S T A T E O F N E W Y O R K

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:

Section 1. Part 1 of article 9 of the estates, powers and trusts law is REPEALED and a new part 1 of article 9 is added to read as follows:

PART 1. UNIFORM STATUTORY RULE AGAINST PERPETUITIES

SECTION 9-1.1 SHORT TITLE
9-1.2 VALIDITY OF NONVESTED PROPERTY INTEREST OR POWER OF APPOINTMENT
9-1.3 CREATION OF PROPERTY INTERESTS AND POWERS OF APPOINTMENT
9-1.4 REFORMATION OF PROPERTY DISPOSITIONS
9-1.5 EXCEPTIONS TO RULE
9-1.6 EFFECT OF TIMING OF CREATION OF PROPERTY INTEREST; SAVINGS CLAUSE
9-1.7 APPLICATION AND CONSTRUCTION
9-1.8 EFFECT ON COMMON LAW

S 9-1.1 SHORT TITLE

THIS PART SHALL BE KNOWN AS AND MAY BE CITED AS THE "UNIFORM STATUTORY RULE AGAINST PERPETUITIES."

S 9-1.2 VALIDITY OF NONVESTED PROPERTY INTEREST OR POWER OF APPOINTMENT

(A) A NONVESTED PROPERTY INTEREST IS INVALID UNLESS:

(1) WHEN THE INTEREST IS CREATED, IT IS CERTAIN TO VEST OR TERMINATE NO LATER THAN TWENTY-ONE YEARS AFTER THE DEATH OF AN INDIVIDUAL THEN ALIVE; OR

(2) THE INTEREST EITHER VESTS OR TERMINATES WITHIN NINETY YEARS AFTER ITS CREATION.

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

LBD05674-01-1

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

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

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

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

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

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

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

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

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

(B) IF THERE IS A PERSON WHO ALONE CAN EXERCISE A POWER CREATED BY A GOVERNING INSTRUMENT TO BECOME THE UNQUALIFIED BENEFICIAL OWNER OF (I) A NONVESTED PROPERTY INTEREST OR (II) A PROPERTY INTEREST SUBJECT TO A POWER OF APPOINTMENT PURSUANT TO PARAGRAPHS (B) AND (C) OF SECTION 9-1.2 OF THIS PART, THE NONVESTED PROPERTY INTEREST OR POWER OF APPOINTMENT IS CREATED WHEN THE POWER TO BECOME THE UNQUALIFIED BENEFICIAL OWNER TERMINATES. A JOINT POWER WITH RESPECT TO MARITAL PROPERTY HELD BY INDIVIDUALS MARRIED TO EACH OTHER IS A POWER EXERCISABLE BY ONE PERSON ALONE.

(C) A NONVESTED PROPERTY INTEREST OR A POWER OF APPOINTMENT ARISING FROM A TRANSFER OF PROPERTY TO A PREVIOUSLY FUNDED TRUST OR OTHER EXISTING PROPERTY ARRANGEMENT IS CREATED WHEN THE NONVESTED PROPERTY INTEREST OR POWER OF APPOINTMENT IN THE ORIGINAL CONTRIBUTION WAS CREATED.

S 9-1.4 REFORMATION OF PROPERTY DISPOSITIONS

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

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

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

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

S 9-1.5 EXCEPTIONS TO RULE

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

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

(1) A PREMARITAL OR POSTMARITAL AGREEMENT;

(2) A SEPARATION OR DIVORCE SETTLEMENT;

