February 1, 2002

SENATE BILL No. 57

DIGEST OF SB 57 (Updated January 31, 2002 4:59 PM - DI 105)

Citations Affected: Numerous provisions throughout the Indiana code.

Synopsis: Title 32 remodification. Recodifies Title 32 concerning property to reorganize and restate the law without substantive change. Makes amendments to Indiana Code provisions outside Title 32 to conform to the Title 32 remodification. Repeals current Title 32 provisions.

Effective: July 1, 2002.

Kenley, Smith S

November 20, 2001, read first time and referred to Committee on Judiciary.
January 31, 2002, amended, reported favorably — Do Pass.

Copy

February 1, 2002

Second Regular Session 112th General Assembly (2002)

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 2001 General Assembly.

C o p y

SENATE BILL No. 57

A BILL FOR AN ACT to amend the Indiana Code concerning property.

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

SECTION 1. IC 32-16 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

ARTICLE 16. EFFECT OF RECODIFICATION OF TITLE 32

Chapter 1. Effect of Recodification by the Act of the 2002 Regular Session of the General Assembly

Sec.1. As used in this chapter, "prior property law" refers to the statutes that are repealed or amended in the recodification act of the 2002 regular session of the general assembly as the statutes existed before the effective date of the applicable or corresponding provision of the recodification act of the 2002 regular session of the general assembly.

Sec. 2. The purpose of the recodification act of the 2002 regular session of the general assembly is to recodify prior property law in a style that is clear, concise, and easy to interpret and apply. Except to the extent that:

(1) the recodification act of the 2002 regular session of the

general assembly is amended to reflect the changes made in a provision of another bill that adds to, amends, or repeals a provision in the recodification act of the 2002 regular session of the general assembly; or

(2) the minutes of meetings of the code revision commission during 2001 expressly indicate a different purpose;

the substantive operation and effect of the prior property law continue uninterrupted as if the recodification act of the 2002 regular session of the general assembly had not been enacted.

Sec. 3. Subject to section 2 of this chapter, sections 4 through 9 of this chapter shall be applied to the statutory construction of the recodification act of the 2002 regular session of the general assembly.

Sec. 4. (a) The recodification act of the 2002 regular session of the general assembly does not affect:

(1) any rights or liabilities accrued;

(2) any penalties incurred;

(3) any violations committed;

(4) any proceedings begun;

(5) any bonds, notes, loans, or other forms of indebtedness issued, incurred, or made;

(6) any tax levies made or authorized;

(7) any funds established;

(8) any patents issued;

(9) the validity, continuation, or termination of any contracts, easements, or leases executed;

(10) the validity, continuation, scope, termination, suspension, or revocation of:

(A) permits;

(B) licenses;

(C) certificates of registration;

(D) grants of authority; or

(E) limitations of authority; or

(11) the validity of court decisions entered regarding the constitutionality of any provision of the prior property law;

before the effective date of the recodification act of the 2002 regular session of the general assembly (July 1, 2002). Those rights, liabilities, penalties, offenses, proceedings, bonds, notes, loans, other forms of indebtedness, tax levies, funds, patents, contracts, leases, permits, licenses, certificates of registration, grants of authority, or limitations of authority continue and shall be imposed and enforced under prior property law as if the recodification act

C o p y

of the 2002 regular session of the general assembly had not been enacted.

(b) The recodification act of the 2002 regular session of the general assembly does not:

(1) extend, or cause to expire, a permit, license, certificate of registration, or other grant or limitation of authority; or

(2) in any way affect the validity, scope, or status of a license, permit, certificate of registration, or other grant or limitation of authority;

issued under the prior property law.

(c) The recodification act of the 2002 regular session of the general assembly does not affect the revocation, limitation, or suspension of a permit, license, certificate of registration, or other grant or limitation of authority based in whole or in part on violations of the prior property law or the rules adopted under the prior property law.

