

THE RULE AGAINST PERPETUITIES: A SURVEY OF STATE (AND D.C.) LAW

At common law, the rule against perpetuities provided that:

No [nonvested property] interest is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest.

Gray, *The Rule Against Perpetuities* § 201 (4th ed. 1942). Under the common law rule, the interest was invalid unless it was certain on the date the interest was created that it would vest within 21 years after the death of the last designated life in being at that time (the “common law period”). The common law rule ignored any events that occurred after the interest was created, and focused only on what was certain to occur or not to occur when the interest was created.

The common law rule remains intact in only three states, however – Alabama, New York, and Texas. Three more states – Iowa, Mississippi and Oklahoma – have the common law rule, with the “wait-and-see” modification that determines whether an interest was valid based on whether it actually vested within the common law period, rather than whether it had to do so in all events.

The beginning of the movement away from the common law rule began in 1979, when the *Restatement (Second) of Property* suggested that this approach was unreasonable, because it ignored events that, in some cases, had already occurred before the court or the parties had to determine the validity of the interests created. *Restatement*

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(*Second*) of Property (*Donative Transfers*) § 1.3 (1979). The *Restatement* recommended a “wait-and-see” approach.¹

The most significant change in the state laws on the rule against perpetuities derive from the 1986 enactment by the Uniform Law Commissioners of the Uniform Statutory Rule Against Perpetuities (“USRAP”). See Waggoner, “The Uniform Statutory Rule Against Perpetuities,” 21 Real Prop., Prob., & Tr. J. 569 (1986). The USRAP both adopted a wait-and-see approach to the rule against perpetuities, and added an alternate 90-year period (measured from the creation of the interest or power) for the rule, allowed the use of *cy pres* to fix RAP violations, as well as making several other less major changes to the common law rule.

The USRAP (either alone or as part of the Uniform Probate Code)² has been adopted in twenty-five states and the District of Columbia (Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Indiana, Kansas, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oregon, South Carolina, Tennessee, Utah, Virginia, and West Virginia). Several of these states, however, have made substantial modifications or added major exceptions.

The most substantive rules adopted by the USRAP are in the first five sections. USRAP § 1(a) codifies the validating side of the common-law rule, but rejects the invaliding

¹ This approach appears to have been first adopted by statute in Pennsylvania in 1947. 20 Pa. Stat. § 6104(b). See Leach, “Perpetuities Legislation, Hail Pennsylvania”, 108 Pa. L. Rev. 1124 (1960).

² In 1990 the Uniform Probate Code made the Uniform Statutory Rule an official part of the Uniform Probate Code as Part 9 of Article II. See UPC §§ 2-901 to 2-907.

side. The USRAP states that a nonvested property interest that is valid under the common-law rule is valid under the USRAP. The USRAP adopts a wait-and-see approach for the invalidating side of the rule, by providing that an interest that is not certain to vest with the period of the common law rule is still valid if it actually vests within 90-years following the date it is created.

USRAP §§ 1(b) and 1(c) adopt a similar rule for powers of appointment. USRAP § 1(b) states that a presently-exercisable general power of appointment is always vested, but under the USRAP, a general power that is not presently exercisable because it is subject to a condition precedent, is valid if either the condition precedent is certain to be satisfied or to become impossible to satisfy within the common law period, or if the condition precedent is actually satisfied or actually becomes impossible to satisfy within 90 years after its creation. USRAP § 1(c) states that a nongeneral power of appointment or general testamentary power of appointment is valid under the USRAP if, when it is created, it is certain to be irrevocably exercised or otherwise to terminate during the common law period, or if it is actually irrevocably exercised or actually otherwise terminates within 90 years after its creation.

USRAP § 1(d) provides that, for purposes of measuring the common law period of the rule, the chance that a child will be born to an individual after the individual's death is disregarded.

In 1990, the USRAP was modified to add USRAP § 1(e), which is designed to avoid unintended adverse results that could arise from a savings clause that states that the maximum time of vesting or termination of any interest or trust occur no later than 21 years after the death of the survivor of specified lives in being at the creation of the trust, or if

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later, 90 years after the creation of the trust. Such a provision could create a problem if used in a trust whose terms otherwise violated the common-law rule. If the savings clause actually sets the duration of the trust, it could actually create a perpetuities violation. Section 1(e) thus provides that language in a governing instrument that seeks to disallow the vesting or termination of any interest or trust until or beyond the later of the expiration of the common law period or a period that exceeds or might exceed the common law period, is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives.

USRAP § 2 defines the time when, for purposes of the USRAP, when a nonvested property interest or a power of appointment is created. Section 2(a) states that general property law determines when a nonvested property interest or power of appointment is created, except as otherwise provided in Section 5 of the USRAP.

USRAP § 2(b) adopts the general common law rule that, if a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of a nonvested property interest (or a property interest subject to a power of appointment described in USRAP § 1(b) (a general power subject to a condition precedent) or 1(c) (a testamentary general or special lifetime power)), the nonvested property interest or power of appointment is deemed to be created when the power to become the unqualified beneficial owner terminates. This section includes alternate language stating that, for purposes of the USRAP, a joint power with respect to community property or to marital property under the Uniform Marital Property Act held by a married couple is treated as a power exercisable by one person alone.

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USRAP § 2(c) provides that nonvested property interests and powers of appointment arising out of transfers to a previously funded trust or other existing property arrangement are deemed to be created when the nonvested property interest or power of appointment arising out of the original contribution was created. This avoids an administrative difficulty that can arise at common law when subsequent transfers are made to an existing irrevocable trust. Arguably, at common law, each transfer starts the period of the Rule running anew as to that transfer. This difficulty is avoided by subsection (c).

USRAP § 3 directs a court, upon the petition of an interested person, to reform a disposition within the limits of the 90-year permissible vesting period, in the manner deemed by the court most closely to approximate the transferor's manifested plan of distribution, in three circumstances. Reformation is permitted if: (1) a nonvested property interest or a power of appointment becomes invalid under the general statutory rule (USRAP § 1(a)); (2) a class gift is not but might become invalid under the statutory rule 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 the general statutory rule can vest, but not within 90 years after its creation.

USRAP § 4 preserves the exclusions from the rule against perpetuities allowed under the enacting state's statutes or common law. USRAP § 4(7). It also adopts six other exceptions to the operation of the statutory rule:

USRAP § 4(1) excludes nondonative transfers from the statutory rule. Notwithstanding this general exclusion, the USRAP continues to apply to 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

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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.

Generally, fiduciary powers are subject to the statutory rule. USRAP § 4(2), however, excludes from the statutory rule any fiduciary's power relating to the administration or management of assets, including a fiduciary's power to sell, lease, or mortgage property, or to determine principal and income. USRAP § 4(3) excludes from the statutory rule any a power to appoint a fiduciary.

USRAP § 4(4) excludes from the statutory rule a trustee's discretionary power to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal.

USRAP § 4(5) excludes from the statutory rule any 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.

USRAP § 4(6) excludes from the statutory rule any 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,

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except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse.

USRAP § 5 provides that the statutory rule applies only to nonvested property interests or powers of appointment created on or after the effective date of the state adoption. The statutory rule does not apply retroactively, but USRAP § 5(b) authorizes a court to exercise its equitable power to reform instruments that contain a violation of the state's former rule and to which the statutory rule does not apply because of the effective date.

A majority of states have eliminated the rule against perpetuities, either entirely or for certain types of trusts, or have adopted a very long fixed permissible period of the rule.

Louisiana has never had the rule against perpetuities. Instead, trust terms are strictly limited by statute, to reflect the Civil Law background of Louisiana law.

Eight states have repealed the rule against perpetuities. These states are Alaska (repealed the rule for vesting of property interests), Delaware (repealed entirely for personal property interest held in trust; 110 year rule for real property held directly in trust), Idaho, Kentucky (repealing the rule interests in real or personal property), New Jersey, Pennsylvania, Rhode Island, South Dakota.

Nine states have adopted longer fixed periods for the rule against perpetuities, sometimes only for certain types of property. These states are Alabama (100 years for property not in trust; 360 years for property in trust), Arizona (500 years), Colorado (1,000 years), Delaware (110 years for real property held in trust); Florida (360 years), Nevada (365 years), Tennessee (360 years), Utah (1,000 years), Washington (150 years).

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Seventeen states have retained the rule against perpetuities, but allowed certain trusts to continue without application of the rule. These states are Arizona, District of Columbia, Hawaii, Illinois, Maine, Maryland, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Virginia, and Wyoming.

Another point worth consideration is the so-called “Delaware tax trap.” Sections 2041(a)(3) and 2514(d) of the Internal Revenue Code state that a power of appointment that appears to be a limited (nontaxable) power will be treated as a general (taxable) power, if it is exercised to create another power of appointment

which, under the applicable local law, can be validly exercised so as to postpone the vesting of any estate or interest in the property which was subject to the first power, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power. . . .

This rule is called the Delaware tax trap, because Delaware appears to be the first state whose law deemed the exercise of a limited power of appointment that created another limited power, as starting a new perpetuities period. 25 Del. Code § 501. The law of most states applies the rule against perpetuities to the exercise of a limited power of appointment that creates a new limited or testamentary power, as running from the date on which the first power was created, rather than the date on which the second power was created. The rule against perpetuities applies to the exercise of a limited power that creates a currently

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exercisable general power, at common law and in most states, as based on the date on which the second power was created.

The vast majority of states appear to follow the common law rule, which is also reflected in the USRAP, starting a new perpetuities period by the exercise of a limited power of appointment only if the exercise creates a presently exercisable general power of appointment. Delaware, of course, starts a new perpetuities period with the exercise of a limited power of appointment to create a limited or general power of appointment (unless the trust is exempt from the generation-skipping transfer tax). Colorado statutes purport to make it impossible to spring the Delaware tax trap by providing that “a power of appointment created by the exercise of a nongeneral power of appointment shall be considered as created when the first power of appointment is created.” Florida states that the exercise of a power of appointment does not create a new perpetuities period. Kentucky and Wisconsin start a new perpetuities period with the exercise of a limited power of appointment to create a general power of appointment, even if not presently exercisable. Michigan and Pennsylvania adopt the common law rule, but add that the interest created by the exercise of the second power of appointment is subject to a 360-year rule period. New Jersey, North Carolina, South Dakota, and Wisconsin laws state that the rule begins to run on a future interest or trust created by the exercise of a power of appointment, from the exercise of the power, if the power is a general power exercisable in favor of the donee, the donee’s estate, the donee’s creditors or the creditors of the donee’s estate, even if the power is exercisable only by will. Tennessee prohibits the exercise of a power of appointment to create another power that would violate the rule against perpetuities. Utah provides that all interests created by the exercise of a nongeneral power of appointment

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to create a new nongeneral power of appointment must vest or terminate within 1,000 years from the time of creation of the new nongeneral power.

The attached 50-state survey notes the following for each state:

- 1) *Basic rule against perpetuities term.* This column notes whether the state adopts the common law rule, the USRAP, no rule (permitting perpetual trusts), or something else.
- 2) *Election out.* This column notes whether the state permits an election not to have the rule against perpetuities apply, and if so, what conditions are imposed on such an election.
- 3) *Exceptions.* This column notes what types of gratuitous transfers are specifically not subject to the rule against perpetuities. It also notes whether the RAP is modified by state law for some interests (trusts or powers of appointment) but not for others (general property interests).
- 4) *Reformation.* This column notes whether state law requires or permits a court to reform a trust to save it from a violation of the rule against perpetuities, and on what terms such a reformation may be allowed.
- 5) *Delaware Tax Trap.* This column notes whether the exercise of a limited power of appointment to create another limited power of appointment starts the running of a new perpetuities period. It also notes whether state law expressly states whether the exercise of a limited power of appointment to create a presently exercisable general power of appointment starts a new perpetuities period.
- 6) *Other Features.* This column notes any other unusual features of the state's rule against perpetuities.

