

ISSUING NEW STOCK IN ANCSA CORPORATIONS

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BACKGROUND

In the late 1960s, oil was discovered on Alaska's North Slope. A pipeline cutting across the state was planned to pump that oil to an ice-free port and get it to market. This necessitated the settlement of aboriginal land claims, which had been simmering for years.¹ To that end, the Alaska Native Claims Settlement Act (ANCSA or "Act") was signed into law on December 18, 1971.² The Act extinguished aboriginal land claims and created thirteen regional for-profit Alaska Native corporations³ and more than 200 village corporations that generally followed historical ethnic lines.⁴

Alaska Native corporations (ANCs) are for-profit corporations organized under the laws of the State of Alaska.⁵ Under ANCSA itself, these corporations received \$962.5 million, retained title to forty-four million acres of Alaska Native traditional land, and now manage this land and money for the benefit of the Alaska Native people who were made

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1. *Alaska Native Land Claims, Unit 4, Chapter 14, ALASKOOL*, http://www.alaskool.org/projects/ancsa/landclaims/landclaims_unit4_ch14.htm (last visited Oct. 5, 2016) [hereinafter *Alaska Native Land Claims, Unit 4, Chapter 14*].

2. 43 U.S.C. §§ 1601–1629h (2012).

3. 43 U.S.C. § 1606. Originally, the Act created twelve regional corporations in the state of Alaska with the option for a thirteenth regional corporation to be created for non-Alaska residents. Alaska Natives living outside of Alaska elected to create and join The 13th Regional Corporation. The 13th Regional Corporation was given a only monetary settlement, receiving no land, and not taking part in the ANCSA Section 7(i) sharing provision, 43 U.S.C. § 1606(i), discussed below. The 13th Regional Corporation was involuntarily dissolved by the Alaska Department of Commerce, Community, and Economic Development in 2013. References in this paper to twelve regional corporations exclude this thirteenth corporation.

4. 43 U.S.C. § 1607.

5. 43 U.S.C. § 1606(d).

shareholders of these new corporations.⁶ Their operation is governed by state and federal laws, some of which apply to all corporations and some of which are specific to ANCs.

These corporations faced rocky starts as Alaska Native peoples who had traditionally lived subsistence lifestyles now had to learn how to run Western-style companies. Today, though, these unique entities are economic powerhouses: twelve regional corporations and nine village corporations were listed on Alaska Business Monthly's roster of the top forty-nine Alaska companies by gross revenue in 2016.⁷ Much of this revenue flows back to ANCs' largely Alaska Native shareholders and the economically depressed villages many still live in, in the form of shareholder dividends, scholarships, elder benefits, and jobs.

These ANCSA corporations were originally designed to have special protections for only twenty years, with unrestricted stock then being issued in place of the restricted ANCSA stock.⁸ Also, because it was a settlement of legal claims, only the people alive at the time the Act was signed were originally made shareholders and intended to benefit from the settlement.⁹ ANCSA corporations have all remained privately-held corporations whose stock cannot be bought or sold, but rather can only be transferred in statutorily limited ways.¹⁰ As these corporations have evolved, however, many have looked for ways to include Alaska Natives who missed the original enrollment deadline and descendants of their original shareholders. Alaska Native cultures all hold respect for elders as a core value, so many have also looked for ways to give an extra benefit to older shareholders.

This article focuses on the considerations and requirements of issuing new stock in ANCSA corporations. To more completely describe that process both in theory and practice, this article will necessarily draw on both substantive law as well as the author's personal experience as an ANC in-house attorney and shareholder.

6. 43 U.S.C. §§ 1605, 1611. *See also Alaska Native Land Claims, Unit 4, Chapter 14, supra* note 1.

7. *Top 49ers Announced by Alaska Business Monthly*, ALASKA BUS. MONTHLY (Sept. 28, 2016), <http://www.akbizmag.com/Media-Arts/Top-49ers-Announced-by-Alaska-Business-Monthly/>.

8. *The Annotated ANCSA*, ALASKOOL, <http://www.alaskool.org/projects/ancsa/annancsa.htm> (last visited Oct. 12, 2016).

9. 43 U.S.C. § 1604(a).

10. 43 U.S.C. § 1606(h)(1)-(2).

