BREAKOUT 306

Minnesota's Modern Rule Against Perpetuities: What Changed and Why It Matters

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I. Executive Summary

Effective August 1, 2025, Minnesota significantly modernized its Rule Against Perpetuities ("RAP") by extending its statutory wait-and-see period from 90 years to 500 years under Minn. Stat. § 501A.01. This reform materially enhances Minnesota's viability as a long-term trust jurisdiction and creates new planning opportunities for dynasty trust structures, generation-skipping transfer ("GST") tax optimization, and multi-generational wealth preservation. While Minnesota's approach to RAP remains less aggressive than in perpetual trust jurisdictions such as South Dakota or Delaware, the 500-year period significantly improves Minnesota's attractiveness as a trust situs for families who wish to retain local trust administration, fiduciary relationships, and governance while still accessing many of the benefits associated with long-term trust planning. The first part of this presentation reviews the historical development and policy foundations of RAP, the shift to modern perpetuities regimes and Minnesota's statutory reform. The second part of this presentation focuses on the practical estate planning, tax, and drafting implications of extended-duration trusts, with particular emphasis on flexibility, governance, and long-term adaptability.

II. Rule Against Perpetuities in Brief

A. Traditional Common Law Rule

The Common Law Rule Against Perpetuities provided:

"No interest is good unless it must vest, if at all, no later than twenty-one years after some life in being at the creation of the interest."

— John Chipman Gray, *The Rule Against Perpetuities* (4th ed. 1942)

In practice, the Rule required lawyers to analyze, at the moment a trust or will was created, whether it was *theoretically possible*—based on any conceivable set of facts—that an interest might vest too remotely. If such a possibility existed, the interest was void from inception, even if the problematic scenario was highly unlikely or purely hypothetical.

B. Policy Objective

RAP was designed to strike a balance between competing goals:

- Promoting free alienability of property by preventing assets from being tied up indefinitely;
- Limiting "dead-hand" control, ensuring that one generation cannot unreasonably restrict how future generations use or transfer property; and
- Balancing desires to engage in multi-generational wealth planning with the need to keep property freely transferable and economically productive.

C. Criticism and Practical Problems

By the 20th century, RAP was widely criticized for:

- Complexity, often requiring abstract, multi-step analysis disconnected from real-world outcomes;
- Rigidity, where minor wording differences or unforeseeable factual developments could invalidate entire dispositions regardless of the settlor's intent;
- Invalidating otherwise reasonable family planning; and
- Relying on hypothetical outcomes rather than real events.

As a result, many valid planning structures failed not because they were abusive or contrary to public policy, but because they did not satisfy a highly technical and counterintuitive rule.

D. Classic Examples

The Rule often produced counterintuitive results:

- **Unborn Widow:** A gift to a person's "widow for life, then to children" could fail because the widow might be someone not yet born when the interest was created.
- **Fertile Octogenarian:** Even elderly individuals are presumed capable of having children, creating remote vesting possibilities.
- **Modern Example – Cryopreserved Descendants:** Advances in reproductive technology raise new questions about when a "life in being" begins and whether posthumously conceived or cryopreserved descendants could create perpetuities problems under traditional analysis.

III. Evolution to Modern Reform

A. Wait-and-See Doctrine

The wait-and-see doctrine shifts the analysis from theoretical possibilities to actual outcomes. Instead of invalidating an interest based on what *might* happen, courts look at what *actually* happens and uphold the interest if it vests within the permitted period.

- First adopted in Pennsylvania (1947)
- Endorsed by Restatement (1979)
- Widely influential in modern reform

B. Uniform Statutory Rule Against Perpetuities (USRAP)

In 1986, USRAP introduced a simpler two-pronged rule that combined the common law and wait-and-see approaches. Under USRAP, a nonvested interest is valid if:

- It satisfies common law RAP; or
- It actually vests within 90 years.

C. GST Tax

Also in 1986, the same year USRAP was promulgated, Congress enacted the generation-skipping transfer (GST) tax to prevent taxpayers from avoiding estate and gift tax by transferring wealth directly to more remote generations. The simultaneous emergence of USRAP and the GST tax created a powerful dynamic: USRAP legitimized longer trust durations, while the GST tax gave wealthy families a strong financial incentive to use them.