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	Period of the Rule	Election Out
Common Law	Interest is valid only if it must vest within a life or lives in being plus 21 years.	No
USRAP	Interest is valid if it actually vests either within a life or lives in being plus 21 years or within 90 years. Section 1(e), adopted in most, but not all USRAP states, validates certain “later of” savings clauses.	No
1. Alabama	USRAP rule adopted with respect to a nonvested property interest or a power of appointment that is created on or after January 1, 2012, substituting 100 years for 90 years with respect to all property not held in trust, and 360 years with respect to all property held in trust. Ala. Code §§ 35-4A-1 to 35-4A-8.	No
2. Alaska	<p>Effective April 22, 2000, there is no rule applicable requiring the vesting of property interests. Alas. Stat. §§ 34.27.051, 34.27.075.</p> <p>Suspension of a power of alienation permitted for a life or lives in being plus 30 years. Alas. Stat. § 34.27.100, effective April 22, 2000.</p> <p>Powers of appointment that are not presently exercisable because of a condition precedent are invalid, unless the power is irrevocably exercised or terminates within 1,000 years from its creation. Alas. Stat. § 34.27.051, effective April 22, 2000.</p>	N/A

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	Period of the Rule	Election Out
3. Arizona	USRAP, substituting 500 years for 90 years. Ariz. Rev. Stat. §§ 14-2901 to 14-2907.	<p>Rule does not apply to an interest under a trust if:</p> <ul style="list-style-type: none"> (a) the trustee has a power of sale; and (b) at one or more times after the creation of the interest, one or more persons who are living when the trust is created have an unlimited power to terminate the trust interest. Ariz. Rev. Stat. § 14-2901(A)(3), effective Aug. 21, 1998. <p>Rule does not apply to a nongeneral power of appointment or a general testamentary power of appointment if the power is with respect to an interest under a trust whose trustee has the expressed or implied power to sell the trust assets and at one or more times after the creation of the interest one or more persons who are living when the trust is created have an unlimited power to terminate the interest. Ariz. Rev. Stat. § 14-2901(C)(3), effective Dec. 31, 2008.</p>
4. Arkansas	USRAP. Ark. Code §§ 18-3-101 to 18-3-109.	No
5. California	USRAP. Cal. Prob. Code §§ 21205.	No

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	Period of the Rule	Election Out
6. Colorado	<p>USRAP adopted, substituting 1,000 years for 90 years. Colo. Rev. Stat. §§ 15-11-1101 to 15-11-1107. The 1,000-year rule applies generally to interests in trusts and powers of appointment created after May 31, 2001. Colo. Rev. Stat. § 15-11-1102.5(1)(a). A person who held an interest in or a power over a trust created before July 1, 2006, however, could file an election with the trustee before July 1, 2008, to cause the trust to be subject to the prior law. Colo. Rev. Stat. § 15-11-1106.5. Trusts created after May 30, 1991, and before June 1, 2001, are generally subject to rules that restate those that were in place when Colorado first adopted the USRAP, including the 90-year wait-and-see period. Trusts created before May 31, 1991, were subject to the common law Rule. See Gazur, “Colorado Revisits the Rule Against Perpetuities,” 35 Colo. Law. 75 (2006)</p>	No
7. Connecticut	<p>USRAP. Conn. Gen. Stat. § 45a-490 to 45a-496.</p>	No

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8. Delaware	Common law rule repealed for any real or personal property interest held in trust. 25 Del. Code § 503(a). The rule was repealed in 1986 and replaced with a 110 year rule. In 1995, it was repealed for personal property. Real property held in trust must be distributed not later than 110 years from the later of its purchase or its other acquisition by the trust. 25 Del. Code § 503(b), effective July 18, 1996. Interests in a corporation, partnership, statutory trust, business trust, LLC or other entity that holds real property are not subject to this rule. 25 Del. Code § 503(e). If the entity terminates and distributes the property to the trustee, the trust does not automatically violate the rule, and the trustee may, before or at the expiration of the 110-year period, distribute the real property or recontribute it to another entity.	No
9. District of Columbia	USRAP. D.C. Code §§ 19-901 to 19-907.	Rule does not apply to a trust if: (a) the instrument states that the rule does not apply; and (b) the trustee or a delegatee has the power to hold, sell, lease, or mortgage property for any period of time beyond the period of the rule. D.C. Code § 19-904(a)(10), effective April 27, 2001.

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10. Florida	USRAP adopted, substituting 360 years for 90 years. Fla. Stat. § 689.225(2)(f), effective as to any trust created after Dec. 31, 2000.	No
11. Georgia	USRAP. O.C.G.A. §§ 44-6-200 to 44-6-206. Has not, however, adopted USRAP § 1(e), relating to certain perpetuities savings clauses.	No
12. Hawaii	USRAP. Haw. Rev. Stat. §§ 525-1 to 525-6.	Rule does not apply to a trust created under the Hawaii Permitted Transfers in Trust Act, which allows creation of settled self-settled spendthrift trusts. Haw. Rev. Stat. § 525-4(6), effective July 1, 2010.
13. Idaho	Rule repealed. Idaho Code § 55-111, effective July 1, 2008. Idaho forbids limitations on the absolute power of alienation of property in excess of lives in being plus 25 years. Idaho Code § 55-111A.	N/A
14. Illinois	Common law rule. Ill. Comp. Stat. § 305/2.	Rule does not apply to an instrument that: (a) specifies that the rule does not apply; and (b) gives the trustee a power of sale. 765 Ill. Comp. Stat. §§ 305/3(9-5), 305/4, effective Jan. 1, 1998.

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	Period of the Rule	Election Out
15. Indiana	USRAP. Ind. Code §§ 32-17-8-1 to 32-17-8-6. Has not, however, adopted USRAP § 1(e), relating to certain perpetuities savings clauses.	No
16. Iowa	Common law rule with “wait-and-see” feature. Iowa Code § 558.68(2)(a).	No, but 2012 bill presented to Iowa Legislature would allow a creator of a trust to suspend, explicitly in the trust document, the Rule from applying to a particular trust, if the trustee has the power to sell all trust assets or if one or more people, including the trustee, has the power to terminate the trust. Iowa House Study Bill 556 (2012).
17. Kansas	USRAP. Kan. Stat. §§ 59-3401 to 59-3408.	No
18. Kentucky	Rule repealed for all interests in real or personal property. Ky. Rev. Stat. § 381.224, effective July 15, 2010. Future interests are void if they suspend alienation beyond the period of 21 years after the death of a person or person then alive. Ky. Rev. Stat. § 381.225, effective July 15, 2010.	N/A

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	Period of the Rule	Election Out
19. Louisiana	<p>The rule does not exist under Louisiana civil law. However, a trust instrument that stipulates a term must terminate not later than:</p> <ul style="list-style-type: none"> (a) the later of the death of the last surviving income beneficiary or 20 years from the death of the settlor last to die, if at least one settlor and one income beneficiary are natural persons; (b) later of the death of the last surviving income beneficiary or 20 years from the creation of the trust, if none of the settlors is a natural person but at least one income beneficiary is a natural person; (c) 20 years from the death of the settlor last to die, if at least ne of the settlors is a natural person but none of the income beneficiaries is a natural person; (d) 50 years from the creation of the trust, if none of the settlors and none of the income beneficiaries is a natural person. La. Rev. Stat. § 9:1831. <p>A trust instrument that stipulates a longer term than is permitted shall be enforced as though the maximum allowable term had been stipulated. La. Rev. Stat. § 9:1832.</p>	No

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20. Maine	Common law rule with “wait-and-see” modification that looks at facts known when the life or lives in being end. 33 Me. Rev. Stat. § 101; <i>White v. Fleet Bank of Maine</i> , 739 A.2d 373 (Me. 1999).	Rule does not apply to a trust if: (a) trustee or other person can sell, mortgage, or lease property for any period of time beyond the period that is required under the common law rule; and (b) the instrument states that the rule does not apply. 33 Me. Rev. Stat. § 101-A, effective Sept. 18, 1999.
21. Maryland	Common law rule with “wait-and-see” modification. Md. Est. & Tr. Code §§ 11-102 to 11-103.	Rule does not apply to a trust if: (a) the governing instrument states that the rule does not apply; and (b) the trustee or other person has the power to sell, lease, or mortgage property for any period of time beyond the period that is required for an interest created under the governing instrument to vest, so as to be good under the rule. Md. Est. & Trust Code § 11-102(b)(5), effective Oct. 1, 2007.
22. Massachusetts	USRAP moved to Massachusetts Uniform Probate Code. Mass. Gen. Laws, ch. 190B §§ 2-901 to 2-906 (formerly 184A Mass Gen. Laws §§ 1-11, change effective March 31, 2012).	No

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23. Michigan	USRAP. Mich. Comp. Laws §§ 554.71 to 554.78.	The rule does not apply to personal property held in trust and the trust can indefinitely suspend: <ul style="list-style-type: none"> (a) the vesting of a future interest; (b) the satisfaction of a condition precedent to the exercise of a general power of appointment; (c) the exercise of a nongeneral or testamentary power of appointment; (d) absolute ownership; (e) the power of alienation; and (f) accumulations of income. Mich. Comp. Laws §§ 554.92(a), 554.92(b), effective May 28, 2008.
24. Minnesota	USRAP. Minn. Stat. §§ 501A.01 to 501A.07.	No
25. Mississippi	Common law rule with “wait-and-see” modification applies only to interests in real property and tangible personal property. Matter of Estate of Anderson, 541 So. 2d 423 (Miss. 1989); Gill v. Gipson, 982 So.2d 415 (Miss. App.,2007); McCorkle v. Loumiss Timber Co., 760 So.2d 845 (Miss. App., 2000); Weeks v. Mississippi College, 749 So.2d 1082 (Miss. App., 1999).	No

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	Period of the Rule	Election Out
26. Missouri	Common law rule. See <i>Davies v. McDowell</i> , 549 S.W.2d 619 (Mo.App. 1977).	Rule does not apply to a trust if: (a) trust contains express provision creating long-term trust; and (b) trust authorizes the trustee to sell property after the ordinary period of the rule. Mo. Ann. § 456.025, effective Aug. 28, 2001.
27. Montana	USRAP. Mont. Code §§ 72-2-1001 to 72-2-1007.	No
28. Nebraska	USRAP. Neb. Rev. Stat. §§ 76-2001 to 76-2008. Has not, however, adopted USRAP § 1(e), relating to certain perpetuities savings clauses.	Rule does not apply to a trust if: (a) the governing instrument states that the rule does not apply; and (b) the trustee or other person can sell, lease, or mortgage property for any period of time beyond the period of the rule. Neb. Rev. Stat. § 76-2005(9) (enacted March 18, 2002).
29. Nevada	USRAP, substituting 365 years for 90 years. Nev. Rev. Stat. §§ 111.103 to 111.1039, effective Oct. 1, 2005.	No

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	Period of the Rule	Election Out
30. New Hampshire	Common law rule. N.H. Rev. Stat. § 564:24.	Rule does not apply to any disposition of property or interest, if: (a) the governing instrument states that the rule does not apply; and (b) the trustee, or other person can sell, mortgage, or lease property for any period of time beyond the period of the rule. N.H. Rev. Stat. §§ 564:24, 547:3-K, effective Jan. 1, 2004.
31. New Jersey	No interest created in real or personal property will be void by reason of the rule, and the common law rule is repealed, effective July 9, 1999. N.J. Stat. § 46:2F-9. A future interest or trust is void, however, if it suspends the power of alienation (the power to convey to another an absolute fee possession of law or full ownership of personalty) for longer than the common law rule. N.J. Stat. § 46:2F-10(a)(1).	Power of alienation not deemed suspended if a trustee has the power to sell or one or more persons then alive has an unlimited power to terminate the trust. N.Y. EPTL § 46:2F-10(c).
32. New Mexico	USRAP. N.M. Stat. §§ 45-2-901 to 45-2-914.	No

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33. New York	<p>Common law rule generally applies. N.Y. EPTL § 9-1.1; also see Matter of Wilcox, 194 N.Y. 288, 87 N.E. 497 (1909).</p> <p>For interests created by the exercise of a power of appointment, facts and circumstances existing on the effective date of the instrument exercising the power are taken into account in determining the validity of interests created by the instrument exercising the power, creating a “second look” approach. N.Y. EPTL § 10-8.3; see also Matter of Patterson, 32 Misc.2d 181, 162 N.Y.S.2d 446 (Sup. Ct., 1957) (applying the same rule before the statute was enacted in 1960).</p>	No.
34. North Carolina	<p>USRAP for property interests and powers of appointment. N.C. Gen. Stat. §§ 41-15 to 41-27.</p> <p>Interests in trust are void if power of alienation is suspended beyond “21 years after the death of an individual then alive or lives then in being plus a period of 21 years.” N.C. Gen. Stat. § 41-23(a).</p>	<p>Rule does not apply to a trust if:</p> <ul style="list-style-type: none"> (a) the trustee has the power to sell; or (b) there exists an unlimited power to terminate the trust in one or more persons in being. N.C. Gen. Stat. § 41-23(d), effective Aug. 19, 2007.

