The Rule Against Perpetuities in the 21st Century: Evolution, Abolition, and the Jurisdictional Landscape of Wealth Preservation

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I. Executive Summary: The Death and Rebirth of Mortmain Control

The Rule Against Perpetuities (RAP) stands as a foundational yet increasingly debated principle in property and trust law, historically designed to limit the duration of property control exerted by deceased owners—a concept often termed "dead hand control" or *mortmain*.[1] Originating in 17th-century English common law, the rule's initial purpose was profoundly socio-economic: to prevent perpetual restraints on the transferability (alienability) of property and curtail the indefinite concentration of wealth within single families.[2] The classic common law formulation restricts the creation of future interests that might vest beyond a specified period: "lives in being plus twenty-one years" (L+21).[2]

The 21st century has witnessed a fundamental schism in American jurisprudence regarding RAP. A number of states continue to adhere to the traditional common law rule or adopt its primary statutory modernization, the Uniform Statutory Rule Against Perpetuities (USRAP), which establishes a fixed 90-year term as a safety net.[4] Conversely, a significant and growing number of jurisdictions have either abolished the rule entirely or modified the permissible duration to extremely long fixed terms, sometimes reaching 360, 500, or even 1,000 years.[5] This shift is primarily driven by state competition for trust situs, capitalizing on the demand for **Dynasty Trusts**—wealth transfer vehicles designed to leverage the federal Generation-Skipping Transfer Tax (GSTT) exemption across multiple generations without subsequent estate taxation.[7]

A critical consequence of this legislative evolution is the reframing of the core public policy justification for RAP. While the common law focused on ensuring the *certainty of vesting* of equitable interests, modern abolitionist statutes often shift focus to ensuring the *marketability* of the underlying trust assets. Jurisdictions achieve this by stipulating that RAP does not apply if the trustee maintains an express or implied power of sale over the trust property.[9] This statutory workaround allows the *beneficial ownership* (the equitable interest) to remain unvested and perpetual, thereby avoiding estate taxes, while the *legal title* (the asset itself) remains commercially alienable, thus neutralizing the original economic concern regarding stagnant capital markets. This report provides a detailed examination of the common law foundations, the mitigating statutory reforms, the drivers of the abolitionist movement, and a comprehensive state-by-state matrix defining the modern legal landscape.

II. The Common Law Doctrine: Rigidity and Rationale

A. Historical Origins and Policy Justification

The origins of the Rule Against Perpetuities can be traced to the English common law system of land ownership, notably stemming from *The Duke of Norfolk's Case* in 1681.[4] This case established the foundational "Doctrine of Perpetuities," aiming to curb the ability of landholders to perpetually tie up future control of their property. The policy drivers behind this early judicial restraint were multifaceted: promoting the free transferability and alienability of land (preventing its withdrawal from commerce), curbing excessive concentrations of wealth that could solidify social and political power, and limiting the long-term governance of property by the wishes of the deceased, commonly referred to as the limitation of the "dead hand".[2] The rule reflects a deep-seated jurisprudential skepticism toward granting grantors indefinite control from the grave.

B. John Chipman Gray's Classic Formulation (The Possibility Test)

The common law rule was eventually crystallized into its canonical American form by legal scholar John Chipman Gray in 1886. Gray's statement provides that: "No interest is good unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest".[2]

The application of this rule hinges on three key elements:

1. **Vesting:** The future property interest must shift from being contingent (uncertain) to being absolutely vested, meaning the owner and the share are certain, either in possession or in enjoyment.[11] Interests are typically categorized as present interests or future interests, with the RAP focusing exclusively on non-vested future interests, such as contingent remainders and executory interests.[2]
2. **Lives in Being (Measuring Lives):** This refers to the individuals who are alive at the moment the interest is created (e.g., when the will becomes effective or the trust is established). These individuals serve as the duration markers, and the vesting must occur within 21 years of the death of the last survivor among them.[11]
3. **The Term of Years:** The specific, maximum 21-year period allowed following the expiration of all identified measuring lives. This 21-year term historically correlates with the legal period of minority. A period of gestation (if relevant, such as a child conceived but not yet born at the time of the relevant death) may also be involved in the calculation.[12]

