Georgia State University Law Review

Volume 7
Issue 1 *Fall 1990*

Article 9

9-1-1990

PROPERTY Estates: The Uniform Statutory Rule Against Perpetuities

J. Rothstein

Follow this and additional works at: https://readingroom.law.gsu.edu/gsulr

Part of the Law Commons

Recommended Citation
J. Rothstein, *PROPERTY Estates: The Uniform Statutory Rule Against Perpetuities*, 7 Ga. St. U. L. Rev. (1990).
Available at: https://readingroom.law.gsu.edu/gsulr/vol7/iss1/9

This Peach Sheet is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact mbutler@gsu.edu.

PROPERTY

Estates: The Uniform Statutory Rule Against Perpetuities

CODE SECTIONS:	O.C.G.A. §§ 44-6-1 (reserved), 44-6-200 to -206 (new)
BILL NUMBER:	HB 1349
ACT NUMBER:	1406
SUMMARY:	The Act strikes Georgia's Rule Against Perpetuities and adopts the Uniform Statutory Rule Against Perpetuities.
EFFECTIVE DATE:	May 1, 1990

History

The common law Rule Against Perpetuities (CLRAP)[1] was developed to limit restrictions that grantors placed upon the use and alienability of property.[2] Under the CLRAP, nonvested property interests[3] that contain a logical possibility of not vesting within twenty-one years after the expiration of some life in being at the time of the creation of the grant are invalid ab initio.[4] That is, looking prospectively from the time of the creation of the grant, if a nonvested interest is not absolutely certain, as a matter of logic, either to vest or not vest within the time period called for by the CLRAP, the interest is invalid as of the time of its creation.[5] This is so even if an interest is virtually certain to vest within the requisite time period.[6] Because nonvested interests that

1. The classic statement of the common law Rule Against Perpetuities was formulated by John Chipman Gray: "No interest is good unless it must vest, if at all, not later than twenty-one years after some life in being at the time of the creation of the interest." J. DUKEMINIER & S. JOHANSON, WILLS, TRUSTS, AND ESTATES 770 (3d ed. 1984) [hereinafter DUKEMINIER & JOHANSON] (quoting J. GRAY, THE RULE AGAINST PERPETUITIES (1886)).

2. Chaffin, *Reforming the Rule Against the Perpetuities*, 24 GA. ST. B.J. 62, 62 (1987).

3. A "nonvested property interest" is defined as "a future interest in property that is subject to an unsatisfied [as of the time of the creation of the grant] condition precedent." UNIF. STAT. R. AGAINST PERPETUITIES, 8A U.L.A. 159 (Supp. 1990) [hereinafter UNIFORM RULE].

4. *Id.* at 159.

5. *Id.* at 158–59.

6. *Id.* For instance, if the testator were to grant an interest to A, "but if the sky should turn green, then to B," the grant to B would not be valid under the CLRAP. This is because, as a matter of logical possibility, it is impossible to say with certainty that the sky will either turn green or fail to turn green within 21 years after all lives in being at the time of the grant.

HeinOnline -- 7 Ga. St. U. L. Rev. 343 1990-1991

Georgia State University Law Review, Vol. 7, Iss. 1 [1990], Art. 9

would almost certainly vest within the requisite time period were nonetheless rendered invalid by operation of the CLRAP, some scholars believed that the CLRAP was unduly harsh and its operation resulted in inequity.[7] Consequently, the Uniform Statutory Rule Against Perpetuities (USRAP) was developed to better balance the interests of the state, the testator, and the draftsperson.[8] In 1986, the USRAP was approved by the National Conference of Commissioners on Uniform State Laws.[9]

Although Georgia has had a statutory form of the Rule Against Perpetuities,[10] the Supreme Court of Georgia has interpreted it as being a restatement of the CLRAP.[11] Therefore, property grants under Georgia law have been subject to the arcane rules and intricacies associated with the CLRAP.[12] The inequities that prompted the development of

---

7. *See* Leach, *Perpetuities in Perspective: Ending the Rule's Reign of Terror*, 65 HARV. L. REV. 721 (1952).

