CHAPTER 6

Uniform Statutory Rule Against Perpetuities

**SECTION 27‑6‑10.** Short title.

 This chapter may be cited as the Uniform Statutory Rule Against Perpetuities.

HISTORY: 1987 Act No. 12, Section 1.

Library References

Perpetuities 1.

Westlaw Topic No. 298.

C.J.S. Perpetuities Sections 10 to 15, 18, 20 to 24, 35.

RESEARCH REFERENCES

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 214, The Rule Against Perpetuities‑History and Status of Rule in the Several States.

Restatement (2d) of Property, Don. Trans. Section 11.3 TD 1, Rules of Construction and Constructional Preferences.

Restatement (2d) of Property, Don. Trans. Section 12.2 TD 1, Modifying Donative Documents to Achieve Donor’s Tax Objectives.

Restatement (3d) Property (Wills & Don. Trans.) Section 11.3, Rules of Construction and Constructional Preferences.

Restatement (3d) Property (Wills & Don. Trans.) Section 12.2, Modifying Donative Documents to Achieve Donor’s Tax Objectives.

Restatement (3d) Property (Wills & Don. Trans.) VIII, 27 IN NT, Introductory Note.

Restatement (3d) Property (Wills & Don. Trans.) VIII 27 INTRO NT, Intro. Note (2011).

Restatement (3d) Property (Wills & Don. Trans.) VIII 27 INTRO NT TD 6, Intro. Note Td No 6 (2010).

Will Contests Section 5:12, Failure to Comply With the Substantive Law of Wills‑The Rule Against Perpetuities‑Modern Attempts to Revise the Rule.

**SECTION 27‑6‑20.** Nonvested property interest or power of appointment.

 (A) A nonvested property interest is invalid unless:

 (1) when the interest is created, it is certain to vest or terminate no later than twenty‑one years after the death of an individual then alive; or

 (2) the interest either vests or terminates within ninety years after its creation.

 (B) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

 (1) when the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than twenty‑one years after the death of an individual then alive; or

 (2) the condition precedent either is satisfied or becomes impossible to satisfy within ninety years after its creation.

 (C) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

 (1) when the power is created, it is certain to be irrevocably exercised or to terminate no later than twenty‑one years after the death of an individual then alive; or

 (2) the power is irrevocably exercised or terminates within ninety years after its creation.

 (D) In determining whether a nonvested property interest or a power of appointment is valid under subsection (A)(1), (B)(1), or (C)(1), the possibility that a child will be born to an individual after the individual’s death is disregarded.

HISTORY: 1987 Act No. 12, Section 1.

CROSS REFERENCES

Effect of this section on creation of nonvested property interests or powers of appointment, see Section 27‑6‑30.

Power of appointment under South Carolina Probate Code, see Sections 62‑1‑108, 62‑2‑608.

Reformation of property dispositions initially invalidated by this section’s provisions, see Section 27‑6‑40.

Library References

Perpetuities 1, 4.

Westlaw Topic No. 298.

C.J.S. Perpetuities Sections 2, 6, 10 to 30, 32 to 40, 52 to 53, 55, 64.

RESEARCH REFERENCES

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 214, The Rule Against Perpetuities‑History and Status of Rule in the Several States.

Family Estate Planning Guide Section 5:23, Rule Against Perpetuities Reform.

NOTES OF DECISIONS

In general 1

1. In general

Court of Appeals would decline to address whether resort developer’s successor’s contingent, nonvested preemptive right to repurchase units in multi‑unit horizontal property development, as reasserted in new covenants, violated rule against perpetuities, as successor had not attempted to exercise its right of repurchase. Queen’s Grant II Horizontal Property Regime v. Greenwood Development Corp. (S.C.App. 2006) 368 S.C. 342, 628 S.E.2d 902. Perpetuities 4(1)

**SECTION 27‑6‑30.** Creation of property interests and powers of appointment.

 (A) Except as provided in subsections (B) and (C) and in Section 27‑6‑60(A), the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

 (B) If there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of (i) a nonvested property interest or (ii) a property interest subject to a power of appointment described in Section 27‑6‑20(B) or 27‑6‑20(C), the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates. A joint power with respect to community property or to marital property under a Uniform Marital Property Act held by individuals married to each other is a power exercisable by one person alone.

 (C) 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.

HISTORY: 1987 Act No. 12, Section 1.

CROSS REFERENCES

Marital property, see Sections 20‑3‑610 through 20‑3‑630.

Power of appointment under South Carolina Probate Code, see Sections 62‑1‑108, 62‑2‑608.

Library References

Perpetuities 1, 4.

Westlaw Topic No. 298.

C.J.S. Perpetuities Sections 2, 6, 10 to 30, 32 to 40, 52 to 53, 55, 64.