C. The Rule's "Perverse" Operation: Legal Fictions and Traps

The primary source of controversy under the common law doctrine was the **possibility test**. The rule required that the future interest *must* vest within the perpetuities period. If there was any theoretical, worst-case-scenario possibility, however remote, that vesting could occur too late, the interest was deemed void *ab initio* (from the start).[2] This hyper-technical application often resulted in the failure of well-intended instruments based on highly improbable scenarios, creating notorious legal fictions or "traps."

Among the most famous traps are:

- **The Fertile Octogenarian:** This legal fiction holds that any living person, regardless of age, sex, or physical condition, is conclusively presumed to be capable of having or adopting additional children.[2] This presumption allows for a hypothetical scenario where an individual over the age of 80 (and thus not a life in being) could have a child (Z), who, in turn, has a child whose interest vests more than 21 years after all lives in being have died.[14] Because the rule operates based on possibility, this remote chance voids the gift immediately. Some jurisdictions have mitigated this by setting a fixed statutory age limit for fertility or by discarding the common-law fiction entirely.[2]
- **The Unborn Widow:** This trap arises when a future interest is conditioned upon the

death of a person's "widow." If the grantor's son (a life in being) marries a woman who was not yet born at the time of the conveyance, that subsequent wife (the "unborn widow") is not a measuring life. Since the interest must vest upon her death, and she might die more than 21 years after the death of all lives who were alive at the grant's creation, the interest is void.[2] The interest can sometimes be saved if the contingency phrase "then living" is removed, allowing the interest to vest immediately upon the son's death.[2]
- **Administrative Contingencies:** Interests conditioned on events that could, in theory, take longer than 21 years to complete, even if highly unlikely, fail the common law test. An example is property devised "to such of my grandchildren... as may be living upon final distribution of my estate".[14] Since the final distribution of an estate might, theoretically, take longer than 21 years after the death of the last measuring life, the gift is void.[14]

The common law rule's insistence on absolute certainty of vesting, prioritizing abstract legal compliance over the actual intent of the testator or settlor, proved overly punitive. This gap between the strict legal application and practical intent was the primary catalyst for the widespread adoption of judicial and statutory reforms designed to mitigate the rule’s inherent harshness.

III. Judicial and Statutory Reforms: Moderation and Mitigation

In response to the complexity and rigidity of the common law, American jurisdictions developed several methods to moderate the Rule Against Perpetuities, moving away from the unforgiving possibility test.

A. The "Wait-and-See" Doctrine

The "wait-and-see" doctrine directly addresses the core flaw of the common law RAP. Instead of voiding an interest at its creation based on a remote possibility that might never occur, this approach mandates that the courts wait until the traditional perpetuities period (L+21) expires to determine if the interest *actually* vests remotely.[4] If, at the end of the period, the contingency has occurred and the interest has vested, the interest is valid. If the period ends and the interest has not vested, it is deemed invalid. This shift from possibilities to actual events mitigates the common law traps, such as the fertile octogenarian, by recognizing that hypothetical scenarios rarely materialize in practice.

B. The Uniform Statutory Rule Against Perpetuities (USRAP)

The Uniform Statutory Rule Against Perpetuities (USRAP) represents the most widespread and influential statutory modernization of RAP in the United States.[4] Adopted by numerous states, USRAP provides a clear, dual-test mechanism designed to validate most interests while retaining a fixed backstop duration.

