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**The  
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*ACTEC*

**STUDIES**



*The summary of each state's laws reflected in this study has been based on an opinion received from a reporter for that state. With rare exceptions, reporters are Fellows of the College from that state. Following the reporter's name is the date as of which that state's material was most recently reviewed. Neither the College nor the individual reporters and editors (who have volunteered their time and experience in the preparation of the studies) assume any responsibility for the accuracy of the information contained in any study.*

Study 23:

**The Rule Against Perpetuities**

*Compiled by*

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# Rule Against Perpetuities

	Ala.	Alaska	Ariz.	Ark.	Calif.	Colo.
1. Does your state have the Rule Against Perpetuities?						
a. Yes	X <sup>1</sup>	X <sup>1</sup>	X <sup>1</sup>	X	X <sup>1</sup>	X <sup>1</sup>
b. No						
2. Does your state have a statute concerning the Rule Against Perpetuities?						
a. Yes	X <sup>2</sup>	X <sup>2</sup>	X <sup>2</sup>		X <sup>1</sup>	X <sup>2</sup>
b. No				X		
3. If you do not have a statute concerning the Rule Against Perpetuities, does your state follow the Common Law Rule?						
a. Yes				X <sup>1</sup>		
b. No, if no, please explain						
4. If you have a statute, is it modeled in the Uniform Statutory Rule Against Perpetuities (USRAP)?						
a. Yes		X <sup>3</sup>	X <sup>3</sup>		X <sup>2</sup>	X
b. No	X					
5. Has your state modified the 90-year period provided by the USRAP?						
a. Yes; if yes, how long a period?			X <sup>4</sup>			
b. No		X <sup>4</sup>			X <sup>3</sup>	X
6. Other than a change to the 90-year period requested in Question 5, has your state made any significant alterations to USRAP?						
a. Yes; if yes, describe and explain		X <sup>2</sup>	X <sup>4</sup>		X <sup>4</sup>	
b. No						
<b>The following questions were answered only if the state has enacted a Rule Against Perpetuities statute other than USRAP.</b>						
7. If your state has not adopted USRAP, does your state have a reformation (Cy Pres) provision?						
a. Yes	X <sup>3</sup>					
b. No						
8. Is your state's reformation conditioned upon violation of the Common Law Rule (immediate Cy Pres)?						
a. Yes	X <sup>3</sup>					
b. No						
9. If your state has immediate Cy Pres, will the Court alter the time period for vesting of an interest?						
a. Yes	X <sup>3</sup>					
b. No						

# Rule Against Perpetuities

	Ala.	Alaska	Ariz.	Ark.	Calif.	Colo.
10. If your state has immediate Cy Pres, will the Court insert a savings clause?						
a. Yes						
b. No	X <sup>3</sup>					
11. If your state has immediate Cy Pres, will the Court use some other savings device?						
a. Yes; if yes, describe and explain the device	X <sup>4</sup>					
b. No						
<b>The following questions were answered only if the state has not enacted USRAP but has enacted a "wait and see" provision.</b>						
12. If your state has not adopted USRAP, does your state have a "wait and see" provision?						
a. Yes						
b. No	X					
13. If your state has a "wait and see" provision, but not the USRAP, is the waiting time based on actual events as required by the Common Law Rule Against Perpetuities?						
a. Yes						
b. No						
14. If your state has a "wait and see" provision, but not the USRAP, is the waiting time based on a specific time period?						
a. Yes; if yes, how long						
b. No						
15. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by the casual relationship method? (Professor Dukeminier approach)?						
a. Yes						
b. No						
16. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by a specified list? (Restatement approach)						
a. Yes						
b. No						
17. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by some other approach?						
a. Yes; if yes, describe						
b. No						

# Rule Against Perpetuities

	Ala.	Alaska	Ariz.	Ark.	Calif.	Colo.
18. If your state has adopted a "wait and see" approach, but not the USRAP, indicate what interests it applies to:						
a. General Power of Appointment						
b. Special Power of Appointment						
c. Other interests, if any						
<b>The following questions were answered if the state has a Rule Against Perpetuities savings device not covered by the previous questions.</b>						
19. Does your state have some other savings device?						
a. Yes; if yes, describe and explain						
b. No	X			X		
<b>The following questions were answered if the state has either a statutory or Common Law Rule Against Perpetuities.</b>						
20. Does your state provide any of the following exceptions to the Rule Against Perpetuities? (check all that apply)						
a. No exceptions provided						
b. Nondonative Transfers		X <sup>5</sup>	X <sup>5</sup>		X <sup>5</sup>	X <sup>3</sup>
c. Fiduciaries		X <sup>6</sup>	X <sup>6</sup>		X <sup>6</sup>	X <sup>4</sup>
d. Trustee Discretionary Power		X <sup>7</sup>	X <sup>7</sup>		X <sup>7</sup>	X <sup>5</sup>
e. Charity	X <sup>5</sup>	X <sup>8</sup>	X <sup>8</sup>	X <sup>2</sup>	X <sup>8</sup>	X <sup>6</sup>
f. Governmental Bodies		X <sup>8</sup>	X <sup>8</sup>		X <sup>8</sup>	X <sup>6</sup>
g. Pensions/Profit Sharing	X <sup>6</sup>	X <sup>9</sup>	X <sup>9</sup>		X <sup>9</sup>	X <sup>7</sup>
h. Cemetery Plots				X <sup>3</sup>		X <sup>8</sup>
i. Condominium Associations		X <sup>10</sup>				
j. Planned Residential Communities		X <sup>10</sup>				
k. Other (specify)	X <sup>7</sup>	X <sup>11</sup>			X <sup>10</sup>	X <sup>9</sup>
21. Does your state have a conclusive presumption of fertility?						
a. Yes	X <sup>8</sup>				X <sup>11</sup>	
b. No		X	<sup>10</sup>	X <sup>4</sup>		X <sup>10</sup>
22. If your state does not have a conclusive presumption of fertility, was this repealed by:						
a. Not applicable	X					
b. Statute						X <sup>11</sup>
c. Judge Made		X <sup>12</sup>		X <sup>4</sup>		

# Rule Against Perpetuities

	Ala.	Alaska	Ariz.	Ark.	Calif.	Colo.
23. Do practitioners in your state generally utilize measuring lives outside the testator's family?						
a. Yes; if yes, briefly describe how						
b. No	X <sup>9</sup>	X	X	X <sup>5</sup>		X
24. Have the courts in your state held a violation of the Rule constitutes malpractice?						
a. Yes						
b. No	X <sup>10</sup>	X <sup>13</sup>	X	X	X <sup>12</sup>	X <sup>12</sup>
25. Are there any other features of your Rule Against Perpetuities that deserve description?						
a. Yes; if yes, describe and explain				X <sup>6</sup>	X <sup>13</sup>	
b. No	X	X	X			X

# Rule Against Perpetuities

	Conn.	Del.	D.C.	Fla.	Ga.	Hawaii
1. Does your state have the Rule Against Perpetuities?						
a. Yes	X <sup>1</sup>	X <sup>1</sup>	X	X <sup>1</sup>	X <sup>1</sup>	X <sup>1</sup>
b. No						
2. Does your state have a statute concerning the Rule Against Perpetuities?						
a. Yes	X <sup>1</sup>	X <sup>2</sup>	X <sup>1</sup>	X <sup>1</sup>	X <sup>2</sup>	X <sup>1</sup>
b. No						
3. If you do not have a statute concerning the Rule Against Perpetuities, does your state follow the Common Law Rule?						
a. Yes						
b. No, if no, please explain						
4. If you have a statute, is it modeled in the Uniform Statutory Rule Against Perpetuities (USRAP)?						
a. Yes	X <sup>1</sup>			X <sup>1</sup>	X	X <sup>1</sup>
b. No		X	X			
5. Has your state modified the 90-year period provided by the USRAP?						
a. Yes; if yes, how long a period?		X <sup>3</sup>				
b. No	X <sup>1</sup>			X <sup>2</sup>	X	X <sup>2</sup>
6. Other than a change to the 90-year period requested in Question 5, has your state made any significant alterations to USRAP?						
a. Yes; if yes, describe and explain		X <sup>3</sup>				
b. No	X <sup>2</sup>			X <sup>1</sup>	X	X
<b>The following questions were answered only if the state has enacted a Rule Against Perpetuities statute other than USRAP.</b>						
7. If your state has not adopted USRAP, does your state have a reformation (Cy Pres) provision?						
a. Yes						
b. No		<sup>4</sup>	X			
8. Is your state's reformation conditioned upon violation of the Common Law Rule (immediate Cy Pres)?						
a. Yes						
b. No		X <sup>4</sup>				
9. If your state has immediate Cy Pres, will the Court alter the time period for vesting of an interest?						
a. Yes						
b. No						

# Rule Against Perpetuities

	Conn.	Del.	D.C.	Fla.	Ga.	Hawaii
10. If your state has immediate Cy Pres, will the Court insert a savings clause?						
a. Yes						
b. No						
11. If your state has immediate Cy Pres, will the Court use some other savings device?						
a. Yes; if yes, describe and explain the device						
b. No						
<b>The following questions were answered only if the state has not enacted USRAP but has enacted a "wait and see" provision.</b>						
12. If your state has not adopted USRAP, does your state have a "wait and see" provision?						
a. Yes						
b. No		5	X <sup>2</sup>			
13. If your state has a "wait and see" provision, but not the USRAP, is the waiting time based on actual events as required by the Common Law Rule Against Perpetuities?						
a. Yes						
b. No						
14. If your state has a "wait and see" provision, but not the USRAP, is the waiting time based on a specific time period?						
a. Yes; if yes, how long						
b. No						
15. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by the casual relationship method? (Professor Dukeminier approach)?						
a. Yes						
b. No						
16. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by a specified list? (Restatement approach)						
a. Yes						
b. No						
17. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by some other approach?						
a. Yes; if yes, describe						
b. No						
18. If your state has adopted a "wait and see" approach, but not the USRAP, indicate what interests it applies to:						

# Rule Against Perpetuities

	Conn.	Del.	D.C.	Fla.	Ga.	Hawaii
a. General Power of Appointment						
b. Special Power of Appointment						
c. Other interests, if any						
The following questions were answered if the state has a Rule Against Perpetuities savings device not covered by the previous questions.						
19. Does your state have some other savings device?						
a. Yes; if yes, describe and explain			X <sup>3</sup>			
b. No	X <sup>3</sup>					
The following questions were answered if the state has either a statutory or Common Law Rule Against Perpetuities.						
20. Does your state provide any of the following exceptions to the Rule Against Perpetuities? (check all that apply)						
a. No exceptions provided						
b. Nondonative Transfers	X <sup>4</sup>			X <sup>3</sup>	X <sup>3</sup>	
c. Fiduciaries	X <sup>5</sup>			X <sup>4</sup>	X <sup>4</sup>	X <sup>3</sup>
d. Trustee Discretionary Power	X <sup>6</sup>			X <sup>5</sup>	X <sup>5</sup>	X <sup>4</sup>
e. Charity	X <sup>7</sup>	X <sup>6</sup>	X <sup>4</sup>	X <sup>6</sup>	X <sup>6</sup>	X <sup>5</sup>
f. Governmental Bodies	X <sup>8</sup>			X <sup>6</sup>	X <sup>6</sup>	X <sup>5</sup>
g. Pensions/Profit Sharing	X <sup>9</sup>	X <sup>7</sup>	X <sup>5</sup>	X <sup>7</sup>	X <sup>7</sup>	X <sup>6</sup>
h. Cemetery Plots	X <sup>10</sup>	X <sup>8</sup>	X <sup>6</sup>			X <sup>7</sup>
i. Condominium Associations	<sup>11</sup>		X <sup>7</sup>			
j. Planned Residential Communities						
k. Other (specify)		X <sup>9</sup>		X <sup>8</sup>	X <sup>8</sup>	X <sup>8</sup>
21. Does your state have a conclusive presumption of fertility?						
a. Yes		X <sup>10</sup>	<sup>8</sup>	X <sup>9</sup>	X <sup>9</sup>	
b. No	X <sup>12</sup>					X <sup>9</sup>
22. If your state does not have a conclusive presumption of fertility, was this repealed by:						
a. Not applicable		X	X <sup>8</sup>			X
b. Statute	X <sup>13</sup>					
c. Judge Made						



# Rule Against Perpetuities

	Conn.	Del.	D.C.	Fla.	Ga.	Hawaii
23. Do practitioners in your state generally utilize measuring lives outside the testator's family?						
a. Yes; if yes, briefly describe how						
b. No	X	X	X	X		X
24. Have the courts in your state held a violation of the Rule constitutes malpractice?						
a. Yes						
b. No	X	<sup>11</sup>	X <sup>9</sup>	X <sup>10</sup>		X
25. Are there any other features of your Rule Against Perpetuities that deserve description?						
a. Yes; if yes, describe and explain			X <sup>10</sup>			
b. No	X	X		X		X

# Rule Against Perpetuities

	Ida.	Ill.	Ind.	Iowa	Kan.	Ky.
1. Does your state have the Rule Against Perpetuities?						
a. Yes			X <sup>1</sup>	X <sup>1</sup>	X <sup>1</sup>	X <sup>1</sup>
b. No	X <sup>1</sup>					
2. Does your state have a statute concerning the Rule Against Perpetuities?						
a. Yes	X <sup>2</sup>		X <sup>2</sup>	X <sup>2</sup>	X <sup>1</sup>	X <sup>1</sup>
b. No						
3. If you do not have a statute concerning the Rule Against Perpetuities, does your state follow the Common Law Rule?						
a. Yes						
b. No, if no, please explain	3					
4. If you have a statute, is it modeled in the Uniform Statutory Rule Against Perpetuities (USRAP)?						
a. Yes			X <sup>1</sup>		X <sup>2</sup>	
b. No				X <sup>2</sup>		X
5. Has your state modified the 90-year period provided by the USRAP?						
a. Yes; if yes, how long a period?						
b. No			X <sup>3</sup>		X	
6. Other than a change to the 90-year period requested in Question 5, has your state made any significant alterations to USRAP?						
a. Yes; if yes, describe and explain			X <sup>4</sup>			
b. No					X	
<b>The following questions were answered only if the state has enacted a Rule Against Perpetuities statute other than USRAP.</b>						
7. If your state has not adopted USRAP, does your state have a reformation (Cy Pres) provision?						
a. Yes				X <sup>3</sup>		
b. No						X <sup>2</sup>
8. Is your state's reformation conditioned upon violation of the Common Law Rule (immediate Cy Pres)?						
a. Yes				X <sup>3</sup>		
b. No						X <sup>3</sup>
9. If your state has immediate Cy Pres, will the Court alter the time period for vesting of an interest?						
a. Yes				X <sup>3</sup>		
b. No						

