

## CHAPTER 47-02 CLASSIFICATION OF OWNERSHIP

### **47-02-01. Ownership - Classification.**

The ownership of property is:

1. Absolute; or
2. Qualified.

### **47-02-02. Absolute ownership defined.**

The ownership of property is absolute when a single person has the absolute dominion over it and may use it or dispose of it according to that person's pleasure, subject only to general laws.

### **47-02-03. Qualified ownership defined.**

The ownership of property is qualified:

1. When it is shared with one or more persons;
2. When the time of enjoyment is deferred or limited; or
3. When the use is restricted.

### **47-02-04. Sole or concurrent ownership designated.**

The ownership of property by a single person is designated as a sole or concurrent ownership.

### **47-02-05. Concurrent ownership defined.**

The ownership of property by several persons is either:

1. Of joint interests;
2. Of partnership interests; or
3. Of interests in common.

### **47-02-06. Joint tenancy interest defined.**

A joint interest is one owned by several persons in equal shares by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants.

### **47-02-07. Partnership interest defined.**

A partnership interest is one owned by several persons in partnership for partnership purposes.

### **47-02-08. Interest in common defined.**

An interest in common is one owned by several persons not in joint ownership or partnership. Every interest created in favor of several persons in their own right is an interest in common, unless acquired by them in partnership for partnership purposes, or unless declared in its creation to be a joint tenancy.

### **47-02-09. Commencement and duration of interests.**

In respect to the time of enjoyment an interest in property is:

1. Present or future; and
2. Perpetual or limited.

### **47-02-10. Present interest defined.**

A present interest means that the owner is entitled to the immediate possession of the property.

**47-02-11. Future interest defined.**

A future interest means that the owner is entitled to the possession of the property only at a future period.

**47-02-12. Perpetual interest defined.**

A perpetual interest has a duration equal to that of the property.

**47-02-13. Limited interest defined.**

A limited interest has a duration less than that of the property.

**47-02-14. Determination of time of creation of limitation.**

The delivery of the grant, where a limitation, condition, or future interest is created by grant, and the death of the testator, when it is created by will, is to be deemed the time of the creation of the limitation, condition, or interest within the meaning of the laws of this state.

**47-02-15. Future estates - Classification.**

A future interest is either vested or contingent. It is vested when there is a person in being who would have a right, defeasible or indefeasible, to the immediate possession of the property upon the ceasing of the intermediate or precedent interest. It is contingent while the person in whom or the event upon which it is limited to take effect remains uncertain.

**47-02-16. Alternative contingencies.**

Two or more future interests may be created to take effect in the alternative so that if the first in order fails to vest, the next in succession shall be substituted for it and take effect accordingly.

**47-02-17. Improbable contingency - Future interest valid.**

A future interest is not void merely because of the improbability of the contingency on which it is limited to take effect.

**47-02-18. Future estates pass.**

Future interests pass by succession, will, and transfer in the same manner as present interests.

**47-02-19. Posthumous heir.**

When a future interest is limited to successors, heirs, issue, or children, posthumous children are entitled to take in the same manner as if living at the death of their parent.

**47-02-20. Mere possibility not an interest.**

A mere possibility, such as the expectancy of an heir apparent, is not to be deemed an interest of any kind.

**47-02-21. Future interests - Limitation.**

No future interest in property is recognized by the law, except such as is defined in this title.

**47-02-22. Conditions of ownership - Definition.**

The time when the enjoyment of property is to begin or end may be determined by computation or made to depend on events. In the latter case, the enjoyment is said to be upon condition.

**47-02-23. Conditions - Classification.**

Conditions are precedent or subsequent. The former fix the beginning, the latter the ending of the right.

**47-02-24. Illegal conditions void.**

If a condition precedent requires the performance of an act wrong in itself, the instrument containing it is so far void, and the right cannot exist. If it requires the performance of an act not wrong of itself, but otherwise unlawful, the instrument takes effect and the condition is void.

**47-02-25. Restraints upon marriage void - Use until marriage.**

Conditions imposing restraints upon marriage, except upon the marriage of a minor, or of the widow of the person by whom the condition is imposed, are void. This does not affect limitations when the intent was not to forbid marriage but only to give the use until marriage.

**47-02-26. Restraints on alienation - When void.**

Conditions restraining alienation, when repugnant to the interest created, are void.

**47-02-27. Suspension of power of alienation - Rule against perpetuities.**

Repealed by S.L. 1991, ch. 484, § 6.

**47-02-27.1. Statutory rule against perpetuities - Invalidity of certain contingent property interests, general powers of appointment, special powers of appointment, and general testamentary powers of appointment.**

1. A contingent property interest is invalid unless:
  - a. When the interest is created, it is certain to vest or terminate no later than twenty-one years after the death of an individual then alive; or
  - b. The interest either vests or terminates within ninety years after its creation.
2. A general power of appointment not presently exercisable because of a condition precedent is invalid unless:
  - a. When the power is created, the condition precedent is certain to be satisfied or to become impossible to satisfy no later than twenty-one years after the death of an individual then alive; or
  - b. The condition precedent either is satisfied or becomes impossible to satisfy within ninety years after its creation.
3. A special power of appointment or a general testamentary power of appointment is invalid unless:
  - a. When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than twenty-one years after the death of an individual then alive; or
  - b. The power is irrevocably exercised or otherwise terminates within ninety years after its creation.
4. In determining whether a contingent property interest or a power of appointment is valid under subdivision a of subsection 1, subdivision a of subsection 2, or subdivision a of subsection 3, the possibility that a child will be born to an individual after the individual's death is disregarded.
5. If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument seeks to disallow the vesting or termination of any interest or trust beyond, seeks to postpone the vesting or termination of any interest or trust until, or seeks to operate in effect in any similar fashion upon, the later of the expiration of a period of time not exceeding twenty-one years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or the expiration of a period of time that exceeds or might exceed twenty-one years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, that language is inoperative to the extent it produces a period of time that exceeds twenty-one years after the death of the survivor of the specified lives.