ORIGINAL ANCSA STOCK

Under the Act as it was originally written, there were two types of stock (called "Settlement Common Stock" after the Act) in the corporations: one for village residents and one for individuals who were not village residents, also called "at-large" shareholders.¹¹ In order to receive the first type of stock, applicants had to meet the statutory definition of "Native," live in one of the villages in the region, and apply for shares with the Bureau of Indian Affairs (BIA) before the deadline the agency set.¹² "Native" as defined by ANCSA means:

a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community) Eskimo or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group.¹³

Qualified applicants received 100 shares of stock in the regional corporation and 100 shares of stock in a village corporation.¹⁴

In order to receive "at-large" stock, applicants had to meet the statutory definition of "Native," have ties to the region but not be a resident of a village in the region, and apply for shares with the BIA before the deadline the agency set.¹⁵ These shares were generally issued to people who were living outside the region at the time of enrollment but whose family was originally from the region; for example, someone in boarding school or the military at the time of enrollment.¹⁶ Shareholders who qualified for "at-large" shares received 100 shares of regional corporation stock and are entitled to a share of Section 7(i) distributions under ANCSA Section 7(j).¹⁷

11. 43 U.S.C. § 1604.

12. Preparation of a Roll of Alaska Natives, 43 C.F.R. §§ 69.1-.15 (Mar. 27, 1972) (repealed 1990), <http://www.lbblawyers.com/ancsa/part69toc.htm> [hereinafter Preparation of a Roll of Alaska Natives].

13. 43 U.S.C. § 1602(b). Members of the Metlakatla Indian Community opted to retain their reservation status and thus were exempt from most provisions in the Act.

14. 43 U.S.C. § 1606(g)(1)(A).

15. See Preparation of a Roll of Alaska Natives, *supra* note 12.

16. See *id.*

17. ANCSA Section 7(i), codified at 43 U.S.C. § 1606(i), requires regional

The BIA, through the Secretary of the Interior, was tasked with preparing the roll of shareholders for each corporation for the two classes of shares above.¹⁸ Alaska Natives could appeal their eligibility determination; or, to avoid the hardship of being enrolled in a different corporation from their family members, the determination of which corporation they were to be enrolled in.¹⁹ The BIA sent regional corporations a list of their new shareholders along with each shareholder's village corporation or "at-large" status, birthdate, the date of death for some, social security number, shareholder ID number, permanent residence as of April 1, 1970, and blood quantum.²⁰ The corporations then had to issue the appropriate stock to the new shareholders.

ANCSA stock may not be sold, pledged, subjected to a lien or judgment execution, assigned in present or future, or treated as an asset in bankruptcy or other insolvency proceedings.²¹ The original language of ANCSA would have restricted the stock for twenty years, after which the stock would lose the protections and restrictions the companies had under the Act. As 1991 approached, though, Alaska Native leaders successfully pushed to have ANCSA changed to protect the unique status and restrictions of these corporations for the benefit of their shareholders.²² There is still a provision in ANCSA whereby shareholders can vote to issue non-Settlement Common Stock and make that stock alienable,²³ but no ANC has yet opted to do so. Many Native leaders wanted to include their children or those who missed the original enrollment, so they also successfully petitioned to have the Act changed

corporations to divide 70% of all revenues received from timber and subsurface resources among the twelve regional corporations in proportion to the number of shareholders originally enrolled to each corporation. This section was the subject of much litigation in the 1970s and is now governed by the Section 7(i) Settlement Agreement, which was entered into by the regional corporations in 1982 and subsequently amended. Section 7(j), codified at 43 U.S.C. § 1606(j), in part directs each regional corporation to distribute not less than 50% of the annual Section 7(i) distribution among village corporations and "at-large" shareholders in the region.

18. 43 U.S.C. § 1604.

19. *Id.*

20. These rolls took several years to prepare, and since ANCSA was a legal settlement, the original shareholders were to be those people who were alive and qualified on the day the act was signed. *Id.* Stock was issued and transferred to the heirs of qualified individuals who passed away in the intervening years. *Id.*

21. 43 U.S.C. § 1606(h)(1)(B).