# Rule Against Perpetuities

	Ida.	Ill.	Ind.	Iowa	Kan.	Ky.
10. If your state has immediate Cy Pres, will the Court insert a savings clause?						
a. Yes				X <sup>3</sup>		
b. No						
11. If your state has immediate Cy Pres, will the Court use some other savings device?						
a. Yes; if yes, describe and explain the device				X <sup>3</sup>		
b. No						
<b>The following questions were answered only if the state has not enacted USRAP but has enacted a "wait and see" provision.</b>						
12. If your state has not adopted USRAP, does your state have a "wait and see" provision?						
a. Yes				X <sup>4</sup>		X <sup>4</sup>
b. No						
13. If your state has a "wait and see" provision, but not the USRAP, is the waiting time based on actual events as required by the Common Law Rule Against Perpetuities?						
a. Yes				X <sup>5</sup>		X <sup>4</sup>
b. No						
14. If your state has a "wait and see" provision, but not the USRAP, is the waiting time based on a specific time period?						
a. Yes; if yes, how long						X <sup>4</sup>
b. No				X <sup>6</sup>		
15. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by the casual relationship method? (Professor Dukeminier approach)?						
a. Yes						X <sup>4</sup>
b. No				X <sup>7</sup>		
16. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by a specified list? (Restatement approach)						
a. Yes				X <sup>8</sup>		
b. No						X
17. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by some other approach?						
a. Yes; if yes, describe						
b. No				X <sup>7</sup>		X
18. If your state has adopted a "wait and see" approach, but not the USRAP, indicate what interests it applies to:						
a. General Power of Appointment				X <sup>9</sup>		5

# Rule Against Perpetuities

	Ida.	Ill.	Ind.	Iowa	Kan.	Ky.
b. Special Power of Appointment				X <sup>10</sup>		5
c. Other interests, if any						5
<b>The following questions were answered if the state has a Rule Against Perpetuities savings device not covered by the previous questions.</b>						
19. Does your state have some other savings device?						
a. Yes; if yes, describe and explain			X <sup>5</sup>			
b. No				X		
<b>The following questions were answered if the state has either a statutory or Common Law Rule Against Perpetuities</b>						
20. Does your state provide any of the following exceptions to the Rule Against Perpetuities? (check all that apply)						
a. No exceptions provided	4					
b. Nondonative Transfers			X <sup>6</sup>		X <sup>3</sup>	
c. Fiduciaries			X <sup>7</sup>		X <sup>4</sup>	
d. Trustee Discretionary Power			X <sup>8</sup>		X <sup>5</sup>	
e. Charity	X <sup>5</sup>		X <sup>9</sup>	X <sup>11</sup>	X <sup>6</sup>	
f. Governmental Bodies			X <sup>9</sup>		X <sup>6</sup>	
g. Pensions/Profit Sharing			X <sup>10</sup>		X <sup>7</sup>	X <sup>6</sup>
h. Cemetery Plots				X <sup>12</sup>		
i. Condominium Associations	X <sup>6</sup>					
j. Planned Residential Communities						
k. Other (specify)	7		X <sup>11</sup>		X <sup>8</sup>	
21. Does your state have a conclusive presumption of fertility?						
a. Yes				X <sup>13</sup>	X <sup>9</sup>	X <sup>7</sup>
b. No	X <sup>8</sup>					
22. If your state does not have a conclusive presumption of fertility, was this repealed by:						
a. Not applicable				X	X	
b. Statute	X <sup>9</sup>					X <sup>8</sup>
c. Judge Made						

# Rule Against Perpetuities

	Ida.	Ill.	Ind.	Iowa	Kan.	Ky.
23. Do practitioners in your state generally utilize measuring lives outside the testator's family?						
a. Yes; if yes, briefly describe how						
b. No			X	X <sup>14</sup>	X	X <sup>9</sup>
24. Have the courts in your state held a violation of the Rule constitutes malpractice?						
a. Yes						
b. No				X <sup>15</sup>	X <sup>10</sup>	<sup>10</sup>
25. Are there any other features of your Rule Against Perpetuities that deserve description?						
a. Yes; if yes, describe and explain						
b. No				X	X	X

# Rule Against Perpetuities

	La.	Maine	Md.	Mass.	Mich.	Minn.
1. Does your state have the Rule Against Perpetuities?						
a. Yes	X <sup>1</sup>	X <sup>1</sup>		X	X <sup>1</sup>	X <sup>1</sup>
b. No						
2. Does your state have a statute concerning the Rule Against Perpetuities?						
a. Yes	X <sup>1</sup>	X <sup>2</sup>		X <sup>1</sup>	X <sup>1</sup>	X <sup>2</sup>
b. No						
3. If you do not have a statute concerning the Rule Against Perpetuities, does your state follow the Common Law Rule?						
a. Yes		X <sup>3</sup>				
b. No, if no, please explain	X <sup>1</sup>					
4. If you have a statute, is it modeled in the Uniform Statutory Rule Against Perpetuities (USRAP)?						
a. Yes				X	X <sup>1</sup>	X <sup>1</sup>
b. No	X	X				
5. Has your state modified the 90-year period provided by the USRAP?						
a. Yes; if yes, how long a period?						
b. No				X	X <sup>2</sup>	X <sup>3</sup>
6. Other than a change to the 90-year period requested in Question 5, has your state made any significant alterations to USRAP?						
a. Yes; if yes, describe and explain						X <sup>4</sup>
b. No				X	X	
<b>The following questions were answered only if the state has enacted a Rule Against Perpetuities statute other than USRAP.</b>						
7. If your state has not adopted USRAP, does your state have a reformation (Cy Pres) provision?						
a. Yes	X <sup>2</sup>	X <sup>4</sup>				
b. No						
8. Is your state's reformation conditioned upon violation of the Common Law Rule (immediate Cy Pres)?						
a. Yes						
b. No	X <sup>2</sup>	X <sup>5</sup>				
9. If your state has immediate Cy Pres, will the Court alter the time period for vesting of an interest?						
a. Yes						
b. No						

# Rule Against Perpetuities

	La.	Maine	Md.	Mass.	Mich.	Minn.
10. If your state has immediate Cy Pres, will the Court insert a savings clause?						
a. Yes						
b. No						
11. If your state has immediate Cy Pres, will the Court use some other savings device?						
a. Yes; if yes, describe and explain the device						
b. No						
<b>The following questions were answered only if the state has not enacted USRAP but has enacted a "wait and see" provision.</b>						
12. If your state has not adopted USRAP, does your state have a "wait and see" provision?						
a. Yes		X <sup>6</sup>				
b. No	X					
13. If your state has a "wait and see" provision, but not the USRAP, is the waiting time based on actual events as required by the Common Law Rule Against Perpetuities?						
a. Yes		X				
b. No						
14. If your state has a "wait and see" provision, but not the USRAP, is the waiting time based on a specific time period?						
a. Yes; if yes, how long		X				
b. No						
15. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by the casual relationship method? (Professor Dukeminier approach)?						
a. Yes						
b. No		X <sup>7</sup>				
16. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by a specified list? (Restatement approach)						
a. Yes						
b. No		X <sup>7</sup>				
17. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by some other approach?						
a. Yes; if yes, describe						
b. No		8				
18. If your state has adopted a "wait and see" approach, but not the USRAP, indicate what interests it applies to:						

# Rule Against Perpetuities

	La.	Maine	Md.	Mass.	Mich.	Minn.
a. General Power of Appointment		X <sup>9</sup>				
b. Special Power of Appointment		X <sup>9</sup>				
c. Other interests, if any		X <sup>9</sup>				
The following questions were answered if the state has a Rule Against Perpetuities savings device not covered by the previous questions.						
19. Does your state have some other savings device?						
a. Yes; if yes, describe and explain	X <sup>1</sup>					
b. No						
The following questions were answered if the state has either a statutory or Common Law Rule Against Perpetuities.						
20. Does your state provide any of the following exceptions to the Rule Against Perpetuities? (check all that apply)						
a. No exceptions provided						
b. Nondonative Transfers		<sup>8</sup>		X <sup>2</sup>	X <sup>3</sup>	X <sup>5</sup>
c. Fiduciaries		<sup>8</sup>		X <sup>3</sup>		X <sup>6</sup>
d. Trustee Discretionary Power		<sup>8</sup>		X <sup>4</sup>	X <sup>3</sup>	X <sup>7</sup>
e. Charity	X <sup>3</sup>	X <sup>10</sup>		X <sup>5</sup>	X <sup>4</sup>	X <sup>8</sup>
f. Governmental Bodies		X <sup>11</sup>		X <sup>5</sup>	X <sup>5</sup>	X <sup>8</sup>
g. Pensions/Profit Sharing	X <sup>4</sup>	X <sup>12</sup>		X <sup>6</sup>	X <sup>6</sup>	X <sup>9</sup>
h. Cemetery Plots	X <sup>5</sup>	X <sup>13</sup>			X <sup>8</sup>	X
i. Condominium Associations	X <sup>6</sup>	X <sup>14</sup>				X <sup>10</sup>
j. Planned Residential Communities	X <sup>7</sup>	<sup>8</sup>				X <sup>11</sup>
k. Other (specify)				X <sup>7</sup>	X <sup>7</sup>	X <sup>12</sup>
21. Does your state have a conclusive presumption of fertility?						
a. Yes					X <sup>9</sup>	
b. No	X	<sup>8</sup>		X <sup>8</sup>		X <sup>13</sup>
22. If your state does not have a conclusive presumption of fertility, was this repealed by:						
a. Not applicable		X				X
b. Statute						
c. Judge Made						



# Rule Against Perpetuities

	La.	Maine	Md.	Mass.	Mich.	Minn.
23. Do practitioners in your state generally utilize measuring lives outside the testator's family?						
a. Yes; if yes, briefly describe how						
b. No		X <sup>15</sup>		X	X	X
24. Have the courts in your state held a violation of the Rule constitutes malpractice?						
a. Yes						
b. No	X	<sup>8</sup>		X <sup>9</sup>	X	X
25. Are there any other features of your Rule Against Perpetuities that deserve description?						
a. Yes; if yes, describe and explain	<sup>1</sup>	X <sup>16</sup>				X <sup>14</sup>
b. No				X		

# Rule Against Perpetuities

	Miss.	Mo.	Mont.	Neb.	Nev.	N. H.
1. Does your state have the Rule Against Perpetuities?						
a. Yes	X <sup>1</sup>	X <sup>1</sup>	X <sup>1</sup>	X <sup>1</sup>	X <sup>1</sup>	X <sup>1</sup>
b. No						
2. Does your state have a statute concerning the Rule Against Perpetuities?						
a. Yes			X <sup>1</sup>	X <sup>1</sup>	X <sup>1</sup>	
b. No	X	X <sup>2</sup>				X
3. If you do not have a statute concerning the Rule Against Perpetuities, does your state follow the Common Law Rule?						
a. Yes		X				
b. No, if no, please explain	X <sup>2</sup>					X <sup>2</sup>
4. If you have a statute, is it modeled in the Uniform Statutory Rule Against Perpetuities (USRAP)?						
a. Yes			X <sup>2</sup>	X <sup>2</sup>	X <sup>1</sup>	
b. No						
5. Has your state modified the 90-year period provided by the USRAP?						
a. Yes; if yes, how long a period?						
b. No			X <sup>3</sup>	X <sup>3</sup>	X <sup>2</sup>	
6. Other than a change to the 90-year period requested in Question 5, has your state made any significant alterations to USRAP?						
a. Yes; if yes, describe and explain					X <sup>3</sup>	
b. No			X <sup>4</sup>	X <sup>4</sup>		
<b>The following questions were answered only if the state has enacted a Rule Against Perpetuities statute other than USRAP.</b>						
7. If your state has not adopted USRAP, does your state have a reformation (Cy Pres) provision?						
a. Yes						
b. No						
8. Is your state's reformation conditioned upon violation of the Common Law Rule (immediate Cy Pres)?						
a. Yes						
b. No						
9. If your state has immediate Cy Pres, will the Court alter the time period for vesting of an interest?						
a. Yes						
b. No						

# Rule Against Perpetuities

	Miss.	Mo.	Mont.	Neb.	Nev.	N. H.
10. If your state has immediate Cy Pres, will the Court insert a savings clause?						
a. Yes						
b. No						
11. If your state has immediate Cy Pres, will the Court use some other savings device?						
a. Yes; if yes, describe and explain the device						
b. No						
<b>The following questions were answered only if the state has not enacted USRAP but has enacted a "wait and see" provision.</b>						
12. If your state has not adopted USRAP, does your state have a "wait and see" provision?						
a. Yes	X <sup>3</sup>					X <sup>3</sup>
b. No						
13. If your state has a "wait and see" provision, but not the USRAP, is the waiting time based on actual events as required by the Common Law Rule Against Perpetuities?						
a. Yes	X <sup>3</sup>					X <sup>3</sup>
b. No						
14. If your state has a "wait and see" provision, but not the USRAP, is the waiting time based on a specific time period?						
a. Yes; if yes, how long	X <sup>4</sup>					X <sup>4</sup>
b. No						
15. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by the casual relationship method? (Professor Dukeminier approach)?						
a. Yes	X <sup>1</sup>					
b. No						5
16. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by a specified list? (Restatement approach)						
a. Yes						
b. No	X					5
17. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by some other approach?						
a. Yes; if yes, describe						
b. No	X					5
18. If your state has adopted a "wait and see" approach, but not the USRAP, indicate what interests it applies to:						
a. General Power of Appointment	5					

