

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE ENROLLED ACT No. 1144

AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 29-1-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) Any interested person or a personal representative named in the will may petition the court having jurisdiction of the administration of the decedent's estate:

(a) (1) to have the will of such decedent, whether the same is written or is unwritten, is in his possession or not, is lost, destroyed, or without the state, probated;

(b) (2) for the issuance of letters testamentary to the executor named in said will for the administration of said estate;

(c) (3) for the appointment of an administrator with the will annexed if no executor is designated in said will or if the person so designated is not qualified, dead, or refuses to serve; **or**

(d) (4) for the appointment of an administrator for the estate of any person dying intestate.

(b) A petition for probate may be combined with a petition for the issuance of letters testamentary, or as administrator with the will annexed, and a person interested in the probate of a will and in the administration of the estate may petition for both.

(c) No notice that a will is to be offered for probate or that it has

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been probated shall be required.

(d) No notice of the filing of, and hearing on, the petition described in this section shall be given to or served upon any person. If the petition described herein is filed in term time, it shall be heard forthwith by the court, and if filed in vacation, it shall be heard by the judge of said court if present, or in his absence by the clerk of the said court.

(e) **If:**

- (1) **an interested person petitions for the appointment of an administrator for the estate of a person dying intestate; and**
- (2) **a petition to dissolve the marriage of the decedent and the decedent's spouse is pending in an Indiana court or the court of another state at the time of the decedent's death;**

the court may not appoint the decedent's spouse to be the administrator of the decedent's estate.

(f) **Subsection (e) does not apply to a petition for appointment of an administrator for the estate of a person dying intestate if the application of subsection (e) is waived in an agreement signed by each person, except a person who is incapacitated or a minor, who is eligible for a distribution from the decedent's net estate under IC 29-1-2-1. A waiver may be submitted to the court at any time before the appointment of an administrator.**

SECTION 2. IC 29-1-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. A petition for the probate of a will and for the issuance of letters testamentary or for the appointment of an administrator with the will annexed, or for the appointment of an administrator, shall state:

- (1) the name, age, domicile, and date of the death of the decedent;
- (2) the name, age, and place of residence of each heir, in the event the decedent left no will; and the name, age, and place of residence of each legatee and devisee, in the event the decedent left a will, so far as such are known or can with reasonable diligence be ascertained by the personal representative;
- (3) whether the person named in **subdivision** (1) died testate or intestate;
- (4) if the decedent was not domiciled in the state at the time of his death, a description of the property to be administered which is within the county in which the petition is filed;
- (5) if the will sought to be probated is unwritten, lost, or was improperly destroyed or suppressed, a detailed statement of the provisions of said will so far as known;
- (6) the name and place of residence or business address of the

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person, if any, designated as executor of the will;

(7) if the petition be for the appointment of an administrator with the will annexed, or of an administrator, the name and place of residence or business address of the person to be so appointed, together with a statement of his relationship to the decedent, and such other facts, if any, which entitle such person to be so appointed;

(8) the name and business address of the attorney who is to represent the personal representative; **and**

(9) if the person named in subdivision (1) died intestate, whether a petition to dissolve the marriage of the decedent and the decedent's spouse is pending in an Indiana court or the court of another state at the time of the decedent's death.

SECTION 3. IC 29-1-7.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) The court may grant a petition for administration without court supervision if:

(1) all the persons referred to in either section 1(a)(1) or 1(a)(2) of this chapter have joined in the petition;

(2) the estate is solvent;

(3) the personal representative is qualified to administer the estate without court supervision;

(4) the heirs, or legatees and devisees, or the parent (as defined in IC 29-3-1-11), or if none, the guardian (as defined in IC 29-3-1-6) of an heir, legatee, or devisee, as the case may be, freely consent to and understand the significance of administration without court supervision; and

(5) the will does not request supervised administration.

