



Texas Fiduciary Litigation Update 2020-2021

David F. Johnson

1

DISCLAIMERS

- These materials should not be considered as, or as a substitute for, legal advice, and they are not intended to nor do they create an attorney-client relationship.
- Since the materials included here are general, they may not apply to your individual legal or factual circumstances.
- You should not take (or refrain from taking) any action based on the information you obtain from these materials without first obtaining professional counsel.
- The views expressed in this presentation do not necessarily reflect those of the firm, its lawyers, or clients.

2

Introduction

- Fiduciary litigation is an ever changing area of the law.
- The author reviews and reports on new cases regularly at his blog: Texas Fiduciary Litigator (www.txfiduciaryliterator.com)
- “The Intersection of Texas Courts and The Fiduciary Field.”
- You can sign up for email alerts!
- This presentation is intended to provide an update on current legal precedent that impacts fiduciaries.

Legislative Update



RAP Changes in Texas

- The Texas Legislatures recently passed a bill that takes effect on September 1, 2021 that extends the rule against perpetuities to 300 years for trusts.
- The Texas Constitution prohibits perpetuities: “Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed . . .” Tex. Const. art. I, § 26.
- Historically, the rule against perpetuities renders invalid any will or trust that “attempts to create any estate or future interest which by any possibility may not become vested within a life or lives in being at the time of the testator’s death and twenty-one years thereafter, and when necessary the period of gestation.”

RAP Changes in Texas

- The Texas Legislature recently amended Texas Trust Code Section 112.036, and that section now provides that an interest in a trust must vest, if at all: (1) not later than 300 years after the effective date of the trust, if the effective date of the trust is on or after September 1, 2021; or (2) except as provided by Subsection (d), not later than 21 years after some life in being at the time of the creation of the interest, plus a period of gestation, if the effective date of the trust is before September 1, 2021. Tex. Prop. Code 112.036(c).
- The effective date of the trust is the date that the trust becomes irrevocable. *Id.* at 112.036(b).
- The statute does clarify that a settlor of a trust may not direct that a real property asset be retained or refuse that a real property asset may be sold for a period of longer than 100 years. Tex. Prop. Code 112.036(f).

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Texas Fiduciary Litigation Update 2020-2021

Also available as part of the eCourse

[2022 Special Needs Trusts eConference](#)

First appeared as part of the conference materials for the
18th Annual Changes and Trends Affecting Special Needs Trusts session
"Fiduciary Litigation Update 2020-2021"