8. *See* Chaffin, *supra* note 2. This discussion does not purport to exhaustively examine the provisions of the Uniform Statutory Rule Against Perpetuities (USRAP). For an in-depth discussion of those provisions, *see* UNIFORM RULE, supra note 3; Waggoner, *The Uniform Statutory Rule Against Perpetuities*, 21 REAL PROP., PROB. AND TR. J. 569 (1986). For further discussion of the USRAP and its provisions, *see* Lynn, *Perpetuities Literacy for the 21st Century*, 50 OHIO ST. L.J. 219 (1989); Fletcher, *Perpetuities: Basic Clarity, Muddled Reform*, 63 WASH. L. REV. 791 (1988); Fellows, *In Search of Donative Intent*, 73 IOWA L. REV. 611 (1988); Haskell, *A Proposal for a Simple and Socially Effective Rule Against Perpetuities*, 66 N.C.L. REV. 545 (1988); Waggoner, *The Uniform Statutory Rule Against Perpetuities: The Rationale of the 90-Year Waiting Period*, 73 CORNELL L. REV. 157 (1988); Bloom, *Perpetuities Refinement: There is an Alternative*, 62 WASH. L. REV. 23 (1987); Dukeminier, *A Modern Guide to Perpetuities*, 74 CALIF. L. REV. 1867 (1986).

9. UNIFORM RULE, *supra* note 3, at 159. To date, at least nine other states have enacted some version of the USRAP. Chaffin, *Memorandum in Support of the Uniform Statutory Rule Against Perpetuities*, 24 STATE B. OF GA. FIDUCIARY SEC. NEWSL. at 8 (Winter 1990) [hereinafter NEWSLETTER].

10. O.C.G.A. § 44-6-1 (1982). This section provided as follows:

> (a) Limitations of estates may extend through any number of lives in being at the time when the limitations commence, and 21 years, and the usual period of gestation added thereafter. The law terms a limitation beyond that period a perpetuity and forbids its creation. When an attempt is made to create a perpetuity, the law will give effect to the limitations which are not too remote and will declare the other limitations void, thereby vesting the fee in the last taker under the legal limitations.

O.C.G.A. § 44-6-1(a) (1982).

Subsection (b) of this section exempts employee benefit plans from the limitations of subsection (a). O.C.G.A. § 44-6-1(b) (1982).

11. Burt v. Commercial Bank & Trust Co., 244 Ga. 253, 260 S.E.2d 306 (1979).

12. *See, e.g.*, Pound v. Shorter, 259 Ga. 148, 377 S.E.2d 854 (1989). In *Pound*, the testator died in 1929, leaving a will which created a trust. *Id.* at 148, 377 S.E.2d at 855. Under the terms of the trust, if the testator's then-unmarried son died leaving a surviving widow, the widow would receive a life estate in the income of the trust. Upon the death of the widow, the children of the testator's sister and brother were to receive the corpus of the trust. The son married in 1953, and died, survived by his widow, in 1987. Evaluating the validity of the grant to the children of the testator's brother and sister, the Georgia

HeinOnline -- 7 Ga. St. U. L. Rev. 344 1990-1991

the USRAP also prompted the Fiduciary section of the Georgia Bar to submit the USRAP for consideration by the Georgia General Assembly.[13] With HB 1349, the Georgia General Assembly struck the language of O.C.G.A. § 44-6-1 and adopted, essentially unchanged, the USRAP.[14]

HB 1349

Section 1 of the Act strikes the language of Georgia's former Rule Against Perpetuities and reserves Code section 44-6-1.[15] Section 2 of the Act creates a new Article 9 of the Code, constituting Georgia's Uniform Statutory Rule Against Perpetuities.[16] As adopted, the USRAP has three main features. First, the statute preserves those grants that would be valid under the CLRAP.[17] Second, the statute provides for a ninety-year wait-and-see period.[18] Third, the statute authorizes judges to reform dispositions that violate the ninety-year wait-and-see period so as to approximate the grantor's intent as closely as possible while conforming to the ninety-year period.[19]

The heart of Georgia's USRAP is found in O.C.G.A. § 44-6-201. This section articulates the CLRAP and the ninety-year wait-and-see period.[20] Under the terms of this section, nonvested property interests[21] and