22. Act of Feb. 3, 1988, Pub. L. No. 100-241, 101 Stat. 1788.

23. 43 U.S.C. § 1606(h)(3) (discussing what occurs when a corporation lifts alienability restrictions); Section 1629(c) (containing the procedure for lifting restrictions).

to include ways to issue new ANCSA stock to different classes of shareholders.²⁴

MISSED ENROLLMENT

In 1967, the more than 200 Alaska Native villages situated across the state's vast lands had no satellite service, but instead depended entirely on fourteen land radio stations that tied into 300 bush radios.²⁵ Eighty-eight villages needed improved telephone service, seventy-two had only "bush" telephone service, and sixteen had no telephone service at all.²⁶ By 1970, 141 of Alaska's 287 village communities still had no satisfactory telecommunication ties.²⁷ Of the 146 with such ties, eighty-four depended on White Alice or less sophisticated systems, and sixty-two were linked to the rest of the world by microwave or cable systems.²⁸

Further complicating matters was the fact that over twenty Alaska Native languages were spoken in the state at the time of ANCSA's passage, with many of the Native peoples speaking little or no English.²⁹ Translating complicated concepts such as corporate stock ownership was difficult at best. The Vietnam War was also being fought at the same time ANCSA was passed and implemented, and did not end until 1975. Given the state of communications at the time, it was nearly impossible for Alaska Natives serving out of state in the Armed Forces to enroll in an ANCSA corporation by the deadline.

In 1988, ANCSA was amended to allow corporations to issue shares to people who met all of the requirements for original Settlement Common Stock as listed above, but who were erroneously left off the rolls or missed the application deadline.³⁰ Each corporation would determine eligibility for these shares if they chose to create them.³¹ With respect to the regional corporations, Arctic Slope Regional Corporation (ASRC), NANA, Doyon, Koniag, Sealaska, and Calista voted to create and issue

24. Act of Feb. 3, 1988.

25. *Alaska's Heritage*, ALASKA HUMANITIES FORUM, <http://www.akhistorycourse.org/americas-territory/alaskas-heritage/chapter-4-13-communications> (last visited Sept. 12, 2016). The White Alice Communications System was a United States Air Force telecommunication network constructed in Alaska during the Cold War. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Alaska Native Land Claims - Unit 5, Chapter 23*, ALASKOOL, http://www.alaskool.org/projects/ancsa/landclaims/LandClaims_Unit5_Ch23.htm (last visited October 5, 2016) [hereinafter *Alaska Native Land Claims - Unit 5, Chapter 23*].

30. 43 U.S.C. § 1606(g)(1)(B)(i)(II).

31. Act of Feb. 3, 1988, Pub. L. No. 100-241, § 2(6)-(7), 101 Stat. 1788, 1788-79.

shares to people who qualified for the original ANCSA stock but missed the enrollment deadline.³²

NEW SHAREHOLDERS

ANCSA was a legal settlement, meaning only those Alaska Natives alive at the time the Act was signed were originally considered the settlers.³³ Many Alaska Natives felt strongly that their children and grandchildren born after the settlement date should be shareholders of these corporations, too.³⁴ In 1988, Congress amended ANCSA to allow corporations to issue shares to Natives, as defined by the Act, born after December 18, 1971.³⁵

Over time, intermingling with non-Native groups had decreased the Alaska Native blood quantum in some family lines. In 1992, Congress further amended ANCSA to allow corporations to issue shares to descendants of Natives born after December 18, 1971.³⁶ The statutory definition of “Descendant of a Native” is a lineal descendant of a “Native,” and includes those who have less than one quarter degree of Alaska Native blood and those who were adopted by either a Native or the descendant of a Native before he or she reached the age of majority.³⁷ With respect to the regional corporations, ASRC, Ahtna, NANA, Doyon, Sealaska, and Calista voted to create and issue shares to people born after December 18, 1971.³⁸

32. RESTATED ARTS. OF INC., ARCTIC SLOPE REG’L CORP., ART. V, § 7 (Jan. 11, 1990); AMEND. & RESTATED ARTS. OF INC., DOYON, LTD., ART. V, § N (July 28, 1992); AMEND. & RESTATED ARTS. OF INC., KONIAG, INC., ART. VII, § B(3) (May 4, 2012); ARTS. OF AMEND. TO ARTS. OF INC., NANA REG’L CORP., INC., ART. V (Jan. 17, 1992); RESTATED ARTS. OF INC., SEALASKA CORP., ART. IV, § G (July 27, 2007); AMEND. & RESTATED ARTS. OF INC., CALISTA CORP., ART. V (Oct. 14, 2015).

