

2202

2011-2012 Regular Sessions

I N A S S E M B L Y

January 14, 2011

Introduced by M. of A. WRIGHT -- read once and referred to the Committee on Judiciary

AN ACT to amend the estates, powers and trusts law and the insurance law, in relation to creating a Uniform Statutory Rule Against Perpetuities and repealing part 1 of article 9 of the estates, powers and trusts law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Part 1 of article 9 of the estates, powers and trusts law
2 is REPEALED and a new part 1 of article 9 is added to read as follows:
3 PART 1. UNIFORM STATUTORY RULE AGAINST PERPETUITIES
4 SECTION 9-1.1 SHORT TITLE
5 9-1.2 VALIDITY OF NONVESTED PROPERTY INTEREST OR POWER OF
6 APPOINTMENT
7 9-1.3 CREATION OF PROPERTY INTERESTS AND POWERS OF APPOINTMENT
8 9-1.4 REFORMATION OF PROPERTY DISPOSITIONS
9 9-1.5 EXCEPTIONS TO RULE
10 9-1.6 EFFECT OF TIMING OF CREATION OF PROPERTY INTEREST; SAVINGS
11 CLAUSE
12 9-1.7 APPLICATION AND CONSTRUCTION
13 9-1.8 EFFECT ON COMMON LAW
14 S 9-1.1 SHORT TITLE
15 THIS PART SHALL BE KNOWN AS AND MAY BE CITED AS THE "UNIFORM STATUTORY
16 RULE AGAINST PERPETUITIES."
17 S 9-1.2 VALIDITY OF NONVESTED PROPERTY INTEREST OR POWER OF APPOINTMENT
18 (A) A NONVESTED PROPERTY INTEREST IS INVALID UNLESS:
19 (1) WHEN THE INTEREST IS CREATED, IT IS CERTAIN TO VEST OR TERMINATE
20 NO LATER THAN TWENTY-ONE YEARS AFTER THE DEATH OF AN INDIVIDUAL THEN
21 ALIVE; OR
22 (2) THE INTEREST EITHER VESTS OR TERMINATES WITHIN NINETY YEARS AFTER
23 ITS CREATION.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

LBD05674-01-1

1 (B) A GENERAL POWER OF APPOINTMENT NOT PRESENTLY EXERCISABLE BECAUSE
2 OF A CONDITION PRECEDENT IS INVALID UNLESS:

3 (1) WHEN THE POWER IS CREATED, THE CONDITION PRECEDENT IS CERTAIN TO
4 BE SATISFIED OR BECOME IMPOSSIBLE TO SATISFY NO LATER THAN TWENTY-ONE
5 YEARS AFTER THE DEATH OF AN INDIVIDUAL THEN ALIVE; OR

6 (2) THE CONDITION PRECEDENT EITHER IS SATISFIED OR BECOMES IMPOSSIBLE
7 TO SATISFY WITHIN NINETY YEARS AFTER ITS CREATION.

8 (C) A NONGENERAL POWER OF APPOINTMENT OR A GENERAL TESTAMENTARY POWER
9 OF APPOINTMENT IS INVALID UNLESS:

10 (1) WHEN THE POWER IS CREATED, IT IS CERTAIN TO BE IRREVOCABLY EXER-
11 CISED OR TO TERMINATE NO LATER THAN TWENTY-ONE YEARS AFTER THE DEATH OF
12 AN INDIVIDUAL THEN ALIVE; OR

13 (2) THE POWER IS IRREVOCABLY EXERCISED OR TERMINATES WITHIN NINETY
14 YEARS AFTER ITS CREATION.

15 (D) IN DETERMINING WHETHER A NONVESTED PROPERTY INTEREST OR A POWER OF
16 APPOINTMENT IS VALID PURSUANT TO SUBPARAGRAPH ONE OF PARAGRAPH (A),
17 SUBPARAGRAPH ONE OF PARAGRAPH (B), OR SUBPARAGRAPH ONE OF PARAGRAPH (C)
18 OF THIS SECTION, THE POSSIBILITY THAT A CHILD WILL BE BORN TO AN INDI-
19 VIDUAL AFTER THE INDIVIDUAL'S DEATH IS DISREGARDED.