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Period of the Rule

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35. North Dakota	USRAP. N.D. Cent. Code §§ 47-02-27.1 to 47-02-27.5.	Rule does not apply to a “fiduciary’s power relating to the administration or management of assets” or to 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.” N.D. Cent. Code § 47-02-27.4
36. Ohio	Common law rule. Ohio Rev. Code § 2131.08(A); Don-Pre Development Corp. v. Jacobs, 2007-Ohio-6634, 2007 WL 4340854 (Ohio Ct. App. 8th Dist. Cuyahoga County 2007).	Rule does not apply to trust, if: (a) the instrument specifically states that the rule shall not apply; (b) either: (1) the trustee has unlimited power to sell all trust assets; or (2) one or more persons, one of whom may be the trustee, has the unlimited power to terminate the entire trust; (c) one of the following applies: (1) the trust is executed in Ohio; (2) the sole trustee or a trustee is domiciled in Ohio; (3) the trust is administered in Ohio; (4) the situs of a substantial portion of the trust assets subject to the testamentary portion of the trust is located in Ohio, even if some or all of those assets are physically deposited for safekeeping in another state;

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	Period of the Rule	Election Out
Ohio (cont'd)		(5) the trust instrument states that Ohio law applies. Ohio Rev. Code § 2131.09(B)(2). This exception does not apply to trusts created by the exercise of a nongeneral power of appointment. Ohio Rev. Code § 2131.09(B)(4), effective March 22, 1999.
37. Oklahoma	Common law rule with “wait-and-see” modification. Ok. Stat., tit. 60, §§31 (real estate), 175.47 (real and personal property in trust).	Rule does not apply to trust, if the trustee is granted the full power to sell or transfer the trust assets. Pipkin v. Pipkin, 370 P.2d 826 (Okla. 1962).
38. Oregon	USRAP. Or. Rev. Stat. §§ 105.950 to 105.975.	No
39. Pennsylvania	Rule abolished, effective July 7, 2006. 20 Pa. Con. Stat. §§ 6104, 6107.1.	N/A
40. Rhode Island	Rule abolished (effective July 3, 1999). Gen. Laws R.I. § 34-11-38.	N/A
41. South Carolina	USRAP. S.C. Code §§ 27-6-10 to 27-6-80. Has not, however, adopted USRAP § 1(e), relating to certain perpetuities savings clauses.	No
42. South Dakota	Rule abolished in 1983. S.D. Cod. Laws §§ 43-5-1, 43-5-8, 55-1-20.	N/A

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	Period of the Rule	Election Out
43. Tennessee	A trust that was created or became irrevocable after June 30, 2007, must require that all beneficial interests vest or terminate or the power of appointment be exercised no later than either 21 years after the death of a person alive when the interest was created or 360 years after the interest was created. Tenn. Code §66-1-202(a)(1) and (2) and (f). A trust that was created and became irrevocable before July 1, 2007, follows the USRAP. Tenn Code § 66-1-202(a)(1) and (2).	No.
44. Texas	Common law rule. Tex. Prop. Code § 112.036.	No
45. Utah	<p>USRAP. Utah Code §§ 72-2-1201 to 72-2-1209, with the following modifications, effective January 1, 2004:</p> <p>(a) Nonvested property interest must vest within 1,000 years. Utah Code § 72-2-1201(1);</p> <p>(b) A general power of appointment not presently exercisable because of a condition precedent must be irrevocably exercised or terminate within 1,000 years after its creation. Utah Code § 72-2-1201(2);</p> <p>(c) A nongeneral or general testamentary power of appointment must be irrevocably exercised or terminate 1,000 years after its creation. Utah Code § 72-2-1201(3);</p> <p>(d) The language in a governing instrument is inoperative to the extent it produces a period of time that exceeds the common law rule if the language of</p>	No

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	Period of the Rule	Election Out
Utah (cont'd)	<p>a trust or other arrangement, in measuring a period from the creation of a trust or arrangement:</p> <ul style="list-style-type: none"> (1) seeks to disallow the vesting or termination of any interest or trust beyond; (2) seeks to postpone the vesting or termination of any interest or trust until; or (3) seeks to operate in effect in any similar fashion upon, the later of: <ul style="list-style-type: none"> (i) the expiration of a period of time not exceeding 21 years from the death of the survivor of specified lives in being at the creation of the trust or other property arrangement; or (ii) the expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement. Utah Code § 72-2-1201(4). 	
46. Vermont	<p>Common law rule with “wait-and-see” modification. 27 Vt. Stat. §§ 501 to 503. See also Colby v. Colby, 157 Vt. 233, 596 A.2d 901 (1990).</p>	No

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	Period of the Rule	Election Out
47. Virginia	USRAP. Va. Code §§ 55-12.1 to 55-12.6.	Rule does not apply to personal property held in trust, or to any power of appointment over personal property held in trust, or to any power of appointment over personal property granted under trust, if the trust instrument, by its terms, provides that the rule shall not apply to such trust. Va. Code § 55-13.3(C).
48. Washington	“Wait-and-see” approach for 150 years. RCW 11.98.130 to 11.98.150. Common law Rule with “wait-and-see” approach applies to irrevocable trusts in effect before January 1, 2002 (unless the governing instrument provides otherwise), and to revocable trusts and testamentary trusts with an effective date on or after January 1, 2002 if, at all times on or after the date of enactment of the new rule (April 18, 2001), , the creator of the trust or testator was not competent to revoke, amend, or modify the instrument. See Wash. Laws of 2001, c60, § 4.	No
49. West Virginia	USRAP. W.Va. Code §§ 36-1A-1 to 36-1A-8. Has not, however, adopted USRAP § 1(e), relating to certain perpetuities savings clauses.	No

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	Period of the Rule	Election Out
50. Wisconsin	<p>Power of alienation cannot be suspended for longer than life(s) in being plus 30 years. Wis. Stat. § 700.16(1)(a).</p> <p>The power of alienation by a trust or equitable interests under a trust is not suspended if the trustee has power to sell or if there is an unlimited power to terminate in one or more persons in being. Wis. Stat. § 700.16(3).</p>	No
51. Wyoming	Common law rule. Wyo. Stat. § 34-1-139(a).	<p>A trust of personal property (including ownership interests in LLCs, corporations, partnerships, and business trusts that hold title to realty) created after July 1, 2003 can continue for 1,000 years if:</p> <p>(a) the instrument provides that the rule does not apply;</p> <p>(b) the instrument adopts the 1,000-year rule period; and</p> <p>(c) the trustee is a resident of or maintains a place of business in Wyoming. Wyo. Stat. § 34-1-139(b), 34-1-139(c).</p>

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EXCEPTIONS

Common Law Excludes most nondonative transfers, fiduciary administrative powers, interests vested in a trustee of a charity (even if the actual charitable application is not vested).

USRAP Excludes:

- (a) nondonative transfers, but USRAP still applies to a nonvested property interest or a power of appointment arising out of:
 - (1) a premarital or postmarital agreement;
 - (2) a separation or divorce settlement;
 - (3) a spouse's election;
 - (4) a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties;
 - (5) a contract to make or not to revoke a will or trust;
 - (6) a contract to exercise or not to exercise a power of appointment;
 - (7) a transfer in satisfaction of a duty of support; or
 - (8) a reciprocal transfer. USRAP § 4(1);
- (b) fiduciary power relating to the administration or management of assets, including a fiduciary's power to sell, lease, or mortgage property, or to determine principal and income. USRAP § 4(2);
- (c) a power to appoint a fiduciary. USRAP § 4(3);
- (d) trustee's discretion to distribute principal before termination of trust to a beneficiary who has

JUDICIAL REFORMATION

No specific authority to reform documents to correct problems under the rule.

A court, upon the petition of an interested person, shall reform a disposition within the limits of the 90-year permissible vesting period, in the manner deemed by the court most closely to approximate the transferor's manifested plan of distribution, in three circumstances. Reformation permitted if:

- (a) a nonvested property interest or a power of appointment becomes invalid under the general statutory rule (USRAP § 1(a));
- (b) a class gift is not but might become invalid under the statutory rule and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or
- (c) a nonvested property interest that is not validated by the general statutory rule can vest, but not within 90 years after its creation. USRAP § 3.

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EXCEPTIONS

JUDICIAL REFORMATION

USRAP (cont'd)

an indefeasibly vested interest in income and principal. USRAP § 4(4);

(e) nonvested property interest held by charity, government, or governmental agency or subdivision, if the property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision. USRAP § 4(5);

(f) nonvested property interest in or power of appointment over 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. USRAP § 4(6).

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EXCEPTIONS

1. Alabama
USRAP exceptions. Ala. Code § 35-4A-5.

Rule also does not apply to:
 (a) business trusts. Ala. Code §§ 10A-16-1.06, 19-3-65; or
 (b) Employee benefit trusts and trusts for self-employed persons. Ala. Code § 19-3B.
2. Alaska
Rule does not apply to any provision of the declaration, bylaws, rules or regulations of a unit owner's association. Alas. Stat. § 34.08.110(b).
3. Arizona
USRAP exceptions. Ariz. Rev. Stat. § 14-2904.

Rule also does not apply to charitable trusts. *Olivas v. Board of Nat. Missions of Presbyterian Church, U. S. of America*, 1 Ariz. App. 543, 405 P.2d 481 (1965).
4. Arkansas
USRAP exceptions. Ark. Code § 18-3-104.

JUDICIAL REFORMATION

- USRAP reformation. Ala. Code § 35-4A-4.
- Courts may reform pre-1996 trusts found to have violated the pre-1996 RAP, upon petition of an interested person, in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created. Alaska Stat. § 34.27.070(b).
- USRAP reformation. Ariz. Rev. Stat. § 14-2905.
- USRAP reformation. Ark. Code § 18-3-103.

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5. California

USRAP exceptions. Calif. Prob. Code § 21225(a) - (g).

USRAP reformation. Calif. Prob. Code § 21220.

Rule also does not apply to:

- (a) trusts to provide for beneficiaries under hospital service contracts, group life insurance, group disability insurance, group annuities, or any combination thereof. Calif. Prob. Code § 21225(h);
- (b) cemetery care funds. Calif. Prob. Code § 21220. Health and Safety Code §8737, 8776.

6. Colorado

USRAP exceptions. Colo. Rev. Stat. §§ 15-11-1105.