33. 43 U.S.C. § 1604.

34. DAVID S. CASE & DAVID A. VOLUCK, ALASKA NATIVES AND AMERICAN LAWS 177 (2nd ed. 2002).

35. 43 U.S.C. § 1606(g)(1)(B)(i)(I).

36. *Id.*

37. 43 U.S.C. § 1602(r).

38. RESTATED ARTS. OF INC., ARCTIC SLOPE REG’L CORP., ART. V, §§ 4–5 (Jan. 11, 1990); 2ND AMEND. & RESTATED ARTS. OF INC., AHTNA, INC., ART. V (Aug. 9, 2008); AMEND. & RESTATED ARTS. OF INC., DOYON, LTD., ART. V, § H (July 28, 1992); ARTS. OF AMEND. TO ARTS. OF INC., NANA REG’L CORP., INC., ART. V (Jan. 17, 1992); ARTS. OF AMEND., SEALASKA CORP., ART. IV, § F (July 27, 2007); AMEND. & RESTATED ARTS. OF INC., CALISTA CORP., ART. V (Oct. 14, 2015).

STOCK FOR ELDERS

Congress also amended ANCSA to allow corporations to issue additional shares of stock to Natives who reached the age of sixty-five.³⁹ Respect for elders is a core value of all of the Alaska Native cultures, so issuing stock is one way to give these shareholders a further benefit. This also aided an elder generation of shareholders who straddled the transition from a solely subsistence way of life to one in which people accrue retirement income to rely on in their old age. Among the regional corporations, Doyon and Sealaska voted to create and issue additional shares to their elder shareholders.⁴⁰

VOTING STANDARDS

Issuing additional shares to any of these classes requires a change to a Native corporation's articles of incorporation, which in turn requires a vote of the board of directors and shareholders.⁴¹ After the board approves the measure, written notice and the amendment or resolution must be sent to each shareholder entitled to vote not less than fifty days nor more than sixty days prior to the meeting at which the vote will occur.⁴² An amendment or resolution to add any of these types of stock requires the affirmative vote of shares representing a majority of the shares present or represented by proxy at the meeting relating to the amendment of the articles of incorporation.⁴³

39. 43 U.S.C. § 1606(g)(1)(B)(i)(III).

40. AMEND. & RESTATED ARTS. OF INC., DOYON, LTD., ART. V, § U (July 28, 1992); RESTATED ARTS. OF INC., SEALASKA CORP., ART. IV, § H (June 27, 2009). Other corporations have provided special benefits to their elders in other ways. For example, CIRI, ASRC, and NANA created Elder Settlement Trusts pursuant to ANCSA, 43 U.S.C. § 1629e, in order to give a monetary benefit to their elder shareholders. Although corporate law generally requires corporations to treat all shareholders of a class equally, ANCSA allows Native corporations to "provide benefits to shareholders who are Natives or descendants of Natives or to its shareholders' immediate family members who are Natives or descendants of Natives to promote the health, education, or welfare of such shareholders or family members." 43 U.S.C. § 1606(r). Some corporations provide monetary or other benefits to their elder shareholders pursuant to this provision.

41. 43 U.S.C. § 1629b(b)(1).

42. 43 U.S.C. § 1629b(b)(2)(A). This is a small window of time, well in advance of the meeting. By comparison, Alaska law requires proxy materials for ANCSA corporations to be sent out not more than sixty days and not less than twenty days before the shareholder meeting. ALASKA STAT. § 10.06.408(b) (2016).

