

## Matters of Trust

February 2013

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Dynasty trusts could be coming to Oklahoma. For the past several years, the Oklahoma legislature has considered enacting a version of the Uniform Statutory Rule Against Perpetuities Act. This year, the legislation appears in House Bill 1553. The act would modify the Oklahoma rule against perpetuities by allowing Oklahoma trusts to remain in existence for as long as 500 years.

The rule was designed to prevent trusts that would last forever. With this rule, American common law has for the most part avoided entails and dynasty trusts.

Dynasty trusts offer several benefits. The most significant benefit is to defer estate taxes. (Be aware, though, of the generation-skipping tax.) Property owners are very interested in deferring estate taxes. For this reason, states are competing with each other for trust business by rolling back or even eliminating their rules against perpetuities. Several states, such as South Dakota, have eliminated the rule against perpetuities.

An Oklahoma trust can last until the end of the life of a currently living beneficiary, plus 21 years. In most instances, this means that a person can set up a trust providing for their children, grandchildren, and 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, then it is going to violate Oklahoma's current rule against perpetuities.

If HB 1553 is enacted, that could change for Oklahoma trusts.

Even if it is enacted, HB 1553 could face challenges. Our state's founders apparently took a dim view of dynasty trusts and entails. The Oklahoma Constitution expressly prohibits perpetuities and entails. Thus, the rule against perpetuities is constitutional in Oklahoma. Oklahoma cannot eliminate the rule altogether without a constitutional amendment.

There may be some risk that HB 1553 could be viewed as a step too far in the direction of perpetuities and entails. With Oklahoma having just celebrated its centennial, it is possible that Oklahoma courts will view 500 years as the functional equivalent of a perpetuity or entail. Then again, the Oklahoma constitutional prohibition against monopolies has not been applied as strictly as the

text would otherwise suggest. In any event, the careful drafter should probably include a good "severability" provision in any trust instrument attempting to extend beyond the common law rule.

## Attorneys

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