



## Texas Fiduciary Litigation Update 2020-2021

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# 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](http://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).

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