Under USRAP, an interest is valid if it meets either of the following conditions [9]:

1. It is valid under the traditional common law L+21 test, applying the wait-and-see principle; **OR**
2. It vests or terminates within a fixed duration of **90 years** after its creation, applying a "wait-and-see" approach.[4]

The selection of the 90-year period was not arbitrary. It was chosen by the Uniform Law Commission because 90 years was calculated to approximate the statistical average time period produced by using an actual set of measuring lives plus the 21-year tack-on period.[17] This fixed term provides crucial certainty for estate planners, especially when measuring lives are complex or difficult to track, offering a predictable, non-life-contingent standard.[16]

While USRAP addressed the historical pitfalls and introduced stability, its 90-year limit ultimately failed to satisfy the most aggressive wealth planners. As jurisdictions began competing for trust business by offering far longer durations (300+ years), the 90-year USRAP standard became viewed as a limit rather than a safe harbor, spurring a subsequent wave of state legislative abolition.

C. The Doctrine of Cy Pres and Equitable Reformation

The doctrine of *cy pres*, meaning "as near as possible," is a judicial tool that allows courts to reform an instrument that violates RAP so that the provision approximates the grantor's intention while remaining within the limits of the rule.[15] This doctrine serves as a direct intervention to save instruments from technical failure, particularly where the testator's overall intent is clear.[15] In many jurisdictions, statutes explicitly mandate or permit courts to reform an invalid interest by measuring the perpetuities period by actual rather than possible events, or reforming the instrument to most closely approximate the creator's intention.[15]

A particularly significant application of *cy pres* relates to **charitable trusts**. Charitable interests are generally favored under the law.[19] A foundational exception to RAP is that a charitable trust may last perpetually, and a future interest shifting from one charitable purpose to another charitable purpose is exempt from the rule.[19] However, if the gift fails or the designated charity ceases to exist, courts will apply the *cy pres* doctrine to reroute the gift to a similar charitable purpose, provided the settlor demonstrated a **general charitable intent**.[18] The application of this doctrine varies by state; some states, such as Alabama, Delaware, and Pennsylvania, always apply it to prevent a charitable testamentary trust from failing, while others require the explicit manifestation of general charitable intent in the trust instrument.[21]

IV. The Modern Trend: Abolition, Dynasty Trusts, and Jurisdictional Competition

The most profound development in perpetuities law over the last several decades is the widespread abolition or radical modification of the rule, a movement that has fundamentally altered estate planning and wealth management.

A. Policy Debate: Dead Hand Control vs. Marketability

The push for abolition is highly controversial, centering on the conflict between two opposing policy goals. Critics argue that abolishing RAP facilitates unlimited "dead hand control," interfering with the natural evolution of property ownership and perpetuating the concentration of wealth in the hands of a few families.[3] This return to effective feudalism, they contend, undermines the social justifications the rule was initially created to address.

However, proponents of abolition counter that the original economic rationale for RAP—keeping land alienable—has been largely satisfied by modern trust mechanisms. The core principle of the reform hinges on the distinction between the equitable interest (beneficial ownership) and the legal interest (title and control). In most abolitionist jurisdictions, the perpetuities rule is voided only if the trust instrument grants the trustee the explicit or implied power to sell, mortgage, or lease the trust property.[9] Because the trustee can always sell the underlying assets, the property remains active and marketable in the economy, even if the equitable beneficial interest is restricted for centuries or perpetually. This separation means that while the grantor retains control over *who* benefits and *when* (dead hand control over beneficial enjoyment), the asset itself remains liquid and accessible to the market.

Table 1: Policy and Economic Drivers for RAP Abolition/Modification

Policy Area	**Rationale for RAP Abolition/Modification**	**Impact on Wealth Transfer**
Dead Hand Control	Permits grantor intent to govern property for extended periods, maximizing customized distribution schemes.	Increased control over assets; perpetuates family legacy across multiple generations.
Asset Marketability	Statutes utilize the *trustee power of sale* clause, ensuring legal title and underlying assets remain alienable.	Assets can be managed, traded, and optimized by the trustee, satisfying economic needs.
Tax Efficiency	Allows trusts to fully leverage the federal Generation-Skipping Transfer Tax (GSTT) exemption across hundreds of years.	Enables the creation of multi-generational Dynasty Trusts, promoting maximum capital preservation.

