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January 23, 2020

The Honorable William C. Smith, Jr.
Senate Judicial Proceedings Committee
2 East Miller Senate Building
11 Bladen Street
Annapolis, Maryland 21401

Re: Senate Bill 152 – Estates and Trusts – Rule Against Perpetuities

Dear Chairman Smith and Members of the Committee

From time immemorial, the Rule Against Perpetuities has struck fear in the hearts of all law students. In a nutshell, the Rule Against Perpetuities provides that any property interest which does not vest within 21 years after the end of the life of a live human being is void. The Rule thus prevents property from being tied up indefinitely by restrictions placed upon it by people who are long dead.

There are lots of exceptions to the Rule. In 2007, the General Assembly amended Section 11-102(b) of the Estates and Trusts Article to add an exception for **“an option of a tenant to purchase all or part of the premises leased by the tenant.”** This exception was intended to codify an exception found in the common law. Unfortunately, the 2007 language deviated from the common law formulation of the exception.

Senate Bill 152, which was brought to me by the Real Property Section of the Maryland State Bar Association, merely modifies the existing statutory language to bring it in line with the common law exception for options to purchase. It provides that the exception will only cover **“an option of a tenant to purchase all or part of the premises leased by the tenant that is exercisable only during the term of the lease.”** Through this amendment, purchase options of tenants in leases would be treated identically under the Rule as other non-donative transfers that do not vest immediately.

I urge the Committee to give Senate Bill 152 a favorable report.