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ALASKA[1]

State Decanting Summary[2]

STATUTORY HISTORY	
Statutory citation	ALASKA STAT. § 13.36.157 through § 13.36.159; § 13.36.215 (definitions)
Effective Date	9/15/98
Amendment Date(s)	2006; 9/9/13
ABILITY TO DECANT	
1. Discretionary distribution authority required to decant?	*Unlimited discretion*: Yes, unlimited discretion to invade principal[3]
	Limited discretion: Yes, power to invade principal without unlimited discretion[4]
2. Limitation on trustee who may decant?	Yes[5]
CHANGES PERMITTED	
3. May new trust eliminate beneficiary's mandatory distribution rights?	No, except with respect to extended trust duration[6]
4. May new trust eliminate beneficiary's withdrawal rights?	No, except with respect to extended trust duration[7]
5. Must new and old trust beneficiaries be identical?	*Unlimited discretion*: No[8]
	Limited discretion: Yes[9]
6. Are beneficiaries of new trust limited to current beneficiaries of old trust?	*Unlimited discretion*: Presumably yes[10]
	Limited discretion: No[11]
7. May remainder beneficiaries' interests be accelerated?	No[12]
8. New and old trust require same distribution standard?	*Unlimited discretion*: Presumably no
	Limited discretion: Yes, but not required during extended term when new trust has longer term length than old trust[13]
9. May trustee grant a power of appointment in new trust?	*Unlimited discretion*: Yes[14]
	Limited discretion: Only if in invaded trust[15]
10. Must new trust grant identical power of appointment as old trust?	*Unlimited discretion*: No[16]
	Limited discretion: Yes[17]
11. Supplemental needs trust exception?	Yes[18]
TAX RESTRICTIONS	
12. Marital deduction savings provision?	Yes[19]
13. Charitable deduction savings provision?	Yes[20]
14. Beneficiary/trustee savings provision?	Yes[21]
15. Other tax savings provisions?	2503(b)[22]; 2642(c)[23]; S Corp[24]; Catch-all[25]
16. Non-grantor trust to grantor trust conversion permitted?	Silent
OTHER RESTRICTIONS	
17. Rule against perpetuities savings provision?	Yes[26]
18. May trustee increase trustee commission?	No, unless the court approves[27]
19. Other restrictions	Decreasing liability or eliminating remover without court approval[28]; fixing asset values[29]
NOTICE, CONSENT & APPROVAL	
20. Notice to interested parties required prior to decanting?	Yes; 30 days to settlor, remover and qualified beneficiaries[30]
21. Is decanting prohibited if a beneficiary objects?	No[31]
22. Court approval required to decant?	No[32]
FIDUCIARY DUTIES	
23. Provision re: purposes for exercise or explicit fiduciary duty?	Yes[33]
24. Provision that trustee has no duty to consider decanting?	Yes[34]
25. Standard of review?	Yes[35]
TRUSTS SUBJECT TO STATUTE	
26. Provision on trusts subject to statute?	Yes[36]
MISCELLANEOUS	
27. Other unique considerations?	Later discovered assets[37]

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ALASKA STATUTE
AS §§ 13.36.157-159, 13.36.153 and 13.36.215(b)

Sec. 13.36.157. Exercise of power of appointment. (a) An authorized trustee with unlimited discretion to invade trust principal may appoint part or all of that principal to a trustee of an appointed trust for, and only for the benefit of, one or more current beneficiaries of the invaded trust to the exclusion of other current beneficiaries. A permissible appointee of a power of appointment held by a beneficiary of the appointed trust is not considered a beneficiary of the appointed trust, regardless of whether the permissible appointee is a current beneficiary or a successor and remainder beneficiary.

(b) An authorized trustee exercising the power under (a) of this section may grant a discretionary power of appointment, including a presently exercisable power of appointment, in the appointed trust to one or more of the current beneficiaries of the invaded trust, to the extent that the beneficiary who is granted the power to appoint is authorized to receive the principal outright under the terms of the invaded trust. A permissible appointee is not limited to the beneficiaries of the invaded trust.

(c) Under (a) and (b) of this section, if the beneficiaries of the invaded trust are described by a class, the beneficiaries of the appointed trust may include present or future members of that class.