# Rule Against Perpetuities

	Miss.	Mo.	Mont.	Neb.	Nev.	N. H.
b. Special Power of Appointment	5					
c. Other interests, if any						X <sup>6</sup>
<b>The following questions were answered if the state has a Rule Against Perpetuities savings device not covered by the previous questions.</b>						
19. Does your state have some other savings device?						
a. Yes; if yes, describe and explain	X <sup>6</sup>	X <sup>3</sup>				X <sup>7</sup>
b. No						
<b>The following questions were answered if the state has either a statutory or Common Law Rule Against Perpetuities.</b>						
20. Does your state provide any of the following exceptions to the Rule Against Perpetuities? (check all that apply)						
a. No exceptions provided						
b. Nondonative Transfers			X <sup>5</sup>	X <sup>5</sup>	X <sup>4</sup>	
c. Fiduciaries			X <sup>6</sup>	X <sup>6</sup>	X <sup>5</sup>	
d. Trustee Discretionary Power		X <sup>4</sup>	X <sup>7</sup>	X <sup>7</sup>	X <sup>6</sup>	
e. Charity		X <sup>5</sup>	X <sup>8</sup>	X <sup>8</sup>	X <sup>7</sup>	X <sup>8</sup>
f. Governmental Bodies			X <sup>9</sup>	X <sup>8</sup>	X <sup>7</sup>	
g. Pensions/Profit Sharing		X <sup>6</sup>	X <sup>10</sup>	X <sup>9</sup>	X <sup>8</sup>	
h. Cemetery Plots	X <sup>7</sup>	X <sup>7</sup>				
i. Condominium Associations		X <sup>8</sup>		X <sup>10</sup>	X <sup>9</sup>	
j. Planned Residential Communities					X <sup>10</sup>	
k. Other (specify)	X <sup>8</sup>	X <sup>9</sup>	X <sup>11</sup>	X <sup>11</sup>	X <sup>11</sup>	
21. Does your state have a conclusive presumption of fertility?						
a. Yes	X <sup>9</sup>	X <sup>10</sup>		X <sup>12</sup>	X <sup>12</sup>	
b. No			X <sup>12</sup>			X <sup>9</sup>
22. If your state does not have a conclusive presumption of fertility, was this repealed by:						
a. Not applicable	X	X				
b. Statute			X <sup>13</sup>			
c. Judge Made						X

# Rule Against Perpetuities

	Miss.	Mo.	Mont.	Neb.	Nev.	N. H.
23. Do practitioners in your state generally utilize measuring lives outside the testator's family?						
a. Yes; if yes, briefly describe how	X					
b. No		X	X	X <sup>13</sup>	X	X
24. Have the courts in your state held a violation of the Rule constitutes malpractice?						
a. Yes					X <sup>13</sup>	
b. No	X	X	X <sup>12</sup>	X <sup>14</sup>		X <sup>10</sup>
25. Are there any other features of your Rule Against Perpetuities that deserve description?						
a. Yes; if yes, describe and explain		X <sup>11</sup>				
b. No	X		X	X		X <sup>11</sup>

# Rule Against Perpetuities

	N.J.	N.M.	N.Y.	N.C.	N.D.	Ohio
1. Does your state have the Rule Against Perpetuities?				X <sup>1</sup>	X <sup>1</sup>	X <sup>1</sup>
a. Yes		X <sup>1</sup>				
b. No	X <sup>1</sup>					
2. Does your state have a statute concerning the Rule Against Perpetuities?						
a. Yes	X <sup>2</sup>	X <sup>1</sup>		X <sup>2</sup>	X <sup>1</sup>	X <sup>1</sup>
b. No						
3. If you do not have a statute concerning the Rule Against Perpetuities, does your state follow the Common Law Rule?						
a. Yes						
b. No, if no, please explain						
4. If you have a statute, is it modeled in the Uniform Statutory Rule Against Perpetuities (USRAP)?						
a. Yes		X		X <sup>2</sup>	X <sup>1</sup>	
b. No	X					X
5. Has your state modified the 90-year period provided by the USRAP?						
a. Yes; if yes, how long a period?						
b. No		X		X <sup>3</sup>	X <sup>1</sup>	
6. Other than a change to the 90-year period requested in Question 5, has your state made any significant alterations to USRAP?						
a. Yes; if yes, describe and explain						
b. No		X		X <sup>2</sup>	X <sup>1</sup>	
<b>The following questions were answered only if the state has enacted a Rule Against Perpetuities statute other than USRAP.</b>						
7. If your state has not adopted USRAP, does your state have a reformation (Cy Pres) provision?						
a. Yes	X <sup>3</sup>					X <sup>2</sup>
b. No						
8. Is your state's reformation conditioned upon violation of the Common Law Rule (immediate Cy Pres)?						
a. Yes	X <sup>4</sup>					X <sup>3</sup>
b. No						
9. If your state has immediate Cy Pres, will the Court alter the time period for vesting of an interest?						
a. Yes	X <sup>3,4</sup>					X
b. No						

# Rule Against Perpetuities

	N.J.	N.M.	N.Y.	N.C.	N.D.	Ohio
10. If your state has immediate Cy Pres, will the Court insert a savings clause?						
a. Yes						X <sup>4</sup>
b. No	X <sup>5</sup>					
11. If your state has immediate Cy Pres, will the Court use some other savings device?						
a. Yes; if yes, describe and explain the device						X <sup>5</sup>
b. No	X					
<b>The following questions were answered only if the state has not enacted USRAP but has enacted a "wait and see" provision.</b>						
12. If your state has not adopted USRAP, does your state have a "wait and see" provision?						
a. Yes						X <sup>6</sup>
b. No	X <sup>6</sup>					
13. If your state has a "wait and see" provision, but not the USRAP, is the waiting time based on actual events as required by the Common Law Rule Against Perpetuities?						
a. Yes	X <sup>7</sup>					X
b. No						
14. If your state has a "wait and see" provision, but not the USRAP, is the waiting time based on a specific time period?						
a. Yes; if yes, how long						
b. No	X					X
15. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by the casual relationship method? (Professor Dukeminier approach)?						
a. Yes						X
b. No	X					
16. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by a specified list? (Restatement approach)						
a. Yes						
b. No	X					X
17. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by some other approach?						
a. Yes; if yes, describe	X <sup>8</sup>					
b. No						X <sup>7</sup>
18. If your state has adopted a "wait and see" approach, but not the USRAP, indicate what interests it applies to:						

# Rule Against Perpetuities

	N.J.	N.M.	N.Y.	N.C.	N.D.	Ohio
a. General Power of Appointment	X <sup>9</sup>					X
b. Special Power of Appointment	X <sup>9</sup>					X
c. Other interests, if any						X <sup>8</sup>
The following questions were answered if the state has a Rule Against Perpetuities savings device not covered by the previous questions.						
19. Does your state have some other savings device?						
a. Yes; if yes, describe and explain						
b. No	X			X		X
The following questions were answered if the state has either a statutory or Common Law Rule Against Perpetuities.						
20. Does your state provide any of the following exceptions to the Rule Against Perpetuities? (check all that apply)						
a. No exceptions provided						
b. Nondonative Transfers	X <sup>10</sup>	X		X <sup>4</sup>	X <sup>2</sup>	
c. Fiduciaries		X		X <sup>5</sup>	X <sup>3</sup>	
d. Trustee Discretionary Power		X		X <sup>6</sup>	X <sup>4</sup>	
e. Charity		X		X <sup>7</sup>	X <sup>5</sup>	X
f. Governmental Bodies		X		X <sup>8</sup>	X <sup>5</sup>	
g. Pensions/Profit Sharing		X		X <sup>9</sup>	X <sup>6</sup>	X
h. Cemetery Plots				X <sup>10</sup>		
i. Condominium Associations				X <sup>11</sup>		
j. Planned Residential Communities				X <sup>12</sup>		
k. Other (specify)				X <sup>13</sup>	X <sup>7</sup>	X <sup>9</sup>
21. Does your state have a conclusive presumption of fertility?						
a. Yes					X <sup>8</sup>	
b. No		X		X <sup>14</sup>		X
22. If your state does not have a conclusive presumption of fertility, was this repealed by:						
a. Not applicable	X				X	
b. Statute		X <sup>2</sup>				X <sup>10</sup>
c. Judge Made						



# Rule Against Perpetuities

	N.J.	N.M.	N.Y.	N.C.	N.D.	Ohio
23. Do practitioners in your state generally utilize measuring lives outside the testator's family?						
a. Yes; if yes, briefly describe how						
b. No	X <sup>11</sup>	X		X <sup>15</sup>	X	X
24. Have the courts in your state held a violation of the Rule constitutes malpractice?						
a. Yes						
b. No	X <sup>12</sup>	X		X <sup>16</sup>	X <sup>9</sup>	X <sup>11</sup>
25. Are there any other features of your Rule Against Perpetuities that deserve description?						
a. Yes; if yes, describe and explain				X <sup>17</sup>	X <sup>10</sup>	X <sup>12</sup>
b. No	X	X				

# Rule Against Perpetuities

	Okla.	Ore.	Pa.	R.I.	S.C.	S.D.
1. Does your state have the Rule Against Perpetuities?						
a. Yes	X <sup>1</sup>	X <sup>1</sup>	X <sup>1</sup>		X <sup>1</sup>	
b. No				X <sup>1</sup>		X <sup>1</sup>
2. Does your state have a statute concerning the Rule Against Perpetuities?						
a. Yes	X <sup>2</sup>	X <sup>1</sup>	X <sup>1</sup>	X <sup>2</sup>	X <sup>2</sup>	X <sup>2</sup>
b. No						
3. If you do not have a statute concerning the Rule Against Perpetuities, does your state follow the Common Law Rule?						
a. Yes			N/A			
b. No, if no, please explain			N/A	<sup>3</sup>		X <sup>2</sup>
4. If you have a statute, is it modeled in the Uniform Statutory Rule Against Perpetuities (USRAP)?						
a. Yes		X <sup>1</sup>			X	
b. No	X		X			
5. Has your state modified the 90-year period provided by the USRAP?						
a. Yes; if yes, how long a period?						
b. No		X <sup>2</sup>			X <sup>3</sup>	
6. Other than a change to the 90-year period requested in Question 5, has your state made any significant alterations to USRAP?						
a. Yes; if yes, describe and explain						
b. No		X <sup>3</sup>			X <sup>4</sup>	
<b>The following questions were answered only if the state has enacted a Rule Against Perpetuities statute other than USRAP.</b>						
7. If your state has not adopted USRAP, does your state have a reformation (Cy Pres) provision?						
a. Yes	X <sup>3</sup>			X <sup>4</sup>		
b. No			X			
8. Is your state's reformation conditioned upon violation of the Common Law Rule (immediate Cy Pres)?						
a. Yes	X <sup>4</sup>			X <sup>5</sup>		
b. No						
9. If your state has immediate Cy Pres, will the Court alter the time period for vesting of an interest?						
a. Yes				X <sup>6</sup>		
b. No						

# Rule Against Perpetuities

	Okla.	Ore.	Pa.	R.I.	S.C.	S.D.
10. If your state has immediate Cy Pres, will the Court insert a savings clause?						
a. Yes				X <sup>7</sup>		
b. No						
11. If your state has immediate Cy Pres, will the Court use some other savings device?	5					
a. Yes; if yes, describe and explain the device				X <sup>7</sup>		
b. No						
<b>The following questions were answered only if the state has not enacted USRAP but has enacted a "wait and see" provision.</b>						
12. If your state has not adopted USRAP, does your state have a "wait and see" provision?						
a. Yes			X <sup>2</sup>	X		
b. No	X <sup>6</sup>					X
13. If your state has a "wait and see" provision, but not the USRAP, is the waiting time based on actual events as required by the Common Law Rule Against Perpetuities?						
a. Yes			X <sup>3</sup>	X		
b. No						
14. If your state has a "wait and see" provision, but not the USRAP, is the waiting time based on a specific time period?						
a. Yes; if yes, how long						
b. No			X <sup>4</sup>	X <sup>8</sup>		
15. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by the casual relationship method? (Professor Dukeminier approach)?						
a. Yes			X <sup>5</sup>	X		
b. No						
16. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by a specified list? (Restatement approach)						
a. Yes						
b. No			X	X		
17. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by some other approach?						
a. Yes; if yes, describe				X <sup>9</sup>		
b. No			X			
18. If your state has adopted a "wait and see" approach, but not the USRAP, indicate what interests it applies to:						

# Rule Against Perpetuities

	Okla.	Ore.	Pa.	R.I.	S.C.	S.D.
a. General Power of Appointment			X <sup>6</sup>			
b. Special Power of Appointment			X <sup>6</sup>			
c. Other interests, if any			X	X <sup>10</sup>		
The following questions were answered if the state has a Rule Against Perpetuities savings device not covered by the previous questions.						
19. Does your state have some other savings device?						
a. Yes; if yes, describe and explain						
b. No			X	X		X
The following questions were answered if the state has either a statutory or Common Law Rule Against Perpetuities.						
20. Does your state provide any of the following exceptions to the Rule Against Perpetuities? (check all that apply)						
a. No exceptions provided				X		
b. Nondonative Transfers		X <sup>4</sup>			X <sup>5</sup>	
c. Fiduciaries		X <sup>5</sup>	X <sup>7</sup>		X <sup>6</sup>	
d. Trustee Discretionary Power		X <sup>6</sup>	X <sup>7</sup>		X <sup>7</sup>	
e. Charity	X <sup>7</sup>	X <sup>7</sup>	X <sup>8</sup>		X <sup>8</sup>	
f. Governmental Bodies		X <sup>7</sup>	X <sup>9</sup>		X <sup>8</sup>	
g. Pensions/Profit Sharing	X <sup>8</sup>	X <sup>8</sup>	X <sup>10</sup>		X <sup>9</sup>	
h. Cemetery Plots			X <sup>11</sup>		X <sup>10</sup>	
i. Condominium Associations		X <sup>9</sup>	<sup>12</sup>			
j. Planned Residential Communities		X <sup>10</sup>	<sup>12</sup>			
k. Other (specify)		X <sup>11</sup>	X <sup>13</sup>		X <sup>11</sup>	
21. Does your state have a conclusive presumption of fertility?						
a. Yes					X <sup>12</sup>	
b. No		X	<sup>14</sup>	X		X
22. If your state does not have a conclusive presumption of fertility, was this repealed by:						
a. Not applicable	X	X	<sup>14</sup>			X <sup>3</sup>
b. Statute				X <sup>11</sup>		
c. Judge Made						

# Rule Against Perpetuities

	Okla.	Ore.	Pa.	R.I.	S.C.	S.D.
23. Do practitioners in your state generally utilize measuring lives outside the testator's family?						
a. Yes; if yes, briefly describe how				X <sup>12</sup>		
b. No	X	X	<sup>15</sup>		X <sup>13</sup>	X
24. Have the courts in your state held a violation of the Rule constitutes malpractice?						
a. Yes						
b. No	<sup>9</sup>	X	X	X <sup>13</sup>	X <sup>14</sup>	
25. Are there any other features of your Rule Against Perpetuities that deserve description?						
a. Yes; if yes, describe and explain						
b. No		X	X	X		X <sup>4</sup>