- **Result:** Longer perpetuities periods became highly valuable for transfer tax planning because a properly allocated GST exemption could shelter trust assets from repeated estate taxation for the entire trust duration; and
- **Consequence:** States increasingly competed for trust business by extending or abolishing perpetuities limits. South Dakota was an early mover (1983), and after the GST tax took effect, other jurisdictions followed, Delaware (1995), Alaska (1997), Nevada (1999), and New Hampshire (2003), enacting particularly favorable dynasty trust statutes designed to attract high-net-worth families, trust administration, and fiduciary business.

IV. Minnesota's 2025 RAP Modernization

A. Prior Minnesota Rule (Pre-August 1, 2025)

Minnesota previously followed USRAP, under which a nonvested property interest was valid if it either satisfied the traditional common law vesting period or actually vested or terminated within 90 years after creation.

B. New Minnesota Rule (Post-August 1, 2025)

Effective August 1, 2025, Minnesota significantly expanded its statutory Rule Against Perpetuities under Minn. Stat. § 501A.01(a), (f). Under the revised statute, a nonvested property interest is valid if it either satisfies the traditional common law vesting period or actually vests or terminates within 500 years after its creation. This change preserves Minnesota's existing wait-and-see framework while dramatically extending the permissible duration of trusts from 90 years to 500 years. Because the perpetuities period is generally fixed at the time a trust becomes irrevocable, the 500-year period primarily benefits trusts created or becoming irrevocable on or after August 1, 2025—which is why updating existing revocable trust agreements to reflect the new period is an immediate priority.

V. Why Minnesota Changed its RAP

A. Ongoing Trust Law Modernization

Minnesota's 2025 RAP reform was part of a broader ongoing effort to modernize the state's trust and estate planning framework, following significant legislative updates over the past decade including adoption of the Minnesota Trust Code, decanting statutes, and expanded directed trust and trust protector provisions. In this context, the 500-year perpetuities extension reflects Minnesota's continued commitment to maintaining current, flexible, and competitive trust laws while preserving in-state planning and administration.

B. Maintaining Competitiveness and Retaining Minnesota Trust Administration

- Minnesota's prior 90-year perpetuities period had become comparatively restrictive as many states extended or abolished their perpetuities limitations.
- The 500-year period helps Minnesota remain competitive for long-term trust planning and reduces pressure for Minnesota families to move trust situs to jurisdictions such as South Dakota, Delaware, or Nevada solely to obtain longer trust duration.
- Rather than aggressively seeking substantial out-of-state trust business, the reform primarily helps preserve existing Minnesota fiduciary, legal, accounting, and family governance relationships.

VI. Comparison to Other Jurisdictions

A. Minnesota's Relative Position in the National Trust Landscape

Minnesota's new 500-year perpetuities period significantly improves its position compared to many other states and makes Minnesota a substantially more favorable trust situs than traditional common law states, 90-year USRAP states, and other jurisdictions with shorter trust duration limits. For Minnesota residents, this creates a much stronger in-state option for long-term trust planning, including dynasty trust and multi-generational wealth preservation strategies.

B. Minnesota Remains Less Competitive Than Other Dynasty Trust Jurisdictions

Minnesota's new approach to RAP remains less aggressive than jurisdictions such as South Dakota, Delaware, Nevada, Alaska, Wyoming, and New Hampshire, many of which allow perpetual or near-perpetual trusts and offer additional tax or administrative advantages. Minnesota is also in the minority of states that continues to impose a state-level estate tax, subjects trusts to state income taxation, and does not permit self-settled asset protection trusts (DAPT statutes)—factors separate from trust duration, but relevant to the overall situs calculus, that may make Minnesota a less attractive trust situs for high-net-worth clients focused on minimizing overall tax exposure and enhancing creditor protection.

PRACTICE NOTE: For Minnesota families who intend to maintain local fiduciary relationships, the 500-year period eliminates duration as a reason to move situs. Out-of-state situs may still warrant consideration for clients with very large dynasty trusts generating significant undistributed income (where state income tax savings compound materially over time), families with no remaining Minnesota-resident beneficiaries or trustees, or clients who prioritize self-settled asset protection planning unavailable under Minnesota law. For most other Minnesota families, the 500-year perpetuities period is more than sufficient, and the costs, complexity, and loss of local relationships associated with out-of-state administration will outweigh the marginal benefits.