USRAP reformation. Colo. Rev. Stat. § 15-11-1104.5.

Rule also does not apply to:

- (a) pre-need funeral contracts. Colo. Rev. Stat. § 10-15-120;
- (b) pet trusts. Colo. Rev. Stat. § 15-11-901(2);
- (c) cemetery care trusts. Colo. Rev. Stat. § 38-30-110;
- (d) employee benefit trusts. Colo. Rev. Stat. §§ 38-30-111 & 38-30-112;
- (e) Condominium declaration provisions for the disposition of condominium units in the event of destruction or obsolescence and restricting partition

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Colorado (cont'd) of common elements. Colo. Rev. Stat. §§ 38-33-105, 38-33.3-203; and
(f) Provision in the declaration, bylaws, or rules and regulations for a common interest community. Colo. Rev. Stat. § 38-33.3-203(2).

7. Connecticut USRAP exceptions. Conn. Gen. Stat. § 45a-494.

Rule also does not apply to:
(a) employee benefit trusts. Conn. Gen. Stat. § 45a-508;
(b) charitable uses. *FitzGerald v. East Lawn Cemetery*, 10 A.2d 683, 126 Conn. 286 (1940);
(c) covenants and restrictions concerning the use, occupancy and transfer of condominium units. Conn. Gen. Stat. § 47-70(c);
(d) provisions in declaration, by-laws, or rules of a common interest ownership association. Conn. Gen. Stat. § 47-222(b).

USRAP reformation. Conn. Gen. Stat. § 45a-493.

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EXCEPTIONS

8. Delaware

The 110-year rule applicable to real estate held directly by a trust does not apply to:

- (a) a trust for the benefit of one or more tax-exempt charities. 25 Del. Code § 503(b);
- (b) employee benefit plan trust *Id.*;
- (c) a Delaware Statutory Trust (a type of business trust). *Id.*;
- (d) trust for the perpetual care of cemeteries. *Id.*;
- (e) Delaware Careplan Trusts. 12 Del. Code § 4011;
- (f) condominium association declaration, by-laws or rules. 25 Del. Code § 81-203(b).

9. District of Columbia

USRAP exceptions. D.C. Code §19-904(a).

Rule also does not apply to:

- (a) gifts of a present interest or devises to charitable uses, donative transfers for establishment, embellishment, preservation, renewal, or repair of cemeteries and parts. *Id.*, see also *Iglehart v. Iglehart*, 204 U.S. 478 (1907);
- (b) condominium declaration, bylaws, or other documents. D.C. Code §§ 42-1902.08, 42-4026.

JUDICIAL REFORMATION

No specific authority to reform documents to correct problems under the rule.

USRAP reformation. D.C. Code § 19-903.

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10. Florida

USRAP exceptions. Fla. Stat. § 689.225(5).

USRAP reformation. Fla. Stat. § 689.225(4).

Rule also does not apply to:

(a) trusts holding a majority of the stock of a hospital for the benefit of a county. Fla. Stat. § 155.02;

(b) employee benefit plan trusts. Fla. Stat. §§ 441.01, 441.02;

(c) dispositions of property for private cemeteries, etc. Fla. Stat. § 689.13;

(c) right to any person or entity given by the declaration in condominium documents allowing unit owners to retain reasonable control over the use, occupancy, and transfer of units. Fla. Stat. § 718.104(5).

11. Georgia

USRAP exceptions. O.C.G.A. § 44-6-204.

USRAP reformation. O.C.G.A. § 44-6-203.

Rule also does not apply to:

(a) community trusts. O.C.G.A. § 30-10-9(b);

(b) certain public covenants and scenic easements running in favor of or for the benefit of the land. condominium covenants. O.C.G.A. § 44-5-60;

(c) leases, options to renew leases, and options to buy contained in a lease. *Parker v. Reynolds Metals Company*, 747 F.Supp. 711 (M.D. Ga. 1990);

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EXCEPTIONS

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Georgia (cont'd)

- (d) right of first refusal based on third-party offer. *Hinson v. Roberts*, 256 Ga. 396, 349 S.E. 2d 454 (1986);
- (e) charitable trusts. O.C.G.A. § 53-12-20(b)(3);
- (f) Trust for care of animal. O.C.G.A. § 53-12-20(b)(3).

See also O.C.G.A. § 44-3-116 exempting condominium covenants from 20-year limitation contained in O.C.G.A. § 44-5-60, but not expressly addressing the application of the Rule.

12. Hawaii

- Rule does not apply to:
- (a) a fiduciary's power to sell, lease, or mortgage. Haw. Rev. Stat. § 525-4(1);
 - (b) fiduciary's power to determine principal and income *Id.*;
 - (c) trustee's discretionary power to distribute principal before termination of a trust Haw. Rev. Stat. § 525-4(2);
 - (d) nonvested property interest held by a charity, government, governmental agency or subdivision, if preceded by an interest held by another charity, government, governmental agency or subdivision Haw. Rev. Stat. § 525-4(3);
 - (e) property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities Haw. Rev. Stat. § 525-4(5);

USRAP reformation. Haw. Rev. Stat. § 525-3.

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Hawaii (cont'd)	(f) employee benefit trust. Haw. Rev. Stat. §§ 525-4(4); (g) pet trusts. Haw. Rev. Stat. § 560:7-501(7); (h) cemetery or perpetual care trust. Haw. Rev. Stat. §§ 441-14; 441-35.	
13. Idaho	In addition to general repeal, rule by statute also does not apply to: (a) cemetery endowment care funds. Idaho Code § 27-410; (b) condominium conditions and conveyances. Idaho Code § 55-1522.	N/A
14. Illinois	Rule does not apply to: (a) trustee power to sell, lease or mortgage property. 765 Ill. Comp. Stat. § 305/4(a); (b) trustee powers related to the administration or management of trust assets, including a trustee's discretionary power to determine what receipts constitute principal and what receipts constitute income and to appoint a successor trustee. <i>Id.</i> ; (c) trustee's mandatory powers to distribute income to a beneficiary having an interest in the principal which is irrevocably vested in quality and quantity. <i>Id.</i> ; (d) trustee's discretionary powers to distribute principal prior to termination of a trust, to a beneficiary having an interest in the principal which is irrevocably vested in quality and quantity. <i>Id.</i> ;	No specific authority to reform instruments for the rule, but in interpretations, the following rules of construction apply in determining whether an interest violates the rule: (a) it is presumed that the interest was intended to be valid. 765 Ill. Comp. Stat. § 305/4(c)(1); (b) an interest conditioned upon the probate of a will, the appointment of an executor, administrator or trustee, the completion of the administration of an estate, the payment of debts, the sale or distribution of property, the determination of federal or state tax liabilities or the happening of any administrative

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EXCEPTIONS

Illinois (cont'd)

(e) trustee's discretionary powers to allocate income and principal among beneficiaries, but no exercise of any such power after the expiration of the period of the rule against perpetuities is valid. *Id.*;

(f) leases to start in the future or upon the happening of a future event, if the lease term actually commences in possession within 40 years from the date of execution. *Id.*;

(g) commitments by a lessor to enter into a lease with the holder of a mortgage. *Id.*;

(h) options in gross or preemptive rights in the nature of a right of first refusal, but no option in gross is valid for more than 40 years from the date of its creation. *Id.*;

(i) qualified perpetual trusts (in which the trust instrument specifies that the rule does not apply and gives the trustee a power of sale). *Id.*;

(j) cemetery maintenance trusts. 65 Illinois Comp. Stat. § 5/11-52.2-1, 225 Ill. Comp. Stat. § 411/15-25, 760 Ill. Comp. Stat. § 95/2, 760 Ill. Comp. Stat. § 100/6;

(k) pet trusts. 760 Ill. Comp. Stat. § 5/15.2;

(l) employee benefit trusts. 760 Ill. Comp. Stat. § 40/1, 760 Ill. Comp. Stat. § 40/2a.

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contingency, is construed as if the contingency must occur, if at all, within the period of the rule. *Id.*;

(c) with respect to an interest created in the "widow," "widower," or "spouse" of another person, the maker of the instrument intended to refer to a person who was living at the date that the period of the rule starts to run. *Id.*;

(d) any interest that would otherwise violate the rule because it depends on any person attaining or failing to attain an age over 21 years is construed as if the specified age is 21 years. 765 Ill. Comp. Stat. § 305/4(c)(2);

(e) the validity of an interest that depends upon the possibility of the birth or adoption of a child is determined as if:

(1) no person is capable of having a child until 13 years of age;

(2) no person is capable of having a child after 65 years of age;

(3) evidence shall be admissible as to the incapacity of having a child by a living person who has not reached 65 years of age; and

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Illinois (cont'd)

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(4) the possibility of having a child or more remote descendant by adoption shall be disregarded. 765 Ill. Comp. Stat.

§ 305/4(c)(3);

(f) A trust containing any limitation (other than a trust the assets of which do not vest in the trustee within the rule) that would violate the rule will end at the expiration of a period of 21 years after the death of the last to die of all the beneficiaries of the instrument who were living at the date when the period of the rule commenced to run, or 21 years after that date if no beneficiary of the instrument was then living, unless events occur which cause an earlier termination under the instrument and then the principal shall be distributed as provided by the instrument. 765. Ill. Comp. Stat. § 305/5.

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EXCEPTIONS

15. Indiana

USRAP exceptions. Ind. Code § 32-17-8-2.

Rule also does not apply to:

- (a) provision for the accumulation of an amount of the trust income reasonably necessary for the upkeep, repair, or proper management of the subject of the estate; Ind. Code § 32-17-8-2(8)(A);
- (b) trust direction to allocate all or part to the principal of the trust of stock dividends or stock rights derived from shares held in a trust. Ind. Code § 32-17-8-2(8)(B);
- (c) provision for a sinking or reserve fund. Ind. Code § 32-17-8-2(8)(C);
- (d) statutory provision directing an accumulation. Ind. Code § 32-17-8-2(8)(D);
- (e) cemetery funds. Ind. Code § 23-14-50-2(c)(2);
- (f) employee benefit trusts. Ind. Code §§ 30-2-6-1 to 30-2-6-3.

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USRAP reformation. Ind. Code § 32-17-8-6.

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EXCEPTIONS

16. Iowa

Rule does not apply to:

- (a) cemetery trusts. Iowa Code §§ 523I.508, 523I.603, 523I.810; and *Hipp v. Hibbs*, 245 N.W. 247, 215 Iowa 253 (1932);
- (b) certain environmental covenants. Iowa Code § 558.68.

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A nonvested interest that would violate the rule shall be judicially reformed to most closely approximate the intention of the creator of the interest in order that the nonvested interest will vest, even though it may not become possessory within the period of the rule. Iowa Code § 558.68(3).

In construing a trust under the rule, if no life or lives can be ascertained at the time the period of the rule begins to run, the measuring lives for purposes of the rule are:

- (a) the creator of the nonvested interest, if the period of the rule begins to run in his or her lifetime;
- (b) those persons alive when the period begins to run, if reasonable in number, who were selected by the creator of the interest to measure the validity of the nonvested interest or, if none, those persons, if reasonable in number, who have a beneficial interest in the property in which the nonvested interest exists, the grandparents of all such beneficiaries and the issue of such grandparents alive when the period of the rule begins to run, and those persons who are the potential

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Iowa (cont'd)

appointees of a special power of appointment exercisable over the property in which the nonvested interests exist who are the grandparents or issue of the grandparents of the donee of the power and alive when the period of the rule begins to run;

(c) those other persons alive when the period of the rule begins to run, if reasonable in number, who are specifically mentioned in describing the beneficiaries of the property in which the nonvested interest exists.

(d) the donee of a general or special power of appointment if alive when the period of the rule begins to run and if the exercise of that power could affect the nonvested interest.

