

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

House Bill 188

(Delegate Rosenberg)

Judiciary

Judicial Proceedings

Estates, Trusts, and Real Property - Rule Against Perpetuities

This bill modifies the application of the common law rule against perpetuities by adding to the exceptions from the rule.

Fiscal Summary

State Effect: Any effect on Transportation Trust Fund (TTF) revenues derived from land parcels reacquired by their former owners under the bill cannot be accurately predicted, but is assumed to be minimal.

Local Effect: The bill would not directly affect local government finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary: The rule against perpetuities does not apply to:

- a tenant's option to renew a lease;
- a tenant's option to purchase all or part of leased premises;
- a userfructuary's right to extend the scope of an easement or profit;
- the right of a county, a municipality, a person from whom land is acquired, or the successor-in-interest of a person from whom land is acquired, to acquire land from the State under provisions governing the disposal of unneeded land by the State Highway Administration; or

- a right or privilege, including an option, warrant, pre-emptive right, right of first refusal, right of first option, right of first negotiation, call right, exchange right, or conversion right to acquire an interest in a domestic or foreign joint venture, partnership, limited liability partnership, limited partnership, limited liability limited partnership, corporation, cooperative limited liability company, business trust, or similar enterprise, whether the interest is characterized as a joint venture interest, partnership interest, limited partnership interest, membership interest, security, stock, or otherwise;
- a nondonative (given for consideration other than nominal consideration) property interest, as defined under the bill, that becomes effective on or after October 1, 2007.

A nondonative property interest becomes effective as of its delivery date. The delivery date is presumed to be the later of: (1) the date of the property interest's last acknowledgment, if any; or (2) the date stated in the document creating the property interest.

A nondonative property interest that becomes effective on or after October 1, 2007 is void unless it is not subject to the rule against perpetuities or it exercised or vested within the applicable time period.

A document creating a nondonative property interest that does not state a date or make reference to lives in being by which the property interest must be exercised or vested is void unless exercised or vested within seven years after the property interest's effective date.

A document creating a nondonative property interest that either expressly states a date or makes reference to lives in being by which the property must exercised or one from which the date may be determined is void on the earlier of the expressed or determined date or 60 years after the effective date.

A document creating a nondonative property interest that refers to one or more lives in being for determining the date by which the property interest must be exercised or vested is void: (1) at the end of the period of time referenced if the reference is to the duration of no more than 10 identified lives in being and no more than 21 years; or (2) at the end of 60 years if the reference is to the duration of more than 10 identified lives in being or to identified lives in being and more than 21 years.

Current Law: With limited exceptions, the common law rule against perpetuities applies in Maryland. Under the common law rule, a property interest, either real or personal, must vest within a life or lives in being (the lifetime of a living person) at the

time of the interest's creation, plus 21 years. The term of gestation is added in the case of a posthumous birth. In order to come within the rule the estate must be one that will not or may not vest within the vesting period. *Curtis v. Maryland Baptist Union Ass'n.*, 176 Md. 430 (1939). The rule does not apply to vested estates or interests, only future interests or estates; it applies to both legal and equitable interests.

By statute, the common rule against perpetuities does not apply to:

- a legacy or inter vivos conveyance, valued at \$5,000 or less, or of a burial lot of any value, in trust or otherwise, for specified care and upkeep;
- a legacy or inter vivos conveyance intended to transfer assets from any corporation incorporated for charitable objects, to any other charitable corporation on a contingency or future event;
- a trust created by an employer as part of a pension, stock bonus, disability, death benefit, profit-sharing, retirement, welfare, or other plan for the exclusive benefit of some of all of the employees or their beneficiaries, under specified circumstances;
- a trust for charitable purposes, including all purposes within the spirit or letter of the statute of charitable uses; or
- a trust in which the governing instrument states that the rule against perpetuities does not apply to the trust and under which the trustee, or other person to whom the power is properly granted or delegated, has the power to sell, lease, or mortgage property for a period of time beyond the period that is required for an interest created under the governing instrument to vest, so as to be good under the rule against perpetuities.

A legacy for charitable use may not be void because of an uncertainty about the donees if: (1) the will making the legacy also contains directions for the formation of a corporation to take it; and (2) a corporation is formed in accordance with directions, under specified circumstances, within 12 months from the probate of the will.

In applying the rule against perpetuities to an interest limited to take effect at or after the termination of one or more life estates in, or lives of, persons in being when the period of the rule begins to run, the validity of the interest must be determined on the basis of facts existing at the termination of one or more life estates or lives.

If land acquired for transportation or other public purposes will not be used, the State Highway Administration (SHA) must dispose of it as soon as practicable after the completion or abandonment of the project for which the land was acquired. If the Secretary of Transportation determines that land from an abandoned project is no longer

needed for any State transportation purpose, a county or municipality may acquire it for a transportation purpose, with the Secretary's approval, on payment of the lesser of: (1) the land's appraised value; or (2) the consideration originally paid for the land, plus simple interest at the fair market rate calculated from the time of acquisition to the time of disposition, and administrative costs.

If the land is not needed for a county or municipal transportation purpose, the person from whom the land was acquired or that person's successor in interest has the right to reacquire it, on payment of an amount equal to the lesser of: (1) the land's appraised value; or (2) the consideration originally paid for the land, plus simple interest at the fair market rate calculated from the time of acquisition to the time of disposition, and administrative costs.

If neither of those rights is exercised, the land must be disposed of in the same manner as if it were from a project that has been completed or as otherwise permitted.

For land from a completed project, SHA must notify the person from whom the property was acquired, or that person's successor in interest, within 30 days after making a determination that the land is not needed and is available for reacquisition. Within five years from the date the land was acquired, the person from whom it was acquired or that person's successor may reacquire the land, on payment of an amount equal to the consideration originally paid. After five years from the date the land was acquired, the person or the successor has the right to reacquire the land at the current market value.

Background: 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. 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. Many real estate and commercial contracts and documents that create preemptive rights are technically void because they violate the rule.

Most states have adopted statutory modifications to the common law rule against perpetuities. The National Conference of Commissioners of Uniform State Laws (NCCUSL) adopted a model law modifying the common law rule in 1986. Since its adoption, the NCCUSL model has been adopted in 26 states and the District of Columbia. Under the NCCUSL model, known as the Uniform Statutory Rule against Perpetuities, a

nonvested property interest is invalid unless: (1) when the interest is created, it is certain to vest or terminate within the lifetime of an individual then alive, or within 21 years after the death of that individual; or (2) the interest either vests or terminates within 90 years after its creation. Neither the bill nor current Maryland law reflects the NCCUSL model.

State Revenues: SHA advises that that it holds title to approximately 2,500 parcels at any given time. SHA further advises that it sells approximately 30 to 50 parcels annually, including transactions in which part of the original parcel has been used for a transportation project. Most of these are sold at fair market value. Annual TTF revenues from sales of surplus land range from approximately \$2 million to \$4 million.

Landowners who sell property to SHA have a statutory right to repurchase property unused after five years at its current fair market value. Some landowners may also have written into their sales contracts repurchase rights on terms more favorable than the statutory provisions. The number of parcels whose repurchase rights (statutory and/or contractual) would be affected by the bill; however, it is assumed that the overall effect would be minimal.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Maryland Department of Transportation, Office of the Attorney General, Department of Legislative Services

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