

IC 32-17-8

Chapter 8. Uniform Statutory Rule Against Perpetuities

IC 32-17-8-1

Application of chapter; reformation of disposition created before May 8, 1991

Sec. 1. (a) Except as provided in subsection (b), this chapter applies to a nonvested property interest or a power of appointment that is created on or after May 8, 1991. 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 May 8, 1991, and:

(1) is determined in a judicial proceeding commenced on or after May 8, 1991, to violate this state's rule against perpetuities as that rule existed before May 8, 1991; or

(2) may violate this state's rule against perpetuities as that rule existed before May 8, 1991;

a court upon the petition of an interested person shall reform the disposition by inserting a savings clause that most closely preserves the transferor's plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

As added by P.L.2-2002, SEC.2.

IC 32-17-8-2

Exclusions

Sec. 2. This chapter does not apply to the following:

(1) 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 any of the following:

(A) A premarital or postmarital agreement.

(B) A separation or divorce settlement.

(C) A spouse's election.

(D) A similar arrangement arising out of a prospective, an existing, or a previous marital relationship between the parties.

(E) A contract to make or not to revoke a will or trust.

(F) A contract to exercise or not to exercise a power of appointment.

(G) A transfer in satisfaction of a duty of support.

(H) A reciprocal transfer.

(2) 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.

- (3) A power to appoint a fiduciary.
- (4) 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.
- (5) 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.
- (6) A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, a profit sharing, a stock bonus, a health, a disability, a death benefit, an income deferral, or other current or deferred benefit plan for one (1) 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.
- (7) A property interest, power of appointment, or arrangement that was not subject to the common law rule against perpetuities or is excluded by another Indiana statute.
- (8) A:
 - (A) provision for the accumulation of an amount of the income of a trust estate reasonably necessary for the upkeep, repair, or proper management of the subject of the estate;
 - (B) direction in a trust that provides for the allocation wholly or in part to the principal of the trust of stock dividends or stock rights derived from shares held in a trust;
 - (C) provision for a sinking or reserve fund; or
 - (D) statutory provision directing an accumulation.

As added by P.L.2-2002, SEC.2.

IC 32-17-8-3

Nonvested property interests; powers of appointment; validity

Sec. 3. (a) A nonvested property interest is valid if:

- (1) when the interest is created, the interest is certain to vest or terminate not later than twenty-one (21) years after the death of an individual then alive; or
- (2) the interest either vests or terminates within ninety (90) years after the interest's creation.

(b) A general power of appointment not presently exercisable because of a condition precedent is valid if:

- (1) when the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy not later than twenty-one (21) years after the death of an individual then alive; or
- (2) the condition precedent either is satisfied or becomes

impossible to satisfy within ninety (90) years after the condition precedent's creation.

(c) A nongeneral power of appointment or a general testamentary power of appointment is valid if:

(1) when the power is created, the power is certain to be irrevocably exercised or otherwise to terminate not later than twenty-one (21) years after the death of an individual then alive;

or

(2) the power is irrevocably exercised or otherwise terminates within ninety (90) years after the power's creation.

(d) In determining whether a nonvested property interest or a power of appointment is valid under subsection (a)(1), (b)(1), or (c)(1), the possibility that a child will be born to an individual after the individual's death is disregarded.

As added by P.L.2-2002, SEC.2.

IC 32-17-8-4

Nonvested property interests or powers of appointment; time of creation

Sec. 4. (a) Except as provided in subsections (b) and (c) and in section 1(a) of this chapter, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(b) For purposes of this chapter, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of:

(1) a nonvested property interest; or

(2) a property interest subject to a power of appointment described in section 3(b) or 3(c) of this chapter;

the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(c) For purposes of this chapter, 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.

As added by P.L.2-2002, SEC.2.

IC 32-17-8-5

Clauses taking effect upon the later of certain occurrences; portion invalid; construction

Sec. 5. (a) This section applies to a clause in a governing instrument that:

(1) purports to:

(A) postpone the vesting or termination of any interest or trust until;

(B) disallow the vesting or termination of any interest or trust beyond;

(C) require all interests or trusts to vest or terminate not later than; or

(D) operate in any similar fashion upon;
the occurrence of an event described in subdivision (2); and

(2) takes effect upon the later of the following occurrences:

(A) The expiration of a period that exceeds twenty-one (21) years or that might exceed twenty-one (21) years after the death of the survivor of lives in being at the creation of the trust or other property arrangement.

(B) The death of, or the expiration of a period not exceeding twenty-one (21) years after the death of, the survivor of specified lives in being at the creation of the trust or other property arrangement.

(b) If a clause described in subsection (a) appears in an instrument creating a trust or other property arrangement, then, in measuring a period from the creation of a trust or other property arrangement, the portion of the clause that pertains to the period that exceeds twenty-one (21) years or that might exceed twenty-one (21) years after the death of the survivor of lives in being at the creation of the trust or other property arrangement is not valid. The court shall construe the clause as becoming effective upon:

(1) the death of; or

(2) the expiration of the period not exceeding twenty-one (21) years after the death of;

the survivor of the specified lives in being at the creation of the trust or other property arrangement.

As added by P.L.2-2002, SEC.2.

IC 32-17-8-6

Judicial reformation of disposition

Sec. 6. Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely preserves the transferor's plan of distribution and is within the ninety (90) years allowed by section 3(a)(2), 3(b)(2), or 3(c)(2) of this chapter if:

(1) a nonvested property interest or a power of appointment becomes invalid under section 3 of this chapter;

(2) a class gift is not but might become invalid under section 3 of this chapter 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 by section 3(a)(1) of this chapter can vest but not within ninety (90) years after the interest's creation.

As added by P.L.2-2002, SEC.2.