VII. Practical Estate Planning Implications of Minnesota's 500-Year RAP

Scenario 1: The Anderson Family – Dynasty Trust for a Closely Held Business

The Andersons own a third-generation manufacturing company in Duluth valued at $40 million. The family is interested in transferring their business interests in the company to a trust. Under the prior 90-year rule, a trust created in 2026 would terminate no later than 2116—potentially forcing a liquidity event or business sale during a generation that may not be prepared to absorb assets outright. Under the 500-year rule, the Andersons can establish a dynasty trust holding the business interests through 2526, allowing multiple future generations to benefit from the business without mandatory termination. The trust can include flexible governance provisions permitting future trustees to sell, restructure, or distribute the business when circumstances warrant, rather than when an arbitrary deadline requires it.

Scenario 2: The Chen Family – GST Planning with Local Administration

Dr. and Mrs. Chen have a combined estate of $28 million and three adult children. They prefer to work with their longtime Minneapolis trust company and local estate planning attorney. Under the prior rule, they were considering moving trust situs to South Dakota solely to obtain a longer trust duration for their GST exempt dynasty trust. Under the new 500-year rule, the Chens can establish their dynasty trust under Minnesota law, allocate their combined GST exemption ($30 million in 2026), and achieve virtually the same multi-generational tax shelter without disrupting their existing advisory relationships or incurring the costs of out-of-state administration.

B. Expanded Long-Term Planning Flexibility

Minnesota's 500-year perpetuities period gives estate planners significantly greater flexibility in structuring long-term trusts, particularly for clients with larger or more complex estates and multi-generational planning objectives. The reform reduces the need to rely on out-of-state jurisdictions solely to achieve an extended trust duration.

Removing Duration Constraints on Trust Design

- Removes the prior 90-year ceiling as a practical constraint on trust design;
- Enables more creative use of dynasty trust, GST, and generation-skipping structures; and
- Provides a planning horizon that accommodates virtually any realistic family timeline.

C. Preservation of Local Administration

The new law allows Minnesota families to implement long-term trust strategies while maintaining local trustees, advisors, and administration, reducing pressure to move trust situs for planning reasons alone.

Advantages of Retaining Local Trustees and Advisors

- Continuity of existing fiduciary relationships with local banks, trust companies, and advisors;

- Familiarity with Minnesota courts, statutes, and administrative practice; and
- Reduced complexity and cost associated with multi-state trust structures and administrations.

D. Most Relevant for Larger or Multi-Generational Estates

Minnesota's expanded Rule Against Perpetuities will generally provide the greatest benefit for the following categories of clients:

- Clients with taxable estates seeking long-term transfer tax minimization;
- Families utilizing GST planning and dynasty trust structures;
- Business owners focused on multi-generational succession planning;
- Families with significant real estate, business, or investment assets intended for long-term preservation; and
- Clients who may simply benefit from greater long-term planning flexibility by removing prior duration constraints and preserving future options for later generations.

VIII. Transfer Tax, Basis, and Situs Planning Considerations

Scenario 3: The Larson Family – Basis Planning in a Long-Term Trust

Robert Larson created a $5 million non-GST-exempt irrevocable trust for his daughter, Karen, in 2020. By 2045, the trust has grown to $12 million in appreciated stock with a very low basis, and Karen has a modest $1.5 million personal estate well below the federal exemption. Rather than continuing the trust indefinitely under the 500-year rule, the trustee exercises the "release valve" termination provision, distributing assets to Karen outright so the assets receive a full basis step-up at her death, potentially eliminating a substantial built-in capital gain and generating significant capital gains tax savings for her heirs.

Scenario 4: The Patel Family – Situs Flexibility and State Income Tax

The Patels establish a $15 million irrevocable GST-exempt dynasty trust under Minnesota law in 2026, invested primarily in publicly traded securities. By 2040, family circumstances have shifted—a child has relocated to Florida—and the trust continues to maintain sufficient Minnesota contacts that undistributed trust income may remain subject to Minnesota income taxation. Using the trust's situs flexibility provision, the trust protector changes the trust's situs and administration to a no-income-tax jurisdiction, potentially reducing state income tax liability by approximately $150,000 per year on undistributed trust income while preserving the trust's beneficial interests, GST-exempt status, and 500-year duration.