Iowa Code § 558.68(3).

17. Kansas

USRAP exclusions. Kan. Stat. § 59-3404.

Rule also does not apply to:

- (a) agreements by electric or gas public utilities waiving partition rights or restricting alienation of certain properties authorized. Kan. Stat. § 16-116;
- (b) employee benefit trusts. Kan. Stat. § 58-1101.

USRAP reformation. Kan. Stat. § 59-3403.

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EXCEPTIONS

18. Kentucky

Rule does not apply to:

- (a) transfers for charitable purposes or to federally-exempt charities. Ky. Rev. Stat. §§ 381.225(4)(a), 381.225(4)(b);
- (b) nondonative transfers, except a nonvested property interest or a power of appointment arising out of a:
 - (1) premarital or post marital agreement. Ky. Rev. Stat. § 381.225(4)(c);
 - (2) separation or divorce settlement. *Id.*;
 - (3) arrangement similar to a premarital or post-marital agreement or separation or divorce settlement but arising out of a prospective, existing, or previous marital relationship between the parties. *Id.*;
 - (4) a contract to make or revoke a will or trust. *Id.*;
 - (5) a contract to exercise or not to exercise a power of appointment. *Id.*;
- (c) a transfer in satisfaction of a duty of support. *Id.*;
- (d) a reciprocal transfer. *Id.*;
- (e) an employee benefit trust. Ky.Rev. Stat. § 381.225(4)(d);
- (f) condominium rules, declaration, bylaws, or regulations. Ky. Rev. Stat. § 381.9129;
- (g) Kentucky business trust. Ky. Rev. Stat. § 386.430;

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A court upon the petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of disposition and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created. Ky. Rev. Stat. § 381.226(2).

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Kentucky (cont'd)	(h) A fee simple subject to a right of entry for condition broken, if the specified contingency occurs within thirty (30) years from the effective date of the instrument creating such fee simple. Ky. Rev. Stat. § 381.219.	
19. Louisiana	Dedications of property acquired for cemetery purposes. La. Rev. Stat. § 8:305.	Documents are automatically reformed to reflect the maximum permitted term. La. Rev. Stat. § 9:1832.
20. Maine	Rule does not apply to: (a) trusts created for charitable purposes. Eaton v. Miller, 250 A.2d 220 (Me. 1969); (b) working waterfront covenants. 33 Me. Rev. Stat. § 135(10); (c) condominium declarations and by-laws. 33 Me. Rev. Stat. § 1602-103(b); (d) employee benefit plan trusts. 26 Me. Rev. Stat. § 841; (e) pet trusts for care of an animal alive during the settlor's lifetime. 18-B Me. Rev. Stat. § 408; and (f) noncharitable trusts without ascertainable beneficiaries (such as cemetery trusts). 18-B Me. Rev. Stat. § 409.	No specific authority to reform documents to correct problems under the rule.

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EXCEPTIONS

21. Maryland

Rule does not apply to:

(a) legacy or inter vivos conveyance worth \$5,000 or less, or of any burial lot of any value, in trust or otherwise, for perpetual care or keeping in good order and condition, or making repairs to, any lot, vault, mausoleum, or other place of sepulture belonging to any individual or several individuals in any cemetery or graveyard, the lots in which are intended for the burial of members of the family, family connections, relatives, or friends of the owners, or their successors in ownership. Md. Est. & Tr. Code § 11-102(b)(1);

(b) legacy or inter vivos conveyance intended to transfer assets from one charitable corporation to another on a contingency or future event. Md. Est. & Tr. Code § 11-102(b)(2);

(c) employee benefit trust. Md. Est. & Tr. Code § 11-102(b)(3);

(d) charitable trust. Md. Est. & Tr. Code § 11-102(b)(4), Md. Code Md. Code § 5-306;

(e) trust in which the governing instrument states that the rule does not apply and which gives the trustee, or other person to whom the power is properly granted or delegated, the power under the governing instrument, applicable statute, or common law to sell, lease, or mortgage property for any period of time beyond the period that is required for an interest created under the governing

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No special provision for reforming trusts to conform with the rule. In construing a disposition under the rule, however, an interest that would violate the rule because it is contingent upon any person attaining or failing to attain an age in excess of 21, is construed as if the age contingency shall be reduced to 21. Md. Est. & Tr. Code § 11-103.

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Maryland (cont'd)

instrument to vest, so as to be good under the rule.
Md. Est. & Trust Code § 11-102(b)(5);

(f) option of a tenant to renew a lease. Md. Est. & Tr. Code § 11-102(b)(6);

(g) option of a tenant to buy all or part of the leased premises. Md. Est. & Tr. Code § 11-102 11-102(b)(7);

(h) option of a usufructuary to extend the scope of an easement or profit. Md. Est. & Tr. Code § 11-102(b)(8);

(i) right of a county, a municipality, a person from whom land is acquired, or the successor-in-interest of a person from whom land is acquired, to acquire land from the State in accordance with § 8-309 of the Transportation Article. Md. Est. & Tr. Code § 11-102(b)(9);

(j) option, warrant, pre-emptive right, right of first refusal, right of first option, right of first negotiation, call right, exchange right, or conversion right, or similar, to acquire an interest in a domestic or foreign joint venture, partnership, limited liability partnership, limited partnership, limited liability limited partnership, corporation, cooperative, limited liability company, business trust, statutory trust, or similar enterprise, whether the interest is characterized as a joint venture interest, partnership interest, limited partnership interest, membership interest, security, stock, or otherwise. Md. Est. & Tr. Code § 11- 102(b)(10);

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Maryland (cont'd)

- (k) nondonative property interest as described. Md. Est. & Tr. Code § 11-102(b)(11);
- (l) pet trust to care for an animal alive during the lifetime of the settlor. Md. Est. & Tr. Code § 11-102(b)(12);
- (m) affordable housing land trust agreement. Md. Est. & Tr. Code § 11-102(b)(12);
- (n) REIT. Md. Code § 8-301(1);
- (o) provision of the condominium laws or any declaration, bylaws, or other instrument made pursuant to those laws. Md. Code § 11-124(a).

22. Massachusetts

USRAP exceptions. Mass. Gen. Laws ch. 190B § 2-904 (formerly 184A Mass Gen. Laws § 4, change effective March 31, 2012).

Rule also does not apply to:

- (a) employee benefit trusts. Mass. Gen. Laws ch. 203 § 3A;
- (b) trusts for the care of animals. Mass. Gen. Laws, ch. 203 § 3C(h).

USRAP reformation. Mass. Gen. Laws ch. 190B § 2-903 (formerly 184A Mass Gen. Laws § 3, change effective March 31, 2012).

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23. Michigan	<p>USRAP exceptions. Mich. Comp. Laws §§ 554.75.</p> <p>Rule also does not apply to:</p> <ul style="list-style-type: none">(a) charitable grants. Mich. Comp. Laws § 554.351;(b) employee benefit trusts. Mich. Comp. Laws § 555.301;(c) public employee's retirement health care trust. Mich. Comp. Laws § 38.2743.	<p>USRAP reformation. Mich. Comp. Laws § 554.74.</p>
24. Minnesota	<p>USRAP exceptions. Minn. Stat. § 501A.04.</p> <p>Rule also does not apply to:</p> <ul style="list-style-type: none">(a) charitable trusts. Minn. Stat. § 501B.31;(b) condominium declarations and by-laws. Minn. Stat. § 515A.2-103;(c) common interest property declarations and by-laws. Minn. Stat. § 515B.	<p>USRAP reformation. Minn. Stat. § 501A.03.</p>
25. Mississippi	<p>Rule does not apply to:</p> <ul style="list-style-type: none">(a) cemetery perpetual care funds. Miss. Stat. § 41-43-51;(b) employee benefit trusts. Miss. Stat. § 71-1-41;(c) investment trusts. Miss. Stat. § 79-15-21.	<p>No specific authority to reform documents to correct problems under the rule.</p>

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26. Missouri

Rule does not apply to:

- (a) cemetery funds for public cemeteries. Mo. Stat. § 214.020;
- (b) cemetery funds for private cemeteries. Mo. Stat. § 214.130; and *Earney v. Clay*, 462 S.W.2d 672 (Mo. 1971);
- (c) stock voting trusts. Mo. Stat. § 351.246;
- (d) agreements between electrical corporations or gas corporations for the generation, transmission or distribution of electricity. Mo. Stat. § 393.105;
- (e) condominium agreements, declarations and by-laws. Mo. Stat. §§ 448.210 and 448.2-103;
- (f) employee benefit trusts. Mo. Stat. § 456.011;
- (g) charitable trusts. *Mercantile Trust Co. Nat. Ass'n v. Shriners' Hospital for Crippled Children*, 551 S.W. 2d 864 (App. 1977).

Any limitation or provision that violates the rule or any policy corollary can be reformed if reformation would more closely approximate the primary purpose or scheme of the grantor, settlor or testator than would total invalidity. Reformation can be done by a petition in a court of competent jurisdiction, by any party in interest, all parties in interest having been served by process. Mo. Stat. § 442.555(2).

27. Montana

USRAP exceptions. Mont. Code § 72-2-1005.

USRAP reformation. Mont Code § 72-2-1004.

Rule also does not apply to:

- (a) dedications for interment purposes with respect to a mausoleum or columbarium. Mont. Code § 35-21-821(3);
- (b) fund for general endowment care with respect to mausoleum or columbarium. Mont. Code § 35-21-848;
- (c) charitable trusts. Mont. Code § 72-33- 502.

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28. Nebraska

USRAP exceptions. Neb. Rev. Stat. § 76-2005.

USRAP reformation. Neb. Rev. Stat. § 76-2004;

Rule also does not apply to:

(a) cemetery perpetual care funds and perpetual special care trusts. Neb. Rev. Stat. § 12-512;

(b) burial or pre-need trusts. Neb. Rev. Stat. § 12-1121;

(c) employee benefit trusts. Neb. Rev. Stat. § 48-2001;

(d) condominium declaration, by-laws, and other required documents and terms. Neb. Rev. Stat. §§ 76-807, 76-840;

(e) a property interest, ownership, or a power of appointment transferred in trust for charitable purposes by whose terms such trust is to continue for an indefinite or unlimited period or arrangement of like import. Neb. Rev. Stat. § 76-2005(8).

29. Nevada

USRAP exceptions. Nev. Rev. Stat. § 111.1037.

USRAP reformation. Nev. Rev. Stat. § 111.1035.

Rule also does not apply to:

(a) condominium declaration and by-laws. Nev. Rev. Stat. §§ 116.2103(2), 116B.320(2);

(b) all other documents and conditions required by the condominium statutes. Nev. Rev. Stat. § 117.103;

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Nevada (cont'd)

- (c) instruments for time-shares. Nev. Rev. Stat. § 119A.380(5);
- (d) cemetery endowment care fund. Nev. Rev. Stat. § 452.110(3);
- (e) payment, gift, grant, bequest, or other contribution for cemetery endowment care. Nev. Rev. Stat. § 452.170(2);
- (f) pet cemetery endowment care trust fund. Nev. Rev. Stat. § 452.695(3);
- (g) trust funds for cemetery:
 - (1) improvement or embellishment;
 - (2) erection, renewal, repair or preservation of any monument, fence, building or other structure;
 - (3) planting or cultivation of trees, shrubs or plants in or around any part of the cemetery;
 - (4) special care or ornamenting of any part of any plot, section or building in the cemetery;
 - (5) any purpose or use consistent with the purpose for which the cemetery was established or is maintained. Nev. Rev. Stat. § 452.725(3).

30. New Hampshire

- Rule does not apply to:
- (a) employee benefit trusts. N.H. Rev. Stat. § 275:48-a;
 - (b) condominium instruments. N.H. Rev. Stat. § 356- B:14.

