FIDUCIARY LAW SECTION

PROPOSAL REGARDING UNIFORM STATUTORY RULE AGAINST PERPETUITIES

1. Specific legislation has been prepared and is printed below. The proposed legislation amends O.C.G.A. § 44-4-201 (Uniform Statutory Rule Against Perpetuities) to provide for a 360-year permissible vesting period (in lieu of the current 90-year permissible vesting period) as to a nonvested property interest or power of appointment contained in a trust created after June 30, 2013.

2. Under the Uniform Statutory Rule Against Perpetuities (USRAP), which applies in Georgia to any nonvested property interest that was created on or after May 1, 1990, 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. Similar rules apply to general and nongeneral powers of appointment. The purpose of the 90-year permissible vesting period is to allow for a period of time (a “wait-and-see” period) during which a nonvested property interest that does not meet the requirements of the traditional rule against perpetuities can be allowed to work itself out to a final resolution instead of being invalid upon creation.

In recent years, a majority of states have reformed or repealed their rules against perpetuities in order to allow property interests contained in a trust to remain nonvested for periods of time that are longer than the period allowed under the traditional rule or USRAP. In some states, property interests contained in a trust may now remain nonvested in perpetuity. The motivation for reform or repeal of the rule is largely related to the federal generation-skipping transfer tax. A property interest in a trust that is exempt from the generation-skipping transfer tax will generally remain exempt so long as it is nonvested, so there is a strong incentive to create property interests in trusts that will remain nonvested for a very long period of time—even in perpetuity.

Some states have accomplished the reform or repeal of the rule by providing a permissible vesting period that is longer than the 90-year period in USRAP. Florida adopted a 360-year period in 2001, and was joined by Tennessee in 2007 and Alabama in 2012. (The period was changed to 365 years in Nevada, 500 years in Arizona, and 1,000 years in Colorado.) So three of Georgia’s five neighboring states now allow property interests in trusts to remain nonvested for 360 years. The proposed legislation would adopt the 360-year permissible vesting period for Georgia trusts created after June 30, 2013. This simple method of reforming the rule against perpetuities avoids the complexity of repealing USRAP or making it elective, but accomplishes the repeal of the rule against perpetuities by providing for a permissible vesting period that is all but perpetual. The 360-year period is admittedly arbitrary, but it is consistent with the period adopted in Florida, Tennessee, and Alabama, and thus contributes to the uniformity of the law among these neighboring states.
3. The Fiduciary Law Section believes that there will always be some opposition to reform or repeal of the rule against perpetuities because of its traditional place in the Anglo-American law of property, but believes that there is a clear trend toward a repeal of the rule in the United States.

4. The Fiduciary Law Section recommends that this proposal be adopted by the State Bar of Georgia.

Nikola R. Djuric
Atlanta, Georgia
Chairman, Legislation Committee
Fiduciary Law Section, State Bar of Georgia

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A BILL TO BE ENTITLED
AN ACT

To amend Chapter 6 of Title 44 of the Official Code of Georgia Annotated, the Uniform Statutory Rule Against Perpetuities, to provide for a 360-year permissible vesting period for purposes of the rule against perpetuities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 9 of Chapter 6 of Title 44 of the Official Code of Georgia Annotated is amended by revising Code Section 44-6-201, by adding a new subsection to read as follows:

“(e) As to any trust created after June 30, 2013, this section shall apply to a nonvested property interest or power of appointment contained in a trust by substituting “360 years” in place of “90 years” in each place such term appears in this Code section.”

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.