B. Dynasty Trusts and GSTT Planning

The primary economic catalyst driving the abolition movement is the creation of **Dynasty**

Trusts, which require long-term or perpetual duration.[7] These trusts are strategically designed to maximize tax efficiency by leveraging the federal **Generation-Skipping Transfer Tax (GSTT)** exemption.[8]

The GSTT applies to transfers made to a "skip-person," typically a relative two or more generations below the grantor (e.g., a grandchild or great-grandchild).[22] Before the rise of Dynasty Trusts, the state-level constraints of RAP (L+21) acted as an effective temporal constraint on tax avoidance. Once RAP is abolished or significantly extended, a settlor can allocate their lifetime GSTT exemption to a trust. The assets within that trust can then grow tax-free and pass to future generations (children, grandchildren, great-grandchildren, and beyond) without being subjected to federal estate or gift taxes at each generational transfer.[7] For wealthy settlors, this leveraging of the GSTT exemption over centuries represents one of the most powerful strategies for wealth preservation and growth.

C. Statutory Workarounds: Suspension of the Power of Alienation

In states that have adopted extremely long fixed terms or outright abolition, the legal focus shifts from the remoteness of *vesting* to the suspension of the *power of alienation*.[12] The power of alienation is suspended when there are no persons in being capable of conveying an absolute fee or estate in possession.[12]

A crucial statutory workaround employed by abolitionist jurisdictions is conditioning the exemption from RAP on the trustee’s retained power to sell. For instance, in Missouri, the statute dictates that the Rule Against Perpetuities shall not apply to a trust if the trustee has the power to sell the trust property during the time the trust continues beyond the common law perpetuities period.[9] Similarly, South Dakota and Idaho condition the repeal of RAP on the absence of a suspension of the power of alienation, which is usually avoided by granting the trustee the power to sell the trust assets.[9] By guaranteeing that the underlying property remains liquid and transferable, the state ensures that the trust, regardless of its duration, does not violate the fundamental economic policy favoring marketability.

V. Jurisdictional Analysis: State Models and Statutory Complexity

The United States legal landscape concerning RAP is highly heterogeneous, falling generally into three distinct models reflecting varying degrees of regulatory intent.

A. Model 1: Traditional Enforcement (Common Law or Strict Statutory Codification)

These jurisdictions maintain adherence to the classical L+21 rule, often through state-specific codification of the common law. These states typically do not offer long-term or perpetual trust capabilities, enforcing the traditional limits on dead hand control.

A key example is New York, which codifies the rule that every present or future estate shall be void if it suspends the absolute power of alienation for a period longer than lives in being plus 21 years.[9] New York law clarifies that measuring lives cannot be so numerous as to make proof of their end unreasonably difficult.[12] Other jurisdictions maintaining the common law rule include Alabama, Iowa, and Massachusetts.[9]

B. Model 2: Statutory Reformation (USRAP Adopters)

States adopting USRAP utilize the dual L+21/90-year wait-and-see test, representing a moderate approach that simplifies drafting while retaining a time limit that roughly approximates the original common law period.[4] These states offer greater certainty than pure common law jurisdictions but impose a definitive limit on trust longevity.

States adopting the USRAP framework include California, Connecticut, the District of Columbia, Florida, Georgia, Indiana, Kansas, Minnesota, and Virginia.[9] Arizona initially adopted USRAP's 90-year wait-and-see period in the late 20th century, but subsequently transitioned to a much longer fixed term.[17]

C. Model 3: Abolitionist Jurisdictions (Fixed Term or Perpetual)

The most aggressive jurisdictions have moved far beyond the USRAP framework to create specialized trust havens. These states utilize statutory maximums that significantly extend duration or provide outright perpetual existence, usually conditioned on maintaining the power of alienation.

