

Another Run at Dynasty Trusts

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By: [James C. Milton](#)

In 2013, the Legislature considered a bill that would modify the Oklahoma rule against perpetuities by allowing Oklahoma trusts to remain in existence for as long as 500 years. The idea didn't gain traction then, but has come up again in Senate Bill 774 and House Bill 2152. These bills are co-authored by state Sen. Anthony Sykes, R-Moore, and Rep. Jon Echols, R-Oklahoma City. All indications are that the legislation will pass the Legislature and make its easy way to the Governor's Desk.

Currently, an Oklahoma trust can last until the end of the life of a currently living beneficiary, plus 21 years. In most instances, this means a person can set up a trust providing for their children, grandchildren, or even great-grandchildren, if any of them are living when the trust is created, along with their children up until their 21st birthday. If your trust extends beyond that time, it's going to violate Oklahoma's current rule against perpetuities.

In 2013, the proposed solution was a variation of the Uniform Statutory Rule Against Perpetuities Act. The legislation would have fundamentally altered Oklahoma's current rule against perpetuities. Subsequently, the legislation appeared vulnerable to challenge based on the Oklahoma Constitution's prohibitions against perpetuities and entails.

This year, the drafters have been more careful. The proposed legislation keeps the statutory rule against perpetuities in place, but allows that if the terms of a trust don't suspend the absolute power of alienation of any trust property beyond the term permitted in this subsection, the trust may exist in perpetuity.

Many lawyers believe this text avoids the constitutional prohibition against perpetuities. Under this view, the constitutional ban against perpetuities is directed at the suspension of the power of alienation. In other words, trusts should be allowed to last forever, as long as they don't tie up real estate for longer than the current period stated in the rule against perpetuities. The proposed text of SB 774 and HB 2152 would ensure that the power of alienation remains intact in this manner.

The difficulty will occur when this view is pitted against a 1967 decision by the Oklahoma Supreme Court, in *Melcher v. Camp*. In that decision, the court appears to have interpreted Oklahoma's constitutional ban against perpetuities more broadly.

Attorneys

- James C. Milton