B. Expanded GST Planning Flexibility

Minnesota's 500-year perpetuities period gives planners substantially greater flexibility for long-term GST exempt trust planning.

Maximizing GST Exemption Over Longer Horizons

- Allocating GST exemption to a 500-year trust can shelter assets from estate tax at each generational level for the full trust duration;
- Leveraging techniques (e.g., sales to grantor trusts, GRATs funding dynasty trusts) become more powerful with a longer compounding horizon; and
- An extended trust duration reduces the likelihood that a trust will terminate and trigger a taxable distribution before assets have been fully leveraged.

C. Basis Planning

Practitioners must continue to consider basis planning and whether trust structures preserve sufficient flexibility for future basis adjustment opportunities.

Building In Basis Step-Up Flexibility when Drafting

- Provide for inclusion powers (general powers of appointment) that allow trust assets to receive a stepped-up basis at a beneficiary's death;
- Include swap powers and substitution rights that permit basis management during the grantor's lifetime;
- Balance GST exemption preservation against basis step-up opportunities for appreciated assets; and
- Consider Delaware Tax Trap planning (IRC § 2041(a)(3)), where the exercise of a power of appointment to create a new perpetuities period may trigger estate tax inclusion and a corresponding basis step-up—a RAP-dependent technique that becomes more relevant with Minnesota's extended 500-year period.

D. Situs and State Tax Considerations Remain Relevant

Practitioners should still evaluate broader state tax and situs planning considerations even though Minnesota's expanded trust duration reduces some pressure for out-of-state situs migration.

Ongoing Considerations when Evaluating Trust Situs

- Minnesota's state income tax on trust income (nexus rules, resident vs. non-resident trust taxation);
- Minnesota's state estate tax and its interaction with trust planning;
- Whether situs migration to a no-income-tax state remains advantageous for certain trusts; and
- The role of trust situs flexibility provisions in preserving future optionality.

IX. Drafting Trust Agreements for 500-Year Duration

The longer a trust continues, the more likely that family circumstances and tax law will diverge from the settlor's original assumptions. Beneficiaries may multiply into dozens or hundreds of descendants, making fiduciary administration increasingly complex and reinforcing the need for flexible governance, modification authority, and clear mechanisms for adaptation

Scenario 5: The Olson Family – Trust Protector Responds to Tax Law Change

In 2026, the Olsons create a $20 million dynasty trust with broad trust protector provisions. When Congress enacts new legislation in 2042 targeting GST exemptions for long-duration trusts, the trust protector divides the trust into separate shares, modifies dispositive provisions, and grants limited powers of appointment to beneficiaries—all without court involvement. Without these provisions, the trust would have been required to undergo costly judicial modification or face the new tax regime without mitigation.

Scenario 6: The Fitzgerald Family – Decanting to Modernize a Rigid Trust

In 2026, the Fitzgeralds create a $10 million trust with broad trustee discretion over principal. By 2060, the trust has grown to $30 million but lacks modern directed trust and investment provisions. Because the original instrument granted absolute discretion over principal—satisfying Minnesota's decanting statute—the successor trustee decants into a new instrument that includes directed trust provisions, specialized advisor roles, and updated administrative terms, while preserving the trust's duration, tax status, and beneficial interests.

B. Flexibility Becomes Increasingly Important

For long-term trusts, drafting should focus less on predicting future outcomes and more on preserving flexibility, governance, and the ability of future fiduciaries to adapt over time. Given uncertainty in tax laws, family circumstances, and administrative needs, trust agreements should provide clear mechanisms for modification and adjustment rather than rely on rigid structures.

Drafting for Adaptability, Not Prediction

- Prioritize adaptability over specificity—avoid locking in assumptions about future law or family structure;
- Build in multiple layers of modification authority (trustee, trust protector, beneficiaries); and
- Design governance mechanisms that can function across generational transitions without court intervention.