# Rule Against Perpetuities

	Tenn.	Texas	Utah	Vt.	Va.	Wash.
1. Does your state have the Rule Against Perpetuities?						
a. Yes	X <sup>1</sup>	X	X	X <sup>1</sup>	X <sup>1</sup>	X <sup>1</sup>
b. No						
2. Does your state have a statute concerning the Rule Against Perpetuities?						
a. Yes	X <sup>2</sup>	X	X	X <sup>2</sup>	X <sup>2</sup>	X <sup>2</sup>
b. No						
3. If you do not have a statute concerning the Rule Against Perpetuities, does your state follow the Common Law Rule?						
a. Yes						X <sup>1</sup>
b. No, if no, please explain						
4. If you have a statute, is it modeled in the Uniform Statutory Rule Against Perpetuities (USRAP)?						
a. Yes	X <sup>2</sup>		X			
b. No		X		X	X	X
5. Has your state modified the 90-year period provided by the USRAP?						
a. Yes; if yes, how long a period?						
b. No	X	X	X			
6. Other than a change to the 90-year period requested in Question 5, has your state made any significant alterations to USRAP?						
a. Yes; if yes, describe and explain						
b. No		X	X			
<b>The following questions were answered only if the state has enacted a Rule Against Perpetuities statute other than USRAP</b>						
7. If your state has not adopted USRAP, does your state have a reformation (Cy Pres) provision?						
a. Yes		X			X <sup>3</sup>	X <sup>3</sup>
b. No						
8. Is your state's reformation conditioned upon violation of the Common Law Rule (immediate Cy Pres)?						
a. Yes				X		X <sup>4</sup>
b. No	X				X <sup>4</sup>	
9. If your state has immediate Cy Pres, will the Court alter the time period for vesting of an interest?						
a. Yes				X		
b. No	X					

# Rule Against Perpetuities

	Tenn.	Texas	Utah	Vt.	Va.	Wash.
10. If your state has immediate Cy Pres, will the Court insert a savings clause?						
a. Yes						
b. No				X <sup>2</sup>		
11. If your state has immediate Cy Pres, will the Court use some other savings device?						
a. Yes; if yes, describe and explain the device						
b. No				X <sup>2</sup>		
<b>The following questions were answered only if the state has not enacted USRAP but has enacted a "wait and see" provision.</b>						
12. If your state has not adopted USRAP, does your state have a "wait and see" provision?						
a. Yes				X <sup>3</sup>	X <sup>5</sup>	X <sup>2</sup>
b. No						
13. If your state has a "wait and see" provision, but not the USRAP, is the waiting time based on actual events as required by the Common Law Rule Against Perpetuities?						
a. Yes				X <sup>3</sup>	X <sup>6</sup>	X <sup>5</sup>
b. No						
14. If your state has a "wait and see" provision, but not the USRAP, is the waiting time based on a specific time period?						
a. Yes; if yes, how long						
b. No				X	X	X
15. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by the casual relationship method? (Professor Dukeminier approach)?						
a. Yes					X <sup>7</sup>	
b. No				X		X
16. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by a specified list? (Restatement approach)						
a. Yes						
b. No				X	X	X
17. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by some other approach?						
a. Yes; if yes, describe						X <sup>2, 5</sup>
b. No				X	X	
18. If your state has adopted a "wait and see" approach, but not the USRAP, indicate what interests it applies to:						

# Rule Against Perpetuities

	Tenn.	Texas	Utah	Vt.	Va.	Wash.
a. General Power of Appointment				X	X	X <sup>6</sup>
b. Special Power of Appointment				X	X	X
c. Other interests, if any				X <sup>4</sup>	X <sup>8</sup>	X
<b>The following questions were answered if the state has a Rule Against Perpetuities savings device not covered by the previous questions.</b>						
19. Does your state have some other savings device?						
a. Yes; if yes, describe and explain	X <sup>3</sup>	X			X <sup>9</sup>	
b. No						X
<b>The following questions were answered if the state has either a statutory or Common Law Rule Against Perpetuities.</b>						
20. Does your state provide any of the following exceptions to the Rule Against Perpetuities? (check all that apply)						
a. No exceptions provided				X		X
b. Nondonative Transfers	X <sup>4</sup>					
c. Fiduciaries	X <sup>5</sup>					
d. Trustee Discretionary Power	X <sup>6</sup>					
e. Charity	X <sup>7</sup>	X			X <sup>10</sup>	
f. Governmental Bodies	X <sup>7</sup>					
g. Pensions/Profit Sharing	X <sup>8</sup>	X <sup>1</sup>			X <sup>11</sup>	
h. Cemetery Plots					X <sup>12</sup>	
i. Condominium Associations					X <sup>13</sup>	
j. Planned Residential Communities					X <sup>14</sup>	
k. Other (specify)					X <sup>15</sup>	
21. Does your state have a conclusive presumption of fertility?						
a. Yes				X <sup>5</sup>	X <sup>16</sup>	X <sup>7</sup>
b. No	X <sup>9</sup>	X				
22. If your state does not have a conclusive presumption of fertility, was this repealed by:						
a. Not applicable		X				X
b. Statute	X <sup>9</sup>					
c. Judge Made						



# Rule Against Perpetuities

	Tenn.	Texas	Utah	Vt.	Va.	Wash.
23. Do practitioners in your state generally utilize measuring lives outside the testator's family?						
a. Yes; if yes, briefly describe how						
b. No	X <sup>10</sup>	X		<sup>6</sup>	X <sup>17</sup>	X
24. Have the courts in your state held a violation of the Rule constitutes malpractice?						
a. Yes						
b. No	X <sup>11</sup>	<sup>2</sup>		<sup>7</sup>	X <sup>18</sup>	X
25. Are there any other features of your Rule Against Perpetuities that deserve description?						
a. Yes; if yes, describe and explain					X <sup>19</sup>	
b. No	X	X		X		X

# Rule Against Perpetuities

	W.Va.	Wis.	Wyo.
1. Does your state have the Rule Against Perpetuities?			
a. Yes	X <sup>1</sup>		
b. No		X <sup>1</sup>	
2. Does your state have a statute concerning the Rule Against Perpetuities?			
a. Yes	X <sup>1</sup>		
b. No		X <sup>2</sup>	
3. If you do not have a statute concerning the Rule Against Perpetuities, does your state follow the Common Law Rule?			
a. Yes			
b. No, if no, please explain		X <sup>3</sup>	
4. If you have a statute, is it modeled in the Uniform Statutory Rule Against Perpetuities (USRAP)?			
a. Yes	X <sup>1</sup>		
b. No		X	
5. Has your state modified the 90-year period provided by the USRAP?			
a. Yes; if yes, how long a period?		X <sup>4</sup>	
b. No	X <sup>2</sup>		
6. Other than a change to the 90-year period requested in Question 5, has your state made any significant alterations to USRAP?			
a. Yes; if yes, describe and explain	X <sup>3</sup>	X <sup>4</sup>	
b. No			
<b>The following questions were answered only if the state has enacted a Rule Against Perpetuities statute other than USRAP.</b>			
7. If your state has not adopted USRAP, does your state have a reformation (Cy Pres) provision?			
a. Yes		X <sup>5</sup>	
b. No			
8. Is your state's reformation conditioned upon violation of the Common Law Rule (immediate Cy Pres)?			
a. Yes			
b. No		X <sup>6</sup>	
9. If your state has immediate Cy Pres, will the Court alter the time period for vesting of an interest?			
a. Yes			
b. No		X <sup>7</sup>	

# Rule Against Perpetuities

	W.Va.	Wis.	Wyo.
10. If your state has immediate Cy Pres, will the Court insert a savings clause?			
a. Yes			
b. No		8	
11. If your state has immediate Cy Pres, will the Court use some other savings device?			
a. Yes; if yes, describe and explain the device			
b. No		8	
<b>The following questions were answered only if the state has not enacted USRAP but has enacted a "wait and see" provision</b>			
12. If your state has not adopted USRAP, does your state have a "wait and see" provision?			
a. Yes			
b. No		X	
13. If your state has a "wait and see" provision, but not the USRAP, is the waiting time based on actual events as required by the Common Law Rule Against Perpetuities?			
a. Yes			
b. No			
14. If your state has a "wait and see" provision, but not the USRAP, is the waiting time based on a specific time period?			
a. Yes; if yes, how long			
b. No			
15. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by the casual relationship method? (Professor Dukeminier approach)?			
a. Yes			
b. No			
16. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by a specified list? (Restatement approach)			
a. Yes			
b. No			
17. If your state has adopted a "wait and see" approach, but not the USRAP, are measuring lives determined by some other approach?			
a. Yes; if yes, describe			
b. No			
18. If your state has adopted a "wait and see" approach, but not the USRAP, indicate what interests it applies to:			
a. General Power of Appointment			

# Rule Against Perpetuities

	W.Va.	Wis.	Wyo.
b. Special Power of Appointment			
c. Other interests, if any			
<b>The following questions were answered if the state has a Rule Against Perpetuities savings device not covered by the previous questions.</b>			
19. Does your state have some other savings device?			
a. Yes; if yes, describe and explain			
b. No		X <sup>9</sup>	
<b>The following questions were answered if the state has either a statutory or Common Law Rule Against Perpetuities</b>			
20. Does your state provide any of the following exceptions to the Rule Against Perpetuities? (check all that apply)			
a. No exceptions provided		X <sup>10</sup>	
b. Nondonative Transfers	X <sup>4</sup>		
c. Fiduciaries	X <sup>5</sup>		
d. Trustee Discretionary Power	X <sup>6</sup>		
e. Charity	X <sup>7</sup>		
f. Governmental Bodies	X <sup>7</sup>		
g. Pensions/Profit Sharing	X <sup>8</sup>		
h. Cemetery Plots			
i. Condominium Associations			
j. Planned Residential Communities			
k. Other (specify)	X <sup>9</sup>		
21. Does your state have a conclusive presumption of fertility?			
a. Yes	X <sup>10</sup>		
b. No		X	
22. If your state does not have a conclusive presumption of fertility, was this repealed by:			
a. Not applicable	X	X	
b. Statute			
c. Judge Made			

# Rule Against Perpetuities

	W.Va.	Wis.	Wyo.
23. Do practitioners in your state generally utilize measuring lives outside the testator's family?			
a. Yes; if yes, briefly describe how			
b. No	X	X <sup>11</sup>	
24. Have the courts in your state held a violation of the Rule constitutes malpractice?			
a. Yes			
b. No	X	X	
25. Are there any other features of your Rule Against Perpetuities that deserve description?			
a. Yes; if yes, describe and explain			
b. No	X	X <sup>12</sup>	

# NOTES

## ALABAMA

G. Porter Brock, Jr.  
Mobile  
February 16, 2000

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1. §35-4-4 Code of Ala. (1975); *Schaffer v. Reed*, 437 So. 2d 98 (Ala. 1983) The common law rule in Alabama is that no interest is good unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest. *Schaffer v. Reed*, 437 So. 2d 98 (Ala. 1983) (citing J. Gray, *The Rule Against Perpetuities*)
2. § 35-4-4 Code of Ala. (1975) adopts the common law rule.
3. § 35-4-251 Code of Ala. (1975); *Baxley v. Birmingham Trust National Bank*, 334 So. 2d 848 (Ala. 1976); *Mastin v. First National Bank of Mobile*, 278 Ala. 251, 177 So. 2d 808 (Ala. 1965); *Biles v. Motin*, 288 Ala. 231, 259 So. 2d 253 (Ala. 1972); *Tumlin v. Troy Bank & Trust Co.*, 258 Ala. 238, 61 So. 2d 817 (Ala. 1952); *Henderson v. Troy Bank & Trust Co.*, 250 Ala. 456, 34 So. 2d 835 (Ala. 1948). The Cy Pres doctrine in Alabama applies only to charitable trusts. This Cy Pres doctrine is called equitable approximation or deviation. This doctrine's availability is limited to the details of administration under which the charitable trust will operate. The Rule Against Perpetuities applies to charitable trusts in Alabama, but only requires that the trust property vest in the trustee within the allowable period.
4. For charitable trusts only. See 3 above. The Court will modify the details of administration to uphold the charitable trust.
5. §35-4-251 Code of Ala.(1975). See 3 above.
6. §35-4-259 Code of Ala. (1975)
7. 1) Insurance trusts: §35-4-260 Code of Ala. (1975)

(commencing time for rule against perpetuities period when liability of insurer accrues).

- 2) Business trusts: §19-3-65 Code of Ala. (1975) (provided that the declaration of trust allows the trust to be terminated at any time by action of the trustees or vote of the beneficial owners).
8. See *Crawford v. Carlisle*, 206 Ala. 379, 89 So. 565 (Ala. 1921) and *Mehaffey v. Fies*, 217 Ala. 127, 115 So. 104 (Ala. 1928).
9. Authority (Cases or Statutory Citations) My survey of all ACTEC Fellows in Alabama found only one who has ever used measuring lives outside the decedent's family, and that Fellow used outside lives only once in over 20 years.
11. No case considering this malpractice issue was found in Alabama.

## ALASKA

Steven T. O'Hara  
Anchorage  
October 30, 1998

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1. AS 34.27.050 - 34.27.090. The rule has been adopted in statutory form.
2. AS 34.27.050 - 34.27.090. Alaska's statute is modeled on the Uniform Statutory Rule Against Perpetuities (USRAP). Effective April 2, 1997, however, Alaska's statute provides that beneficial interest in certain discretionary trusts are no longer subject to the rule, i.e., "the interest is in a trust and all or part of the income or principal of the trust may be distributed, in the discretion of the trustee, to a person who is living when the trust is created." AS 34.27.050 (a) (3). In other words, Alaska has chosen to leave the USRAP intact for certain non-discretionary trusts. This can be a trap for the unwary. For example, suppose a client wants to

create a perpetual trust under which initially his spouse is the sole mandatory income beneficiary and under which the trustee has no discretion to make principal distributions until after the spouse's death. Here it appears the trust would be subject to the rule against perpetuities, under Alaska law, because the trustee would not initially have any discretion over distributions.

3. AS 34.27.090
4. AS 34.27.050 (a) (2)
5. AS 34.27.065 (1)
6. AS 34.27.065 (2)
7. AS 34.27.065 (4)
8. AS 34.27.065 (5)
9. AS 34.27.065 (6)
10. AS 34.08.110 (b)
11. A power to appoint a fiduciary: AS 34.27.065 (3)
12. See *Hansen v. Stroecker*, 699 P.2d 871, 875 (AK 1985)
13. No reported Supreme Court decision

## ARIZONA

Robert Fleming  
Tucson  
November 11, 1998

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1. Arizona Rev. Statutes §33-261; Arizona Rev. Statutes §§14-2901 et seq. §33-261 adopts a general common-law RAP; §§14-2901 et seq. Are Arizona's version of the USRAP.
  2. A.R.S. §33-261, A.R.S. §§14-2901 et seq.
  3. A.R.S. §§14-2901 et seq.