(d) An authorized trustee with the power to invade trust principal but without unlimited discretion may appoint part or all of the principal of the trust to a trustee of an appointed trust if the current beneficiaries of the appointed trust are the same as the current beneficiaries of the invaded trust and the successor and remainder beneficiaries of the appointed trust are the same as the successor and remainder beneficiaries of the invaded trust. The shares of the current beneficiaries of the appointed trust must be the same as the shares of the current beneficiaries of the invaded trust, and the shares of the successor and remainder beneficiaries of the appointed trust must be the same as the shares of the successor and remainder beneficiaries of the invaded trust.

(e) If the authorized trustee exercises the power under (d) of this section, the appointed trust must include the same standard authorizing the trustee to distribute the income or invade the principal of the appointed trust as the standard in the invaded trust. However, the standard authorizing the trustee to distribute the income or invade the principal of the appointed trust may be changed if the trustee appoints to an appointed trust that is a special needs trust, a pooled trust, or a third-party trust.

(f) If an authorized trustee exercises the power under (d) and (e) of this section to extend the duration of the appointed trust beyond the duration of the invaded trust for any period after the invaded trust would have otherwise terminated under the provisions of the invaded trust, the appointed trust, in addition to the language required to be included in the appointed trust under (e) of this section, may also provide an additional trustee with unlimited discretion to invade the principal of the appointed trust during the extended duration. The trustee with unlimited discretion continues to be subject to the restrictions in (d) - (h) of this section.

(g) Under (d) - (f) of this section, if the beneficiaries of the invaded trust are described by a class, the beneficiaries of the appointed trust include present or future members of that class.

(h) If the authorized trustee exercises the power under (d) - (g) of this section and if the invaded trust grants a power of appointment to a beneficiary of the trust, the appointed trust must grant this power of appointment in the appointed trust, and the class of permissible appointees shall be the same as in the invaded trust.

Sec. 13.36.158. Additional provisions relating to exercise of a power of appointment. (a) An exercise of the power to invade trust principal under AS 13.36.157 is the exercise of a special power of appointment.

(b) The appointed trust to which an authorized trustee appoints the assets of the invaded trust under AS 13.36.157 may have a duration that is longer than the duration set out in the invaded trust.

(c) If an authorized trustee has unlimited discretion to invade the principal of a trust and if the same trustee or another trustee has a power, not dependent on unlimited discretion, to invade principal under the trust instrument, the authorized trustee having unlimited discretion may exercise the power of appointment under AS 13.36.157(a) - (c).

(d) An authorized trustee may exercise the power to appoint in favor of an appointed trust under AS 13.36.157 whether or not there is a current need to invade principal under the terms of the invaded trust.

(e) An authorized trustee exercising the power under AS 13.36.157 - 13.36.159 has a fiduciary duty to exercise the power in the best interests of one or more proper objects of the exercise of the power and as a prudent person would exercise the power under the prevailing circumstances. The authorized trustee may not exercise the power under AS 13.36.157 - 13.36.159 if there is substantial evidence of a contrary intent of the settlor and it cannot be established that the settlor would be likely to have changed this intention under the circumstances existing at the time the trustee exercises the power. The provisions of the invaded trust may not be viewed alone as substantial evidence of a contrary intent of the settlor unless the invaded trust expressly prohibits the exercise of the power in the manner intended by the authorized trustee.

(f) The provisions of AS 13.36.157 - 13.36.159 may not be construed to abridge the right of a trustee to appoint property further in trust under the terms of the governing instrument of a trust, another provision of law, or common law, or as directed by a court having jurisdiction over the trust.

(g) Nothing in AS 13.36.157 - 13.36.159 creates or implies a duty to exercise a power to invade principal. An inference of impropriety may not be made, and liability is not incurred, as a result of an authorized trustee not exercising the power conferred under AS 13.36.157.

(h) A power authorized by AS 13.36.157 may be exercised, subject to the provisions of AS 13.36.159(a), unless expressly prohibited by the terms of the governing instrument. A general prohibition against amending or revoking the invaded trust and a provision that constitutes a spendthrift clause do not preclude the exercise of a power under AS 13.36.157.