20 S 9-1.3 CREATION OF PROPERTY INTERESTS AND POWERS OF APPOINTMENT

21 (A) EXCEPT AS PROVIDED IN PARAGRAPHS (B) AND (C) OF THIS SECTION AND
22 IN PARAGRAPH (A) OF SECTION 9-1.6 OF THIS PART, THE TIME OF CREATION OF
23 A NONVESTED PROPERTY INTEREST OR A POWER OF APPOINTMENT IS DETERMINED
24 UNDER GENERAL PRINCIPLES OF PROPERTY LAW.

25 (B) IF THERE IS A PERSON WHO ALONE CAN EXERCISE A POWER CREATED BY A
26 GOVERNING INSTRUMENT TO BECOME THE UNQUALIFIED BENEFICIAL OWNER OF (I) A
27 NONVESTED PROPERTY INTEREST OR (II) A PROPERTY INTEREST SUBJECT TO A
28 POWER OF APPOINTMENT PURSUANT TO PARAGRAPHS (B) AND (C) OF SECTION 9-1.2
29 OF THIS PART, THE NONVESTED PROPERTY INTEREST OR POWER OF APPOINTMENT IS
30 CREATED WHEN THE POWER TO BECOME THE UNQUALIFIED BENEFICIAL OWNER TERMI-
31 NATES. A JOINT POWER WITH RESPECT TO MARITAL PROPERTY HELD BY INDIVID-
32 UALS MARRIED TO EACH OTHER IS A POWER EXERCISABLE BY ONE PERSON ALONE.

33 (C) A NONVESTED PROPERTY INTEREST OR A POWER OF APPOINTMENT ARISING
34 FROM A TRANSFER OF PROPERTY TO A PREVIOUSLY FUNDED TRUST OR OTHER EXIST-
35 ING PROPERTY ARRANGEMENT IS CREATED WHEN THE NONVESTED PROPERTY INTEREST
36 OR POWER OF APPOINTMENT IN THE ORIGINAL CONTRIBUTION WAS CREATED.

37 S 9-1.4 REFORMATION OF PROPERTY DISPOSITIONS

38 (A) UPON THE PETITION OF AN INTERESTED PERSON, A COURT SHALL REFORM A
39 DISPOSITION IN THE MANNER THAT MOST CLOSELY APPROXIMATES THE
40 TRANSFEROR'S MANIFESTED PLAN OF DISTRIBUTION AND IS WITHIN THE NINETY
41 YEARS PERMITTED BY THIS CHAPTER IF:

42 (1) A NONVESTED PROPERTY INTEREST OR A POWER OF APPOINTMENT BECOMES
43 INVALID;

44 (2) A CLASS GIFT IS NOT BUT MAY BECOME INVALID PURSUANT TO SECTION
45 9-1.2 OF THIS PART AND THE TIME HAS ARRIVED WHEN THE SHARE OF ANY CLASS
46 MEMBER IS TO TAKE EFFECT IN POSSESSION OR ENJOYMENT; OR

47 (3) A NONVESTED PROPERTY INTEREST THAT IS NOT VALIDATED PURSUANT TO
48 SUBPARAGRAPH ONE OF PARAGRAPH (A) OF SECTION 9-1.2 OF THIS PART CAN VEST
49 BUT NOT WITHIN NINETY YEARS AFTER ITS CREATION.

50 S 9-1.5 EXCEPTIONS TO RULE

51 SECTION 9-1.2 OF THIS PART DOES NOT APPLY TO:

52 (A) A NONVESTED PROPERTY INTEREST OR A POWER OF APPOINTMENT ARISING
53 OUT OF A NONDONATIVE TRANSFER, EXCEPT A NONVESTED PROPERTY INTEREST OR A
54 POWER OF APPOINTMENT ARISING OUT OF:

55 (1) A PREMARITAL OR POSTMARITAL AGREEMENT;

56 (2) A SEPARATION OR DIVORCE SETTLEMENT;

1 (3) A SPOUSE'S ELECTION;

2 (4) A SIMILAR ARRANGEMENT ARISING OUT OF A PROSPECTIVE, EXISTING, OR
3 PREVIOUS MARITAL RELATIONSHIP BETWEEN THE PARTIES;

4 (5) A CONTRACT TO MAKE OR NOT TO REVOKE A WILL OR TRUST;

5 (6) A CONTRACT TO EXERCISE OR NOT TO EXERCISE A POWER OF APPOINTMENT;

