# CHAPTER 5-A

# RULE AGAINST PERPETUITIES

## §111. Statutory rule against perpetuities

**1. Validity of nonvested property interest.** A nonvested property interest is invalid unless:

A. When the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The interest either vests or terminates within 90 years after its creation. [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Validity of general power of appointment subject to a condition precedent.** A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

A. When the power is created, the condition precedent is certain to be satisfied or becomes impossible to satisfy no later than 21 years after the death of an individual then alive; or [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation. [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Validity of nongeneral or testamentary power of appointment.** A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

A. When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The power is irrevocably exercised or otherwise terminates within 90 years after its creation. [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**4. Possibility of post-death child disregarded.** In determining whether a nonvested property interest or a power of appointment is valid under subsection 1, paragraph A; subsection 2, paragraph A; or subsection 3, paragraph A, the possibility that a child will be born to an individual after the individual's death is disregarded.

[PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**5. Effect of certain "later of"-type language.** Language contained in a governing instrument that measures a period from the creation of a trust or other property arrangement is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives in being if the language seeks:

A. To disallow the vesting or termination of any interest or trust beyond the later of:

(1) The expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement; and

(2) The expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of the specified lives in being at the creation of the trust or other property arrangement; [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. To postpone the vesting or termination of any interest or trust until the later of:

(1) The expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement; and

(2) The expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of the specified lives in being at the creation of the trust or other property arrangement; or [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. To operate in effect in any fashion similar to that described in paragraph A or B upon the later of:

(1) The expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement; and

(2) The expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of the specified lives in being at the creation of the trust or other property arrangement. [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. B, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§112. When nonvested property interest or power of appointment created**

**1. General principles.** Except as provided in subsections 2 and 3 and in section 115, subsection 1, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

[PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Unqualified beneficial owner.** For purposes of this chapter, if there is an individual who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of a nonvested property interest or a property interest subject to a power of appointment described in section 111, subsection 2 or 3, the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

[PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Arising out of transfer of property.** For purposes of this chapter, a nonvested property interest or a power of appointment arising out of 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.

[PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. B, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§113. Reformation**

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 so that the reformed disposition is within the 90 years allowed by section 111, subsection 1, paragraph B; section 111, subsection 2, paragraph B; or section 111, subsection 3, paragraph B if: [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**1. Nonvested property interest or power of appointment.** A nonvested property interest or a power of appointment becomes invalid under section 111;

[PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Class gift.** A class gift is not but might become invalid under section 111 and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or
[PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Certain nonvested property interest not validated.** A nonvested property interest that is not validated by section 111, subsection 1, paragraph A can vest but not within 90 years after its creation.
[PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. B, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§114. Exclusions from statutory rule against perpetuities**

Section 111 does not apply to: [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**1. Nonvested property interest or power of appointment arising out of nondonative transfer; exceptions.** 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:

A. A premarital or postmarital agreement; [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. A separation or divorce settlement; [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. A spouse's election; [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. An arrangement similar to those described in paragraphs A, B and C arising out of a prospective, existing or previous marital relationship between the parties; [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. A contract to make or not to revoke a will or trust; [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. A contract to exercise or not to exercise a power of appointment; [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. A transfer in satisfaction of a duty of support; or [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

H. A reciprocal transfer; [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Fiduciary's power.** 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;
[PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Power to appoint fiduciary.** A power to appoint a fiduciary;
[PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**4. Discretionary power of trustee to distribute.** 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;
[PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**5. Nonvested property interest held by charity, government or governmental agency or subdivision.** 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;
[PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**6. Not subject to rule or excluded by other statute.** 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; or
[PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**7. Trusts to which rule does not apply.** A trust in which the governing instrument provides that the rule against perpetuities does not apply to the trust and under which the trustee or other individual to whom the power is properly granted or delegated has the power under the governing instrument, applicable statute or common law to sell, mortgage or lease property for any period of time beyond the period that is required for an interest created under the governing instrument to vest. This subsection applies to all trusts created by will or inter vivos instrument executed or amended on or after July 1, 2019 and to all trusts created by exercise of power of appointment granted under instruments executed or amended on or after July 1, 2019.
[PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. B, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§115. Application**

**1. Nonvested property interest or a power of appointment created prior to effective date of this chapter.** This subsection governs nonvested property interests and powers of appointment created prior to July 1, 2019.

A. Except as provided in section 116, subsection 1, this chapter may not be construed to invalidate or modify the terms of any limitation that would have been valid prior to August 20, 1955. [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. This chapter applies only to inter vivos instruments taking effect after August 20, 1955, to wills if the testator dies after August 20, 1955 and to appointments made after August 20, 1955, including appointments by inter vivos instruments or wills under powers created before August 20, 1955. [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Section 114, subsection 7 applies to all trusts created by will or inter vivos instrument executed or amended on or after July 1, 2019 and to all trusts created by exercise of power of appointment granted under instruments executed or amended on or after July 1, 2019. [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. If a nonvested property interest or a power of appointment was created before July 1, 2019 and is determined in a judicial proceeding, commenced on or after July 1, 2019, to violate this State's rule against perpetuities as that rule existed before July 1, 2019, a court upon the petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and so that the reformed disposition is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created. [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Nonvested property interest or a power of appointment created on or after July 1, 2019.** Except as provided by subsection 1, paragraph D, this chapter applies to a nonvested property interest or a power of appointment that is created on or after July 1, 2019.
[PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Creation by exercise of a power of appointment.** 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.
[PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. B, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§116. Contingent interests**

**1. Specified contingency within 30 years.** Except as provided in subsection 2, a fee simple determinable in land or a fee simple in land subject to a right of entry for condition broken becomes a fee simple absolute if the specified contingency does not occur within 30 years from the date when the fee simple determinable or the fee simple subject to a right of entry becomes possessory. If the specified contingency occurs within the 30 years, the succeeding interest, which may be an interest in a person other than the individual creating the interest or that individual's heirs, becomes possessory or the right of entry exercisable notwithstanding the rule against perpetuities.
[PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Contingency within period.** If a fee simple determinable in land or a fee simple in land subject to a right of entry for condition broken is so limited that the specified contingency must occur, if at all, within the period of the rule against perpetuities, the interests take effect as limited.
[PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Not applicable to public, charitable or religious purposes; grant to State or political subdivision.** This section does not apply:

A. If both the fee simple determinable and the succeeding interest or both the fee simple and the right of entry are for public, charitable or religious purposes; or [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. To a deed, gift or grant to the State or any political subdivision of the State. [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. B, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§117. Application of provisions**

This chapter applies to both legal and equitable interests. [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. B, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

**§118. Supersession**

This chapter supersedes the rule of the common law known as the rule against perpetuities and it replaces chapter 5. [PL 2017, c. 402, Pt. B, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. B, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

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