1. Extreme Long-Term Fixed Periods

Several states have opted for statutory fixed terms that effectively allow for Dynasty Trusts spanning many generations:

- **1,000-Year States:** Colorado, Utah, and Wyoming have statutory periods that validate a nonvested property interest if it vests or terminates within 1,000 years after its creation.[5] Wyoming, specifically, requires the trust instrument to state the exemption and set a termination limit of no later than 1,000 years.[9]
- **Other Long Fixed Terms:** Arizona allows a 500-year duration.[6] Tennessee allows trusts created after June 30, 2007, to require vesting or termination within **360 years**.[6] Pennsylvania permits interests created by the exercise of a new power of appointment to vest within 360 years.[9] Texas currently operates under a common law rule but has pending legislation proposing a 200-year maximum.[9]

2. Conditional Perpetual States

A number of states have abolished RAP entirely for trusts, provided certain conditions regarding asset control are met:

- **Idaho and Illinois:** Idaho declares there shall be no rule against perpetuities applicable to real or personal property, provided the suspension of alienation does not exceed 25 years after the death of an individual alive at the time the power was suspended.[9] Critically, the alienation limit is waived if the trustee has the power to sell trust property.[9] Illinois similarly deems the rule inapplicable to "qualified perpetual trusts" if the trust expressly excludes the rule and the trustee holds the unlimited power to sell assets.[9]
- **Delaware (Hybrid System):** Delaware abolished RAP for personal property held in trust, allowing for perpetual Dynasty Trusts based on intangible assets.[9] However, real property held in trust must vest within 110 years. The critical element for planners is that "real property" specifically excludes intangible personal property, such as interests in corporations, LLCs, or partnerships, allowing trusts to hold real property indirectly

without facing the 110-year limit.[9]

- **Missouri and South Dakota:** Both states largely exempt trusts from RAP if the trustee has the power to sell the trust property, creating effective perpetual duration.[9] South Dakota imposes a 30-year limit on the suspension of the power of alienation, which is circumvented if the trustee retains the power of sale.[9]

A significant complexity arises in jurisdictions like Tennessee, Arizona, Montana, Nevada, North Carolina, Oklahoma, Texas, and Wyoming, which have constitutional provisions prohibiting perpetuities.[6] When these states, such as Tennessee and Wyoming, enact statutory terms of 360 or 1,000 years, a direct tension is created between the legislative allowance and the underlying constitutional mandate. This legal conflict suggests that these exceptionally long durations, while statutorily permissible, may not be absolutely secure against a future court challenge arguing that the fixed term still violates the constitutional intent to prevent unreasonable perpetuities.[6] This factor must be weighed heavily in asset situs selection.

VI. Comprehensive State Status Matrix

The following matrix synthesizes the specific statutory provisions regarding the enforcement, modification, duration limits, and primary workarounds or exceptions for the Rule Against Perpetuities across key jurisdictions.

Comparative Status of the Rule Against Perpetuities in US Jurisdictions

State	General RAP Approach	Vesting/Duration Limit	Workaround /Exception (Trusts)	Statutory Citation / Key Note
Alabama	Common Law Rule	Lives in Being + 21 Years	None listed.	Ala. St. §35-4-4 [9]
Alaska	Fixed Term (Long	1,000 Years (Power of	Power of alienation not	AK ST §34.27.100 [9]

	Alienation Limit)	Appointment); 30 Years (Alienation)	suspended if trustee has power to sell trust assets.	
Arizona	Fixed Term (Abolitionist)	500 Years	Common Law RAP inapplicable if trustee has power of sale/unlimited power to terminate. Constitutional prohibition noted.	ARS §14-2901(A)(3); ARS §33-261 [6]
Arkansas	USRAP (Wait-and-See)	90 Years	Standard USRAP adoption. Constitutional prohibition noted.	A.C.A. § 18-3-101 [6]
California	USRAP (Wait-and-See)	90 Years	Standard USRAP adoption.	Cal. Prob. Code §21200 [9]
Colorado	Fixed Term (Extreme Long Term)	1,000 Years	Nonvested interests invalid only if they terminate outside 1,000 years.	CRS §15-11-1102.5 [5]