(i) An authorized trustee may not exercise a power authorized by AS 13.36.157 to

(1) reduce, limit, or modify a beneficiary's current right to a mandatory distribution of income or principal, a mandatory annuity or unitrust interest, a right to withdraw a percentage of the value of the trust, or a right to withdraw a specified dollar amount, if the mandatory right has come into effect with respect to the beneficiary, but the mandatory right may be reduced, limited, or modified during any extended duration of the trust; however, notwithstanding the other provisions in this paragraph, but subject to the other limitations in AS 13.36.157 - 13.36.159, an authorized trustee may exercise a power authorized by AS 13.36.157 to appoint to an appointed trust that is a special needs trust, a pooled trust, or a third-party trust;

(2) decrease or indemnify against a trustee's liability or exonerate a trustee from liability for failure to exercise reasonable care, diligence, and prudence unless the court having jurisdiction over the trust specifies otherwise;

(3) eliminate a provision granting another person the right to remove or replace the authorized trustee exercising the power under AS 13.36.157 unless a court having jurisdiction over the trust specifies otherwise;

(4) fix as binding and conclusive the value of an asset for purposes of distribution, allocation, or otherwise; or

(5) jeopardize

(A) the deduction or exclusion originally claimed with respect to a contribution to the invaded trust that qualified for the annual exclusion under 26 U.S.C. 2503(b), the marital deduction under 26 U.S.C. 2056(a) or 26 U.S.C. 2523(a), or the charitable deduction under 26 U.S.C. 170(a), 26 U.S.C. 642(c), 26 U.S.C. 2055(a), or 26 U.S.C. 2522(a) (Internal Revenue Code);

(B) the qualification of a transfer as a direct skip under 26 U.S.C. 2642(c) (Internal Revenue Code);

(C) the election to treat a corporation as a subchapter S corporation under 26 U.S.C. 1362 (Internal Revenue Code); or

(D) another specific tax benefit for which a contribution originally qualified for income, gift, estate, or generation-skipping transfer tax purposes under 26 U.S.C. (Internal Revenue Code).

(j) Before exercising the power under AS 13.36.157, an authorized trustee shall consider the tax implications of the exercise of the power.

(k) An authorized trustee may not exercise a power described in AS 13.36.157 - 13.36.159 in violation of the limitations on validity in AS 34.27.051 or 34.27.100, or the restrictions on exercising certain powers in AS 13.36.153 by trustees who are not independent. A violation voids the entire exercise of the power unless the exercise is modified to correct the violation.

(*l*) Unless a court having jurisdiction over the trust directs otherwise, an authorized trustee may not exercise a power authorized by AS 13.36.157 to change the provisions regarding the determination of the compensation of a trustee. The commissions or other compensation payable to the trustees of the invaded trust may continue to be paid to the trustees of the appointed trust during the term of the appointed trust and shall be determined in the same manner as for the invaded trust.

(m) A trustee may not receive a payment, a commission, or other compensation for appointing property from the invaded trust to an appointed trust under AS 13.36.157. However, a trustee may be compensated at a reasonable rate for the time spent considering and implementing the exercise of a power to appoint.

(n) Unless the invaded trust expressly provides otherwise, the provisions in AS 13.36.157 - 13.36.159 apply to

(1) a trust, whether testamentary or inter vivos, governed by the laws of this state, including a trust whose governing law has been changed to the laws of this state; and

(2) a trust that has a trustee who is an individual domiciled in this state, or a trustee that is an entity having an office in this state, if a majority of the trustees select this state as the location for the primary administration of the trust and the selection is made by an instrument in writing that is signed and acknowledged by a majority of the trustees; the instrument exercising this selection shall be kept with the records of the invaded trust.

(o) In this section, "Internal Revenue Code" means the Internal Revenue Code of the United States (26 U.S.C.) as it exists on the effective date of this Act and as it is amended from time to time.

Sec. 13.36.159. Implementation of power of appointment. (a) Unless the authorized trustee provides otherwise, the appointment of

(1) all of the assets making up the principal of the invaded trust to an appointed trust includes subsequently discovered assets of the invaded trust and undistributed principal of the invaded trust acquired after the appointment to the appointed trust;

(2) a part but not all of the assets making up the principal of the invaded trust to an appointed trust may not include subsequently discovered assets belonging to the invaded trust or principal paid to or acquired by the invaded trust after the appointment to the appointed trust; those subsequently discovered assets remain the assets of the invaded trust.

(b) The exercise of the power to appoint to an appointed trust under AS 13.36.157 shall be evidenced by an instrument in writing that is signed, dated, and acknowledged by the authorized trustee. The exercise of the power is effective 30 days after the date of service of the instrument as specified in (d) of this section, unless the persons entitled to notice consent in writing to a sooner effective date.

(c) An authorized trustee may exercise the power authorized by AS 13.36.157 without the consent of the settlor or a person interested in the invaded trust and without court approval. However, an authorized trustee may seek court approval for the exercise. When seeking court approval, notice shall be sent to all qualified beneficiaries.

