

## Texas Legislature Relaxes the Rule Against Perpetuities

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Texas has always required that property interests passing to beneficiaries in trust must “vest” (unconditionally belong to the beneficiaries) in accordance with the common law rule against perpetuities, which imposes a time limit of twenty-one years after the death of specified persons who are already living at the time the interest in trust was created, plus a period of gestation (if applicable). This “lives-in-being plus 21 years” rule has resulted in trusts that can currently be expected to last perhaps 100 years or longer, due to medical advancements that have increased human longevity over time. But now, after nine prior failed attempts to increase the duration of trusts that are governed by Texas law, the Texas Legislature has passed and the governor has signed House Bill 654, which permits interests in trusts to last for 300 years before vesting must occur.

The new law will apply only to trusts that become irrevocable on or after September 1, 2021 although it permits some trusts that are already irrevocable on that date to last just as long if special provisions are included in the governing document. The new statute applies only to trusts and does not apply in any other contexts. Charitable trusts, which may be perpetual, continue to be an important exception to the rule against perpetuities.

Other states have already extended the permissible duration of trusts beyond the “lives-in-being plus 21 years” rule, with some even permitting perpetual trusts. Presumably in response to this trend, recent U.S. administrations have proposed imposing wealth transfer taxes on trusts every 90 years, regardless of how long they exist, in order to capture the assets of long-lasting trusts in the transfer tax system. So far, advocates of the current tax system have prevailed and many trusts are able to shelter assets from wealth transfer taxes during their entire existence.

The extension of the permissible duration of Texas trusts to 300 years presents an opportunity for high net worth individuals to create a financial dynasty that can provide benefits to descendants for hundreds of years into the future without the trust assets being subject to the 40% federal estate and generation-skipping transfer taxes (which apply after factoring in available exclusions and deductions, including the current exclusion of assets worth \$11.7 million).

Some Texas attorneys believe the new law may not be consistent with our Texas Constitution, which prohibits “perpetuities” without specifically defining the term, thus leaving it potentially open to challenge. Anyone considering the possibility of creating a very long-lasting trust in Texas should consider not only the significant potential tax benefits (a window of opportunity that might someday close) but also non-tax factors such as the

uncertain legal environment and the practical difficulties associated with creating a trust that is irrevocable yet flexible enough to make sense centuries into the future.

The enrolled version of HB 654 can be accessed [here](#).