6 (7) A TRANSFER IN SATISFACTION OF A DUTY OF SUPPORT; OR

7 (8) A RECIPROCAL TRANSFER;

8 (B) A FIDUCIARY'S POWER RELATING TO THE ADMINISTRATION OR MANAGEMENT
9 OF ASSETS, INCLUDING THE POWER OF A FIDUCIARY TO SELL, LEASE, OR MORT-
10 GAGE PROPERTY, AND THE POWER OF A FIDUCIARY TO DETERMINE PRINCIPAL AND
11 INCOME;

12 (C) A POWER TO APPOINT A FIDUCIARY;

13 (D) A DISCRETIONARY POWER OF A TRUSTEE TO DISTRIBUTE PRINCIPAL BEFORE
14 TERMINATION OF A TRUST TO A BENEFICIARY HAVING AN INDEFEASIBLY VESTED
15 INTEREST IN THE INCOME AND PRINCIPAL;

16 (E) A NONVESTED PROPERTY INTEREST HELD BY A CHARITY, GOVERNMENT, OR
17 GOVERNMENTAL AGENCY OR SUBDIVISION, IF THE NONVESTED PROPERTY INTEREST
18 IS PRECEDED BY AN INTEREST HELD BY ANOTHER CHARITY, GOVERNMENT, OR
19 GOVERNMENTAL AGENCY OR SUBDIVISION;

20 (F) A NONVESTED PROPERTY INTEREST IN OR A POWER OF APPOINTMENT WITH
21 RESPECT TO A TRUST OR OTHER PROPERTY ARRANGEMENT FORMING PART OF A
22 PENSION, PROFIT-SHARING, STOCK BONUS, AND HEALTH, DISABILITY, DEATH
23 BENEFIT, INCOME DEFERRAL, OR OTHER CURRENT OR DEFERRED BENEFIT PLAN FOR
24 ONE OR MORE EMPLOYEES, INDEPENDENT CONTRACTORS, OR THEIR BENEFICIARIES
25 OR SPOUSES, TO WHICH CONTRIBUTIONS ARE MADE FOR THE PURPOSE OF DISTRIB-
26 UTING TO OR FOR THE BENEFIT OF THE PARTICIPANTS OR THEIR BENEFICIARIES
27 OR SPOUSES THE PROPERTY, INCOME, OR PRINCIPAL IN THE TRUST OR OTHER
28 PROPERTY ARRANGEMENT, EXCEPT A NONVESTED PROPERTY INTEREST OR A POWER OF
29 APPOINTMENT THAT IS CREATED BY AN ELECTION OF A PARTICIPANT OR A BENEFI-
30 CIARY OR SPOUSE; OR

31 (G) A PROPERTY INTEREST, POWER OF APPOINTMENT, OR ARRANGEMENT THAT WAS
32 NOT SUBJECT TO THE COMMON LAW RULE AGAINST PERPETUITIES OR IS EXCLUDED
33 BY ANOTHER STATUTE OF THIS STATE, INCLUDING, BUT NOT LIMITED TO, THE
34 INTERESTS, POWERS, AND ARRANGEMENTS.

35 S 9-1.6 EFFECT OF TIMING OF CREATION OF PROPERTY INTEREST; SAVINGS
36 CLAUSE

37 (A) EXCEPT AS EXTENDED BY PARAGRAPH (B) OF THIS SECTION, THIS PART
38 APPLIES TO A NONVESTED PROPERTY INTEREST OR A POWER OF APPOINTMENT THAT
39 IS CREATED ON OR AFTER JULY FIRST, NINETEEN HUNDRED EIGHTY-SEVEN. FOR
40 PURPOSES OF THIS SECTION, A NONVESTED PROPERTY INTEREST OR A POWER OF
41 APPOINTMENT CREATED BY THE EXERCISE OF A POWER OF APPOINTMENT IS CREATED
42 WHEN THE POWER IS IRREVOCABLY EXERCISED OR WHEN A REVOCABLE EXERCISE
43 BECOMES IRREVOCABLE.