43. 43 U.S.C. § 1629b(d)(3)(A). ANCSA stock only has voting rights while it is owned by a Native or a Descendant of a Native. ANCSA stock can be inherited by anyone. While it is held by someone who is not a Native or a Descendant of a Native, as defined by the Act, they are non-voting shares. When those shares are subsequently transferred to someone who is a Native or a Descendant of a Native,

A majority of the shares entitled to vote, represented in person or by proxy, constitutes a quorum at a meeting of shareholders, though a corporation can amend its articles of incorporation to lower the quorum requirements to as little as one-third of the voting shares.⁴⁴ Corporations with large shareholder bases can have trouble obtaining a quorum, and many ANCSA corporations offer door prizes for shareholders who attend in person or turn in a proxy in an effort to increase participation in the meeting.⁴⁵

Increasing the shareholder base by creating new stock exacerbates quorum issues, so this should be a factor when a corporation is considering adding new shareholders. For example, Calista Corporation's shareholders voted in 2015 to create stock for descendants of their original shareholders.⁴⁶ By requiring that new shareholders be at least eighteen years old to have voting rights, the corporation hoped to balance the interests of new shareholders with the corporation's need to achieve quorum at shareholder meetings.⁴⁷

TERMS AND CONDITIONS OF NEW STOCK

Each corporation considering the above changes can attach certain terms and conditions to the stock that they create under 16 U.S.C. §1606(g)(1)(B).⁴⁸ ANCs may issue not more than 100 shares of Settlement Common Stock to one individual pursuant to this section.⁴⁹ Some corporations have chosen to issue less than 100 shares to certain individuals; for example, giving only fifty shares to descendants of "at-large" shareholders, while giving 100 shares to descendants of shareholders from village corporations that merged with the regional

the voting rights are restored. 43 U.S.C. § 1606(h)(2)(C). ANCSA stock can also be inherited by a corporation, and would be non-voting stock while it is held by the corporation. Since ANCSA stock can only be transferred by gift to a shareholder's child, grandchild, niece, nephew, brother, or sister, or transferred by inheritance upon a shareholder's death, shares transferred to a corporation are not easily transferred back out of that corporation.

44. ALASKA STAT. § 10.06.415(a).

45. See, e.g., *2016 NANA Annual Meeting door prizes*, NANA REG'L CORP., INC., <http://www.nana.com/regional/news-and-press/press-releases/2016-nana-annual-meeting-door-prizes/> (last visited Oct. 12, 2016) (recounting a typical drawing held for door prizes for those present and those who turned in a valid proxy).

46. *Calista Descendant Enrollment FAQs*, CALISTA CORP., <http://www.calistacorp.com/sites/default/files/documents/Calista%20Descendant%20Enrollment%20FAQs%2010April%20FINAL.pdf> (last visited Aug. 11, 2016).

47. *Id.*

48. 43 U.S.C. § 1606(g)(1)(B).

49. 43 U.S.C. § 1606(g)(1)(B)(ii).

corporation.⁵⁰ Other corporations have chosen to split the issuance of stock based on an applicant's age; for example, first issuing thirty shares to an applicant who is a minor, and then issuing an additional seventy shares once that applicant reaches the age of eighteen.⁵¹

The stock can be a life estate, where the stock reverts back to the issuing corporation upon the death of the shareholder to whom it was issued.⁵² Alternatively, the stock can be inheritable, as is the original Settlement Common Stock.⁵³ Making stock a life estate keeps the overall number of shares much lower than it would be if all stock were inheritable, thereby allowing less dilution. It also limits the voting power that any one shareholder can accumulate. Generally in corporate law, an individual must be compensated for the taking of property, such as stock in a corporation. But this provision of ANCSA allows life estate stock to revert to the corporation with no compensation to the deceased shareholder's estate.⁵⁴ Once it reverts, the corporation can then issue the stock to another qualified individual.

The stock can carry limited or no voting rights.⁵⁵ This provision can be used to clarify that people who are issued multiple classes of stock would not have disproportionate voting power. For example, a corporation could create a class of non-voting stock for elders who would still be able to vote their original ANCSA stock, but not have more voting power by virtue of their age. The non-voting elders stock could, however, entitle them to a larger pro rata dividend or a special elders' distribution.