C. Trustee Discretion and Distribution Flexibility

Practitioners should strongly consider granting broad trustee discretion, providing for flexible distribution standards, and avoiding unnecessary mandatory distribution structures. In particular:

Granting Broad Discretion Over Distributions

- Grant trustees broad discretion to distribute or accumulate income and principal, withhold or postpone distributions, and terminate trusts to respond to changes in law, tax considerations, or beneficiary circumstances without court involvement;
- Consider granting trustees the broadest permissible discretion to invade principal, including to make distributions for any purpose or without adhering to a stated standard (subject to tax constraints), to maximize flexibility—particularly for

purposes of decanting and restructuring irrevocable trusts without requiring beneficiary consent; and

- Avoid rigid or mandatory distribution provisions that may undermine long-term tax planning, asset protection, or administrative flexibility.

D. Trustee Succession Planning

Trust agreements should include clear but flexible mechanisms for trustee succession over time. For long-term (e.g., 500-year) trusts, it is unrealistic to rely solely on named successor trustees. Instead, agreements should ensure trustee continuity across generations by:

- Permitting currently serving trustees to appoint additional and successor trustees;
- Providing a mechanism for appointing trustees in the event of a complete vacancy, ensuring the fiduciary structure can be reestablished without court involvement; and
- Establishing a clear process for the removal and replacement of trustees, including by specifying who holds that authority and defining any applicable standards or limitations.

E. Trust Protectors

When drafting long-term trusts, practitioners should strongly consider including trust protector provisions to provide ongoing oversight and flexibility. In modern drafting, the trust protector is best viewed as a separate governance layer—distinct from the trustee—whose role focuses on adapting the trust structure over time, rather than on day-to-day administration. Trust protector provisions commonly include authority to:

- Modify administrative and, in appropriate circumstances, dispositive provisions to respond to changes in tax law, fiduciary standards, or family dynamics;
- Change trust situs or governing law to take advantage of more favorable legal or tax environments;
- Remove and replace trustees, adjust fiduciary structures, or convert to directed trust arrangements; and
- Grant, modify, or restrict powers of appointment to facilitate tax planning (e.g., basis step-up and GST planning) or adapt beneficial interests.

F. Directed Trusts

Directed trust provisions allow fiduciary responsibilities to be divided among fiduciaries with specialized roles (e.g., investment and distribution advisors) rather than concentrated in a single trustee. This is particularly important for long-term trusts where institutional trustees, investment strategies, and family dynamics will inevitably change over time. By unbundling the responsibilities of a trustee, directed trusts promote continuity, reduce disruption from trustee turnover, and allow the trust to evolve by substituting or adjusting roles as needed without restructuring the entire fiduciary framework.

Separate Fiduciary Roles for Long-Term Durability

- Investment direction advisor (manages portfolio decisions);
- Distribution advisor (makes or recommends distribution decisions);
- Administrative trustee (handles custody, tax reporting, recordkeeping); and
- Trust protector (oversees structural modifications and fiduciary appointments).

G. Decanting

Trust instruments should be explicitly drafted to maximize future decanting authority, including by granting sufficiently broad trustee distribution powers and clear administrative flexibility to facilitate trust modification or restructuring as circumstances change.

Preserving Decanting Authority in the Instrument

- Grant trustees absolute discretion over principal distributions (broadest permissible standard);
- Avoid limiting language that could restrict the scope of permissible decanting under Minn. Stat. ch. 502; and
- Consider expressly authorizing decanting to trusts with different terms, including trusts with modified dispositive provisions.
- Note that decanting **cannot** extend the trust's perpetuities period. Minn. Stat. § 502.851 expressly prohibits extending the term of the appointed trust beyond the permissible perpetuities period of the invaded trust, and provides that any exercise of decanting authority that does so voids the entire exercise. The 500-year benefit is prospective only.

H. Powers of Appointment

Flexible powers of appointment provide long-term adaptability by allowing future changes to beneficial interests, tax planning, and overall trust structure, including adjustments for basis and GST planning as circumstances evolve.

Using Powers of Appointment Strategically

- **Limited (special) powers of appointment:** Allow beneficiaries to redirect trust assets among a class without estate tax inclusion;
- **General powers of appointment:** Can be granted strategically (e.g., testamentary general power) to achieve basis step-up at a beneficiary's death; and
- **Powers held by trust protectors:** Enable structural changes (e.g., granting or restricting powers) to respond to evolving tax law.

