

2023 Kansas Statutes

59-3404. Statutory rule against perpetuities, exclusions. K.S.A. 59-3401, and amendments thereto, the statutory rule against perpetuities, does not apply to:

(1) A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of a:

- (i) Premarital or postmarital agreement;
- (ii) separation or divorce settlement;
- (iii) spouse's election;
- (iv) similar arrangement arising out of a prospective, existing or previous marital relationship between the parties;
- (v) contract to make or not to revoke a will or trust;
- (vi) contract to exercise or not to exercise a power of appointment;
- (vii) transfer in satisfaction of a duty of support; or
- (viii) reciprocal transfer;

(2) a fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease or mortgage property, and the power of a fiduciary to determine principal and income;

(3) a power to appoint a fiduciary;

(4) a discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

(5) a nonvested property interest held by a charity, government or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government or governmental agency or subdivision;

(6) a nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral or other current or deferred benefit plan for one or more employees, independent contractors or the beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse;

(7) a property interest, power of appointment or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this state; or

(8) a trust in which the governing instrument states that the rule against perpetuities does not apply to the trust and under which the trustee or other person to whom the power is properly granted or delegated has power under the governing instrument, any applicable statute or the common law to sell, lease or mortgage property for any period of time beyond the period which would otherwise be required for an interest created under the governing instrument to vest. This subsection shall apply to all trusts created by will or inter vivos agreement executed or amended on or after July 1, 2023, and to all trusts created by exercise of power of appointment granted under instruments executed or amended on or after July 1, 2023.

History: L. 1992, ch. 302, § 4; L. 2023, ch. 48, § 32; July 1.