Connecticut	USRAP (Wait-and-See)	90 Years	Standard USRAP adoption.	Conn. Gen. Stat. §45a-491 [9]
Delaware	Abolished (Hybrid)	110 Years (Real Property); Perpetual (Personal Property)	Real property definition excludes intangible personal property (LLCs, partnerships, etc.).	25 Del. C. §503 [9]
Florida	USRAP (Wait-and-See)	90 Years	Standard USRAP adoption (often cited as 1,000 years, but statutory adoption is 90 years).	FL ST §689.225 [5]
Georgia	USRAP (Wait-and-See)	90 Years	Standard USRAP adoption.	OCGA §44-6-200 [9]
Hawaii	USRAP (Wait-and-See)	90 Years	Standard USRAP adoption.	HRS §525-1 [9]
Idaho	Abolished/Perpetual	Perpetual (Vesting); 25 Years (Suspension	No rule against perpetuities applies.	ID Code §55-111, §55-111A [9]

		of Alienation)	Suspension limit lifted if trustee has power of sale.	
Illinois	Abolished (Qualified Perpetual)	Perpetual	Rule does not apply to "qualified perpetual trusts" if trustee has unlimited power to sell assets.	IL ST Ch. 765, §305/4 [9]
Indiana	USRAP (Wait-and-See)	90 Years	Standard USRAP adoption.	Ind. Code §§32-17-8-1 [9]
Iowa	Common-law Rule Codified	Lives in Being + 21 Years	Codified common law approach.	Iowa Code §558.68 [9]
Kansas	USRAP (Wait-and-See)	90 Years	Standard USRAP adoption.	KSA §59-3401 [9]
Kentucky	Fixed Term (Alienation)	21 Years (after last life)	No suspension of alienation if trustee has power to sell or unlimited power to terminate.	KRS Chapter 381 [9]

Louisiana	Not Known to Law	Not applicable	Trust law requires beneficiary to be in being and ascertainable at trust creation.	LA RS §9:1803 [9]
Maine	Abolished (Qualified)	Perpetual (Conditional)	Rule does not apply if trust expressly states exclusion and trustee has power to sell.	33 ME RSA §101-A [9]
Maryland	Abolished (Qualified)	Perpetual (Conditional)	Rule does not apply if trust expressly states exclusion and trustee has power to sell.	MD Est. & Trust §11-102(b)(5) [9]
Massachusetts	Common Law Rule Codified	Lives in Being + 21 Years	Codified common law approach.	MGLA c. 184A §1 [9]
Michigan	Abolished (Personal Property)	Lives in Being + 21 Years (Real Property)	Rule does not apply to personal property in trust.	MCLA §554.94 [9]
Minnesota	USRAP (Wait-	90 Years	Standard	Minn. Stat. §501A.01 [9]

	and-See)		USRAP adoption.	
Mississippi	Common Law Rule (Case Law)	Lives in Being + 21 Years	Common law mentioned in case law.	N/A [9]
Missouri	Common Law Modified	Perpetual (Conditional)	RAP does not apply if trustee retains the power to sell trust property.	V.A.M.S. §456.025(1) [9]
Montana	USRAP (Wait-and-See)	90 Years	Standard USRAP adoption. Constitutional prohibition noted.	Mont. Code Ann. §72-2-1001 [6]
Nebraska	USRAP (Wait-and-See)	90 Years	Standard USRAP adoption.	Neb. Rev. Stat. §76-2001 [9]
Nevada	USRAP (Wait-and-See) / Long Term	365 Years (Trusts)	Statutory modification for trusts, despite general USRAP adoption and constitutional prohibition.	NRS §111.103 [6]