I. Administrative Flexibility and Nonjudicial Modification

Drafting should anticipate the need for future modification by including provisions that facilitate nonjudicial settlement agreements, trust division or merger, and other administrative adjustments without court intervention.

Enabling Modification Without Court Involvement

- Authority to divide trusts (e.g., into GST exempt and non-exempt shares) to preserve tax benefits;
- Authority to merge trusts for administrative efficiency when separate administration is no longer warranted;
- Express consent to nonjudicial settlement agreements under the Minnesota Trust Code; and
- Broad authority to modify administrative provisions (e.g., accounting, reporting, investment standards) as circumstances change.

J. Lifetime Trusts

For larger trusts, practitioners should strongly consider using lifetime trust structures in place of outright distributions to preserve asset protection, tax flexibility, and long-term planning benefits. Outright distributions can expose assets to creditors, claims arising from divorce proceedings, and estate tax inclusion, while lifetime trusts allow for the continued use of discretionary standards and provide spendthrift protection and ongoing fiduciary oversight.

Reasons to Favor Lifetime Trusts Over Outright Distributions

- Continued spendthrift and creditor protection for beneficiaries;
- Exclusion from beneficiary's taxable estate (preserving GST exemption);
- Protection in the event of beneficiary divorce or legal judgment; and
- Ongoing fiduciary oversight and professional management of assets.

K. "Release Valve" – Trust Termination Flexibility

Trust agreements should include a provision allowing an independent trustee to terminate the trust and distribute assets outright to the beneficiary when continuation of the trust no longer serves a material purpose. This "release valve" is useful when:

- Trust corpus has diminished to a level where administrative costs outweigh benefits;
- Continued trust-level income taxation is less efficient than individual taxation;
- Basis step-up at the beneficiary's death would provide greater after-tax value than continued trust exclusion; and
- The beneficiary of a non-GST exempt trust has a relatively small estate, and inclusion may be more tax efficient than continued trust administration.

L. Situs and Governing Law Flexibility

Trust agreements should expressly authorize fiduciaries to change situs and governing law to respond to changes in tax law, promote administrative efficiency, or secure jurisdictional advantages without requiring court involvement.

Authorizing Future Situs and Law Changes

- Grant the trust protector or an independent trustee express authority to change situs and governing law;
- Specify that no court approval or beneficiary consent is required for situs changes;
- Permit selection of any U.S. jurisdiction (or, where appropriate, foreign jurisdictions) as trust situs; and
- Include language confirming that trust validity, construction, and administration are governed by the law of the designated situs.

X. Immediate Practitioner Action Items

A. Update Existing Revocable Trust Agreements

For practitioners with clients who have existing revocable trust agreements—particularly those with larger or taxable estates—updating the perpetuities savings clause from 90 years to 500 years should be treated as a straightforward, high-priority step. Because revocable trusts are freely amendable during the grantor's lifetime, there is no legal barrier to making this change, and the potential long-term benefit is significant relative to the minimal effort involved.

Amending RAP Provisions in Current Documents

- Review all existing revocable trust agreements for clients with estates that may benefit from extended-duration planning;
- Amend perpetuities savings clauses to reference the new 500-year statutory period under Minn. Stat. § 501A.01;
- Confirm that related provisions (e.g., dynasty trust subtrusts, GST exempt shares, and generation-skipping dispositions) are drafted broadly enough to take full advantage of the extended duration;
- Treat this as a routine maintenance item on par with updating beneficiary designations or revising fiduciary appointments—low cost, minimal complexity, and potentially high long-term value; and
- Use the RAP amendment as an opportunity to discuss broader planning updates with the client, including whether the extended duration warrants adding trust protector, decanting, or directed trust provisions that may not be in the current instrument.

B. Incorporate Long-Term Drafting Standards in New Engagements

Building the 500-Year Framework into New Trusts

- Draft all new trusts with the 500-year perpetuities period as the default savings clause;
- Include trust protector, decanting, directed trust, and situs flexibility provisions as standard features in long-term trust instruments;
- Build in "release valve" termination authority and powers of appointment for basis and GST planning flexibility; and

- Discuss with clients whether the extended duration warrants revisiting broader planning goals, including lifetime trust structures, trustee succession mechanisms, and family governance.

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