---

Supreme Court declined the opportunity to adopt the so-called wait-and-see approach. *Id.* at 149, 377 S.E.2d at 856. Under this approach, a court may consider the actual events that occur after the creation of an interest to determine whether the interest in question vests within the requisite time period. *Id.* at 149, n. 1, 377 S.E.2d at 855, n. 1. Furthermore, the court applied the "unborn widow" doctrine to the grant. *See* DUKEMINIER & JOHANSON, *supra* note 1, at 794—95. The court reasoned, first, that the testator's son could conceivably have married a woman who was unborn when the will became effective; therefore, the widow would not have been a life in being at the time of the grant. *Pound,* 259 Ga. at 150, 377 S.E.2d at 856. Since the subsequent gift over to the children of the testator's brother and sister would not vest until after the death of the widow, there existed a logical possibility that the gift would not vest within the perpetuities period under the CLRAP. The court therefore held that the grant to the children of the testator's brother and sister was invalid and the corpus vested fee simple in the son's widow. *Id.*

13. Telephone interview with Dr. Verner Chaffin, Callaway Professor of Law Emeritus, University of Georgia School of Law, Mar. 15, 1990 [hereinafter Chaffin Interview].

14. *See* O.C.G.A. §§ 44-6-1, 44-6-200 to -206 (Supp. 1990).

15. O.C.G.A. § 44-6-1 (Supp. 1990).

16. O.C.G.A. §§ 44-6-200 to -206 (Supp. 1990).

17. NEWSLETTER, *supra* note 9, at 8.

18. *Id.*

19. *Id.*

20. O.C.G.A. § 44-6-201 (Supp. 1990).

21. O.C.G.A. § 44-6-201(a) (Supp. 1990). The USRAP does not overturn the common law all-or-nothing rule relating to class gifts. UNIFORM RULE, *supra* note 3, at 167. Under this rule, "the interests of all potential class members must be valid or the class gift is invalid." *Id.* Consequently, vested interests subject to open are nonvested interests under the USRAP. *Id.*

certain types of powers of appointment,[22] including general powers of appointment that are not presently exercisable because of a condition precedent,[23] nongeneral powers of appointment,[24] and general testamentary powers of appointment[25] are invalid unless they meet one of two requirements. First, if they meet the CLRAP's requirements for validity at the time of their creation, they are valid.[26] Consequently, dispositions which would have been valid under prior Georgia law are still valid under the USRAP. Second, if they fail to meet the CLRAP's requirements as of the time of their creation, but meet the requirements of a ninety-year wait-and-see period, they are valid.[27]

---

22. O.C.G.A. § 44-6-201(b)—(c) (Supp. 1990). A power of appointment is "the authority, other than as an incident of the beneficial ownership of property, to designate recipients of beneficial interests in or powers of appointment over property." UNIFORM RULE, *supra* note 3, at 173. A power of appointment is created by a donor in a donee over some appointive property. DUKEMINIER & JOHANSON, *supra* note 1, at 614.

23. O.C.G.A. § 44-6-201(b) (Supp. 1990). "A power of appointment is 'general' if it is exercisable in favor of the donee of the power [i.e., the recipient of the power], [his] creditors, [his] estate, or the creditors of [his] estate. UNIFORM RULE, *supra* note 3, at 173. Conditions upon the exercise of a power of appointment may be stipulated by the donor at the time of the creation of the power. DUKEMINIER & JOHANSON, *supra* note 1, at 614—16. The exercise of a power of appointment may be contingent upon the occurrence of some condition precedent. The explanatory notes to the USRAP point out that if the time at which a power is exercisable is deferred, even if for some definite period, the survival of the donee becomes a condition precedent to the exercise of the power. UNIFORM RULE, *supra* note 3, at 173.

24. O.C.G.A. § 44-6-201(c)(1) (Supp. 1990). Another name for nongeneral power of appointment is "special" power of appointment. DUKEMINIER & JOHANSON, *supra* note 1, at 614—15. If the power is not exercisable in favor of the donee, his creditors, his estate, or the creditors of his estate, the power is nongeneral. *Id.*

25. O.C.G.A. § 44-6-201(c) (Supp. 1990). Testamentary powers of appointment are exercisable only by will. DUKEMINIER & JOHANSON, *supra* note 1, at 616.