**SECTION 27‑6‑40.** Reformation of property dispositions.

 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 ninety years permitted by this chapter if:

 (1) a nonvested property interest or a power of appointment becomes invalid under Section 27‑6‑20;

 (2) a class gift is not but may become invalid under Section 27‑6‑20 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 27‑6‑20(A)(1) can vest but not within ninety years after its creation.

HISTORY: 1987 Act No. 12, Section 1.

CROSS REFERENCES

Use of savings clause to reform property dispositions made before July 1, 1987 but at issue in litigation commencing after that date, see Section 27‑6‑60.

Library References

Perpetuities 4.

Reformation of Instruments 16, 30.

Westlaw Topic Nos. 298, 328.

C.J.S. Perpetuities Sections 2, 6, 12, 15 to 30, 32 to 40, 52 to 53, 55, 64.

C.J.S. Reformation of Instruments Sections 20 to 22, 61.

RESEARCH REFERENCES

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 214, The Rule Against Perpetuities‑History and Status of Rule in the Several States.

**SECTION 27‑6‑50.** Exceptions to rule.

 Section 27‑6‑20 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 (i) a premarital or postmarital agreement, (ii) a separation or divorce settlement, (iii) a spouse’s election, (iv) a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties, (v) a contract to make or not to revoke a will or trust, (vi) a contract to exercise or not to exercise a power of appointment, (vii) a transfer in satisfaction of a duty of support, or (viii) 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, and 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; or

 (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, including, but not limited to, the interests, powers, and arrangements coming within Sections 13‑7‑30, 27‑5‑70, 27‑5‑80, 33‑53‑30, 39‑55‑135, and 62‑7‑909.

HISTORY: 1987 Act No. 12, Section 1; 2005 Act No. 66, Section 2.

Code Commissioner’s Note

At the direction of the Code Commissioner, the reference in item (7) to 62‑7‑409 was changed to 62‑7‑909 to conform to the South Carolina Uniform Principal and Income Act of 2005.

Federal Aspects

Qualified pension, profit‑sharing, and stock bonus plans, 26 U.S.C.A. Sections 401 et seq.

Library References

Perpetuities 4(1).

Westlaw Topic No. 298.

C.J.S. Perpetuities Sections 2, 12, 15 to 18, 20 to 24, 27, 30, 33 to 35, 52 to 53.

RESEARCH REFERENCES

Forms

South Carolina Legal and Business Forms Section 16:2 , Legal Principles‑Types of Trusts.

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 342, The Rule Against Remoteness of Vesting.

Bogert ‑ the Law of Trusts and Trustees Section 350, Statutory Rules Against Undue Suspension of the Power of Alienation.

**SECTION 27‑6‑60.** Effect of timing of creation of property interest; savings clause.

 (A) Except as extended by subsection (B), this chapter applies to a nonvested property interest or a power of appointment that is created on or after July 1, 1987. 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 the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

 (B) If a nonvested property interest or a power of appointment was created before July 1, 1987, and is determined in a judicial proceeding, commenced on or after July 1, 1987, to violate this State’s rule against perpetuities as that rule existed before July 1, 1987, a court upon the petition of an interested person shall reform the disposition by inserting a savings clause that preserves most closely the transferor’s plan of distribution and that brings that plan within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

HISTORY: 1987 Act No. 12, Section 1.

CROSS REFERENCES

Reformation of certain property dispositions, for purposes of conformity with rule against perpetuities, see Section 27‑6‑40.

Library References

Perpetuities 4(1).

Westlaw Topic No. 298.

C.J.S. Perpetuities Sections 2, 12, 15 to 18, 20 to 24, 27, 30, 33 to 35, 52 to 53.

NOTES OF DECISIONS

In general 1

1. In general

Reservation of perpetual right of first refusal in deed conveying lakeshore property violated rule against perpetuity in that right may not have vested within 21 years after life in being. Webb v. Reames (S.C.App. 1997) 326 S.C. 444, 485 S.E.2d 384, rehearing denied. Perpetuities 4(4)

Suit to set aside condition, reserved in deed and determined to be void under rule against perpetuities, cannot be barred as untimely. Webb v. Reames (S.C.App. 1997) 326 S.C. 444, 485 S.E.2d 384, rehearing denied. Limitation Of Actions 36(1)

**SECTION 27‑6‑70.** Application and construction.

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

HISTORY: 1987 Act No. 12, Section 1.

Library References

Perpetuities 1.

Westlaw Topic No. 298.

C.J.S. Perpetuities Sections 10 to 15, 18, 20 to 24, 35.

**SECTION 27‑6‑80.** Effect on common law.

 This chapter supersedes the common law rule against perpetuities.

HISTORY: 1987 Act No. 12, Section 1.

Library References

Perpetuities 1, 3.

Westlaw Topic No. 298.

C.J.S. Perpetuities Sections 3 to 5, 10 to 15, 18, 20 to 24, 35, 52.

RESEARCH REFERENCES

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 214, The Rule Against Perpetuities‑History and Status of Rule in the Several States.