44 (B) IF A NONVESTED PROPERTY INTEREST OR A POWER OF APPOINTMENT WAS
45 CREATED BEFORE JULY FIRST, NINETEEN HUNDRED EIGHTY-SEVEN, AND IS DETER-
46 MINED IN A JUDICIAL PROCEEDING, COMMENCED ON OR AFTER JULY FIRST, NINE-
47 TEEN HUNDRED EIGHTY-SEVEN, TO VIOLATE THIS STATE'S RULE AGAINST PERPETU-
48 ITIES AS THAT RULE EXISTED BEFORE JULY FIRST, NINETEEN HUNDRED
49 EIGHTY-SEVEN, A COURT UPON THE PETITION OF AN INTERESTED PERSON SHALL
50 REFORM THE DISPOSITION BY INSERTING A SAVINGS CLAUSE THAT PRESERVES MOST
51 CLOSELY THE TRANSFEROR'S PLAN OF DISTRIBUTION AND THAT BRINGS THAT PLAN
52 WITHIN THE LIMITS OF THE RULE AGAINST PERPETUITIES APPLICABLE WHEN THE
53 NONVESTED PROPERTY INTEREST OR POWER OF APPOINTMENT WAS CREATED.

54 S 9-1.7 APPLICATION AND CONSTRUCTION

1 THIS PART SHALL BE APPLIED AND CONSTRUED TO EFFECTUATE ITS GENERAL
2 PURPOSE TO MAKE UNIFORM THE LAW WITH RESPECT TO THE SUBJECT OF THIS
3 CHAPTER AMONG STATES ENACTING IT.

4 S 9-1.8 EFFECT ON COMMON LAW

5 THIS PART SUPERSEDES THE COMMON LAW RULE AGAINST PERPETUITIES.

6 S 2. Paragraph 8 of subsection (a) of section 7302 of the insurance
7 law is amended to read as follows:

8 (8) In pursuance of any such plan to convert a domestic stock life
9 insurance company into a mutual life insurance company, such company
10 shall have power, and shall be privileged, to acquire any of its shares
11 by gift, bequest, or purchase. Until all of its outstanding shares are
12 acquired, any shares so acquired shall be taken and held in trust for
13 all the policyholders of such company, by the trustees named in such
14 plan. Before undertaking any of the duties of the appointment each trust-
15 tee shall file with the company an acceptance of the appointment and a
16 declaration that he will faithfully discharge his duties as trustee,
17 subscribed and affirmed by him as true under the penalties of perjury.
18 All shares held by the trustees shall be deemed admitted assets of the
19 company at their par value. The trustees shall have power to vote any
20 shares so acquired at all corporate meetings at which shareholders have
21 the right to vote. All dividends and other sums received by such trust-
22 tees on the shares acquired by them, after paying the necessary expenses
23 of the trust, shall be immediately repaid to such company for the bene-
24 fit of all who are or may become policyholders of such company and enti-
25 tled to participate in the profits thereof, and shall be added to and
26 become a part of the surplus earned by such company, apportionable as a
27 part of such surplus among such policyholders. The provisions of
28 section six hundred twenty-one of the business corporation law and [of
29 section 9-1.1] PART ONE OF ARTICLE NINE of the estates, powers and
30 trusts law shall not apply to the trust hereinbefore authorized.

31 S 3. The opening paragraph of paragraph (c) of section 7-2.1 of the
32 estates, powers and trusts law, as added by chapter 1031 of the laws of
33 1973, is amended to read as follows:

34 A trust as described [in sections 9-1.5, 9-1.6 and 9-1.7] PURSUANT TO
35 PART ONE OF ARTICLE NINE of [the estates, powers and trusts law] THIS
36 CHAPTER, including a business trust as defined in subdivision two of
37 section two of the general associations law, may acquire property in the
38 name of the trust as such name is designated in the instrument creating
39 said trust. Any property, so acquired can be conveyed, encumbered or
40 otherwise disposed of only in such name by a conveyance, encumbrance or
41 other instrument executed by:

42 S 4. Subparagraph 8 of paragraph (a) of section 11-2.2 of the estates,
43 powers and trusts law, as amended by chapter 217 of the laws of 1991, is
44 amended to read as follows:

45 (8) Investment by a fiduciary in a limited partnership or investment
46 trust, as defined in [9-1.5] ARTICLE NINE of this chapter, shall not be
47 deemed to be an improper delegation of investment authority.

48 S 5. This act shall take effect on the first of September next
49 succeeding the date on which it shall have become a law.