26. O.C.G.A. § 44-6-201(a)(1), (b)(1), (c)(1) (Supp. 1990). For nonvested property interests, the CLRAP requires that the interest be certain to vest or terminate within 21 years of a life in being at the time of the creation of the interest. O.C.G.A. § 44-6-201(a)(1). For general powers of appointment not presently exercisable because of a condition precedent, the CLRAP requires that the condition precedent either be certain to be satisfied or impossible to satisfy within 21 years of a life in being at the time that the power is created. O.C.G.A. § 44-6-201(b)(1). For nongeneral powers of appointment and general testamentary powers of appointment, the CLRAP requires that the power be certain to be irrevocably exercised or terminate within the same period. O.C.G.A. § 44-6-201(c)(1).

27. O.C.G.A. § 44-6-201(a)(2), (b)(2), (c)(2) (Supp. 1990). A nonvested property interest must actually either vest or terminate within 90 years of its creation. O.C.G.A. § 44-6-201(a)(2). The condition precedent to the exercise of a general power of appointment must actually be satisfied or become impossible to satisfy within 90 years of the creation of the power. O.C.G.A. § 44-6-201(b)(2). Nongeneral powers of appointment and general testamentary powers of appointment must actually be irrevocably exercised or terminate within 90 years of their creation. O.C.G.A. § 44-6-201(c)(2).

A flat period of 90 years was chosen for two reasons. First, it was believed that 90 years closely approximated the perpetuities period of a lifetime plus 21 years. *See* UNIFORM

HeinOnline -- 7 Ga. St. U. L. Rev. 346 1990-1991

Finally, O.C.G.A. § 44-6-201(d) impacts upon O.C.G.A. § 44-6-201(a)(1), (b)(1), and (c)(1) because it affects who may constitute a life in being at the time of the creation of an interest or a power.[28] Under this section, "the possibility that a child will be born to an individual after the individual's death" is disregarded for purposes of deciding whether a nonvested property interest or power of appointment is valid.[29]

Such medical advances as sperm banks and frozen embryos constitute a potential problem for class gifts under the CLRAP. For a class gift to be valid, the class must close and the interests of all members of the class must vest within the perpetuities period.[30] If the interest of one member of the class might fail to vest within the perpetuities period, the entire class gift fails under the CLRAP.[31] Since frozen embryos and sperm banks make it possible for a class member to be born far in the future, a class could conceivably not close within the perpetuities period.[32] Code section 44-6-201(d) solves this problem by

---

RULE, *supra* note 3, at 163. This point has been the object of some debate because some commentators consider this period too long. *See* Dukeminier, *The Uniform Statutory Rule Against Perpetuities: Ninety Years in Limbo*, 34 UCLA L. REV. 1023 (1987). Second, by adopting a flat time period, it eliminates the requirement of finding a relevant life in being at the time of the grant by which to measure time. *See* UNIFORM RULE, *supra* note 3, at 161–63.

28. This provision does not affect the common law principle that a fetus later born alive is considered to have been alive while in gestation. UNIFORM RULE, *supra* note 3, at 168.

29. O.C.G.A. § 44-6-201(d) (Supp. 1990).

30. DUKEMINIER & JOHANSON, *supra* note 1, at 803–06. A class can close in two ways: physiologically or by the rule of convenience. *Id.* at 803–05. A class closes physiologically when it is physically impossible for another person to be born into the class. *Id.* For example, the class of A's children generally physiologically closes when A dies, because at that time A can have no more children. However, frozen embryos and sperm banks raise the possibility that A may have more children long after he dies, and the class of his children might therefore never close. *Id.*

A class closes by the rule of convenience when any member of the class has the right to demand immediate possession and enjoyment of the property granted. *Id.* at 805. For example, if a grantor makes a contingent gift to A's children that vests in each child when he or she reaches 21, the class will close, though not all interests will vest, when one of A's children reaches 21, because at that time he or she can demand immediate possession and enjoyment of the grant.