No specific authority to reform documents to correct problems under the rule.

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EXCEPTIONS

31. New Jersey

Rule repealed, but specific statutory exceptions remain for:

(a) Transfers, outright or in trust, for charitable purposes; N.J. Stat. § 46:2F-10(d)(1);

(b) Transfers to one or more charitable organizations described in IRC §§ 170(c), 2055(a) and 2522(a), or under any similar statute. N.J. Stat. § 46:2F-10(d)(2);

(c) A future 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 revoke a will or trust; (vi) a contract to exercise or not to exercise a power of appointment; (vi) a transfer in satisfaction of a duty of support; or (vii) a reciprocal transfer. N.J. Stat. § 46:2F-10(d)(3);

(d) Transfers to an employee benefit trust. N.J. Stat. §§ 14A:8-3.1, 46:2C-6, 46:2F-10(d)(4);

(e) A property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or was excluded by another N.J. statute. N.J. Stat. § 46:2F-10(d)(4);

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No specific authority to reform documents to correct problems under the rule.

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New Jersey (cont'd) (f) community trusts. N.J. Stat. § 3B:11-34;
(g) employee benefit trusts for employees of nonprofit corporations. N.J. Stat. §15A:8-5;
(h) employee benefit trusts for officers and employees of banks and savings banks. N.J. Stat. § 17:9A-27.8(b);
(i) dedication of property to cemetery purposes. N.J. Stat. § 45:27-21.

32. New Mexico USRAP exceptions. N.M. Stat. § 45-2-904.

Rule also does not apply to:

(a) condominium declaration, by-laws, rules or regulations. N.M. Stat. § 47-7B-3;
(b) payment, gift, grant, bequest or other contribution for general endowed care of cemetery. N.M. Stat. § 58-17-8;
(c) honorary or pet trusts. N.M. Stat. §§ 45-2-904(H), 45-2-907.

USRAP reformation. N.M. Stat. § 45-2-903.

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EXCEPTIONS

33. New York

Rule does not apply to:

- (a) business or investment trusts with transferrable certificates of beneficial interest. N.Y. EPTL § 9-1.5;
- (b) employee benefit trusts. N.Y. EPTL § 9-1.6;
- (c) employee benefit trusts for self-employed persons. N.Y. EPTL § 9-1.7;
- (d) trust created by national securities exchange to assist customers of members, member firms or member corporations. N.Y. EPTL § 9-1.8;
- (e) trusts to assist participation in N.Y. City cultural institutions. N.Y. Arts & Cult. Affairs Law §§ 21.07, 22.07;
- (f) charitable trusts. N.Y. EPTL § 8-1.1; also In re MacDowell's Will, 217 N.Y. 454, 112 N.E. 177 (1916);
- (g) trusts for cemetery purposes. N.Y. EPTL § 8-1.5.

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No specific statute authorizing reformation of rule violations, but several rules of construction created for such cases:

- (a) the creator is presumed to intend every estate to be valid under the rule. N.Y. EPTL § 9-1.3(b);
- (b) if an estate would violate the rule because an interest depends for vesting or duration, on a person attaining or failing to attain an age older than 21 years, the age contingency shall be reduced to 21 years. N.Y. EPTL § 9-1.2;
- (c) an estate that would otherwise violate the rule because of the possibility that a person may not be a person then in being, and such person is referred to only as another's spouse, is construed by presuming that such reference is to a person in being on the effective date of the instrument. N.Y. EPTL § 9-1.3(c);
- (d) an estate the duration or vesting of which is contingent on the probate of a will, the appointment of a fiduciary, the location of a distributee, the payment of debts, the sale of assets, the settlement of an estate, the determination of questions relating to an estate or transfer tax or the occurrence of any specified contingency, is construed

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EXCEPTIONS

New York (cont'd)

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presuming that the contingency occurs, if at all, within 21 years. N.Y. EPTL § 9-1.3(d);

(e) a disposition the validity of which under the rule depends on a person's ability to have a child at some future time, is construed by presuming that a male can have a child only at or after 14 years of age and a female can have a child only at or after 12 years of age and that she cannot have a child after 55 years of age. This presumption is rebuttable with respect to a living person. The possibility that a person may have a child by adoption shall be disregarded. A determination of validity or invalidity of a disposition under the rule by virtue of these presumptions is not affected by later contradictory occurrences. N.Y. EPTL § 9-1.3(e).

34. North Carolina USRAP exceptions for interests in property and powers of appointment. N.C. Gen. Stat. §§ 41-18(1) - 41.18(5), 41.18(7).

Rule also does not apply to:

(a) property interest or arrangement constituting an employee benefit plan trust. N.C. Gen. Stat. §§ 41-18(6), 41-23(f)(iv), 32-75;

(b) property interest or arrangement constituting an honorary or pet trust. N.C. Gen. Stat. § 41-18(8);

USRAP reformation for interests in property and powers of appointment. N.C. Gen. Stat. § 41-17.

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North Carolina
(cont'd)

(c) property interest or arrangement constituting a trust for cemetery lots. N.C. Gen. Stat. §§ 41-18(8), 36C-4-409(4);

(d) property interest or arrangement subjected to a time limit under the special provisions for options in gross and certain other land interests. N.C. Gen. Stat. § 41-18(8);

(e) transfers to charitable or literary organization or for charitable purposes or to charitable trusts. N.C. Gen. Stat. §§41-23(f)(i), 41-23(f)(ii), 36C-4-405. See also Wachovia Bank & Trust Co. v. John Thomasson Const. Co., 168 S.E.2d 358, 275 N.C. 399 (1969);

(f) transfers to a veterans' memorial organization. N.C. Gen. Stat. § 41-23(f)(iii);

(g) transfers to a cemetery corporation, society, or association. N.C. Gen. Stat. § 41-23(f)(iv);

(h) North Carolina community third party trusts and pooled trusts. N.C. Gen. Stat. § 36D-10;

(i) condominium declaration, bylaws, or rules and regulations. N.C. Gen. Stat. § 47C-2-103(b);

(j) North Carolina planned community declaration, bylaws, or rules and regulations. N.C. Gen. Stat. § 47F-2-103.

35. North Dakota

USRAP exceptions. N.D. Cent. Code § 47-02-27.4. Rule also does not apply to real estate investment trusts. N.D. Cent. Code § 10-34-07.

USRAP reformation. N.D. Cent. Code § 47-02-27.3.

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36. Ohio Rule does not apply to:
- (a) employee benefit trusts. Ohio Rev. Code § 2131.09;
 - (b) business trusts. Ohio Rev. Code § 1746.14;
 - (c) real estate investment trusts. Ohio Rev. Code § 1747.09;
37. Oklahoma Rule does not apply to:
- (a) property given, granted, bequeathed, or devised to:
 - (1) a charitable use. Ok. Stat. tit. 60, § 175.47(B)(1);
 - (2) literary, educational, scientific, religious, or charitable corporations for their sole use and benefit. Ok. Stat. tit. 60, § 175.47(B)(2);
 - (3) a cemetery corporation, society or association. Ok. Stat. tit. 60, § 175.47(B)(3);
 - (4) the Department of Mental Health and Substance Abuse Services. Ok. Stat. tit. 60, § 175.47(B)(4) and tit. 43A, § 2-111; or
 - (5) gifts for the advancement of medical science to an incorporated state society of physicians and surgeons. Ok. Stat. tit. 60, § 175.47(B)(5);
 - (b) employee benefit trusts. Ok. Stat. tit. 60, § 326.

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Any property interest that would violate the rule shall be reformed, within the limits of the rule, to approximate most closely the intention of the creator of the interest. Reformation applies “wait-and-see” test. Ohio Rev. Code § 2131.08(B)(1).

Any interest in property that would violate the rule shall be reformed, or construed within the limits of the rule, to give effect to the general intent of the creator of, if ascertainable. “This provision shall be liberally construed and applied to validate such interest to the fullest extent consistent with such ascertained intent.” Okla. Stat. tit. 60, §§ 75 and 77.

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EXCEPTIONS

38. Oregon

USRAP exceptions. Or. Rev. Stat. § 105.965.

Rule also does not apply to:

(a) employee benefit trusts. Ore. Rev. Stat. §128.520;

(b) affordable housing covenants. Ore. Rev. Stat. § 456.290(2);

(c) declarations, bylaws and rules and regulations adopted under the Oregon Planned Community Act. Ore. Rev. Stat. § 94.770(1);

(d) dedications to cemetery purposes. Ore. Rev. Stat. § 97.350;

(e) gifts, grants and bequests of personal property in trust to provide perpetual care and maintenance, improvement or embellishment of private burial lots and of the walks, fences, monuments, structures or tombs thereon. Ore. Rev. Stat. § 97.730;

(f) a property interest, power of appointment or arrangement that was not subject to the common law rule or that is excluded by another statute of the state. Ore. Rev. Stat. S 105.956(7);

(g) declaration, bylaw or rule for a condominium. Ore. Rev. Stat. § 100.025.

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USRAP reformation. Ore. Rev. Stat. § 105.960.

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39. Pennsylvania

Rule does not apply to:

(a) provisions of the declaration or any instrument executed under the rules governing condominiums.

68 Pa. Con. Stat. § 3203;

(b) provisions of the declaration, bylaws or rules and regulations adopted pursuant to the rules governing cooperative apartment buildings. 68 Pa. Con. Stat. § 4203(b);

(c) provisions of the declaration or any instrument executed under the rules governing planned communities. 68 Pa. Con. Stat. § 5203(b);

(d) business trusts. 15 Pa. Con. Stat. § 9503(d).

No specific authority to reform documents to correct problems under the rule.

40. Rhode Island

Rule repealed generally, but specific statutory exceptions remain for:

(a) employee benefit trusts. Gen. Laws R.I. § 28-17-2;

(b) declaration, bylaws or other condominium documents. Gen. Laws R.I. §§ 34-36-28, 34-36.1-2.03.

N/A

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41. South Carolina	USRAP exceptions. S.C. Code § 27-6-50. Rule also does not apply to: (a) business trusts. S.C. Code § 33-53-30; (b) employee benefit trusts. S.C. Code § 27-5-80; (c) trusts for the care and maintenance of a cemetery or cemetery plots, graves, mausoleums, columbaria, grave markers, or monuments. S.C. Code § 62-7-409.	USRAP reformation. S.C. Code § 27-6-40.
42. South Dakota	Rule repealed generally, but specific statutory exceptions remain for: (a) transfers for charitable purposes. S.D. Cod. Laws § 43-5-7(1); (b) transfer to charitable corporations. S.D. Cod. Laws § 43-5-7(2); (c) transfer to charitable corporation. S.D. Cod. Laws § 55-9-2; (d) transfers to cemetery corporation, society, or association. S.D. Cod. Laws § 43-5-7(3); (e) employee benefit trusts. S.D. Cod. Laws §§ 43-5-7(4), 60-13-1, 60-13-2; (f) agreements for restrictions on alienation of jointly owned property used in connection with natural gas or electricity. S.D. Cod. Laws § 49-34-17.	N/A

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EXCEPTIONS

43. Tennessee USRAP exceptions. Tenn. Code § 66-1-205.
- Rule also does not apply to:
- (a) charitable gifts. Tenn. Code § 35-13-108;
 - (b) condominium declaration, or the bylaws, rules, or regulations. Tenn. Code § 66-27-303(b);
 - (c) employee benefit trusts. Tenn. Code § 35-50-106.
44. Texas Rule does not apply to:
- (a) charitable trusts. Tex. Prop. Code § 112.036;
 - (b) dedication of cemetery property. Tex. Health & Safety Code § 711.035(c);
 - (c) perpetual care trust fund. Tex. Health & Safety Code § 712.023;
 - (d) any provision of the declaration, bylaws or rules of a condominium association. Tex. Prop. Code § 82.053;
 - (e) pension benefit trust. Tex. Prop. Code § 121.004.