4. A.R.S. §14-2901 (a) (3). In 1998, the Arizona Legislature added a third option (in addition to the common-law rule and the USRAP's 90-year rule). No trust need ever terminate if the Trustee has the power to sell assets and the trust was revocable at creation.
5. §14-2904 (1)
6. §14-2904 (2)
7. §14-2904 (4)
8. §14-2904 (5)
9. §14-2904 (6)
10. No express statute or case; Arizona generally follows the Restatements on unresolved questions.

## ARKANSAS

Tom Baxter  
Little Rock  
March 12, 1999

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1. Arkansas follows the common law rule, which prohibits the creation of future interests or estates that by possibility may not become vested within the lives in being at the time of the effective date of the instrument and twenty-one years thereafter. See *Nash v. Scott*, 62 Ark. App. 8, 966 S.W.2d 936 (1998).
  2. The Arkansas Supreme Court has held that a devise to the Trustee of a certain church is a devise creating a trust for charitable use and benefit of an indefinite number of persons and does not fall within the rule against perpetuities. See *Garrett v. Mendenhall, Executor*, 209 Ark. 898, 192 S.W. 2d 1971 (1946); *Bisco v. Thweatt*, 74 Ark. 545 86 S.W. 2d 432 (1905); *Bakos v. Kryder*, 260 Ark. 621, 543 S.W.2d 216 (1976).
  3. The rule against perpetuities does not apply to property or funds set aside or trusts created for the

perpetual care or maintenance of cemeteries. See Ark. Code Ann. 20-17-904(e) and §§20-171013(c).

4. *Fletcher v. Hurdle*, 259 Ark. 640, 543 S.W.2d 216 (1976)
5. Sometimes utilized but not typically.
6. Article 2 §19 of the Arkansas Constitution forbids “perpetuities and monopolies”, but it does not describe them. The description of perpetuities in Arkansas comes from common law and interpreted by the Courts. See *Otter Creek Dev. Co. v. Friesenhahn*, 295 Ark. 318, 748 S.W.2d 344 (1988).

## CALIFORNIA

Kenneth A. Feinfeld  
Los Angeles  
April 20, 2000

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1. Cal. Prob. Code §§ 21200-21231
  2. Cal. Prob. Code §§ 21205-21225
  3. Cal. Prob. Code §§ 21205(b), 21206(b), 21207(b)
  4. Cal. Prob. Code §§ 21225(h), 21202(a)

Subsection 21225(h) excludes from the rule against perpetuities trusts created to provide for beneficiaries under hospital service contracts, group life or disability insurance or group annuities. Subsection 21202(a) provides that the Uniform Statutory Rule Against Perpetuities applies to nonvested property interests and unexercised powers of appointment, regardless of whether they were created before, on, or after the date that California adopted the Uniform Statutory Rule Against Perpetuities.

5. Cal. Prob. Code § 21225(a)
6. Cal. Prob. Code § 21225(b), (c)
7. Cal. Prob. Code § 21225(d)

8. Cal. Prob. Code § 21225(e)
9. Cal. Prob. Code § 21225(f)
10. a. Trusts for Hospital Service Contracts, Group Insurance or Group Annuities:

Cal. Prob. Code Subsection 21225(h) excludes from the Rule Against Perpetuities trusts created to provide for beneficiaries under hospital service contracts, group life or disability insurance or group annuities.

- b. Nondonative Options to Renew, Rights of First Refusal and Commercial Leases:

*Shavers v. Clanton*, 26 Cal. App. 4th 568, 576, 31 Cal. Rptr 2d 595 (providing examples of the types of nondonative transfers that California Probate Code § 21225(a) excludes from the Rule Against Perpetuities).

11. *In re Lefranc's Estate*, 232 P.2d 4, 9-10 (Cal. Ct. App. 1951), *vacated on other grounds*, 38 Cal.2d 289, 294, 239 P.2d 617 (1952).
12. *Lucas v. Hamm*, 56 Cal.2d 583, 15 Cal. Rptr 821, 364 P.2d 685 (1961).

The Supreme Court of California has concluded that violating the Rule Against Perpetuities is not malpractice. *Lucas v. Hamm*, 56 Cal.2d 583, 592-93, 15 Cal. Rptr. 821, 364 P.2d 685 (1961). The *Lucas* court's conclusion was based on a version of the Rule Against Perpetuities that did not contain a 90-year wait-and-see provision, which is contained in the current version of the statute.

13. Cal. Prob. Code §§ 21230, 21231

Section 21230 provides that the number of selected validating lives may not be so numerous or so situated that it would be unreasonably difficult to obtain evidence of their deaths. Section 21231 provides that, when an individual is described as the spouse of another person alive when a



perpetuities period commences, that individual is deemed to be an individual alive when the interest was created, whether or not he or she was actually alive at that time.

# COLORADO

Baird B. Brown  
Grand Junction  
December 2, 1998

1. The Uniform Statutory Rule Against Perpetuities Act supersedes the common law rule against perpetuities (CRS 15-11-1107) for interests created after May 31, 1991.
2. C.R.S. 15-11-1101
3. C.R.S. 15-11-1105 (1) (a)
4. C.R.S. 15-11-1105 (1) (b)
5. C.R.S. 15-11-1105 (1) (d)
6. C.R.S. 15-11-1105 (1) (e)
7. C.R.S. 15-11-1105 (1) (f)
8. C.R.S. 38-30-110
9. (1) Employee's Pension Trust  
C.R.S. 38-30-111  
(2) Existing Pension, Stork Bonus disability, death benefit or profit sharing plan C.R.S. 38-30-112  
(3) Appointment of fiduciary  
C.R.S. 15-11-1105 (1) (c)  
(4) Powers not subject to common law rule C.R.S. 15-11-1105 (1) (g)
10. C.R.S. 15-11-1102 (4)
11. In 15-11-1102 (4) A possibility that a child may be born to an individual after the individual's death is disregarded and therefore no presumption of fertility is made.
12. Not aware of any such cases.

# CONNECTICUT

Martin Wolman  
Hartford  
October 22, 1998

1. Connecticut General Statutes §§45a-491 ff.
2. After § (e) (A) of Uniform Act, adds the sentence: Nothing in this subsection shall affect the validity of the other provisions of the trust or other property arrangement or of the governing instrument.
3. Follows Uniform Statutory Rule - Wait and See
4. §45a-494 (1)
5. §45a-494 (2) & (3)
6. §45a-494 (4)
7. §45a-494 (5); 45a-514
8. §45a-494 (5)
9. §45a-494 (6)
10. §19a-299 ff
11. Organized via declaration and bylaws with no provisions for expiration of interests under the Condominium Act of 1976 (CGS Chapter 825, §§47-68aff).
12. Follows uniform Statutory Rule Against Perpetuities - see official comment to Sec 1, ¶ (C) (2) ex. 7.
13. Uniform Statutory Rule Against Perpetuities

# DELAWARE

Richard G. Bacon  
Wilmington  
February 22, 1999

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1. 25 Del. C. §503, *Taylor v. Crosson*, 98 A. 375 (Del. Ch. 1916)
2. 25 Del. C. §503
3. 25 Del. C. §503. K No limit on personal property held in trust, 110 years on real property held in trust. Otherwise, common law rule in effect.
4. Delaware's cy pres statute (12 Del. C. §3541) is unrelated to rule against perpetuities and applies to charitable trusts.
5. Uncertain. See *Asche v. Asche*, 210 A.2d 306 (Del. 1965)
6. *Wilmington Trust Company v. Sloane*, 54 A. 2d 544 (Del. Ch. 1947); 12 Del. C. §9503 (b) (1)
7. 12 Del. C. §503 (b) (2)
8. 12 Del. C. §3551-03554
9. Property held in trust. K 12 Del. C. §503
10. See *A. B. v. Wilmington Trust Company*, 191 A. 2d 98 (Del. 1963)
11. No cases known.

# DISTRICT OF COLUMBIA

Richard S. T. Marsh  
Washington  
March 6, 2000

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1. §§45-302, 303, 304, which apply to realty and chattels real, are made applicable to personalty by §45-223 and to alienation of accumulations in *German v. Burdick*, 123 F. 2d 924 (D.C. Cir. 1941),

cert. Denied 315 U.S. 824. It has been suggested that the statute is declaratory of the common law rule and even if not so construed, the statute is not exclusive and the common law rule is also in effect. *American Security and Trust Company v. Cramer*, 175 F. Supp. 367 (D.C.D.C., 1959)

2. No statutory provision. Judicial "wait and see" declined in *American Security and Trust Company v. Cramer*, 175 F. Supp. 367 at fn. 12 (D.C.D.C., 1959)
3. Savings clause in the instrument will avoid a Rule violation. *In re Estate of Burrough*, 521 F.2d 277 (D.C. Cir. 1975)
4. §45-302, *Washington Loan & Trust Co. v. Hammond*, 278 F.569 (U.S. App. D.C. 1922)
5. §45-307
6. §27-113, as interp. By *Iglehart v. Iglehart*, 204 U.S. 478 (1907)
7. §45-1818(b); §45-1726 (superseded)
8. No such statutory provision and no reported case found on point. However, common law Rule is in force in D.C. and conclusive presumption of fertility is part of the Rule. See *Leach, Perpetuities in a Nutshell*, 51 Harv. L.R. 638, 642-644 (1938)
9. Not aware of any reported case with such a specific holding.
10. The Courts have addressed numerous issues arising in application of Rule to particular facts and circumstances, e.g., whether a valid interest is severable from a void interest.

# FLORIDA

Barry A. Nelson  
Aventura  
May 17, 1999

1. §689.225, Florida Statutes
2. §689.225 (2) (a) 2, Florida Statutes
3. §689.225 (5) (a), Florida Statutes
4. §689.225 (5) (b) and (5) (c), Florida Statutes
5. §689.225 (5) (d), Florida Statutes
6. §689.225 (5) (e), Florida Statutes
7. §689.225 (5) (f), Florida Statutes
8. Interests, powers or arrangements that were not subject to the common law Rule Against Perpetuities or which are excluded by another Florida statute. §689.225 (5) (g), Florida Statutes
9. §732.106, Florida Statutes
10. No cases discuss the issue.

# GEORGIA

Ann D. Salo  
Atlanta  
November 15, 1998

1. O.C.G.A. §44-6-200
2. O.C.G.A. §44-6-200 et. seq.
3. O.C.G.A. §44-6-204 (1)
4. O.C.G.A. §44-6-204
5. O.C.G.A. §44-6-204 (2) & (4)
6. O.C.G.A. §44-6-204 (5)

7. O.C.G.A. §44-6-204 (6)
8. Anything excluded under common law rule. O.C.G.A. §44-6-204 (7)
9. *Lanier v. Lanier*, 126 S.E. 2d 776 (1962)

# HAWAII

Mervyn S. Gerson  
Honolulu  
April 7, 1999

1. HRS §525
2. HRS §525 - 1 (b) (2)
3. HRS §525 - 4 (1)
4. HRS §525 - 4 (2)
5. HRS §525 - 4 (3)
6. HRS §525 - 4 (4)
7. HRS §414 - 14
8. Anything not subject to common law rule or excluded by another law. HRS §525 - 4 (5)
9. No authority found

# IDAHO

Joseph H. Uberuaga, II  
Boise  
February 23, 2000

1. Idaho Code §55-111, *Locklear v. Tucker*, 69 Idaho 84, 203 P2d 380 (1949)
2. Idaho Code §55-111. Idaho does have a rule against restraints on alienation of real property. Idaho Code §55-111
3. NA. Idaho does not follow the Common Law Rule.

See *Locklear v. Tucker*, 69 Idaho 84, 203 P2d 380 (1949)

4. Idaho does not have a rule against perpetuities. These exceptions only relate to the restraint on alienation of real property rule contained in Idaho Code §55-111.
5. *Estate of Kirk*, 127 Idaho 817, 907 P2d 794 (1995)
6. Idaho Code §55-1522
7. The exceptions above only relate to the rule against restraint on alienation real property contained in Idaho Code §55-111
8. Idaho Code §55-111. In Idaho, there is no presumption that a person is capable of having children at any stage of adult life. Idaho Code §55-111
9. Idaho Code §55-111

## ILLINOIS

We received no response from this state.

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## INDIANA

Lawrence E. Lawhead  
Indianapolis  
April 21, 1999

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1. Ind. Code 32-1-4.5-1 et seq.
2. Uniform Statutory Rules Against Perpetuities. Ind. Code 32-1-4.5-1 et seq.
3. Ind. Code 32-1-4.5-3(a)(2); Ind. Code 32-1-4.5-3(b)(2); Ind. Code 32-1-4.5-3(c)(2)

4. Ind. Code 32-1-4.5-2(1). This chapter does not apply to the following: (a) a nonvested property interest or a power of appointment arising out of a nondonative transfer. This provision limits the applicability of the USRAP.
5. Ind. Code 32-1-4.5-1(b)(2). If a nonvested property interest or a power of appointment was created before May 8, 1991, and...(2) may violate this state's rule against perpetuities as that rule existed before May 8, 1991; a court upon the petition of an interested person shall reform the distribution by inserting a savings clause that most closely preserves the transferor's 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.
6. Ind. Code 32-1-4.5-2(1)
7. Ind. Code 32-1-4.5-2(2)
8. Ind. Code 32-1-4.5-2(4)
9. Ind. Code 32-1-4.5-2(5)
10. Ind. Code 32-1-4.5-2(6)
11. Ind. Code 32-1-4.5-2(7). [A] property interest, power of appointment or arrangement that was not subject to the common law rule against perpetuities or is excluded by another Indiana statute.

Ind. Code 32-1-4.5-2(8)(A). [A] provision for the accumulation of an amount of the income of a trust estate reasonably necessary for the upkeep, repair or property management of the subject of the estate.

Ind. Code 32-1-4.5-2(8)(B). [A] direction in a trust that provides for the allocation wholly or in part to the principal of the trust of stock dividends or stock rights derived from shares held in a trust.

Ind. Code 32-1-4.5-2(8)(c) [A] provision for a

sinking or reserve fund.

Ind. Code 32-1-4.5-2(8)(d) [A] statutory provision directing an accumulation.

