
To: Members of the House Judiciary Committee

From: **William A. O’Connell**, Real Property Section Legislative Chair

Date: **February 5, 2020**

Subject: **HB Bill #94** – Estates and Trusts – Rule Against Perpetuities

Position: **Supports**

The Maryland State Bar Association (MSBA) **supports House Bill #94 - Estates and Trusts – Rule Against Perpetuities.**

At common law, the Rule Against Perpetuities provided that any property interest that did not vest (that is, become a legal right of present or future enjoyment) within 21 years after the termination of certain lives in being was void. This rule prevented property from being tied up or encumbered for extended periods of time, which would inhibit the use and value of that property.

In 2007, the General Assembly enacted House Bill 188 as Chapter 381, which amended §11-102(b) of the Estates and Trust Article (“ET”). In part, that bill expanded the list of items set forth in the Estates and Trust Article to which the common-law Rule Against Perpetuities does **not** apply. The idea was not to change the common law on this point; instead, it was to have all of the exceptions to the Rule Against Perpetuities collected in one place for easy reference. One of the newly listed exceptions is for “An option of a tenant to purchase all or part of the premises leased by the tenant.” According to cases of the Court of Appeals, this exception is one of three exceptions that arose at common law in the more than 300 years of the existence of the Rule Against Perpetuities. However, this exception is too broadly stated. The exception at common law from the Rule Against Perpetuities relating to a tenant’s option to purchase the leased premises is actually limited only to purchase options that must be exercised, if at all, no later than the end of the term of the lease. This is set forth in Restatement (First) of Property, §395(a)(1944).

This Bill adds the limitation that for a purchase option in a lease to be excluded from the effects of the Rule Against Perpetuities, the option must be exercisable only during the term of the lease. The purpose of this Bill is to make this Maryland statutory exception to the Rule Against



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Perpetuities consistent with the applicable common-law exception and the Restatement. This is what was intended by Chapter 381 of the Laws of 2007.

Therefore, on behalf of the Maryland State Bar Association Real Property Section, I urge that you vote in favor of HB 94.

Thank you for your consideration.

If you have any questions, please contact me.

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