#### **47-02-27.2. When contingent property interest or power of appointment created.**

1. Except as provided in subsections 2 and 3 of this section and in subsection 1 of section 47-02-27.5, the time of creation of a contingent property interest or a power of appointment is determined under general principles of property law.
2. For purposes of sections 47-02-27.1 through 47-02-27.5, if there is a person who alone can exercise a power created by a governing instrument to become an unqualified beneficial owner of a contingent property interest or a property interest subject to a power of appointment described in subsection 2 or 3 of section 47-02-27.1, the contingent property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.
3. For purposes of sections 47-02-27.1 through 47-02-27.5, a contingent property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the contingent property interest or power of appointment in the original contribution was created.

#### **47-02-27.3. Reformation.**

Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the ninety years allowed under subdivision b of subsection 1 of section 47-02-27.1, subdivision b of subsection 2 of section 47-02-27.1, and subdivision b of subsection 3 of section 47-02-27.1, if:

1. A contingent property interest or a power of appointment becomes invalid under section 47-02-27.1;
2. A class gift is not but might become invalid under section 47-02-27.1 and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or
3. A contingent property interest that is not validated by subdivision a of subsection 1 of section 47-02-27.1 can vest but not within ninety years after its creation.

#### **47-02-27.4. Exclusions from statutory rule against perpetuities.**

Section 47-02-27.1 does not apply to:

1. A contingent property interest or a power of appointment arising out of a nondonative transfer, except a contingent property interest or a power of appointment arising out of a premarital or postmarital agreement, a separation or divorce settlement, a spouse's election, a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties, a contract to make or not to revoke a will or trust, a contract to exercise or not to exercise a power of appointment, a transfer in satisfaction of a duty of support, or a reciprocal transfer.
2. A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income.
3. A power to appoint a fiduciary.
4. A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal.
5. A contingent property interest held by a charity, government, or governmental agency or subdivision, if the contingent property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision.
6. A property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or excluded by another statute of this state.
7. Except to the extent otherwise provided in the governing instrument of a business trust, a business trust has perpetual existence, and a business trust may not be terminated or revoked by a beneficial owner or other person except in accordance with the terms of its governing instrument. A business trust, whether domestic or foreign, except for a real estate investment trust, may not own any interest in real property within this state. As used in this subsection "real estate investment trust" means a trust qualifying as a real estate investment trust under section 856 et seq., of the United States Internal Revenue Code of 1986 [26 U.S.C. 856 et seq.], or a trust qualifying as

a real estate mortgage investment conduit under section 860D of the United States Internal Revenue Code of 1986 [26 U.S.C. 860D].

**47-02-27.5. Prospective application.**

1. Except as extended by subsection 2, sections 47-02-27.1 through 47-02-27.5 apply to a contingent property interest or a power of appointment that is created on or after July 1, 1991. For purposes of this section, a contingent property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.
2. If a contingent property interest or a power of appointment was created before July 1, 1991, and is determined in a judicial proceeding, commenced on or after July 1, 1991, to violate this state's rule against perpetuities as that rule existed before July 1, 1991, a court upon the petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the contingent property interest or power of appointment was created.

**47-02-28. Termination of future interest - Provision by creator.**

A future interest may be defeated in any manner, or by any act or means, which the party creating such interest provided for or authorized in the creation thereof, nor is a future interest thus liable to be defeated to be adjudged void in its creation on that ground.

**47-02-29. Future interest dependent on death without successors is defeated by birth of posthumous child.**

A future interest depending on the contingency of the death of any person without successors, heirs, issue, or children is defeated by the birth of a posthumous child of such person capable of taking by succession.

**47-02-30. Future interest - Effect of change of intermediate interest.**

No future interest can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent interest, nor by any destruction of such precedent interest by forfeiture, surrender, merger, or otherwise, except as provided by section 47-02-32, or when a forfeiture is imposed by statute as a penalty for the violation thereof.

**47-02-31. Future interest restraining alienation - When void.**

Repealed by S.L. 1991, ch. 484, § 6.

**47-02-32. Future interest - Effect of determination of precedent interest - Contingent remainders not artificially destructible.**

No future interest, valid in its creation, is defeated by the determination of the precedent interest before the happening of the contingency on which the future interest is limited to take effect, but should such contingency afterwards happen, the future interest takes effect in the same manner and to the same extent as if the precedent interest had continued to the same period.

**47-02-33. Rights of owner of life estate.**

The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that the owner of a life estate must do no act to the injury of the inheritance.

**47-02-34. Life estate - Obligation to maintain property - Waste - Taxes - Other charges and assessments.**

The owner of a life estate must keep the buildings and fences in repair from ordinary waste and must pay the taxes and other annual charges and a just proportion of extraordinary assessments benefiting the whole inheritance.