The corporation can restrict the stock from being gifted.⁵⁶ Original ANCSA stock may be transferred to a Native or Descendant as an *inter vivos* gift to the holder's child, grandchild, great-grandchild, niece, nephew, brother, or sister.⁵⁷ Since a corporation can create a class of stock that is a life estate, it makes sense to be able to restrict the stock from being gifted away from the original recipient it was intended to benefit. Absent this provision, Shareholder A could gift his life estate stock to his child,

50. ARTS. OF AMEND. TO ARTS. OF INC., NANA REG'L CORP., INC., ART. V (Jan. 17, 1992).

51. *Stock Classes*, DOYON, LTD., <http://www.doyon.com/our-shareholders/records-stocks/stock-classes/> (last visited Sept. 30, 2016). See also Ahtna, Incorporated, which issues thirty shares to qualified minors and an additional seventy shares when the shareholder graduates from high school with a diploma or its equivalent and reaches his or her eighteenth birthday, or upon the shareholder's twenty-first birthday without a diploma or equivalent. AM. & RESTATED ARTS. OF INC., AHTNA, INC., ART. V(E)(C) (Aug. 9, 2008).

52. 43 U.S.C. § 1606(g)(1)(B)(iii)(II)(aa).

53. 43 U.S.C. § 1606(h)(2).

54. 43 U.S.C. § 1606(g)(1)(B)(iii)(II)(aa).

55. 43 U.S.C. § 1606(g)(1)(B)(iii)(II)(bb).

56. 43 U.S.C. § 1606(g)(1)(B)(iii)(II)(cc).

57. 43 U.S.C. § 1606(h)(1)(B)(iii).

Shareholder Y, who would hold the stock until the death of Shareholder A, at which time the stock would revert back to the corporation.⁵⁸

Dilution of stock is an important consideration when issuing new shares. Some corporations have authorized the creation of 200,000 shares to be issued at 100 shares apiece to 2,000 individuals born after December 18, 1971.⁵⁹ Once all of those shares are outstanding, the board and shareholders then have the opportunity to assess how the corporation is performing and whether they want to authorize the creation of more shares of that class. Conversely, some corporations create a high number of a class of stock, such as five million shares, anticipating that they would have enough shares to issue to eligible applicants for the foreseeable future.⁶⁰

STOCK CONSIDERATIONS REGARDING MINOR SHAREHOLDERS

Corporations that issue shares to those born after 1971 will have a younger shareholder base than those corporations that have not opened their rolls. Most ANCSA corporations that issue stock to new shareholders allow parents or guardians to apply on behalf of minors.⁶¹ Having minors as shareholders raises unique issues.

ANCSA stock is considered “property,” and is therefore governed by the Alaska Uniform Transfers to Minors Act when it is issued to anyone under eighteen years of age.⁶² A custodian must be appointed for all ANCSA stock issued to a minor, and it is important to note that the custodian of a minor’s ANCSA stock may differ from the person with physical and/or legal custody of the child.⁶³ A person must be eighteen years old or older to be an ANCSA stock custodian, and must accept in

58. Life estate stock could also be inherited in this situation: If Shareholder A makes a valid gift of stock to Shareholder Y, who dies before Shareholder A, then Shareholder Y’s heirs (via intestate succession or valid will/testamentary disposition) would inherit the stock for the life of Shareholder A. This would lead to a corporation needing to track a class of people who may not be shareholders, but still have shares that are measured by their life expectancy (in this example, Shareholder A).

59. *Our Shareholders*, THE KUSKOKWIM CORP., <http://kuskokwim.com/our-shareholders/shareholders/> (last visited Sept. 30, 2016).

60. ARTS. OF AMEND. TO ARTS. OF INC., NANA REG’L CORP., INC., ART. IV (Jan. 17, 1992).

61. *See, e.g., Applying for Class D Stock*, NANA REG’L CORP., INC., [http://nana.com/files/forms/2016_Applying_for_Class_D_Stock_Application_05242016\(1\).pdf](http://nana.com/files/forms/2016_Applying_for_Class_D_Stock_Application_05242016(1).pdf) (last visited October 6, 2016) (outlining a typical process for parents or guardians to apply on behalf of minors).