# IOWA

Bruce I. Campbell  
Des Moines  
February 14, 2000

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1. Iowa Code §558.68. Adopted, with changes, from Restatement (Second) of Property.
  2. Iowa Code §558.68
  3. Iowa Code §558.68 (3). Depending on the circumstances, the Court will generally not apply the Cy Pres provision unless the "wait and see" provision fails to validate the challenged interest. *Matter of Estate of Keenan*, 519 N.W.2d 373 (Iowa 1994). See also Sheldon F. Kurtz, *The Iowa Rule Against Perpetuities -Reform at Last, Restatement Style: Wait-and-See and Cy Pres*, 69 Iowa L. Rev. 705 (1984)
  4. Iowa Code §558.68 (2). See also *Matter of Estate of Keenan*, 519 N.W.2d 373 (Iowa 1994), which indicates Court typically will apply "wait and see" provisions prior to reformation provisions.
  5. Iowa Code §558.68 (2) (a)
  6. Iowa Code §558.68 (2)
  7. Iowa Code §558.68 (2) (b). The statutory provision establishes four categories of lives in being that may be considered in measuring the validity of the nonvested interest depending on the nature of the interest. See Kurtz at 718.
  8. Iowa Code §558.68 (2) (b)
  9. Iowa Code §558.68 (2) (b) (4)
  10. Iowa Code §558.68 (2) (b) (2). See Kurtz beginning

at 727 for discussion of general and special powers of appointment.

11. *Palmer v. Evans*, 124 N.W. 2d 856 (Iowa 1963)
12. *Hipp v. Hibbs*, 245 N.W. 247 (Iowa 1932)
13. It appears that this presumption survives. See Kurtz at 745-46.
14. Common practice predominantly, seems to be to use lives of the testator's or donor's family.
15. *Millwright v. Romer*, 322 N.W. 2d 30 (Iowa 1982). The *Millwright* case held that the plaintiffs were barred by the statute of limitations which ran from the date of the decedent's death because the plaintiffs should have known as of the date of the decedent's death that the will violated the rule against perpetuities. Presumably had plaintiffs timely brought the action, the violation would have been malpractice. This case preceded the most recent amendment to §558.58 of the Iowa Code that adopted the "wait and see" and "Cy Pres" provisions.

# KANSAS

Charles E. Cole, Jr.  
Wichita  
March 2, 2000

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1. K.S.A. 59-3401- 59-3408
  2. See K.S.A. 59-3406- 59-3407
  3. K.S.A. 59-3404 (1)
  4. K.S.A. 59-3404 (2)
  5. K.S.A. 59-3404 (4)
  6. K.S.A. 59-3404 (5)
  7. K.S.A. 59-3404 (6)
  8. (1) Power to Appoint a Fiduciary. K.S.A. 59-3404

(3) (2) Property interest, power of appointment or arrangement that was not subject to the common law rule or excluded by another statute. K.S.A. 59-3404 (7)

9. Prior to adoption of the statutory Rule Against Perpetuities, the Kansas courts applied the common law rule. See e.g. *Beverlin v. First Nat'l Bank*, 151 Kan. 307, 98 P2d 200 (1940). The common law rule applies a conclusive presumption of fertility, which presumption is not pre-empted by the statutory rule.
10. Kansas courts have not addressed this issue.

## KENTUCKY

Homer Parrent III  
Louisville  
February 14, 2000

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1. KRS 381.215
2. KRS 381.216; *Univ. of Louisville v. Isert*, Ky., App., 742 S.W. 2<sup>nd</sup> 571 (1987)
3. KRS 381.216; Reformation is triggered by a violation as determined under the "wait and see" Doctrine.
4. KRS 381.216
5. No known case decided since the adoption of the "wait and see" doctrine in 1960, addresses applicability of the statutory rule to powers; however KY decisions under the common law rule extended the Rule to powers, e.g. *Ligget v. Fidelity & Columbia Trust Co.*, Ky 118 S.W. 2d 720 (1938); also see *Lilly v. Citizens Fidelity Bank & Trust Co.*, KY App. 859 S.W. 2d 666, (1993), which alludes to the subject.
6. KRS 381.217
7. *Beall v. Wilson*, KY., 143 S.W. 55 (1912) (common law rule). Presumption is irrelevant under "wait and see" doctrine.

8. Not expressly. No express repeal; however "wait and see" renders the presumption effectively obsolete.
9. Non-family beneficiaries may be used as measuring lives.
10. None known

## LOUISIANA

David F. Edwards  
New Orleans  
March 15, 1999

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1. Louisiana does not have a "rule against perpetuities". Property inherited free of trust must be immediately vested. There are no contingent remainders in Louisiana. In trusts, all interests in an irrevocable trust must be immediately fixed and vested. There can under some circumstances be substitutions of interest upon the death of an initial beneficiary, but the trust cannot continue for longer than the death of the last surviving initially designated income beneficiary. In the case of a class trust, however, later-born members of the class can be included as beneficiaries, and the trust can continue as long as any of them is living. Under a 1997 change in the Trust Code, the class of income beneficiaries can include "any descendants in the direct line, regardless of degrees, or any descendants in any collateral line, regardless of degrees, or any combination thereof, although some members of the class are not yet in being at the time of the creation of the trust." Thus, it may be possible in Louisiana now to create a perpetual trust.
2. In Louisiana, the Cy Pres doctrine allows the reformation of a charitable trust (whether it was created during life or by testament) if the circumstances have changed such as to render compliance with the terms of the trust impractical, impossible or illegal. See La. R.S. 9:2331.
3. La. R.S. 9:1834 & 9:2291
4. La. R.S. 9:1834

5. La. R.S. 8:452-464
6. La. R.S. 9:1123.101 et seq.
7. La. C.C. Arts. 775-783

## MAINE

Philip C. Hunt  
Portland  
March 2, 2000

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1. 33 ME Rev. Stat. Ann §§101 - 106. *True Real Estate Co. v. True*, 115 ME 533 (1917); *Andrews v. Lincoln*, 95 ME 541 (1901). The Statute clarifies, supplements and modifies the common law rule.
2. 33 ME Rev. Stat. Ann §§101-106. The Statute clarifies, supplements and modifies the common law rule. It includes a "wait and see" provision and the ability to reduce an age contingency to age 21.
3. The common law rule is clarified, supplemented and modified by the statute.
4. In part. 33 ME Rev. Stat. Ann §102 permits a reduction of an age based contingent to age 21. Judicial reformation not required.
5. Maine has a statutory "wait and see" rule. 33 ME Rev. Stat. Ann §101
6. 33 ME Rev. Stat. Ann §101
7. Not addressed in statute. No controlling judicial authority.
8. No controlling authority.
9. No directly controlling authority. In *Pulitzer v. Livingston*, 89 ME 359 (1896) the court stated that the rule applies to equitable and legal estates, instruments executing powers and other instruments.
10. *Snow v. Bowdoin Cottage*, 133 ME 195, 175 A. 268

(1934) (dicte).

11. Governmental units are bodies corporate and politic and have perpetual existence.
12. 26 MRSA §841
13. 13 MRSA §1222 (Perpetual Care Funds)
14. By Statute Association is organized as non profit corporation. 33 MRSA 1603-101.
15. Generally, the measuring lives are within the beneficiaries and, generally, the beneficiaries are family members.
16. If instrument provides two contingencies in the alternative, and one contingency is not violative, the instrument will not violate the rule. *First Nat. Bank v. Rodrigue*, 157 ME 277 (1961). This case adopts the doctrine of "alternative contingencies".

A statutory change to the Rule Against Perpetuities in Maine enacted by P.L. 1999, c.391, added a new statutory section, 33 MRSA Section 101-A, which exempts certain trusts from the Rule Against Perpetuities. The rule does not apply to trusts created after September 18, 1999, if the trust instrument expressly states that the Rule Against Perpetuities does not apply to the trust and the trustee has the power to sell or mortgage property or to lease property for any period beyond the time required for an interest created under the instrument to vest in order to be valid under the Rule Against Perpetuities.

## MARYLAND

We received no response from this state.

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## MASSACHUSETTS

Robert P. Goldman  
Boston  
November 17, 1998

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1. M.G.L.A. c. 184A
2. M.G.L.A. c. 184A §4 (1)
3. M.G.L.A. c. 184A §4 (2,3)
4. M.G.L.A. c. 184A §4 (4)
5. M.G.L.A. c. 184A §4 (5)
6. M.G.L.A. c. 184A §4 (6)
7. Interests not subject to common-law rule against perpetuities. M.G.L.A. c. 184A §4 (7)
8. 313 Mass. 72
9. No cases on point.

## MICHIGAN

Lawrence W. Waggoner  
Ann Arbor  
October 26, 1998

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1. Mich. Comp. Laws Ann. §§554.53, 554.71 to 554.78
2. Mich. Comp. Laws Ann. §554.72
3. Mich. Comp. Laws Ann. §554.75
4. Mich. Comp. Laws Ann. §554.75; § 554.351
5. Mich. Comp. Laws Ann. §554.64
6. Mich. Comp. Laws Ann. §555.301
7. Mich. Comp. Laws Ann. §555.351

8. (1) Gift or devise to any city, village, township or county. Mich. Comp. Laws Ann. §123.871  
(2) Public welfare. Mich. Comp. Laws Ann. §554.381
9. *Gettins v. Grand Rapids Trust Co.*, 228 N.W. 703 (Mich. 1930); *Rozell v. Rozell*, 186 N.W. 489 (Mich. 1922). The Uniform Statutory Rule Against Perpetuities does not overturn the conclusive presumption. The official comment to USRAP states that the presumption is preserved.

## MINNESOTA

Andrea S. Breckner  
Minneapolis  
June 30, 1999

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1. Minn. Stat. §501A.01-07
2. Minn. Stat. §501A.01-07. Substantially the Uniform Rule Against Perpetuities as originally promulgated in 1986.
3. Minn. Stat. §501A.01
4. Minn. Stat. §501A.01 omits subsection (3) which was added by the 1990 amendments to USRAP >  
(2) Minn. Stat. §501A.02 omits the bracketed sentence from subsection (b) of USRAP relating to joint powers over community property or over marital property under the Uniform Marital Property Act held by individuals married to each other.
5. Minn. Stat. §501A.04 (1)
6. Minn. Stat. §501A.04 (2), (3)
7. Minn. Stat. §501A.04 (4)
8. Minn. Stat. §501A.04 (5)
9. Minn. Stat. §501A.04 (6)
10. Minn. Stat. §515A.2-103



11. Minn. Stat. §515B.2-103
12. Charitable trusts. Minn. Stat. §501B.31
13. There is no statutory authority or reported case law in Minnesota on the common law rule of a conclusive presumption of fertility.
14. The Uniform Rule Against Perpetuities is generally applicable to a nonvested property interest or a power of appointment created after December 31, 1992, except as extended by subsection (b) of Minn. Stat. §501A.05.

## MISSISSIPPI

Jamie G. Houston, III  
Jackson  
May 20, 1999

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1. *In re Estate of Anderson*, 541 So. 2d 423 (Miss. 1989)
  2. *Phelps v. Shropshire*, 183 So. 2d 158 (Miss. 1966); *Carter v. Berry*, 140 So. 2d 843 (Miss. 1962). Mississippi has altered the Rule through judicial decision. *Phelps* adopted the "wait and see" doctrine. *Carter* adopted the doctrine of equitable approximation.
  3. *Phelps v. Shropshire*, 183 So. 2d 158 (Miss. 1966)
  4. *Phelps v. Shropshire*, 183 So. 2d 158 (Miss. 1966). "Wait-and-see" does not validate all interests that would be void. It simply prevents such interests from being rendered initially invalid and gives them a second chance to vest within the 21 year waiting period of the Rule.
  5. Not specifically. The wait-and-see approach generally applies to any interest subject to the Rule.
  6. *Carter v. Berry*, 140 So. 2d 843 (Miss. 1962). The doctrine of equitable approximation modifies the "all or nothing" aspect of the common-law Rule and provides for the partial validation of an otherwise

invalid interest.

7. Miss. Code Ann. § 41-43-51. For perpetual care funds for cemeteries and burial grounds.
8. Investment Trusts. Miss. Code Ann. § 79015-21
9. Believed to be correct. However, we cannot locate any statute or case which specifically states that the presumption exists.

## MISSOURI

Richard L. English  
Kansas City  
December 1, 1998

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1. *Trautz v. Lempm* 46 S.W. 2d 135, 138 (Mo. 1932); *Nelson v. Mercantile Trust Company*, 335 S.W. 2d 167, 172 (Mo. 1960)
  2. Missouri does not have a statutory Rule Against Perpetuities. It does have statutes that concern the Rule. These are identified in other portions of this study.
  3. RSMO §442.555.1 provides that if an instrument contains any limitation or provision that violates the RAP, and other limitations or provisions that do not violate the RAP, the other limitations or provisions shall be valid unless the provision or limitation in violation of the RAP is manifestly so essential to the disposition scheme that it is inferable that the grantor, settlor or testator would not want the other limitations or provisions to stand alone. Doubts are resolved in favor of validity of the other limitations or provisions. RSMO §442.555.2 permits reformation by court proceeding if doing so would more closely approximate the primary purpose or scheme of the grantor, settlor or testators than would total invalidity of the limitation or provision.
  4. *Mercantile Trust Co. v. Hammerstein*, 380 S.W. 2d 287 (Mo. 1965). Discretion of trustees to shorten period of trust did not cause interests of

beneficiaries to be contingent for purposes of determining whether bequest in trust violated RAP.

5. *Newton v. Newton Burial Park*, 34 S.W. 2d 118, 121 (Mo. 1930); *Mercantile Trust Company National Association v. Shriners' Hospital for Crippled Children*, 551 S.W. 2d 864, 867 (Mo. App. 1977).
6. RSMO §456.060
7. *Earney v. Clay*, 462 S.W. 2d 672, 674 (Mo. 1971)
8. RSMO §448.210
9. (1) Honorary trusts for pets or other noncharitable purpose. RSMO §456.055
10. *Blackhurst v. Johnson*, 72 F 2d 644 (C.C.A. Mo. 1934); *Nelson v. Mercantile Trust Co.*, 335 S.W. 2d 167 (Mo. 1960).
11. RSMO §442.557. Where donee holds general power of appointment exercisable only at death the perpetuities period for limitations appointed in the exercise of that power or in default of such power runs from the death of the donee, not from creation of the power.

## MONTANA

Eric K. Anderson  
Billings  
November 10, 1998

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1. Mont. Code Ann. §72-2-1001 (1997) et seq.
  2. Mont. Code Ann. §72-2-1001 (1997) et seq. somewhat modifies the USRAP.
  3. Mont. Code Ann. §72-2-1001 (1) (b)
  4. Montana adopted the 1990 amendment to subsection (e) of section 1. Montana is a separate property state and omitted the bracketed sentence of subsection (b) of section 2.