31. *Id.*

32. For example, consider the following grant: T grants Blackacre to A's children for life, then to A's grandchildren. A is dead, has five children, and has donated sperm to a sperm bank.

In the absence of sperm banks and frozen embryos, the class of A's grandchildren would close after the last of A's children dies, both physiologically and by the rule of convenience. Since all of A's children were lives in being at the time of the grant, the class would close within the perpetuities period.

However, with the existence of sperm banks and frozen embryos, it is not possible to be certain that the class of A's grandchildren would or would not vest within the requisite period, because this technology raises the potential that another child could be

HeinOnline -- 7 Ga. St. U. L. Rev. 347 1990-1991

disregarding the possibility that children will be born to a person after his or her death.[33]

O.C.G.A. § 44-6-202 defines the time at which a nonvested property interest or power of appointment is created.[34] General principles of property law determine the creation date of a nonvested property interest or a power of appointment.[35] There are three exceptions to this general rule.[36] Under the first exception, if one person[37] may exercise a presently exercisable general power of appointment[38] to become the unqualified beneficial owner[39] of a nonvested property interest or of a property interest that is subject to one of the powers

---

born to A even after his death. Since such a child would not have been a life in being at the time of the grant, he or she could not be used as a measuring life. It is possible that such a child would not die within the perpetuities period, and the class of A's grandchildren would therefore not close in time.

33. O.C.G.A. § 44-6-202 (Supp. 1990). This provision does not purport to resolve the legal status of children conceived after death, i.e., whether such children may take under a grant. UNIFORM RULE, *supra* note 3, at 169.

34. O.C.G.A. § 44-6-202 (Supp. 1990).

35. O.C.G.A. § 44-6-202(a) (Supp. 1990). Thus, a nonvested interest or power of appointment created by: 1) will is created at the grantor's death; 2) inter vivos transfer is created when the transfer becomes effective, normally the date of delivery; 3) the exercise of a nongeneral or testamentary power of appointment is created when the creating power was itself created, not when it was exercised; and 4) the exercise of a general power presently exercisable is created when the creating power is irrevocably exercised. UNIFORM RULE, *supra* note 3, at 181.

36. O.C.G.A. § 44-6-202(b)–(c) (Supp. 1990) and O.C.G.A. § 44-6-205(a) (Supp. 1990). The USRAP treats the date of an interest's or power's creation as significant because, on that date, the nonvested interest or interest subject to a power of appointment is no longer owned by one person. Since that is the date upon which the interest ceases to be completely controllable by any one person then living, public policy concerns with dead hand control of property and inalienability of land then become applicable. UNIFORM RULE, *supra* note 3, at 182.

37. Incapacity of the donee to exercise the power does not prevent O.C.G.A. § 44-6-202(b) from applying, unless the governing instrument extinguishes the power for that reason. UNIFORM RULE, *supra* note 3, at 183. A power held jointly with another person does not qualify. *Id.* at 184.

38. A donee must hold a presently exercisable general power of appointment to qualify nonvested property interests or property interests subject to one of the powers in O.C.G.A. § 44-6-201(b)–(c) for deferred creation dates. General powers of appointment not exercisable because of a condition precedent, however, are treated as presently exercisable general powers of appointment once the condition precedent is satisfied. *Id.* at 183.

39. It is not necessary that the holder of a general power presently exercisable have the power to terminate a trust under which he is the unqualified beneficial owner for O.C.G.A. § 44-6-202(b) to apply. *Id.* at 182. In addition, the creation of the nonvested property interests or interests subject to the powers in O.C.G.A. § 44-6-201(b) and (c) are deferred, even if the donee of the power is not authorized "to become the unqualified beneficial owner of *all beneficial* rights *in the trust*." *Id.* Finally, a power to assume unqualified beneficial ownership of only a partial nonvested interest in property or interest subject to the powers in O.C.G.A. § 44-6-201(b) and (c) does not qualify to defer the date of creation of the interest unless the power is actually exercised. *Id.* at 183.