62. ALASKA STAT. § 13.46.

63. ALASKA STAT. § 13.46.085.

writing the duties and responsibilities of custodianship before they can assume the position.⁶⁴

The order of priority in the selection of a custodian for a minor's ANCSA stock is as follows: (1) Custodian Selected by Transferor: A person who proposes to transfer ANCSA shares to a minor, either by *inter vivos* gift or through inheritance may nominate a custodian for the shares to be transferred. The custodian designated in this manner may be different from the person currently serving as custodian for shares already issued to a child. (2) Legal Guardian, if any, of the minor. (3) A parent, if any, of the minor, as selected by the parents. (4) An adult member of the minor's family (includes parent(s), step-parent(s), spouse, grandparents, brothers, sisters, uncles and aunts, of whole or half-blood), as well as members of any family with whom the minor has customarily lived.⁶⁵

There are very limited ways to change the custodian of record for stock. Corporations are not empowered to change stock custodians simply because the custodial parent of the child has changed, or because the custodian is incarcerated. Corporations may, however, change stock custodians pursuant to a court order that explicitly changes the custodian of the minor's ANCSA stock, or upon the resignation of the stock custodian.⁶⁶ Courts considering custody issues involving Alaska Native children should verify that each child has or qualifies to have ANCSA stock. They should then give deference to the transferor's wishes on stock custodianship, if applicable, or make a decision on stock custodianship that is in the best interest of the child, being mindful that tens of thousands of dollars could be involved over the course of the child's minority.

As the custodian of other types of property for a minor, an adult is entitled to reimbursement of reasonable expenses incurred in the performance of the custodian's duties.⁶⁷ However, with regards to ANCSA stock, custodians may only receive compensation for unusual and extraordinary services with approval by the superior court.⁶⁸ The custodian is responsible for the holding and safekeeping of the minor's shares and dividend payments, and can vote the minor's shares in a corporate election provided that the minor is entitled to vote.⁶⁹

64. *Id.*

65. ALASKA STAT. § 13.46.085(b).

66. ALASKA STAT. § 13.46.085.

67. ALASKA STAT. § 13.46.140(a).

68. ALASKA STAT. § 13.46.085(d)(6).

69. Alaska Statutes §§ 13.46.110 and 120 list the powers and obligations of a custodian with regards to a minor's property. 43 U.S.C. § 1606(h)(2)(C) states that ANCSA stock owned by a person who is not a Native or Descendant of a Native

The placement of a minor in state custody does not automatically change the custodian of the minor's stock.⁷⁰ Payment of dividends or other monies, though, will not be made to the custodian, but must instead be held in an interest-bearing account for the benefit of the minor until the minor reaches the age of eighteen or is no longer in state custody.⁷¹ The placement of a minor in state custody may also affect the voting rights of a minor's stock. Some corporations allow the last custodian of the minor's stock to vote the shares unless parental rights have been terminated, in which case the shares would likely be marked non-voting until another custodian is properly appointed or the minor is no longer in state custody.⁷² In no event should the state be voting ANCSA corporation stock for shareholders in their custody, though they may return a blank proxy for quorum purposes only.⁷³

One issue that frequently arises is when a child's parents are shareholders in different ANCSA corporations that issue shares to those born after 1971, and the child could apply for stock with either corporation. Since some corporations require that an applicant must have a parent who was issued stock in the corporation in their own right (rather than by gift or inheritance), while others only require that a child be a lineal descendant of a shareholder,⁷⁴ a child could theoretically qualify to apply for shares in several ANCSA corporations.

However, regarding original stock, ANCSA states that Natives shall be enrolled in one of the twelve regional corporations⁷⁵ and that each

does not have voting rights during the time that it is owned by that person. Some ANCSA corporations also specify that shares owned by minors are non-voting until they reach the age of majority. If a minor is a Native or a Descendant of a Native and the corporation does not restrict the voting age, the stock should be considered voting stock regardless of the status of the stock custodian.

70. See ALASKA STAT. §§ 10.06.961 and 13.46.085 (refraining from listing the placement of a minor in state custody as grounds for changing the custodian of the minor's stock).

71. ALASKA STAT. § 10.06.961.

72. See *Alaska Native Land Claims - Unit 5, Chapter 23, supra* note 29.

73. Similar issues arise when an adult has a legal guardian, be it an individual or the state. Also, an adult who is the subject of a guardianship could also be the stock custodian for a minor, in which case courts and state agencies should be aware that the minor's stock would not automatically be affected by orders regarding the adult's property.