(d) A copy of the invaded trust, the appointed trust, and the instrument exercising the power shall be delivered to

(1) the settlor, if living, of the invaded trust;

(2) a person having the right, under the terms of the invaded trust, to remove or replace the authorized trustee exercising the power under AS 13.36.157; and

(3) a qualified beneficiary or a person who may represent and bind a qualified beneficiary under AS 13.06.120.

(e) Notice under (d) of this section to a qualified beneficiary is not required if the settlor has exempted the authorized trustee from providing notification or information to beneficiaries under AS 13.36.080(b). Notice under (d) of this section shall be provided under AS 13.06.110.

(f) The instrument exercising the power must state whether the appointment is of all or part of the assets making up the principal of the invaded trust and, if a part, the approximate percentage of the value of the principal of the invaded trust that is the subject of the appointment. A failure to state whether the appointment is of all or part of the assets creates a presumption that only part of the assets is to be appointed.

(g) A person entitled to notice under (d) of this section may object to the trustee's exercise of the power under AS 13.36.157 - 13.36.159 by serving a written notice of objection on the trustee before the effective date of the exercise of the power. The failure to object does not constitute consent.

(h) The receipt of a copy of the instrument exercising the power does not, before the expiration of the limitation period in AS 13.36.100 with respect to a report disclosing the exercise, affect the right of a qualified beneficiary to object to the exercise of the power under AS 13.36.157 and to request the court to modify or to reverse the exercise.

(i) A copy of the instrument exercising the power shall be kept with the records of the invaded trust.

Section 13.36.153. Restrictions on exercising certain trustee powers.

(a) Notwithstanding AS 13.36.107, a trustee who is not an independent trustee may not exercise a power to make or cause to be made a discretionary distribution of either principal or income

(1) to or for the direct or indirect benefit of the trustee individually or to any person holding a power to remove and replace the trustee, except to the extent that the power is exercised in accordance with an ascertainable standard that relates to the health, education, maintenance, or support of the trustee or person;

(2) to satisfy a legal obligation that is owed by the trustee individually or by any person holding a power to remove and replace this trustee; or

(3) if the distribution would constitute a taxable gift from the trustee individually or from a person holding a power to remove and replace the trustee.

(b) The prohibitions of (a) of this section apply to a trustee even if the governing instrument states that the trustee may make distributions in the trustee's uncontrolled, absolute, or total discretion, or that distributions are not subject to review by a court, or the governing instrument otherwise indicates that distributions by the trustee are not subject to reasonableness when the trustee exercises discretion.

(c) If a trustee is prohibited by (a) of this section from exercising a power and if one or more other trustees are not prohibited by (a) of this section from exercising the power, the other trustees may exercise the power. If there is not a trustee who can exercise a power prohibited under (a) of this section, a party in interest may apply to the superior court to appoint an independent trustee to exercise the power.

(d) The provisions of (a) of this section do not prohibit a trustee from making payments, including reimbursement of and compensation of an independent trustee appointed under (c) of this section, for the protection of the trust or the assets of the trust, or for the expenses, losses, or liabilities incurred in the collection, care, administration, or protection of the trust or the assets of the trust.

(e) Except as provided in (f) of this section, this section applies to

(1) a trust that is created on or after August 9, 2000; or

(2) the decisions and actions of a trust that is in existence on August 9, 2000, if the decisions are made, or the actions occur, on or after August 9, 2000.

(f) The application provisions of (e) of this section do not apply if

(1) the terms of the trust, including the terms as amended, expressly provide that this section does not apply and either specifically refer to this section or otherwise clearly demonstrate the intent that this section does not apply; or

(2) the trust is irrevocable and all parties in interest elect under (g) of this section not to be subject to the application of this section; an election under this paragraph must be made on or before January 1, 2003, or three years after the date on which the trust becomes irrevocable, whichever date is later; however, notwithstanding AS 13.36.080, the trustee does not have a duty to inform the parties in interest of this election.

(g) The election allowed under (f) of this section shall be made by a written declaration that is delivered to the trustee.

(h) The prohibitions of (a) of this section do not apply to a trustee with respect to trust property, including income from the trust property, if the trust property would, upon the death of the trustee, be included, for any reason other than the exercise of a power prohibited by (a) of this section, in the gross estate of the trustee for federal estate tax purposes.

(i) This section does not create a new cause of action, or impair a cause of action existing before August 9, 2000, if the new or existing cause of action relates to the exercise of a power prohibited by (a) of this section that was exercised before August 9, 2000.