HeinOnline -- 7 Ga. St. U. L. Rev. 348 1990-1991

of appointment described in O.C.G.A. § 44-6-201,[40] the nonvested property interest or subsection (b) or (c) power of appointment is created when the power to become the unqualified beneficial owner terminates.[41]

Under the second exception, when nonvested property interests or powers of appointment result from transferring additional property into a pre-existing property arrangement, the nonvested interests or powers of appointment are deemed to have been created when the nonvested property interest or power of appointment in the underlying pre-existing property arrangement was created.[42] This provision is intended to avoid treating different portions of the same trust as having been created at different times.[43]

The final exception to the general rule is contained in Code section 44-6-205(a). This section provides that the USRAP only applies to nonvested property interests and powers created after the effective date of the statute, May 1, 1990.[44]

Code section 44-6-203 defines a court's power under the USRAP to reform provisions that are invalid under the CLRAP and the ninety-year wait-and-see period to approximate the intent of the testator as closely as possible, while bringing such provisions within the ninety-year period.[45] Under O.C.G.A. § 44-6-203, only the following interests, gifts, and powers may be reformed: those nonvested interests and powers of appointment that are invalid under both the CLRAP and the ninety-year wait-and-see period;[46] a class gift that is not yet, but might become, invalid under O.C.G.A. § 44-6-201 and about which some class member's share is due to take possession or enjoyment;[47] and a nonvested property interest that is initially invalid and that cannot possibly vest within ninety years, but that can, as a matter of logic, vest.[48] Judicial reformation of an interest or power will not often be necessary, because most nonvested interests and powers will meet the requirements of O.C.G.A. § 44-6-201.[49] Since the USRAP calls for litigation only in the

---

40. These include: a general power of appointment not exercisable because of a condition precedent, a nongeneral power of appointment, or a testamentary power of appointment. O.C.G.A. § 44-6-201(b)–(c).

41. If the holder of a general power presently exercisable were to exercise the power in favor of himself, he would hold all beneficial interests, present and future, in the property. Consequently, in effect, no future interests (including nonvested interests or interests subject to the powers of appointment described in O.C.G.A. § 44-6-201(b) or (c)) that are subject to a general power of appointment presently exercisable) exist unless and until that immediate power terminates.

42. O.C.G.A. § 44-6-202(c) (Supp. 1990).

43. UNIFORM RULE, *supra* note 3, at 184.

44. O.C.G.A. § 44-6-205(a) (Supp. 1990).

45. O.C.G.A. § 44-6-203 (Supp. 1990); NEWSLETTER, *supra* note 9.

46. O.C.G.A. § 44-6-203(1) (Supp. 1990).

47. O.C.G.A. § 44-6-203(2) (Supp. 1990).

48. O.C.G.A. § 44-6-203(3) (Supp. 1990).

49. NEWSLETTER, *supra* note 9, at 9.

HeinOnline -- 7 Ga. St. U. L. Rev. 349 1990-1991

Georgia State University Law Review, Vol. 7, Iss. 1 [1990], Art. 9

event a will needs to be reformed, the USRAP will eliminate much litigation.[50] This section does not "prevent an earlier application of ... remedies [other than reformation]."[51]

Code section 44-6-204 lists seven exclusions from the USRAP.[52] Arrangements excluded by virtue of this section are not subject to the Rule Against Perpetuities.[53] First, all nondonative transfers are exempt from the USRAP; this is contrary to existing law.[54] A transfer that is "essentially gratuitous in nature, accompanied by donative intent on the part of at least one party to the transaction" does not become nondonative only because of the presence of some consideration.[55] This section also lists transactions that are, arguably, nondonative but that arise in the domestic context and that are not excluded from the USRAP.[56] Unless specifically excluded, fiduciary powers are subject to the USRAP.[57] Not subject to the USRAP are: purely administrative fiduciary powers;[58] the power to appoint a fiduciary;[59] the distributive fiduciary power described in Code section 44-6-204(4);[60] charitable or governmental interests preceded by interests held by another charity, government, or governmental agency;[61] property arrangements "forming part of a bona fide plan"[62] for workers and their spouses, so long as not created by an election of a participant, spouse, or beneficiary;[63] and all property arrangements, powers of appointment, and interests excluded from the CLRAP.[64]