74. ASRC, Doyon, and NANA's articles of incorporation include requirements to the effect that an applicant must have a parent who is an original shareholder. Ahtna, Calista, and Sealaska's articles of incorporation include requirements to the effect that an applicant must be a lineal descendant of an original shareholder. See *supra* note 38 and accompanying text.

75. 43 U.S.C. § 1604(b) states that the roll prepared by the Secretary shall show for each person "the region and the village or other place in which he resided . . . and he shall be enrolled according to such residence" (emphasis added). It further states that when a person is not a permanent resident of one of the regions, he

enrollee shall receive 100 shares of stock in that regional corporation.⁷⁶ For new stock, ANCSA says that “[n]ot more than one hundred shares of Settlement Common Stock shall be issued to any one individual pursuant to clause (i).”⁷⁷ Accordingly, all regional corporations who have issued new stock to date have interpreted ANCSA to mean that an individual may only be issued new stock in one regional corporation.⁷⁸ Applicants who qualify for stock in more than one corporation (or their parents or guardians if they are applying on behalf of a minor) should be cautioned to choose carefully since the corporations do not allow switching between each other.

Adoption of or by Natives raises a similar issue. Because most ANCSA shareholders are also members of an Indian tribe, tribal adoptions and orders may affect their qualification for ANCSA stock.

The definition of “Descendant of a Native” includes:

- (2) an adoptee of a Native or of a descendant of a Native, whose adoption –
 - (A) occurred prior to his or her majority, and
 - (B) is recognized at law or in equity⁷⁹

An ANCSA shareholder could adopt someone with no Alaska Native blood and, as long as that adoption occurred prior to the child’s eighteenth birthday, the adoptee would be considered a Descendant of a Native and be entitled to all the rights and privileges that status confers.⁸⁰ Specifically, the adoptee could receive a gift of stock and vote that stock, unless otherwise prohibited by a corporation’s governing documents.

ANCSA stock can be gifted to certain family members who are Natives or Descendants of a Native “notwithstanding an adoption, relinquishment, or termination of parental rights that may have altered or severed the legal relationship between the gift donor and recipient.”⁸¹ Generally, an adoption completely severs the relationship between a parent and child unless it specifically preserves an inheritance right. This provision in ANCSA explicitly allows the gift of stock between a birth family member and a minor even if there is no longer a legal relationship.

“shall be enrolled by the Secretary in *one* of the twelve regions.” *Id.* (emphasis added). Subsection (c) of this statute addresses enrollment in The 13th Regional Corporation instead of one of the twelve regions. 43 U.S.C. § 1604(c).

76. 43 U.S.C. § 1606(g)(1)(A).

77. 43 U.S.C. § 1606(g)(1)(B)(ii).

78. An individual can still receive stock in another corporation through gift or inheritance without affecting their qualification to receive new stock.

79. 43 U.S.C. § 1602(r).

80. *Id.*

81. 43 U.S.C. § 1606(h)(1)(C).

Corporations have the right to specify terms and conditions with regards to the issuance of stock,⁸² so they can choose to implement an Alaska Native blood quantum requirement. Such a requirement would preclude a non-Native adoptee from applying for new stock, but would not preclude their receipt of stock by inheritance or gift.

If, however, a child is an Alaska Native and comes from a birth family that holds stock in one ANC but is adopted by a family that holds stock in another ANC, the question arises as to which corporation the child may apply for stock. ANCSA does not directly address this scenario, but in light of the “notwithstanding an adoption” language in the gifting section,⁸³ corporations generally allow the adoptee to choose between the corporations provided they meet all other criteria.

CONCLUSION

Over the last forty-five years, ANCSA corporations have evolved into economically powerful and socially influential entities. ANCs involve new generations to continue their work, while honoring their elders and their cultures. Those corporations that have not yet voted to issue stock to descendants of their original shareholders often have other ways of including them in their benefit and job programs. The process of creating and issuing new stock is complex, but has proven rewarding for those corporations that have chosen to do so. Overall, though, the decision to issue additional stock is one that must carefully balance the needs of the community, the resources of the corporation, and the shared vision for the future.

82. 43 U.S.C. § 1606(g)(1)(B).

83. 43 U.S.C. § 1606(h)(1)(C)(iii).