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USRAP reformation. Tenn. Code § 66-1-204.

A court shall reform or construe an interest in property (including interests in trust) that violates the rule to effect the ascertainable general intent of the creator of the interest. The court may reform or construe an interest according to the doctrine of *cy pres* by giving effect to the general intent and specific directives of the creator within the limits of the rule. If an instrument that violates the rule may be so reformed or construed, a court shall enforce the provisions of the instrument that do not violate the rule and shall reform or construe under this section a provision that violates or might violate the rule. Tex. Prop. Code § 5.043.

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EXCEPTIONS

45. Utah USRAP exceptions. Utah Code § 75-2-1206.
- Rule also does not apply to:
- (a) any deed, lease, conveyance, covenant, easement, or other interest created or document executed in accordance with the Utah Historical Preservation Act. Utah Code § 9-8-505;
 - (b) employee benefit trust. Utah Code § 22-6-1;
 - (c) any declaration, bylaws or other condominium document. Utah Code § 57-8-28.
46. Vermont Rule does not apply to:
- (a) cemetery trusts. 18 Vt. Stat. § 5307;
 - (b) declaration, bylaws or rules adopted pursuant to the Vermont Uniform Common Interest Ownership Act. 27A Vt. Stat. § 2-103.
47. Virginia USRAP exceptions. Va. Code § 55-12.4.
- Rule also does not apply to:
- (a) employee benefit trusts. Va. Code § 55-13.1;
 - (b) any provisions of any condominium master deed or lease, bylaws or other document executed in accordance with applicable state condominium laws or other condominium instrument. Va. Code §§ 55-79.36, 55-79.52;

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- USRAP reformation, but to most closely approximate the transferor's manifested plan of distribution within the 1,000-year period of the Utah rule. Utah Code § 75-2-1205.
- Any interest shall be reformed, within the limits of the rule, to approximate most closely the intention of the creator of the interest. In determining whether an interest would violate measured by actual rather than possible events. 27 Vt. Stat. § 501.
- USRAP reformation. Va. Code § 55-12.3.

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- (c) any provision of a cooperative's declaration, bylaws or rules and regulations. Va. Code § 55-440;
- (d) declaration of a homeowner's association. Va. Code § 55-515.2.

48. Washington

- Rule does not apply to:
- (a) employee benefit trusts. RCW 49.64.010;
 - (b) condominium declaration, bylaws, rules and regulations. RCW 64.34.208;
 - (c) cemetery dedication. RCW 68.24.080.

49. West Virginia

USRAP exceptions. W. Va. Code § 36-1A-4.

- Rule also does not apply to:
- (a) declaration, bylaws and regulations of common interest communities. W. Va. Code § 36B-2-103;
 - (b) West Virginia investment management trust fund. W. Va. Code § 12-6-9a;
 - (c) express trusts for perpetual care of cemeteries or burial lots. W. Va. Code § 35-5-6;
 - (d) employee benefit plan trusts. W. Va. Code § 36-1-23;
 - (e) options in leases to purchase any part of the leased premises. W. Va. Code § 36-1-24.

JUDICIAL REFORMATION

Judicial reformation permitted to correct problems under the Rule, by agreement of the parties and without judicial intervention, unless there are minor or unborn parties for whom there is no virtual representation. RCW ch. 11.96A.

USRAP reformation. W. Va. Code § 36-1A-3.

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50. Wisconsin

Rule does not apply to:

- (a) charitable transfers, outright or in trust. Wis. Stat. § 700.16(4)(a);
- (b) literary or charitable corporations. Wis. Stat. § 700.16(4)(b);
- (c) a veterans' memorial organization. Wis. Stat. § 700.16(4)(bm);
- (d) a cemetery corporation, society or association. Wis. Stat. § 700.16(4)(c);
- (e) the state society of physicians and surgeons incorporated under the law of Wisconsin (whether outright or in trust), if the transfer is for the advancement of medical science. Wis. Stat. § 700.16(4)(d);
- (f) certain employee benefit trusts. Wis. Stat. § 700.16(4)(f);
- (g) condominium bylaws and other instruments. Wis. Stat. §§ 700.16(4)(e), 703.30(1).

No specific authority to reform documents to correct problems under the rule.

51. Wyoming

Rule does not apply to condominium declaration or other instruments. Wyo. Stat. § 34-20-104.

No specific authority to reform documents to correct problems under the rule.

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	Delaware Tax Trap	Other Features
Common law	Exercise of a limited power of appointment starts a new perpetuities period if it creates a presently-exercisable general power.	None
USRAP	Appears not to reject the common law rule, whereby the exercise of a limited power of appointment starts a new perpetuities period only if it creates a presently-exercisable general power of appointment. USRAP §§ 1 and 2.	None
1. Alabama	USRAP rule. Ala. Code § 35-4A-3.	None
2. Alaska	Exercise of a limited or general power of appointment starts a new perpetuities period if it creates a presently-exercisable general power. Alas. Stat. § 34.27.051.	Statutory savings clause, under which, after 1,000 years has passed, power of appointment that becomes invalid, and then be distributed pursuant to statutory format. Alas. Stat. § 34.27.053.
3. Arizona	USRAP rule. Ariz. Rev. Stat. § 14-2902.	Ariz. Const. § 29 states, in part, that “no law shall be enacted permitting any perpetuity or entailment in this state.”
4. Arkansas	USRAP rule. Ark. Code § 18-3-103.	Ark. Const. § 19 states that “Perpetuities...shall not be allowed....”

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Delaware Tax Trap

5. California

USRAP rule. Calif. Prob. Code §§ 21206, 21207.

Other Features

Calif. Constitution, Art. XI, § 16 states that “[n]o perpetuities shall be allowed, except for eleemosynary purposes.”

A trust that is to continue after the expiration of the longer of the two USRAP periods may be terminated on petition by a majority of the beneficiaries, the Attorney General, or any person who would be affected by the termination, on a judicial finding that termination would be in the best interest of the public or of a majority of the affected persons. Calif. Prob. Code § 15414.

In determining whether a nonvested property interest or a power of appointment is valid, the possibility that a child will be born to an individual after the individual's death is disregarded. Calif. Prob. Code § 21208.

The lives of individuals selected to govern the time of vesting may not be so numerous or so situated that evidence of their deaths is likely to be unreasonably difficult to obtain. Calif. Prob. Code § 21230.

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Delaware Tax Trap

Other Features

California (cont'd)

In determining the validity of a nonvested property interest, the identified spouse of an individual alive at the commencement of the perpetuities period is deemed to be alive when the interest is created, whether or not the individual to whom he or she is married was then alive. Calif. Prob. Code § 21231.

6. Colorado The statute purports to make it impossible to trip the Delaware Tax Trap, by providing that “a power of appointment created by the exercise of a nongeneral power of appointment shall be considered as created when the first power of appointment is created. This paragraph . . . shall be applied and construed in a manner consistent with the treatment of the exercise of a nongeneral power of appointment as nontaxable for purposes of the estate and gift tax under the federal internal revenue laws.” Colo. Rev. Stat. § 15-11-1102.5(3)(b).

To prevent a constructive addition to a pre-effective date generation-skipping trust, the 1,000 year rule does not apply to nonvested property interests and powers of appointment created by the exercise of a nongeneral power of appointment over all or any part of a trust that was irrevocable on September 25, 1985. Colo. Rev. Stat. § 15-11-1102.5(3)(c).

7. Connecticut USRAP rule. Conn. Gen. Stat. § 45a-491.

None

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	Delaware Tax Trap	Other Features
8. Delaware	Delaware tax trap applies to the exercise of a limited power of appointment generally, except that the exercise of a limited power of appointment over a trust that is exempt from GST tax by effective date or inclusion ratio, however, does not create a new perpetuities period. 25 Del. Code §§ 501, 504.	The duration of a trust and time of vesting of interests in the trust property do not change merely because the place of administration of the trust is changed from some other jurisdiction to Delaware. 12 Del. Code § 3332(a).
9. District of Columbia	USRAP rule. D.C. Code § 19-902.	None
10. Florida	Exercise of a power of appointment does not create a new perpetuities period. Fla. Stat. § 689.225(3)(e).	A joint power with respect to community property or to marital property under the Uniform Marital Property Act held by individuals married to each other is deemed to be a power exercisable by one person alone. Fla. Stat. § 689.225(3)(c). In all matters relating to the validity of an interest under the rule, “unless a contrary intent appears, it shall be presumed that the transferor of the interest intended that the interest be valid.” Fla. Stat. § 689.225(7).
11. Georgia	USRAP rule. O.C.G.A. § 44-6-202.	None
12. Hawaii	USRAP rule. Haw. Rev. Stat. §§ 525-1, 525-2(a).	None

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	Delaware Tax Trap	Other Features
13. Idaho	Common law rule appears to apply – no statutory or case law modifications or interpretations, in light of general repeal of rule.	None
14. Illinois	Common law rule appears to apply – no statutory or case law modifications or interpretations.	None
15. Indiana	USRAP rule. Ind. Code § 32-17-8-3.	None
16. Iowa	Common law rule appears to apply – no statutory or case law modifications or interpretations.	Lease or grant of agricultural lands, reserving any rent, or service of any kind, subject to 20-year limit. Iowa Const. Art. 1, § 24.
17. Kansas	USRAP rule. Kan. Stat. §§ 59-3401, 59-3402.	None
18. Kentucky	The creation of a future property interest or trust by exercise of a power of appointment starts a new period of the rule, if the exercised power is a general power exercisable in favor of the donee, the donee's estate, the donee's creditors, or the creditors of the donee's estate, even if the laws of Kentucky are made applicable by transfer of the situs of a trust to Kentucky, by a change in the law governing a trust instrument to Kentucky law, or otherwise. Ky. Rev. Stat. § 381.225(c).	Repeal of the rule applies to a future property interest or power of appointment created under the laws of any state that does not have a rule against perpetuities in force, that is not covered by any previously existing rule against perpetuities, and to which, after the power is only testamentary. Ky. Rev. Stat. § 381.225(c).
19. Louisiana	None	None

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	Delaware Tax Trap	Other Features
20. Maine	<p>Common law rule appears to apply – no statutory or case law modifications or interpretations.</p> <p>A fee simple determinable in land or a fee simple in land subject to a right of entry for condition broken becomes a fee simple absolute if the specified contingency does not occur within 30 years from the date when such fee simple determinable or such fee simple subject to a right of entry becomes possessory. If this contingency occurs within said 30 years, the succeeding interest, which may be an interest in a person other than the person creating the interest or his heirs, shall become possessory or the right of entry exercisable notwithstanding the rule against perpetuities. 33 Me. Rev. Stat. § 103.</p>	<p>If a property interest would violate the rule because it is contingent upon any person attaining or failing to attain an age in excess of 21 years, the age contingency shall be reduced to 21 years as to all persons subject to the same age contingency. 33 Me. Rev. Stat. § 102.</p>
21. Maryland	<p>Common law rule appears to apply – no statutory or case law modifications or interpretations.</p>	None
22. Massachusetts	<p>USRAP rule. Mass. Gen. Laws, ch. 190B §§ 2-901 to 2-902 (formerly 184A Mass Gen. Laws § 1-2, change effective March 31, 2012).</p>	None

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	Delaware Tax Trap	Other Features
23. Michigan	<p>Available for exercise of a nongeneral power of appointment to create a presently-exercisable general power of appointment. Mich. Comp. Laws §§ 554.72, 554.73, 554.93(3), 556.124.</p> <p>An interest or power of appointment to which the personal property trust perpetuities act applies, that was created, or made subject to the interest or power, by the exercise of a second power of appointment, is subject to a rule with a 360-year period substituted for the 90-year period. Mich. Comp. Laws §§ 554.75(2).</p>	None
24. Minnesota	Common law rule ratified by statute. Minn. Stat. § 502.73.	None
25. Mississippi	Common law rule appears to apply – no statutory or case law modifications or interpretations.	None
26. Missouri	Common law rule appears to apply. Statute confirms that rule begins to run from death of the holder of a testamentary general power of appointment. Mo. Stat. § 442.557.	None

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Delaware Tax Trap

Other Features

27. Montana	USRAP rule. Mont. Code §§ 72-2-1002 to 72-2-1003.	Mont. Const. Art. XIII, § 6 states: “No perpetuities shall be allowed except for charitable purposes.” Pet trusts cannot last more than 21 years. Mont. Code § 72-2-1017(1).
28. Nebraska	USRAP rule. Neb. Rev. Stat. §§ 76-2002 to 76-2003.	None
29. Nevada	USRAP rule. Nev. Rev. Stat. §§ 111.1031 to 111.1033. Also states that “a joint power with respect to community property held by persons married to each other is a power exercisable by one person alone.” Nev. Rev. Stat. § 111.1033(2).	Nev. Const. Art. 15, § 4 states “No perpetuities shall be allowed except for eleemosynary purposes.” A spendthrift trust may not continue for a period longer than the USRAP rule. The free alienation of the legal estate by the trustee may not be suspended beyond the statutory or constitutional limits of Nevada law or of the law of the state where the trust’s lands are situate. “A contingent remainder in fee may be created on a prior remainder in fee, to take effect if the persons to whom the first remainder is limited die under the age of 21 years, or upon any other contingency by which the estate of those persons may be determined before they attain that age.” Nev. Rev. Stat. §166.140.

