

**Department of Legislative Services**  
Maryland General Assembly  
2020 Session

**FISCAL AND POLICY NOTE**  
**Third Reader**

Senate Bill 152

(Senator West)

Judicial Proceedings

Judiciary

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**Estates and Trusts - Rule Against Perpetuities**

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This bill limits a statutory exception to the rule against perpetuities that establishes that the rule does not apply to an option of a tenant to purchase all or part of the premises leased by the tenant. The bill limits the exception so that it applies to an option that is exercisable only during the term of the lease. The bill applies only prospectively and may not be applied or interpreted to have any effect on or application to any option to purchase leased premises granted before the effective date of the bill.

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**Fiscal Summary**

**State Effect:** The bill does not materially affect State operations or finances.

**Local Effect:** The bill does not materially affect local operations or finances.

**Small Business Effect:** None.

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**Analysis**

**Current Law/Background:** The common law rule against perpetuities finds its origins from the original English common law case, *The Duke of Norfolk's Case* (1682). The Court of Appeals of Maryland has specified that the rule against perpetuities states “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.” *Ferrero Construction Co. v. Dennis Rourke Corp.*, 311 Md. 560, 536 A.2d 1137 (1988).

Future interests in property can be either vested or nonvested. A vested interest currently belongs to someone, even though the person to whom it belongs may not come into

possession of the property for years. Generally, the term “vested” signifies that there has been a fixation of a present right to either the immediate or the future enjoyment of property. A nonvested interest belongs to no one until some event in the future determines who actually will take the interest. Nonvested future interests were brought into American property law from English common law.

Limitations were placed on nonvested future interests, chiefly through the rule against perpetuities, because the law does not favor nonvested future interests that cannot vest, or will not vest, within a recognizable period of time. The common law rule depends on possible, not actual, events, and any hypothetical violation of the rule extinguishes a future interest. The rule also does not simply apply to estates and trusts, but also in commercial transactions. *Commonwealth Realty Corp. v. Bowers*, 261 Md. 285 (1971). Consequently, many real estate and commercial contracts and documents that create preemptive rights are technically void because they violate the rule.

The State has adopted 13 exceptions to the rule against perpetuities; those include (1) an option of a tenant to renew a lease and (2) an option of a tenant to purchase all or part of the premises leased by the tenant.

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### **Additional Information**

**Prior Introductions:** HB 1360 of 2019 was referred to the House Rules and Executive Nominations Committee, but no further action was taken.

**Designated Cross File:** HB 94 (Delegate Rosenberg) - Judiciary.

**Information Source(s):** Comptroller’s Office; Judiciary (Administrative Office of the Courts); Register of Wills; Department of Legislative Services

**Fiscal Note History:** First Reader - January 20, 2020  
af/sdk Third Reader - February 6, 2020

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Analysis by: Donovan A. Ham

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510