5. Mont. Code Ann. §72-2-1005 (1)
6. Mont. Code Ann. §72-2-1005 (2)
7. Mont. Code Ann. §72-2-1005 (4)
8. Mont. Code Ann. §72-2-1005 (5)
9. Mont. Code Ann. §72-2-1005 (6)
10. (1) The power to appoint a fiduciary. Mont. Code Ann. §72-2-1005 (3)  
  
(2) A property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another Montana statute. Mont. Code Ann. §72-2-1005 (7). Montana has adopted the exclusions set forth in the USRAP, as amended.
11. Mont. Code Ann. §72-33-409. In determining the class of beneficiaries whose consent is necessary to modify or terminate a trust, the presumption of fertility is rebuttable.
12. Mont. Code Ann. §72-33-409
13. No reported Montana cases.

## NEBRASKA

Don R. Janssen  
Lincoln  
November 6, 1998

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1. Neb. Rev. Stat. §76-2001 - 2008
  2. Neb. Rev. Stat. §76-2001
  3. Neb. Rev. Stat. §76-2001 (2)
  4. USRAP Sec. 1 (e) is not included in the Nebraska statute.
  5. Neb. Rev. Stat. §76-2005 (1)

6. Neb. Rev. Stat. §76-2005 (2)
7. Neb. Rev. Stat. §76-2005 (4)
8. Neb. Rev. Stat. §76-2005 (5)
9. Neb. Rev. Stat. §76-2005 (6), 48-2001
10. Neb. Rev. Stat. §76-807, 76-840
11. (1) Power to appoint a fiduciary. Neb. Rev. Stat. §76-2005 (3). All exclusions in USRAP Sec. 4 were adopted. There is no adopted exclusion for cemetery "plots" but exclusions are present for perpetual cemetery trust and burial trust funds. Neb. Rev. Stat. §12-512 and 12-1121
12. Answer is based on common law rule, there are no cases addressing the issue.
13. Answer is based on personal experience and documents I have seen.
14. No reported cases on this issue.

## NEVADA

Robert E. Armstrong  
Reno  
June 28, 1999

1. NRS 111.103-1039
2. NRS 111.1031
3. §2(b) of Act bracketed sentences omits "or to marital property under the Uniform Marital Property Act." §5 of Act does not require a prior judicial determination of violation.
4. NRS 111.1037 (1)
5. NRS 111.1037 (2) (3)
6. NRS 111.1037 (4)

7. NRS 111.1037 (5)
8. NRS 111.1037 (6)
9. NRS 117.103
10. NRS 116.2103
11. Cemeteries (General Endowment) - NRS 452.110(3)
12. Nevada has adopted the USRAP- See Comment C to §21 of USRAP
13. Never decided by Nevada Supreme Court (No published decisions in Nevada on this issue)

## NEW HAMPSHIRE

Ruth Ansell  
Bedford  
January 8, 1999

1. *Marston v. Carter*, 12 N.H. 159 (1841); *Hall v. Chaffee*, 14 N.H. 215 (1843); *Bell v. Scammon*, 15 N.H. 381 (1844); *Pinkham v. Blair*, 57 N.H.226 (1876); *Kimball v. Penhallow*, 60 N.H. 448 (1881); *Edgerly v. Barker*, 66 N.H. 434, 31 A. 900 (1891); *Wentworth v. Wentworth*, 77 N.H. 400, 92 A. 733 (1914); *McAllister v. Elliott*, 83 N.H. 225, 140 A. 708 (1928); *Gale v. Gale*, 85 N.H. 358, 159 A. 122 (1932).
2. In re *Trust of Richardson*, the Supreme Court stated very clearly the New Hampshire approach to the rule when confronted with a will that violated the rule: Determining that the will violates the rule against perpetuities does not mandate that its provisions must entirely fail, however. Although the rule prevails in this state, it has never been "remorselessly applied,"... Hence the testator's intent, as determined by the probate court, will be carried out to the fullest extent possible.
3. Judicially adopted in: *Merchant's National Bank v. Curtis*, 98 N.H. 225, 232, 97 A. 2d 207, 212 (1953)

4. Lives in being plus 21 years.
5. Undetermined
6. Preemptive right to purchase land. *Great Bay School & Training Center v. Simplex Wire & Cable Corp.*, 131 N.H. 682 (1989).
7. *Edgerly v. Barker*, 66 N.H. 434; 31 A. 900 (1891). Cy Pres principle - effectuate testator's intent to the greatest extent possible.
8. *Merrill v. American Baptist Missionary Union*, 73 N.H. 414, 62 A. 647 (1905).
9. *In re Bassett's Estate*, 104 N.H. 504, 506-7, 190 A.2d 415, 417 (1963).
10. Unlikely to do so given N.H. modifications to the Rule described above.
11. As noted throughout, N.H. emphasizes testator's intent above all else.

is unlimited power to terminate in one or more persons alive.

2. N.J.S.A. 46:2F-14 imposes a limitation akin to the Rule Against Perpetuities. Also, the future interests created before July 9, 1999 that violated the Rule Against Perpetuities, as that Rule existed prior to July 9, 1999, may be reformed.
3. For cure of pre-July 9, 1999 violations, see N.J.S.A. 46:2F-15(b).
4. Upon violation of USRAP, being in effect from 1991 through July 9, 1999.
5. Apparently not within the contemplation of the statute. See N.J.S.A. 46:2F-15(b).
6. However, it is possible that a future interest initially valid may become invalid because a person having the power to terminate dies. N.J.S.A. 46:2F-14(c). The statute may also be applicable at the time a power of appointment is exercised or can no longer be exercised.
7. N.J.S.A. 46:2F-14(a)(3) and (c).
8. N.J.S.A. 46:2F-14(a)(3). For exercise of a general power of appointment, the period is computed from termination of an unlimited power to revoke, i.e., time of death. For exercise of a limited power of appointment, the period is computed from the time of creation of the power.
9. N.J.S.A. 46:2F-14(a)(3)
10. N.J.S.A. 46:2F-14(d)(3), except a non-vested property interest or a power of appointment arising out of:
  - a. a premarital or postmarital agreement;
  - b. a separation or divorce settlement;
  - c. a spouse's election
  - d. a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties;

## NEW JERSEY

Richard Kahn  
Morristown  
February 22, 2000

1. The New Jersey statutory Rule Against Perpetuities, a USRAP statute, (which superceded the common law rule) was repealed prospectively as to newly created interests as of July 9, 1999. See N.J.S.A. 3B:11-34 and N.J.S.A. 46:2F-13. However, N.J.S.A. 46:2F-14(a)(1) states that a future interest or trust is void if it suspends the power of alienation for longer than the permissible period, which is within 21 years after the death of an individual or individuals then alive. The power of alienation is defined as the power to convey to another an absolute fee in possession of land or full ownership of personalty. There is no suspension of the power of alienation by a trust or by equitable interests under a trust if the trustee has the express or implied power to sell or if there

- e. a contract to make or revoke a will or trust;
- f. a contract to exercise or not to exercise a power of appointment;
- g. a transfer in satisfaction of a duty of support; or
- h. a reciprocal transfer.

- 11. A few practitioners, under USRAP, utilized lives in being of non-beneficiaries.
- 12. No reported cases to the best of my knowledge.

## NEW MEXICO

James F. Beckley  
Albuquerque  
May 10, 1999

- 1. NMSA §§45-2-901 thru 907
- 2. NMSA §45-2-906. USRAP supersedes Common Law RAP.

## NEW YORK

We received no response from this State.

## NORTH CAROLINA

Ronald C. Link  
Chapel Hill  
April 26, 1999

- 1. N.C. Gen. Stat. §§41-15 to 41-22; N.C. Const. Art. I, §34.
- 2. N.C. Gen. Stat. §§41-15 to 41-22
- 3. N.C. Gen. Stat. §41-15

- 4. N.C. Gen. Stat. §41-18 (1)
- 5. N.C. Gen. Stat. §41-18 (2); (3)
- 6. N.C. Gen. Stat. §41-18 (4)
- 7. N.C. Gen. Stat. §41-18 (5); 36A-49.
- 8. N.C. Gen. Stat. §41-18 (5)
- 9. 36 A-6 & N.C. Gen. Stat. §41-18 (6)
- 10. N.C. Gen. Stat. §41-18 (8)
- 11. 47C-2-103 (b)
- 12. 47F-2-103 (b)
- 13. (1) Honorary Trusts. 41-18 (8)  
(2) Options in Gross, etc. 41-18 (9)  
(3) Community Trusts for Persons With Disabilities. 36A-59.19
- 14. There is a presumption of fertility, but apparently it is rebuttable. In *McPherson v. First 8 Citizens Nat'l Bank*, 240 N.C. 1, 81 S.E. 2d 386 (1954) the court said it is "irrebuttably presumed" that any person may have children, but in the later case of *Joyner v. Duncan*, 299 N.C. 565, 264 S.E. 2d 76 (1980), the court simply said that the law "presumes" a person can have children and found that the testator did not intend to include certain after-born grandchildren.
- 15. This is my best guess at what N.C. practitioners are doing.
- 16. No case on the issue.
- 17. (1) Options in gross, leases to commence in the future, and nonvested easements in gross are exempt from the USRAP (G.S. 41-18 (9)), but are subject to a 30 year time limit. (G.S. 41-28 to 41-31). Possibilities of reverter, rights of entry, and executory interests are also exempt from the USRAP (G.S. 41-18 (9)), but are subject to a 60

year time limit (G.S. 41-32). These exemptions and limits apply only to interests in land.

(2) Honorary trusts, trusts for pets, and trusts for cemetery lots are exempt from the USRAP (G.S. 41-18 (8)), but are subject to time limits of 21 years for honorary trusts (G.S. 36A-145), the animal's life for trusts for pets (G.S. 36A-147), and no time limit for trusts for cemetery lots (G.S. 36A-146).

## NORTH DAKOTA

Wesley A. Argue  
Hamilton  
October 22, 1998

## OHIO

Craig F. Frederickson  
Toledo  
November 20, 1998

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1. NDCC 47-02-27.1
  2. NDCC 47-02-27.4 (1)
  3. NDCC 47-02-27.4 (2) (3)
  4. NDCC 47-02-27.4 (4)
  5. NDCC 47-02-27.4 (5)
  6. NDCC 59-02-17.1
  7. Real Estate Investment Trusts. NCDD 10-34-07
  8. Probably. There is no statute so the Common Law Rule (2 Coke's Littleton, 551; 2 Blackstone's Commentaries 125) should apply.
  9. No cases on the issue in North Dakota.
  10. NDCC 47-02-27.5; NDCC 47-02-27.3. Uniform Rule applies to contingent property interests and powers of appointment created after July 1, 1991. Prior transactions may be judicially reformed.
1. ORC §2131.08
  2. ORC §2131.08 (c)
  3. However, reformation of a contingent future interest should ordinarily be deferred until it is clear that the interest cannot vest within the perpetuities period as measured by actual events under the wait and see doctrine.
  4. Courts will recognize a savings clause in the instrument which removes the danger of violation against the rule against perpetuities. If none, courts will design a judicial construction which approximates most closely the intention of the creator of the interest.
  5. Where there are two possible constructions of an instrument, preference will be accorded the construction which upholds the validity of the instrument.
  6. ORC §2131.08 (c)
  7. The court will wait and see. In determining whether an interest would violate the rule, and in reforming an interest, the period of perpetuities is measured by actual rather than possible events. An appropriate measuring life may be determined in retrospect.
  8. Personal and real property generally.
  9. (1) Investment Trusts  
(2) Business Trusts
  10. The wait and see doctrine selects measuring lives in light of actual events, not possibilities.
  11. Only found one case from 1821 to 1998 that even

involved malpractice regarding rule against perpetuities.

12. Legislation is pending to amend the Rule to allow a trust to opt out of the Rule against perpetuities if:  
(1) Either the trustee of the trust has an unlimited power to sell the trust assets or the trustee or one or more other persons have the power to terminate the trust, and (2) the trust specifically states that it is electing out of the Rule against perpetuities. Expect legislation to be passed by end of 1998.

## OKLAHOMA

Bill V. Brumley, Jr.  
Bartlesville  
March 1, 1999

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1. Okla. Const. Art 2 Sec. 32; 60 O.S. Sec. 31; 60 O.S. Sec. 175.47
  2. Okla. Const. Art 2 Sec. 32; 60 O.S. Sec. 31; 60 O.S. Sec. 175.17. Statutes considered enactment of the Common Law Rule against perpetuities. *Melcher v. Camp*, 435 P2d 107 (Okla. 1967)
  3. 60 O. S. Sections 75 et seq.
  4. 60 O.S. Sec. 77. Court will also construe instrument in a way which will not violate the Rule. *Matter of Estate of Crawl*, 737 P2d 911 (Okla. 1987).
  5. Court will reform instrument to give effect to general intent of parties. Provisions which violate the Rule may be eliminated and the remainder of the instrument may be enforced. *Stoltz, Wagner & Brown v. Duncan*, 417 F. Supp. 552 (W.D. Okla. 1976).
  6. Apparently not.
  7. 60 O.S. Sec. 175.47
  8. 60 O.S. Sec. 326
  9. Not known

## OREGON

Nancy L. Cowgill  
Portland  
February 24, 2000

- 
1. ORS 105.950 - 105.975
  2. ORS 105.950
  3. ORS 105.950 - 105.975. Omits bracket language in USRAP §2 (b)
  4. ORS 105.965 (1)
  5. ORS 105.965 (2) & (3)
  6. ORS 105.965 (4)
  7. ORS 105.965 (5)
  8. ORS 105.965 (6)
  9. ORS 100.025; ORS 105.965(7)
  10. ORS 94.770; ORS 105.965(7)
  11. Lessee Option to Buy. *Coomler v. Shell Oil Co.*, 814 P2d 184, 108 Or. App. 233 (1991), review denied 824 P2d 418.312 Or. 589 (1992).