(3) A SPOUSE'S ELECTION;
(4) A SIMILAR ARRANGEMENT ARISING OUT OF A PROSPECTIVE, EXISTING, OR PREVIOUS MARITAL RELATIONSHIP BETWEEN THE PARTIES;
(5) A CONTRACT TO MAKE OR NOT TO REVOKE A WILL OR TRUST;
(6) A CONTRACT TO EXERCISE OR NOT TO EXERCISE A POWER OF APPOINTMENT;
(7) A TRANSFER IN SATISFACTION OF A DUTY OF SUPPORT; OR
(8) A RECIPROCAL TRANSFER;
(B) A FIDUCIARY'S POWER RELATING TO THE ADMINISTRATION OR MANAGEMENT OF ASSETS, INCLUDING THE POWER OF A FIDUCIARY TO SELL, LEASE, OR MORTGAGE PROPERTY, AND THE POWER OF A FIDUCIARY TO DETERMINE PRINCIPAL AND INCOME;
(C) A POWER TO APPOINT A FIDUCIARY;
(D) A DISCRETIONARY POWER OF A TRUSTEE TO DISTRIBUTE PRINCIPAL BEFORE TERMINATION OF A TRUST TO A BENEFICIARY HAVING AN INDEFEASIBLY VESTED INTEREST IN THE INCOME AND PRINCIPAL;
(E) A NONVESTED PROPERTY INTEREST HELD BY A CHARITY, GOVERNMENT, OR GOVERNMENTAL AGENCY OR SUBDIVISION, IF THE NONVESTED PROPERTY INTEREST IS PRECEDED BY AN INTEREST HELD BY ANOTHER CHARITY, GOVERNMENT, OR GOVERNMENTAL AGENCY OR SUBDIVISION;
(F) A NONVESTED PROPERTY INTEREST IN OR A POWER OF APPOINTMENT WITH RESPECT TO A TRUST OR OTHER PROPERTY ARRANGEMENT FORMING PART OF A PENSION, PROFIT-SHARING, STOCK BONUS, AND HEALTH, DISABILITY, DEATH BENEFIT, INCOME DEFERRAL, OR OTHER CURRENT OR DEFERRED BENEFIT PLAN FOR ONE OR MORE EMPLOYEES, INDEPENDENT CONTRACTORS, OR THEIR BENEFICIARIES OR SPOUSES, TO WHICH CONTRIBUTIONS ARE MADE FOR THE PURPOSE OF DISTRIBUTING TO OR FOR THE BENEFIT OF THE PARTICIPANTS OR THEIR BENEFICIARIES OR SPOUSES THE PROPERTY, INCOME, OR PRINCIPAL IN THE TRUST OR OTHER PROPERTY ARRANGEMENT, EXCEPT A NONVESTED PROPERTY INTEREST OR A POWER OF APPOINTMENT THAT IS CREATED BY AN ELECTION OF A PARTICIPANT OR A BENEFICIARY OR SPOUSE; OR
(G) A PROPERTY INTEREST, POWER OF APPOINTMENT, OR ARRANGEMENT THAT WAS NOT SUBJECT TO THE COMMON LAW RULE AGAINST PERPETUITIES OR IS EXCLUDED BY ANOTHER STATUTE OF THIS STATE, INCLUDING, BUT NOT LIMITED TO, THE INTERESTS, POWERS, AND ARRANGEMENTS.
S 9-1.6 EFFECT OF TIMING OF CREATION OF PROPERTY INTEREST; SAVINGS CLAUSE
(A) EXCEPT AS EXTENDED BY PARAGRAPH (B) OF THIS SECTION, THIS PART APPLIES TO A NONVESTED PROPERTY INTEREST OR A POWER OF APPOINTMENT THAT IS CREATED ON OR AFTER JULY FIRST, NINETEEN HUNDRED EIGHTY-SEVEN. FOR PURPOSES OF THIS SECTION, A NONVESTED PROPERTY INTEREST OR A POWER OF APPOINTMENT CREATED BY THE EXERCISE OF A POWER OF APPOINTMENT IS CREATED WHEN THE POWER IS IRREVOCABLY EXERCISED OR WHEN A REVOCABLE EXERCISE BECOMES IRREVOCABLE.
(B) IF A NONVESTED PROPERTY INTEREST OR A POWER OF APPOINTMENT WAS CREATED BEFORE JULY FIRST, NINETEEN HUNDRED EIGHTY-SEVEN, AND IS DETERMINED IN A JUDICIAL PROCEEDING, COMMENCED ON OR AFTER JULY FIRST, NINETEEN HUNDRED EIGHTY-SEVEN, TO VIOLATE THIS STATE'S RULE AGAINST PERPETUITIES AS THAT RULE EXISTED BEFORE JULY FIRST, NINETEEN HUNDRED EIGHTY-SEVEN, A COURT UPON THE PETITION OF AN INTERESTED PERSON SHALL REFORM THE DISPOSITION BY INSERTING A SAVINGS CLAUSE THAT PRESERVES MOST CLOSELY THE TRANSFEROR'S PLAN OF DISTRIBUTION AND THAT BRINGS THAT PLAN WITHIN THE LIMITS OF THE RULE AGAINST PERPETUITIES APPLICABLE WHEN THE NONVESTED PROPERTY INTEREST OR POWER OF APPOINTMENT WAS CREATED.
S 9-1.7 APPLICATION AND CONSTRUCTION

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

S 9-1.8 EFFECT ON COMMON LAW

THIS PART SUPERSEDES THE COMMON LAW RULE AGAINST PERPETUITIES.

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

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

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

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

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

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

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