(b) ~~In addition,~~ As an alternative to the requirements of subsection (a), the court may also grant a petition without the requirements of subdivision (1) and the consent requirement of subdivision (4) being met, for administration without court supervision if:

(1) the decedent in the will authorized the administration of the estate to be unsupervised; and if all other requirements of this subsection are met.

(2) the estate is solvent; and

(3) the personal representative is qualified to administer the estate without court supervision.

~~(b)~~ (c) Once a petition for administration without court supervision has been granted **under subsection (a) or (b)**, a personal representative's authority, under such order, shall not be subject to any requirement of court approval or confirmation or be open to collateral

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attack on account of any defect or irregularity in the proceedings resulting in issuance of the order of no supervision, if the court issuing the order had jurisdiction of the estate.

(c) (d) The court may, on its own motion or the motion of an interested person, revoke an order of unsupervised administration and require an administration on terms and conditions which the court specifies if the court finds that such a revocation is in the best interests of the estate, creditors, taxing authorities, heirs, legatees, or devisees.

SECTION 4. IC 29-1-7.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. Subject to ~~section 2(c)~~ **section 2(d)** of this chapter, a personal representative who administers an estate under this chapter may do the following without order of the court:

- (1) retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;
- (2) receive assets from fiduciaries or other sources;
- (3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:
 - (i) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or
 - (ii) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;
- (4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;
- (5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees

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generally;

(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(8) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) abandon property when, in the opinion of the personal representatives, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss and liability and himself against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise and advance money for the protection of the estate;

(17) effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in

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- satisfaction of the indebtedness secured by lien;
- (18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;
- (19) sell or exercise stock subscription or conversion rights **and** consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- (20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;
- (21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one (1) or more agents to perform any act of administration, whether or not discretionary;
- (22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;
- (23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;
- (24) continue any unincorporated business or venture in which the decedent was engaged at the time of his death:
- (i) in the same business form for a period of not more than five (5) months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will;
 - (ii) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or
 - (iii) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporations and retention in the estate;
- (25) incorporate any business or venture in which the decedent was engaged at the time of his death;
- (26) satisfy and settle claims;
- (27) distribute assets of the estate upon such terms as he may impose; and

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(28) perform any other act necessary or appropriate to administer the estate.

SECTION 5. IC 29-1-7.5-3.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3.2. (a) Not more than two (2) months after the appointment of a personal representative under this chapter, the personal representative shall prepare a verified inventory of the estate's assets. The inventory may consist of at least one (1) written instrument.

(b) The inventory required under subsection (a) must indicate the fair market value of each item of property of the decedent of which the personal representative has possession or knowledge, including a statement of all known liens and other charges on any item. The property shall be classified in the inventory as follows:

- (1) Real property, with plat or survey description, and if a homestead, designated as a homestead.
- (2) Furniture and household goods.
- (3) Emblements and annual crops raised by labor.
- (4) Corporate stocks, including the class, the par value or that the stock has no par value, and if preferred stock, the dividend rate.
- (5) Mortgages, bonds, notes, or other written evidences of debt or of ownership described by the name of the debtor, recording data, and other identification.
- (6) Bank accounts, money, and insurance policies if payable to the estate of the decedent or to the decedent's personal representative.
- (7) All other personal property accurately identified, including the decedent's proportionate share in any partnership. However, no inventory of the partnership property is required.

(c) In preparing the inventory required under subsection (a), the personal representative may employ a disinterested appraiser to ascertain the fair market value as of the date of the decedent's death of an asset that has a value that may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items the appraiser appraised.

(d) The personal representative shall furnish a copy of the inventory required under subsection (a), or a supplement or amendment to the inventory, to a distributee who requests a copy.

(e) The personal representative may certify to the court that the inventory required under subsection (a), a supplement, or an amendment to the inventory has been prepared and is available. However, the court may not require the personal representative to

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file a copy of the inventory, a supplement, or an amendment to the inventory with the court.

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