## PENNSYLVANIA

Robert L. Freedman  
Philadelphia  
February 15, 2000

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1. 20 Pa. C.S. §§6104 - 6107
  2. 20 Pa. C.S. §§6104 - 6107. Enacted in 1948 - The first in USA; in 1978 it was made retroactive to govern pre-1948 trusts.
  3. Actual events, not common law possibilities
  4. Lives in being + 21 years

5. Statute is silent. I know of no cases. Lawyers assume courts would follow Dukeminier approach and Restatement of Property 2d § 51.3.
6. All common law interests
7. 20 Pa. C.S. §6104 (b) (4)
8. 20 Pa. C.S. §6104 (b) (1); *Philadelphia v. Girard*, 45 Pa. 9 (1883)
9. Probably common law exception. 20 Pa. C.S. §6104 (b) (1)
10. 20 Pa. C.S. §6104 (b) (3)
11. Cemetery Trusts. 20 Pa. C.S. §6104 (b) (2)
12. Unknown
13. Any interest not subject to common law rule against perpetuities. 20 Pa. C.S. §6104 (b) (1)
14. Perhaps under common law; but irrelevant under wait and see
15. Sometimes in large trusts
3. RIGL §34-22-38. The common law rule against perpetuities shall no longer be deemed to be in force and/or of any effect in this state, provided, the provisions of this section shall not be construed to invalidate or modify the terms of any interest which would have been valid prior to the effective date of this act, and, provided further, that the provisions of this section shall apply to both legal and equitable interests.
4. Reform possible if "wait and see" approach does not validate interest.
5. By Statute RIGL §34-11-38. By case law the RI Supreme Court has concluded that "wait and see" is the common law of the State and effective in dealing with interests which predate the effective date of the Statute. *Fleet National Bank v. Colt*, 529 A2d 122.
6. Court will approximate "most closely the intention of the creator."
7. If this is deemed to most closely approximate the intention of the creator.
8. Reference is to common law Rule against Perpetuities.

## RHODE ISLAND

David T. Riedel  
Providence  
February 14, 2000

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1. RIGL §34-11-38. See *Fleet National Bank v. Colt* 529 A2d 122 (1987). Wait and see approach. Court may reform invalid interest to conform. Rhode Island abolished the Rule Against Perpetuities effective July 3, 1999, but the answers in this study presumably apply to interests that vested prior to July 3, 1999.
  2. RIGL §34-11-38. Rhode Island abolished the Rule Against Perpetuities effective July 3, 1999, but the answers in this study presumably apply to interests that vested prior to July 3, 1999.
  9. The period of perpetuities shall not be measured by any lives whose continuance does not have a causal relationship to the vesting or failure of the interest.
  10. Above interests not specifically covered by RIGL §34-11-38.
  11. To the extent there was a conclusive presumption the "wait and see" statute will override.
  12. They quite often will include such extended family members as cousins and the like.
  13. See *Colt et al. V. Industrial Trust Co. et al* 146 A 628 (1929)



# SOUTH CAROLINA

David A. Merline, Jr.  
Greenville  
February 17, 2000

1. §27-6-10. Uniform Statutory Rule Against Perpetuities Title 27, Chapter 6 of the Code of Laws of South Carolina 1976.
2. §27-6-80 of the Code of Laws of South Carolina 1976 specifically states, "This chapter supersedes the common law rule against perpetuities."
3. §27-6-20
4. In §27-6-60(B), if a nonvested interest created before the effective date is judicially determined to violate the State's rule against perpetuities as it existed before this effective date, a court "shall" (versus "may" in the USRAP) reform the disposition.
5. §27-6-50 (1)
6. §27-6-50 (2)
7. §27-6-50 (4)
8. §27-6-50 (5)
9. §27-6-50 (6)
10. §27-6-50 (7); §27-5-70
11. (1) Power to appoint a fiduciary. §27-6-50 (3).  
(2) A business trust; §27-6-50 (7); §33-53-30
12. This issue is not addressed in the South Carolina Uniform Statutory Rule Against Perpetuities or in case law.
13. Most practitioners believe that a measuring life outside the testator's family is unnecessary, since a broad class can be obtained by simply using the lineal descendants of the testator's grandparents.

14. I am not aware of any case law with such a holding.

# SOUTH DAKOTA

Herb C. Sundall  
Kennebec  
February 22, 2000

1. South Dakota repealed its rule against perpetuities in 1983.
2. SDCL 43-5-8. The cited statute expressly provides the common law rule against perpetuities is NOT in force in South Dakota.
3. Such a statute has not been enacted.
4. It should be noted, though, that South Dakota does have a rule against suspension of the power of alienation as codified in SDCL 43-5-1. This statute provides that the power of alienation may not be suspended for a period longer than the continuance of the lives of persons in being plus 30 years. A subsequent statute also provides, however, that while the suspension of the power to alienate trust property is within the ambit of the statute, a violation of the rule is avoided if the trustee has the power to sell, or if there is an unlimited power to terminate in one or more persons in being. See SDCL 43-5-4. This latter provision allows the so called South Dakota Dynasty Trusts to avoid the rule against suspension of the power of alienation. Therefore, this provision, combined with the fact South Dakota has no rule against perpetuities, allows South Dakota Dynasty Trusts to be perpetual in duration.

# TENNESSEE

Michel G. Kaplan  
Nashville  
November 18, 1998

1. T.C.A. §§66-1-202-208. Newly enacted in 1994, effective for non vested property interest and unexercised powers of appointment regardless of

whether they were created before or after July 1, 1994.

2. T.C.A. §§66-1-202-208
3. Based on USRAP. T.C.A. §§66-1-206. Based on USRAP wait and see during 90 year period.
4. T.C.A. §66-205 (1)
5. T.C.A. §66-205 (2) & (3)
6. T.C.A. §66-205 (4)
7. T.C.A. §66-205 (5)
8. T.C.A. §66-205 (6)
9. T.C.A. §24-5-112. Statute creates a rebuttable presumption.
10. T.C.A. §24-5-112.
11. Unable to find any case dealing with malpractice against an attorney in a matter involving a violation of the rule against perpetuities.

## TEXAS

Thomas C. Baird  
Temple  
March 15, 1999

1. But there is a conflict between Prop. Code & Trust Code
2. Unknown

## UTAH

Mark E. Lehman  
Salt Lake City  
December 28, 1998

There are no notes for Utah.

## VERMONT

Christopher Stoneman  
Woodstock  
December 15, 1998

1. *In re Peck's Estate*, 96 Vt. 183, 118 Atl. 527 (1922) a modified by 14 V.S.A. §501
2. 27 V.S.A. §501. Determination whether violation of Rule has occurred is to be measured by actual rather than possible events. Interests which violate are to be reformed so a best to approximate creator's intent.
3. 27 V.S.A. §501
4. "Any interest in real or personal property" is within statute.
5. Common law rule applies, subject to "wait and see".
6. No basis for answer either way. Your reporter customarily uses family members.
7. Unaware of any such holding

## VIRGINIA

Thomas H. Campbell  
Fairfax  
February 25, 2000

1. *Skeen v. Clinchfield Coal Corp.* 119 S.E. 89 Va. 397 (1923) Va. Code §55.13 et seq.
2. Va. Code §55.13 et seq.
3. Va. Code §55.13.3 (B). The court of equity in the city or county where the affected property is located determines the transferor's manifested plan of distribution, and the property is disposed of in the manner that most closely effectuates that plan which is within the limits of the rule against perpetuities. Cy Pres applies only to donative

transfers.

4. Va. Code §55.13.3 (B). Reformation occurs when a donative transfer does not vest or cannot vest within the period of the rule against perpetuities. If there is a possibility that the interest will not vest, the “wait and see” doctrine applies.
5. Va. Code §55.13.3 (A)
6. Va. Code §55.13.3 (A). The statute provides that a transfer fails if the transferred interest does not vest, if it ever vests, within the period of the rule against perpetuities. By common law, this period is a life or lives in being plus 21 years and 10 months. *Burruss v. Baldwin*, 103 S.E. 2d 249, 199 Va. 883 (1983)
7. The Virginia statute does not specifically reference measuring lives, so it appears that the common law rule continues to apply.
8. It appears that the “wait and see” doctrine applies to all interest covered by the common law rule against perpetuities. However, the common law rule does not apply to presently exercisable general powers of appointment.
9. Va. Code §55.13. Limitations in any deed or will contingent upon the dying of any person without heirs, issue, children, etc., are construed to mean a definite failure of issue determined at that person's death. This was the first statutory provision to modify the effects of the Common Law rule against perpetuities. Enacted in 1919, it codified the judicial interpretation given to such limitations since 1820.
10. The common law exceptions for charitable transfers applies in Virginia. *Maguire v. Loyd*, 67 S.E. 2d 885, 193 Va. 138 (1952). However, this has been modified by statute; certain interests are subjected to a “wait and see” version of the rule against perpetuities. Va. Code §55-13.3 (C)
11. Va. Code §55-13.1
12. Va. Code §57.31
13. Va. Code §55-79.52(b) (Condominium Act). Va. Code §55-79.36 (Horizontal Property)
14. Va. Code §55-515.2 (Property Owner's Association Act)
15. (1) Real estate cooperatives. Va. Code §55-440  
(2) Real estate investment trusts. Va. Code §6.1-351.
16. Virginia's common law rule appears to apply unless changed by statute. No statute references the presumption of fertility; however, the “wait and see” doctrine renders the presumption inapplicable in most cases.
17. It would be very unusual to encounter such a provision in a document prepared by a Virginia practitioner.
18. A search of the authorities reveals no case where it has been held that a violation of the rule against perpetuities constitutes malpractice.
19. *Citgo Petroleum Corp. v. Hopper*, 429 S.E. 2d 6, 245 Va. 363 (1993). The rule against perpetuities does not apply to an option to purchase when the option is appendant to a long-term commercial lease and exercisable within the term of the lease. The rule against perpetuities does apply to option in gross. *The Ryland Group v. Wills*, 331 S.E. 2d 399, 229 Va. 459 (1985); *United Virginia Bank v. Union Oil*, 197 S.E.2d 174, 214 Va. 48 (1973)

## WASHINGTON

T. Randall Grove  
Vancouver  
April 20, 1999

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1. RCW 11.98.130 to 11.98.910. Common law rules apply for non trust interests. For trust interests that violate the common law rule, a statutory wait and see period extends the common law.

2. RCW 11.98.130 to 11.98.910. Statutory wait and see extends for the life of any life in being during which the trust is to continue or any portion of such life, plus 21 years. Then Cy Pres.
3. RCW 11.98.150. Court has power to distribute any trust interest that does not distribute or vest at end of statutory wait and see, giving effect to settlor's general intent.
4. RCW 11.98.130 & .150. Conditional on violation of common law rule AND expiration of statutory wait and see.
5. RCW 11.98.130. Wait and see conditioned on lives in being at creation of interest if trust continues during such lives.
6. RCW 11.98.130. Applies to any interest created by a trust, including powers of appointment.
7. *Betchard v. Iverson*, 35 Wn 2d 344 (1949)

## WEST VIRGINIA

Thomas G. Freeman, II  
Charleston  
February 9, 2000

1. §36-1A-1
2. §36-1A-1 (a) (2); §36-1A-1 (b) (2); §36-1A-1(c) (2)
3. Omits §1 (e) of USRAP (effect of "later of" language). Omits last sentence of §2 (b) (concerning joint powers of appointment and community property or Uniform Marital Property Act)
4. §36-1A-4 (1)
5. §36-1A-4 (2)
6. §36-1A-4 (4)
7. §36-1A-4 (5)

8. §36-1A-4 (6)
9. (1) A power to appoint a fiduciary. §36-1A-4 (3)  
(2) Common law and statutory exceptions. §36-1A-4 (7)
10. *Carney v. Kain*, 40 W.Va. 758, 23 S.E. 650 (1895)

## WISCONSIN

David W. Reinecke  
Madison  
February 23, 2000

1. However, Wisconsin law has a somewhat similar rule called the Rule Against Suspension of Alienation. Wis. Stat. §700.16. It is a rule against the idea of tying up of the ability to transfer property longer than lives in being plus 30 years, or 30 years after the restriction becomes irrevocable. The Rule Against the Suspension of Alienation, however, is not applicable so long as the trustee has the authority to sell trust assets. Since this power is normally conferred to trustees, the Rule Against the Suspension of Alienation normally does not provide an impediment to drafting perpetual trusts in Wisconsin. The prevention of perpetuities, so far as accomplished by the statute, is an incidental effect. See *Becker v. Chester*, 91 N.W. 87, 115 Wis. 90 (Wis. 1902).
2. Wisconsin has no statute concerning perpetuities, but rather only has a statute relating to the suspension of power of alienation as explained above. The statute in Wis. Stats. §700.16.
3. The common law rule against perpetuities is not in force in the State of Wisconsin. Wis. Stat. §700.16 (5).
4. As discussed above, Wisconsin has statutorily and expressly revoked the Rule Against Perpetuities. Wis. Stat. §700.16(5). Wisconsin does not have a Rule Against Perpetuities and does not follow USRAP. However §700.16 of Wisconsin Statutes provides for a Rule Against the Suspension of

Alienation, as discussed above.

5. The Cy Pres doctrine applies only where the general charitable purposes can be found in terms of bequest or gift, and the specific purpose thereof has become impracticable or impossible. See *Saletri v. Clark*, 108 N.W. 2d 548, 13 Wis. 2d. 325 (1961).
6. For application of the Cy Pres doctrine, at common law or under §701.10(2), a finding is required that complying with the trust's stated purpose has become impossible, unlawful or impracticable, and "impracticable" is not synonymous with "unfair." See *In re Oshkosh Foundation*, 213 N.W. 2d 54, 61 Wis. 2d 432 (1973).
7. Wisconsin does not have Immediate Cy Pres, Wisconsin has Judicial Cy Pres. The Judicial Cy Pres doctrine in essence is that when a charitable purpose cannot be fulfilled according to its terms, equity allows the court to attempt to do the next best but similar charitable thing. See *In re Bletsch's Estate*, 130 N.W. 2d 275, 25 Wis. 2d 40 (1964).
8. Wisconsin does not have Immediate Cy Pres.
9. Wisconsin does not need a savings clause because it does not have a Rule Against Perpetuities. Wisconsin's rule against suspension of alienation specifies that a future interest or trust is void if it suspends the power of alienation for longer than lives in being plus 30 years. See Wis. Stat. §700.16. However, the trust can go on in perpetuity as long as a trustee can sell the property.
10. Wisconsin has no Rule Against Perpetuities. Exceptions to the Rule Against Suspension of Power of Alienation are provided in Wis. Stat. §700.16(4).
11. The power of alienation is only suspended when there are no persons in being who, alone or in combination with others, can convey an absolute fee in possession of land, or full ownership of

personalty. See §700.16(2).

12. The common law Rule Against Perpetuity is not in force in Wisconsin.

## WYOMING

We received no response from this state.

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