations of the other spouse.

(g) Whether or not a community property trust is unconscionable is determined by a court as a matter of law.

(h) The trustee of a community property trust shall maintain records that identify which property held by the trust is community property and which property held by the trust is not community property.

(i) In addition to other transfers of property to a community property trust, property will be considered transferred to a community property trust if the property is subject to a nonprobate transfer on death under [AS 13.33.101](#) and the community property trust is designated as the beneficiary to receive the property under the transfer.