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Delaware Tax Trap

Other Features

Nevada (cont'd)

A trust protector may be authorized to modify or amend the instrument to take advantage of changes in the rule or other state laws restricting the terms of a trust, the distribution of trust property or the administration of the trust. Nev. Rev. Stat. § 163.5553(1)(b).

30. New Hampshire Common law rule appears to apply – no statutory or case law modifications or interpretations.

A trust protector may be authorized to modify or amend the instrument to take advantage of changes in the rule or other state laws restricting the terms of a trust, the distribution of trust property or the administration of the trust. N.H. Rev. Stat. § 564-B: 12-1201(a)(2).

31. New Jersey The rule begins to run on a future interest or trust created by the exercise of a power of appointment, from the exercise of the power, if the power is a general power exercisable in favor of the donee, the donee's estate, the donee's creditors or the creditors of the donee's estate, even if the power is exercisable only by will. Otherwise, the period of the rule begins from the date the power is created. Delaware tax trap cannot be invoked by the exercise of a limited power of appointment, therefore. N.J. Stat. § 46:2F-10(a)(3).

None

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Delaware Tax Trap

32. New Mexico USRAP rule. N.M. Stat. §§ 45-2-901 to 45-2-902.

Other Features

Pet trusts cannot last more than 21 years.
N.M. Stat. § 45-2 -907(a).

Special rules for “nonvested easements in gross” (nonvested easement that is not created to benefit or that does not benefit the possessor of any real property in the possessor's use of it as the possessor), “option in gross with respect to an interest in real property” (option in which the holder does not own any leasehold or other interest in the subject real property), and “[p]reemptive rights in the nature of a right of first refusal in gross with respect to an interest in real property” (a preemptive right in which the holder does not own any leasehold or other interest in the subject real property. N.M. Stat. §§ 45-2-908 to 45-2-914.

33. New York Common law rule applies. N.Y. EPTL § 10-8.1.

Where real property situated in New York is acquired by a trust that is validly created under the law of another jurisdiction, New York law determines whether there is a violation of the rule (and whether a direction for the accumulation of rents and profits is valid), using the law in effect at the time of the acquisition of such property. N.Y. EPTL § 9-1.2.

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34. North Carolina Trust created by exercise of a general power of appointment, whether inter vivos or testamentary, gets new period of the rule from date of exercise. All other exercises of powers of appointment to create new trusts are deemed to start their period of the rule from when the original power was created. N.C. Gen. Stat. § 41-23(c). As to the exercise of a power of appointment not creating a new trust but still possibly creating a new power of appointment, the USRAP rule applies. N.C. Gen. Stat. §§ 41-15 to 41-16.

Other Features

N.C. Constitution, Art. I, § 34, states: “Perpetuities . . . are contrary to the genius of a free state and shall not be allowed.”

The power of alienation is suspended on a transfer in trust, only when there are no persons in being who can convey an absolute fee in possession of land, or full ownership of personal property. N.C. Gen. Stat. § 41-23(d).

A trust or equitable interests in a trust does not suspend the power of alienability, if the trustee has the power to sell or if there exists an unlimited power to terminate the trust in one or more persons in being. N.C. Gen. Stat. § 41-23(d).

Noncharitable trust with no ascertainable beneficiaries (such as an honorary or pet trust), may continue for no more than 21 years. N.C. Gen. Stat. § 36C-4-409.

A lease to commence at a time certain or upon the occurrence or nonoccurrence of a future event is invalid if it does not actually commence in possession within 30 years after its execution. N.C. Gen. Stat. § 41-30.

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	Delaware Tax Trap	Other Features
35. North Dakota	USRAP rule. N.D. Cent. Code §§ 47-02-27.1.	Lease or grant of agricultural land reserving any rent or service of any kind is not valid for more than ten years, and lease or grant of any city lot reserving any rent or service of any kind is not valid for more than 99 years. N.D. Cent. Code § 47-16-02.
36. Ohio	Common law rule appears to apply – no statutory or case law modifications or interpretations.	None
37. Oklahoma	Common law rule adopted. Ok. Stat. tit. 60, § 299.12.	Ok. Const. Art. II, §32 states: “Perpetuities . . . are contrary to the genius of a free government, and shall never be allowed. . . .”
38. Oregon	USRAP rule. Ore. Rev. Stat. §§ 105.950, 105.955.	None
39. Pennsylvania	Common law rule appears applicable, except that if a power of appointment is exercised to create a new power of appointment, any interest created by the exercise of the new power of appointment must vest within 360 years of the creation of the original power of appointment, unless the exercise of the new power of appointment expressly states that this provision shall not apply. 20 Pa. Con. Stat. § 6107.1(b)(3).	None

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	Delaware Tax Trap	Other Features
40. Rhode Island	Common law rule against perpetuities repealed outright. Unclear how Delaware tax trap would be applied.	None
41. South Carolina	USRAP rule. S.C. Code §§ 27-6-10 to 27-6-20.	None
42. South Dakota	A future interest or trust created by exercise of a power of appointment computes its permissible period from the time the power is exercised, if the power is a general inter vivos or testamentary power, and from the time the power is created if the power is a special power. S.D. Cod. Laws § 43-5-5.	<p>Lease or grant of agricultural land reserving any rent or service limited to 20 years. S.D. Cod. Laws § 43-32-2.</p> <p>Lease or grant of any municipal lot reserving rent or service limited to 99 years. S.D. Cod. Laws § 43-32-2.</p> <p>Absolute power of alienation, other than one covered by the rule, may not be suspended for longer the lives of persons in being plus 30 years at the creation of the limitation or condition. S.D. Cod. Laws § 43-5-1.</p> <p>Suspension of all power to alienate trust res is a suspension of the power of alienation, unless the trustee has power to sell, or a person in being has an unlimited power to terminate. S.D. Cod. Laws § 43-5-4.</p>

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Delaware Tax Trap

Other Features

43. Tennessee	Power of appointment may not be exercised to create another power of appointment that would violate the rule. Tenn. Code § 32-3-110(2)(F).	Const. Art. I, § 22 states: “perpetuities . . . are contrary to the genius of a free State, and shall not be allowed.”
44. Texas	Common law rule appears to apply – no statutory or case law modifications or interpretations.	Texas Const. Art. 1, § 26 states: “Perpetuities . . . are contrary to the genius of a free government, and shall never be allowed. . . .” See <i>Bowers v. Taylor</i> , 2007 WL 1299440 (Tex. App. Houston 1st Dist. 2007).
45. Utah	<p>USRAP rules. Utah Code § 75-2-1202. Also:</p> <p>(a) All property interests created by the exercise of a nongeneral power of appointment to create a new presently-exercisable general power of appointment, must vest or terminate within 1,000 years after creation of the new power. Utah Code § 75-2-1201(5);</p> <p>(b) All property interests created by the exercise of a nongeneral power of appointment to create a new or successive nongeneral power or a testamentary general power to which the property interest or successive power is subject, must vest or terminate within 1,000 years from the time of creation of the nongeneral power of appointment. Utah Code § 75-2-1201(6).</p>	<p>When title to real property is granted to the trustee of a trust governed by the statutory rule, the terms of the trust, provisions regarding the appointment of successor trustees and the names and addresses of successor trustees must be disclosed. Utah Code § 75-2-1209.</p> <p>A property interest that becomes invalid pursuant to the statutory rule upon the expiration of the 1,000-year period shall be distributed:</p> <p>(a) if the property interest is payable to one person, to that person;</p> <p>(b) if the property interest is payable to more than one person, to the persons to whom it is then payable:</p>

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Delaware Tax Trap

Other Features

Utah (cont'd)

(1) in the shares to which the persons are entitled; or

(2) equally among the persons who are entitled to unspecified shares;

(c) if the property interest is payable to only one person but in the discretion of a trustee, to that person;

(d) if the property interest is payable in the discretion of a trustee and to more than one person, to the persons eligible to receive it:

(1) in the shares to which they are entitled; or

(2) equally among all persons who are entitled to unspecified shares;

(e) if there is no then-living person to whom a property interest may be distributed under the above rules, it shall be payable to one or more organizations described in 26 U.S.C. § 2055(a) in such shares as the then-acting trustee or trustees determine. Utah Code § 75-2-1206.5.

46. Vermont	Common law rule appears to apply – no statutory or case law modifications or interpretations.	None
47. Virginia	USRAP rules. Va. Code §§ 55-12.1, 55-12.2.	None

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	Delaware Tax Trap	Other Features
48. Washington	Common law rule appears to apply – no statutory or case law modifications or interpretations.	After 150 years, any trust assets not otherwise distributable or vested shall be distributed as the superior court having jurisdiction directs, giving effect to the general intent of the trust's creator or the person exercising a power of appointment. Rev. Code Wash. § 11.98.150.
49. West Virginia	USRAP rules. W. Va. Code §§ 36-1A-1, 36-1A-2.	None
50. Wisconsin	Permissible period for future interest or trust created by exercise of a general power of appointment (a power exercisable in favor of the donee, the donee's estate, the donee's creditors or the creditors of the donee's estate), starts when the power is exercised, even if the power is testamentary. Otherwise, it starts when the power is created, but facts at the time the power is exercised are considered in determining whether the power of alienation is suspended beyond the period of the rule. Wis. Stat. § 700.16(1)(c).	<p>Const. Art. I, § 14 states that: "Leases and grants of agricultural land for a longer term than fifteen years in which rent or service of any kind shall be reserved, and all fines and like restraints upon alienation reserved in any grant of land, hereafter made, are declared to be void."</p> <p>A power of alienation is suspended when there are no persons in being who can convey an absolute fee in possession of land, or full ownership of personalty. Wis. Stat. § 700.16(2).</p>

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51. Wyoming

Common law rule appears to apply – no statutory or case law modifications or interpretations.

The lives selected to govern the time of vesting must not be so numerous nor so situated that evidence of their deaths is likely to be unreasonably difficult to obtain. Wyo. Stat. § 34-1-139(a).

Const., Art. 1, § 30 states:
“Perpetuities . . . are contrary to the genius of a free state, and shall not be allowed.”

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