

Part 12 Statutory Rule Against Perpetuities

75-2-1201 Statutory Rule Against Perpetuities.

This part is known as the "Statutory Rule Against Perpetuities."

Amended by Chapter 301, 2003 General Session

75-2-1202 Uniformity of application and construction.

This part shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this section among states enacting it.

Enacted by Chapter 39, 1998 General Session

75-2-1203 Validity of nonvested property interest -- Validity of general power of appointment subject to a condition precedent -- Validity of nongeneral or testamentary power of appointment -- Effect of certain "later-of" type language.

- (1) A nonvested property interest is invalid unless within 1,000 years after the interest's creation the interest vests or terminates.
- (2) A general power of appointment not presently exercisable because of a condition precedent is invalid unless within 1,000 years after the general power of appointment's creation the power of appointment is irrevocably exercised or terminates.
- (3) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless within 1,000 years after its creation the power of appointment is irrevocably exercised or terminates.
- (4) The language in a governing instrument is inoperative to the extent it produces a period of time that exceeds 1,000 years after if, in measuring a period from the creation of a trust or other property arrangement, the language:
 - (a) seeks to disallow the vesting or termination of any interest or trust beyond;
 - (b) seeks to postpone the vesting or termination of any interest or trust until; or
 - (c) seeks to operate in effect in any similar fashion upon, the later of:
 - (i) the expiration of a period of time not exceeding 1,000 years; or
 - (ii) the expiration of a period of time that exceeds or might exceed 1,000 years.
- (5) If a nongeneral power of appointment is exercised to create a new presently exercisable general power of appointment, all property interests subject to that new presently exercisable general power of appointment are invalid unless, within 1,000 years after the creation of the new presently exercisable general power of appointment, the property interests that are subject to the new presently exercisable general power of appointment vest or terminate.
- (6) If a nongeneral power of appointment is exercised to create a new or successive nongeneral power of appointment or a new or successive testamentary general power of appointment, all property interests subject to the exercise of that new or successive nongeneral or testamentary general power of appointment are invalid unless, within 1,000 years from the time of creation of the original instrument or conveyance creating the original nongeneral power of appointment that is exercised to create a new or successive nongeneral or testamentary general power of appointment, the property interests that are subject to the new or successive nongeneral or testamentary general power of appointment vest or terminate.

Amended by Chapter 364, 2013 General Session

75-2-1204 When nonvested property interest or power of appointment created.

- (1) Except as provided in Subsections (2) and (3) and in Section 75-2-1207, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.
- (2) For purposes of this part, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of:
 - (a) a nonvested property interest; or
 - (b) a property interest subject to a power of appointment described in Section 75-2-1203, the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.
- (3) For purposes of this title, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

Amended by Chapter 364, 2013 General Session

75-2-1205 Reformation.

Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the 1,000 years allowed by Section 75-2-1203 if:

- (1) a nonvested property interest or a power of appointment becomes invalid under Section 75-2-1203;
- (2) a class gift is not but might become invalid under Section 75-2-1203 and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or
- (3) a nonvested property interest that is not validated by Section 75-2-1203 can vest but not within 1,000 years after its creation.

Amended by Chapter 301, 2003 General Session

75-2-1206 Exclusions from statutory rule against perpetuities.

Section 75-2-1203 does not apply to:

- (1) a nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:
 - (a) a premarital or postmarital agreement;
 - (b) a separation or divorce settlement;
 - (c) a spouse's election;
 - (d) a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties;
 - (e) a contract to make or not to revoke a will or trust;
 - (f) a contract to exercise or not to exercise a power of appointment;
 - (g) a transfer in satisfaction of a duty of support; or
 - (h) a reciprocal transfer;
- (2) a fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;

- (3) a power to appoint a fiduciary;
- (4) a discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;
- (5) a nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;
- (6) a nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse;
- (7) a property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this state; or
- (8) a property interest or arrangement subjected to a time limit under Section 75-2-1001.

Enacted by Chapter 39, 1998 General Session

75-2-1206.5 Savings provision.

A property interest that becomes invalid pursuant to Section 75-2-1203 upon the expiration of the 1,000-year period shall be distributed as follows:

- (1) If the property interest is payable to one person, it shall be distributed to that person. If the property interest is payable to more than one person, it shall be distributed to the persons to whom the property interest is then payable:
 - (a) in the shares to which the persons are entitled; or
 - (b) equally among all persons who are entitled to shares if not specified.
- (2) If the property interest is payable in the discretion of a trustee and is payable to one person, it shall be distributed to that person. If the property interest is payable to more than one person, it shall be distributed to the persons eligible to receive it:
 - (a) in the shares to which the persons are entitled; or
 - (b) equally among all persons who are entitled to shares if not specified.
- (3) When there is no person then living to whom a property interest may be distributed under Subsection (1) or (2), it shall be payable to one or more organizations described in 26 U.S.C. 2055(a) Internal Revenue Code, or successor provisions and in the shares or proportions that the trustee or trustees then acting may determine.

Enacted by Chapter 301, 2003 General Session

75-2-1207 Prospective application.

- (1)
 - (a) Except as extended by Subsection (2), this section applies to a nonvested property interest or a power of appointment that is created on or after December 31, 2003.
 - (b) For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when:
 - (i) the power is irrevocably exercised; or
 - (ii) a revocable exercise becomes irrevocable.

- (2) If a nonvested property interest or a power of appointment was created before December 31, 2003, and is determined in a judicial proceeding, commenced on or after December 31, 2003, to violate Utah's rule against perpetuities as that rule existed before December 31, 2003, a court upon the petition of an interested person may reform the disposition:
- (a) in the manner that most closely approximates the transferor's manifested plan of distribution; and
 - (b) that is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.
- (3) Section 75-2-1203 applies to a trust instrument or conveyance executed on or after December 31, 2003, if the trust instrument or conveyance creates a contingent power of appointment or nonvested property interest subject to the exercise of a power of appointment that creates a new or successive power of appointment.

Amended by Chapter 3, 2003 Special Session 2

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75-2-1208 Rule against perpetuities does not apply.

The common law rule against perpetuities does not apply in this state.

Amended by Chapter 301, 2003 General Session

75-2-1209 Real estate conveyed to a trust under the Statutory Rule Against Perpetuities.

On or after the effective date, when title to real property is granted to the trustee of a trust governed by Title 75, Chapter 2, Part 12, Statutory Rule Against Perpetuities, the terms of the trust, provisions regarding the appointment of successor trustees, and the names and addresses of successor trustees must be disclosed in accordance with Section 75-7-816.

Amended by Chapter 89, 2004 General Session