(j) In this section, "independent trustee" means a trustee that is not related or subordinate, as defined in 26 U.S.C. 672(c), to the person having the power to remove the trustee or to any beneficiary.

AS 13.36.215(b):

(b) In AS 13.36.157 - 13.36.159,

(1) "appointed trust" means an irrevocable trust that receives principal from an invaded trust under AS 13.36.157, including a new trust created by the settlor of the invaded trust or by the trustees, acting in that capacity, of the invaded trust;

(2) "authorized trustee" means, with regard to an invaded trust, a trustee with the authority to pay trust principal to or for a current beneficiary; in this paragraph, "trustee" does not include a settlor or a beneficiary to whom income or principal must be paid, currently or in the future, or who is or will become eligible to

receive a distribution of income or principal in the discretion of the trustee other than by the exercise of a power of appointment held in a nonfiduciary capacity;

(3) "current beneficiary" means a person or, with regard to a class of persons, a person who is a member of the class, to whom a trustee may distribute principal when exercising a power under AS 13.36.157;

(4) "invade" means pay directly to the beneficiary of a trust or apply to the benefit of a beneficiary;

(5) "invaded trust" means an irrevocable inter vivos or testamentary trust the principal of which is appointed under AS 13.36.157;

(6) "pooled trust" means a trust described in 42 U.S.C. 1396p(d)(4)(C) that meets the requirements for a pooled trust under the regulations of this state relating to the Medicaid treatment of trusts;

(7) "principal" means the assets of a trust, including accrued and accumulated income, but excluding income that is currently required to be distributed;

(8) "special needs trust" means a trust under 42 U.S.C. 1396p(d)(4)(A) that meets the requirements for a special needs trust under the regulations of this state relating to the Medicaid treatment of trusts;

(9) "third-party trust" means a trust that is

(A) established by a third party with the assets of the third party to provide for supplemental needs for a person eligible when the trust is created or at a future time for needs-based public assistance; and

(B) exempt from the provisions of the regulations of this state relating to the Medicaid treatment of trusts;

(10) "unlimited discretion" means the unlimited right to distribute principal if the right is not restricted by an ascertainable standard under 26 C.F.R. 26 25.2514-1.

CH1 8032897v.2 September 23, 2013

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[1] Reviewed by David G. Shaftel 9/22/13.

[2] ***Circular 230 Disclosure***. To comply with certain Treasury regulations, we inform you that these materials are not intended or written to be used, and cannot be used, by any person for the purpose of avoiding U.S. federal tax penalties that may be imposed on such person, and each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor. These materials do not constitute, and should not be treated as legal advice. Although every effort has been made to assure the accuracy of these materials, the author and Sidley Austin LLP do not assume responsibility for any individual's reliance on these materials. The reader should independently verify all statements made in these materials and should independently determine both the tax and nontax consequences of any particular transaction before recommending or implementing that transaction.

[3] "An authorized trustee with unlimited discretion to invade trust principal may appoint part or all of that principal to a trustee of an appointed trust for, and only for the benefit of, one or more current beneficiaries of the invaded trust to the exclusion of other current beneficiaries." § 13.36.157(a).

[4] "An authorized trustee with the power to invade trust principal but without unlimited discretion may appoint part or all of the principal of the trust to a trustee of an appointed trust if the current beneficiaries of the appointed trust

are the same as the current beneficiaries of the invaded trust and the successor and remainder beneficiaries of the appointed trust are the same as the successor and remainder beneficiaries of the invaded trust." § 13.36.157(d).

[5] The term "authorized trustee" excludes the creator of the trust and a beneficiary to whom income or principal must be paid or who is or will become eligible to receive a distribution. § 13.36.215(b)(2).

[6] § 13.36.158(i)(1).

[7] § 13.36.158(i)(1).

[8] The current beneficiaries may be "one or more current beneficiaries of the invaded trust to the exclusion of other current beneficiaries." § 13.36.157(a).

[9] § 13.36.157(d).

[10] Section 13.36.157(a) provides that the appointment may be "only for the benefit of, one or more current beneficiaries of the invaded trust."

[11] The successor and remainder beneficiaries of the appointed trust must be the same as the successor and remainder beneficiaries of the invaded trust. § 13.36.157(d).

[12] Only current beneficiaries of the invaded trust can be current beneficiaries of the appointed trust. § 13.36.157(a); § 13.36.157(d).