New Hampshire	Abolished (Qualified)	Perpetual (Conditional)	Rule does not apply if trust expressly states exclusion and trustee has power to sell.	N.H. Rev. Stat. §564:24 [9]
New Jersey	Abolished (Conditional Alienation)	21 Years (Suspension of Alienation)	Common law rule abolished. Trust void only if it suspends power of alienation for longer than L+21; waived if trustee has power of sale.	NJSA §46:2F-9, §46:2F-10 [9]
New Mexico	USRAP (Wait-and-See)	90 Years	Standard USRAP adoption.	NMSA §45-2-901 [9]
New York	Common Law Codified	Lives in Being + 21 Years	Focus is strictly on suspension of the absolute power of alienation.	NY Est. Pow. & Trust §9-1.1 [12]
North Carolina	USRAP / Long Term (Alienation)	21 Years (Suspension of Alienation)	Power of alienation limit lifted if trustee has	NC Gen. Stat. §§41-15, §§41-23 [6]

			power to sell. Constitutional prohibition noted.	
North Dakota	USRAP (Wait-and-See)	90 Years	Standard USRAP adoption.	NDCC §47-02-27.1 [9]
Ohio	Common Law Rule	Lives in Being + 21 Years	Rule does not apply if instrument states exclusion and trustee has power of sale/unlimited power to terminate.	OH ST §2131.08, §2131.09 [9]
Oklahoma	Common Law Rule Codified	Lives in Being + 21 Years	Constitutional prohibition and statutory codification of common law.	OK Const. Art. 2, Sec. 32 [6]
Oregon	USRAP (Wait-and-See)	90 Years	Standard USRAP adoption.	ORS §105.950 [9]
Pennsylvania	Fixed Term (Conditional)	360 Years (New Power of Appointment)	No interest shall be void as a perpetuity generally, but limit applies	20 Pa.C.S. §6107.1 [9]

			to interests created by new powers.	
Rhode Island	Abolished	Perpetual	Common law rule is no longer in force. Applies to both legal and equitable interests.	RI GL §34-11-38 [9]
South Carolina	USRAP (Wait-and-See)	90 Years	Standard USRAP adoption.	SC ST §27-6-10 [9]
South Dakota	Abolished (Conditional Alienation)	30 Years (Suspension of Alienation)	Common law rule not in force. Alienation limit waived if trustee has power of sale or power to terminate.	SDCL §43-5-8, §43-5-1 [9]
Tennessee	Fixed Term (Long Term)	360 Years (Trusts)	Statutory extension for trusts created after 2007. Constitutional prohibition noted.	TCA §66-1-202(f) [6]
Texas	Common Law	Lives in Being	Constitutional prohibition	TX Prop. Code

	Rule Codified	+ 21 Years	noted. Legislation pending to set 200-year limit.	§112.036 [6]
Utah	Fixed Term (Extreme Long Term)	1,000 Years	Nonvested property interests terminate within 1,000 years.	UT ST §75-2-1203(1) [5]
Vermont	Common Law Rule (Case Law)	Lives in Being + 21 Years	Common law mentioned in case law.	N/A [9]
Virginia	USRAP (Wait-and-See)	90 Years	Standard USRAP adoption.	Va Code §55-12.1 [9]
Washington	Fixed Term (Long Term)	150 Years	Trust provision invalid only after 150 years if assets have not vested or become distributable.	RCW §11.98.130 [9]
West Virginia	USRAP (Wait-and-See)	90 Years	Standard USRAP adoption.	W.Va. ST §36-1A-1 [9]
Wisconsin	Fixed Term	Lives in Being	Interest not	Wis. Stat. §700.16(5) [9]

	(Alienation)	+ 30 Years	suspended if trustee has power to sell or unlimited power to terminate.	
Wyoming	Fixed Term (Extreme Long Term)	1,000 Years	Trust must expressly state exemption and terminate within 1,000 years. Constitutional prohibition noted.	WY ST §34-1-139 [6]

VII. Strategic Implications for Interstate Estate Planning

The divergence in state perpetuities laws creates profound opportunities and risks for sophisticated estate planning professionals, particularly those focused on long-term wealth transfer.

