

"TRIBALIZING"

ANCSA?

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ANCSA'S ORIGINAL "DESIGN"

- **VILLAGES ASSERTED ABORIGINAL USE AND OCCUPANCY CLAIMS**
 - Villages were actually "tribes" with aboriginal claims of exclusive use and occupancy.
 - ANCSA extinguished aboriginal claims (including fishing and hunting rights).
 - State & Federal governments paid \$962.5 million for 365 million acres (< \$3/acre).
- **STOCK INALIENABLE ONLY UNTIL 1991**
 - Stock in corporations only issued to "Natives" who were alive on December 18, 1971.
 - Stock could not be sold or taken by creditors only up to December 18, 1991.
 - Until then stock could only be transferred by inheritance or court order in divorce.
 - On December 18, 1991, ANCSA stock was to be freely alienable.
- **LAND TAXABLE AFTER 1991**
 - Land immediately at risk for any creditor claims.
 - Land immediately subject to 14(c) reconveyances
 - Was to be subject to property taxes immediately after December 18, 1991.
 - Conveyed 45 million acres to regional and village corporations.

**ANCSA WAS ORIGINALLY "DESIGNED" TO "NORMALIZE" RELATIONSHIPS
BETWEEN NATIVES AND NON-NATIVES AFTER 20 YEARS**

SEPARATED THE LAND FROM THE TRIBES AND THEIR FUTURE MEMBERS.

**THE NATIVES WOULD LOSE THE LAND AND THE STOCK BEGINNING
DECEMBER 18, 1991**

“REDESIGNING” ANCSA

- **1980 Alaska National Interest Lands Act (“ANILCA”)**
 - Allowed for “Land Bank” protection of ANCSA Lands by agreement.
 - Provided for “Rural Resident” Subsistence “Preference.”
- **1984 Tax Reform Act**
 - Allowed sales of Net Operating Losses (“NOLs”) to refinance ANCSA.
 - Avoided bankruptcy and loss of lands for many ANCSA corporations.
- **1988 “1991” ANCSA Amendments**
 - “Automatically” protected all ANCSA lands under the ANILCA “Land Bank” unless developed, sold or leased to third parties.
 - Allowed ANCSA Corporation shareholders to vote to admit descendants of the original ANCSA shareholders
 - Allowed for issuing “life estate” stock.

“1991” AMENDMENTS (1) PROTECT “UNDEVELOPED” ANCSA LANDS AND (2) ALLOW CORPORATIONS TO ADMIT TRIBAL MEMBERS.

TRIBAL LAND TRANSFERS

- **ANCSA CORPORATIONS CAN TRANSFER ALL OR SUBSTANTIALLY ALL THEIR LANDS TO TRIBES**
 - Venetie and Tetlin are historic examples (former reserves).
 - Does not mean tribal territorial jurisdiction (*Alaska v. Venetie*, 522 US 520 (1998))
 - Requires a vote of 2/3 of the shares to approve under state law.
See Alaska Statutes 10.06.570(a).
 - **Must also satisfy 14(c) requirements (not applicable to former reserves).**
 - Will lose ANILCA Land Bank protections.
 - **May be subject to property taxation (*Oneida* case pending in U.S. Supreme Court).**
 - Protected from property taxation if organized under Section 16 of the IRA. (*Nome Eskimo Community Tax Case*, 780 P. 2nd 363 (Alaska 1989)).
 - Probably protected from other creditor claims, especially if organized under IRA.
 - **Dissenters cannot block the transfer so long as stock is still restricted.**
See Alaska Statutes 10.06.375 & 10.06.578(g)

TRIBAL LAND TRANSFERS NEED TO BE PROPERLY DONE TO PROTECT LAND AND AVOID LATER LEGAL CHALLENGES