[13] The appointed trust must "include the same standard authorizing the trustee to distribute the income or invade the principal of the appointed trust as the standard in the invaded trust." § 13.36.157(e). If the appointed trust has a longer term than the invaded trust, however, after the invaded trust's original term, the appointed trust may also include language providing the trustees with unlimited discretion to invade the principal of the appointed trust during such extended term. § 13.36.157(f).

[14] § 13.36.157(b).

[15] "[I]f the invaded trust grants a power of appointment to a beneficiary of the trust, the appointed trust must grant this power of appointment in the appointed trust, and the class of permissible appointees shall be the same as in the invaded trust." § 13.36.157(h).

[16] § 13.36.157(b).

[17] § 13.36.157(h).

[18] The standard for distribution may be changed if the appointed trust is a special needs trust, a pooled trust or a third-party trust. § 13.36.157(e). Further, section 13.36.158(i)(1) creates an exception to the restriction that a trustee not decant in a way that reduces a mandatory distribution right or existing withdrawal right by creating an exception for a special needs trust, a pooled trust, or a third-party trust. These types of trusts are defined in section 13.36.215.

[19] § 13.36.158(i)(5)(A).

[20] § 13.36.158(i)(5)(A).

[21] A trustee who is not an independent trustee may not decant in violation of the restrictions in section 13.36.153. § 13.36.158(K). Section 13.36.153 provides that a trustee who is not an independent trustee may not decant to or for the direct or indirect benefit of the trustee or a trustee remover unless the power is exercised in accordance with an

ascertainable standard relating to health, education, maintenance or support. The restriction in section 13.36.153 does not apply if the trust would be included in the trustee's gross estate.

[22] § 13.36.158(i)(5)(A).

[23] § 13.36.158(i)(5)(B).

[24] "An authorized trustee may not exercise a power authorized by AS 13.36.157 to . . . jeopardize . . . the election to treat a corporation as a subchapter S corporation under 26 U.S.C. 1362 (Internal Revenue Code) . . ." § 13.36.157(i)(5)(C).

[25] "An authorized trustee may not exercise a power authorized by AS 13.36.157 to . . . jeopardize . . . another specific tax benefit for which a contribution originally qualified for income, gift, estate, or generation-skipping transfer tax purposes under 26 U.S.C. (Internal Revenue Code)." § 13.36.157(i)(5)(D).

[26] "An authorized trustee may not exercise a power described in AS 13.36.157 – 13.36.159 in violation of the limitations on validity in AS 34.27.051 or 34.27.100 . . . A violation voids the entire exercise of such power unless the exercise is modified to correct the violation." § 13.36.158(k). Sections AS 34.27.051 and 34.27.100 discuss the statutory rule against perpetuities (1,000 years) and suspension of the power of alienation, respectively.

[27] § 13.36.158(l).

[28] § 13.36.158(i)(2) and (3).

[29] The decanting cannot fix as binding and conclusive the value of an asset for purposes of distribution, allocation or otherwise. § 13.36.158(i)(4).

[30] Thirty days' notice is required to the settlor, if living, to any person having the right to remove or replace the trustee and to the qualified beneficiaries. § 13.36.159(b), (d).

[31] § 13.36.159(g).

[32] § 13.36.159(c).

[33] "An authorized trustee exercising the power under AS 13.36.157 - 13.36.159 has a fiduciary duty to exercise the power in the best interests of one or more proper objects of the exercise of the power and as a prudent person would exercise the power under the prevailing circumstances. The authorized trustee may not exercise the power under AS 13.36.157 - 13.36.159 if there is substantial evidence of the contrary intent of the settlor and it cannot be established that the settlor would be likely to have changed this intention under the circumstances existing at the time the trustee exercises the power. The provisions of the invaded trust may not be viewed alone as substantial evidence of a contrary intent of the settlor unless the invaded trust expressly prohibits the exercise of the power in the manner intended by the authorized trustee." § 13.36.158(e). "Before exercising the power under AS 13.36.157, an authorized trustee shall consider the tax implications of the exercise of the power." § 13.36.158(j).

[34] "Nothing in AS 13.36.157 - 13.36.159 creates or implies a duty to exercise a power to invade principal. An inference of impropriety may not be made, and liability is not incurred, as a result of an authorized trustee not exercising the power conferred under AS 13.36.157." § 13.36.158(g).

[35] § 13.36.158(e).

[36] § 13.36.158(n).

[37] § 13.36.159(a).