A. Situs Selection: The Critical Planning Decision

The validity and duration of a trust are primarily determined by the laws of the jurisdiction chosen as the trust's situs, provided there is a legally sufficient connection (e.g., resident trustee, administration within the state). The dramatic difference between a 90-year USRAP state and a 1,000-year or perpetual state necessitates careful strategic selection. Planners must evaluate whether the stable, predictable environment of a USRAP state outweighs the generational tax benefits afforded by extreme long-duration jurisdictions like Delaware, South Dakota, Utah, or Wyoming. The decision involves balancing maximum duration against jurisdictional stability and the specific asset protection laws offered by the chosen state.[7]

B. Drafting Requirements for Dynasty Trusts

In states that offer abolition or extreme duration (Model 3), the effectiveness of the Dynasty Trust relies heavily on precise drafting that addresses the state's specific workarounds. The single most critical drafting requirement in these jurisdictions is the inclusion of an explicit, unlimited clause granting the trustee the **power of sale** over the trust assets, along with an unlimited power to terminate the trust if desired.[9]

This clause is essential because it prevents the trust from violating the rule against the *suspension of the power of alienation*, even if the state has abolished the rule against remoteness of vesting. For example, in New Hampshire, the trust must explicitly exempt itself from RAP and grant the trustee the power to sell property beyond the vesting period.[9] Failure to include this specific language, or failure to comply with a state's fixed termination requirement (such as Wyoming's 1,000-year cap), renders the entire instrument potentially void.

C. Addressing Constitutional and Legal Challenges

Planners must acknowledge the inherent legal risk in selecting a situs where a constitutional prohibition on perpetuities exists alongside a statute enacting a 360-year or 1,000-year term.[6] Although legislatures in states like Tennessee and Wyoming have enacted these long terms, a future court challenge could determine that the statute violates the state constitution's mandate against unreasonable perpetuities. This risk places a burden on the planner to incorporate statutory savings clauses.

Prudent drafting should anticipate such judicial nullification by including provisions that mandate termination or reformation (*cy pres*) to the nearest legal limit upon an adverse court ruling. Historically, the complexities of the common law RAP were so great that drafting errors were common, leading some state courts to reportedly rule that getting the rule wrong did not necessarily constitute attorney malpractice.[1] However, in the modern competitive environment, the complexity has shifted from abstract legal possibility to jurisdictional compliance. The failure to correctly implement the mandatory requirements of a chosen jurisdiction—such as the power of sale clause or the required maximum duration—now constitutes the primary source of liability for professionals advising on perpetual trusts.

VIII. Conclusion

The Rule Against Perpetuities has transitioned from a rigid, judicially enforced common law doctrine primarily concerned with the abstract certainty of equitable ownership to a highly variable statutory instrument dominated by state legislative policy and competition. The proliferation of USRAP (90-year limit) and the subsequent rise of abolitionist jurisdictions (300 to 1,000 years, or perpetual trusts) underscore a national commitment to facilitating multi-generational Dynasty Trusts, particularly for maximizing GSTT efficiency.

The critical legal distinction that underpins the abolitionist movement is the separation of equitable vesting from legal alienability. By requiring the trustee to maintain the power of sale, jurisdictions allow settlors to exercise perpetual dead hand control over beneficial distribution while ensuring the underlying assets remain functional within the financial markets. For practitioners, this environment demands exceptional diligence in situs selection and mandatory compliance with jurisdiction-specific saving clauses, particularly the explicit delegation of the power of alienation to the trustee. While the strictures of the common law RAP have largely faded, the strategic and technical demands of navigating the 21st-century perpetuities landscape have never been higher.

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