

Memorandum 92-11

Subject: Study L-3013.01 - Perpetuities and Honorary Trusts

A technical conforming amendment enacted as part of the Uniform Statutory Rule Against Perpetuities (USRAP) appears to be causing some confusion. We have had two telephone calls on the matter. The staff proposes to include a clarifying amendment in the Commission's 1992 general probate bill to cure the problem.

Probate Code Section 15211 reads as follows:

Prob. Code § 15211. Honorary trust

15211. A trust for a noncharitable corporation or unincorporated society or for a lawful noncharitable purpose may be performed by the trustee for only 21 years, whether or not there is a beneficiary who can seek enforcement or termination of the trust and whether or not the terms of the trust contemplate a longer duration.

This section, nearly identical to Uniform Probate Code Section 2-907(a), was included in the USRAP bill to avoid application of the 90-year wait-and-see rule to honorary trusts. However, the section, when encountered outside the context of USRAP, can be read to apply to all trusts that are not charitable, including everyday private trusts, which is clearly not intended.

A trust for a "noncharitable purpose" is a term of art, like "nonprobate transfer." Neither term can be read and applied in a strictly literal sense without swallowing up all sorts of other rules. A trust for a noncharitable purpose is a trust for purposes, not for individuals, that does not qualify as a charitable trust, e.g., a trust for a fraternal organization or to maintain a monument. By focusing on the charitable versus noncharitable nature of the trust purpose, the statute assumes that we are not concerned with private trusts.

The Restatement (Second) of Trusts uses the same type of language:

§ 123. Indefinite or General Purposes

Where the owner of property transfers it in trust for indefinite or general purposes, not limited to charitable purposes, no enforceable trust is created, except as stated in § 398(2-4); but if the transferee is authorized or directed to apply the property for such purposes, he has power so to apply it, unless the application is authorized or directed to be made at a time beyond the period of the rule against perpetuities, or the purpose is so indefinite that it cannot be ascertained whether any application falls within it.

The rule in Probate Code Section 15211 deals with the duration issue by making clear that such trusts cannot be performed after the expiration of 21 years.

The staff proposes to clarify Section 15211 as follows:

Prob. Code § 15211 (technical amendment). Honorary trust

15211. A (a) As used in this section, an "honorary trust" is a trust for a lawful purpose that is not a private or charitable trust, including, without limitation, a trust for a noncharitable corporation or noncharitable unincorporated society or for a lawful noncharitable purpose.

(b) An honorary trust may be performed by the trustee for only 21 years, whether or not there is a beneficiary who can seek enforcement or termination of the trust and whether or not the terms of the trust contemplate a longer duration.

Comment. Section 15211 is amended to clarify its application. This is a technical, nonsubstantive change. This section does not apply to private or charitable trusts, but to honorary trusts, which do not qualify as charitable trusts because the beneficiary organization is noncharitable or the trust purpose is noncharitable. This section, like Uniform Probate Code Section 2-907(a) (9th ed. 1990), places a limit on the duration of honorary trusts. See also Restatement (Second) of Trusts §§ 123, 398 (1957).

If the Commission approves this proposal, we will get the necessary amendment drafted and include it in a bill at the next opportunity.

Respectfully submitted,

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