Code section 44-6-204(4) contains language not found in the USRAP.[65] The additional language provides that "[n]othing contained in paragraphs (2) and (3) of this Code section and this paragraph shall be construed to permit the fiduciary to continue the administration or management

---

50. *Id.*

51. UNIFORM RULE, *supra* note 3, at 185.

52. O.C.G.A. § 44-6-204 (Supp. 1990); *see also* UNIFORM RULE, *supra* note 3, at 189.

53. UNIFORM RULE, *supra* note 3, at 189.

54. *Id.* The legislation group of the Fiduciary section of the Georgia Bar anticipates that a provision that would make commercial options subject to a 40-year perpetuities period will be introduced in the next legislative session. Chaffin Interview, *supra* note 13.

55. UNIFORM RULE, *supra* note 3, at 189.

56. O.C.G.A. § 44-6-204(1) (Supp. 1990); *see also* UNIFORM RULE, *supra* note 3, at 189–90.

57. UNIFORM RULE, *supra* note 3, at 190.

58. O.C.G.A. § 44-6-204(2) (Supp. 1990).

59. O.C.G.A § 44-6-204(3) (Supp. 1990).

60. O.C.G.A. § 44-6-204(4) (Supp. 1990).

61. O.C.G.A. § 44-6-204(5) (Supp. 1990). This section codifies the common law rule. UNIFORM RULE, *supra* note 3, at 190–91.

62. UNIFORM RULE, *supra* note 3, at 112.

63. O.C.G.A. § 44-6-204(6) (Supp. 1990).

64. O.C.G.A. § 44-6-204(7) (Supp. 1990).

65. O.C.G.A. § 44-6-204(4) (Supp. 1990).

https://readingroom.law.gsu.edu/gsulr/vol7/iss1/9 HeinOnline -- 7 Ga. St. U. L. Rev. 350 1990-1991

of assets once the nonvested property interest becomes invalid as described in subsection (a) of Code Section 44-6-201."[66] This language was added to ensure that the USRAP could not be evaded by placing property in trust.[67] Code section 44-6-205(a) provides that the USRAP is not retroactive; therefore, it applies only to nonvested property interests or powers of appointment created after the effective date of the statute, May 1, 1990.[68] However, if an interest or power created prior to that date is found to violate the CLRAP, O.C.G.A. § 44-6-205(b) authorizes a judge, upon petition, to reform the disposition so as to meet the requirements of the Rule Against Perpetuities applicable when the disposition was created, while approximating the testator's intent as closely as possible.[69]

Code section 44-6-206 provides that the USRAP is to be construed and applied so as to make uniform the perpetuities rules among the states that have enacted the USRAP.[70]

Conclusion

The USRAP facilitates the creation of interests by invalidating fewer grants than does the CLRAP. The USRAP accomplishes this primarily through two provisions. First, the USRAP dispenses with initial invalidity and provides for a ninety-year wait-and-see period to see if grants do, in fact, vest within the requisite vesting period. Second, the USRAP provides for reformation of invalid gifts to meet the intent of the testator as closely as possible, within the mandates of the perpetuities period. These provisions facilitate the balancing of the testator's interest in disposing of property and the state's interest in limiting dead hand control.

J. Rothstein

---

66. *Id.*

67. Telephone Interview with Representative Denmark Groover, House District No. 99 (Mar. 16, 1990).

68. O.C.G.A. § 44-6-205 (Supp. 1990). The effective date of the statute was one of three changes made to HB 1349 in committee. As submitted, the bill provided for an effective date of July 1, 1990. HB 1349, as introduced, 1990 Ga. Gen. Assem. The other two changes provided a new section 3 of the bill; adding an effective date clause to the bill; added a new heading, section 4; and moved the language of the previous section 3 to the new section 3. HB 1349 (AM), 1990 Ga. Gen. Assem.

69. O.C.G.A. § 44-6-205(b) (Supp. 1990).

70. O.C.G.A. § 44-6-206 (Supp. 1990).

HeinOnline -- 7 Ga. St. U. L. Rev. 351 1990-1991