

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 84
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Short Title: Limit Options in Gross.

(Public)

Sponsors: Senators Hartsell and Odom:

Referred to: Judiciary II/Election Laws

January 30, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO PLACE TIME LIMITS ON OPTIONS IN GROSS AND OTHER
3 INTERESTS IN LAND, AS RECOMMENDED BY THE GENERAL STATUTES
4 COMMISSION.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 41 of the General Statutes is amended by designating the
7 existing provisions as Article 1, "Survivorship Rights and Future Interests", and by
8 adding a new Article to read:

9 **"ARTICLE 3.**
10 **"TIME LIMITS ON OPTIONS IN GROSS AND**
11 **CERTAIN OTHER INTERESTS IN LAND.**

12 **"§ 41-28. Definitions.**

13 As used in this Article:

14 (1) 'Nonvested easement in gross' means a nonvested easement which is not
15 created to benefit or which does not benefit the possessor of any tract of
16 land in his or her use of it as the possessor.

17 (2) 'Option in gross with respect to an interest in land' means an option in
18 which the holder of the option does not own any leasehold or other
19 interest in the land which is the subject of the option.

- 1 (3) 'Preemptive right in the nature of a right of first refusal in gross with
2 respect to an interest in land' means a preemptive right in which the
3 holder of the preemptive right does not own any leasehold or other
4 interest in the land which is the subject of the preemptive right.

5 **"§ 41-29. Options in gross, etc.**

6 An option in gross with respect to an interest in land or a preemptive right in the
7 nature of a right of first refusal in gross with respect to an interest in land becomes
8 invalid if it is not exercised within 30 years after its creation. For purposes of this
9 section, the term 'interest in land' does not include arrangements relating solely to an
10 interest in oil, gas, or minerals.

11 **"§ 41-30. Leases to commence in the future.**

12 A lease to commence at a time certain or upon the occurrence or nonoccurrence of a
13 future event becomes invalid if its term does not actually commence in possession within
14 30 years after its execution. For purposes of this section, the term 'lease' does not include
15 an oil, gas, or mineral lease.

16 **"§ 41-31. Nonvested easements.**

17 A nonvested easement in gross becomes invalid if it does not vest within 30 years
18 after its creation.

19 **"§ 41-32. Possibilities of reverter, etc.**

20 Except as otherwise provided in this section:

- 21 (1) A possibility of reverter preceded by a fee simple determinable;
22 (2) A right of entry preceded by a fee simple subject to a condition
23 subsequent; or
24 (3) An executory interest preceded by either a fee simple determinable or a
25 fee simple subject to an executory limitation;

26 becomes invalid, and the preceding fee simple becomes a fee simple absolute, if the right
27 to vest in possession of the possibility of reverter, right of entry, or executory interest
28 depends on an event or events affecting the use of land and if the possibility of reverter,
29 right of entry, or executory interest does not vest in possession within 60 years after its
30 creation. This section does not apply to an arrangement relating solely to an interest in
31 oil, gas, or minerals.

32 **"§ 41-33. Prospective application.**

33 This Article applies only to a property interest or arrangement that is created on or
34 after October 1, 1995."

35 Sec. 2. In the event that the 1995 General Assembly enacts the "Uniform
36 Statutory Rule Against Perpetuities", G.S. 41-32, as enacted by this this act, reads as
37 rewritten:

38 **"§ 41-32. Possibilities of reverter, etc.**

39 Except as otherwise provided in this section:

- 40 (1) A possibility of reverter preceded by a fee simple determinable;
41 (2) A right of entry preceded by a fee simple subject to a condition
42 subsequent; or

1 (3) An executory interest preceded by either a fee simple determinable or a
2 fee simple subject to an executory limitation;
3 ~~becomes invalid, and the preceding fee simple becomes a fee simple absolute, if the shall~~
4 ~~become invalid 60 years after its creation, and the preceding fee simple shall become a~~
5 ~~fee simple absolute, if the right to vest in possession of the possibility of reverter, right of~~
6 ~~entry, or executory interest depends on an event or events affecting the use of land and if~~
7 ~~the possibility of reverter, right of entry, or executory interest does not vest in possession within~~
8 ~~60 years after its creation. This section does not apply to~~~~of reverter, right of entry, or~~
9 ~~executory interest has not by that date vested in possession. This section does not apply~~
10 ~~to a possessory interest in land, possibility of reverter, right of entry, or executory interest~~
11 ~~held by a charity, a government or governmental agency or subdivision excluded from~~
12 ~~the Uniform Statutory Rule Against Perpetuities by G.S. 41-18(5) or to an arrangement~~
13 ~~relating solely to an interest in oil, gas, or minerals."~~

14 Sec. 3. The Revisor of Statutes shall cause to be printed along with this act all
15 relevant portions of the Official Commentary to the Uniform Rule Against Perpetuities
16 Act and all explanatory comments of the drafters of this act as the Revisor may deem
17 appropriate.

18 Sec. 4. This act becomes effective October 1, 1995.