Sec. 5. The recodification act of the 2002 regular session of the general assembly shall be construed as a recodification of prior property law. Except as provided in section 2(1) and 2(2) of this chapter, if the literal meaning of the recodification act of the 2002 regular session of the general assembly (including a literal application of an erroneous change to an internal reference) would result in a substantive change in the prior property law, the difference shall be construed as a typographical, spelling, or other clerical error that must be corrected by:

(1) inserting, deleting, or substituting words, punctuation, or other matters of style in the recodification act of the 2002 regular session of the general assembly; or

(2) using any other rule of statutory construction;

as necessary or appropriate to apply the recodification act of the 2002 regular session of the general assembly in a manner that does not result in a substantive change in the law. The principle of statutory construction that a court must apply the literal meaning of an act if the literal meaning of the act is unambiguous does not apply to the recodification act of the 2002 regular session of the general assembly to the extent that the recodification act of the 2002 regular session of the general assembly is not substantively identical to the prior property law.

Sec. 6. Subject to section 9 of this chapter, a reference in a statute or rule to a statute that is repealed and replaced in the same or a different form in the recodification act of the 2002 regular session of the general assembly shall be treated after the effective

C o p y

date of the new provision as a reference to the new provision.

Sec. 7. A citation reference in the recodification act of the 2002 regular session of the general assembly to another provision of the recodification act of the 2002 regular session of the general assembly shall be treated as including a reference to the provision of prior property law that is substantively equivalent to the provision of the recodification act of the 2002 regular session of the general assembly that is referred to by the citation reference.

Sec. 8. (a) As used in the recodification act of the 2002 regular session of the general assembly, a reference to rules adopted under any provision of this title or under any other provision of the recodification act of the 2002 regular session of the general assembly refers to either:

(1) rules adopted under the recodification act of the 2002 regular session of the general assembly; or

(2) rules adopted under the prior property law until those rules have been amended, repealed, or superseded.

(b) Rules adopted under the prior property law continue in effect after June 30, 2002, until the rules are amended, repealed, or suspended.

Sec. 9. (a) A reference in the recodification act of the 2002 regular session of the general assembly to a citation in the prior property law before its repeal is added in certain sections of the recodification act of the 2002 regular session of the general assembly only as an aid to the reader.

(b) The inclusion or omission in the recodification act of the 2002 regular session of the general assembly of a reference to a citation in the prior property law before its repeal does not affect:

(1) any rights or liabilities accrued;

(2) any penalties incurred;

(3) any violations committed;

(4) any proceedings begun;

(5) any bonds, notes, loans, or other forms of indebtedness issued, incurred, or made;

(6) any tax levies made;

(7) any funds established;

(8) any patents issued;

(9) the validity, continuation, or termination of contracts, easements, or leases executed;

(10) the validity, continuation, scope, termination, suspension, or revocation of:

(A) permits;

C o p y

(B) licenses;
(C) certificates of registration;
(D) grants of authority; or
(E) limitations of authority; or
(11) the validity of court decisions entered regarding the constitutionality of any provision of the prior property law;
before the effective date of the recodification act of the 2002 regular session of the general assembly (July 1, 2002). Those rights, liabilities, penalties, offenses, proceedings, bonds, notes, loans, other forms of indebtedness, tax levies, funds, patents, contracts, leases, licenses, permits, certificates of registration, and other grants of authority continue and shall be imposed and enforced under prior property law as if the recodification act of the 2002 regular session of the general assembly had not been enacted.

(c) The inclusion or omission in the recodification act of the 2002 regular session of the general assembly of a citation to a provision in the prior property law does not affect the use of a prior conviction, violation, or noncompliance under the prior property law as the basis for revocation of a license, permit, certificate of registration, or other grant of authority under the recodification act of the 2002 regular session of the general assembly, as necessary or appropriate to apply the recodification act of the 2002 regular session of the general assembly in a manner that does not result in a substantive change in the law.

SECTION 2. IC 32-17 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

ARTICLE 17. INTERESTS IN PROPERTY

Chapter 1. Fee Simple Interest

Sec. 1. As used in this chapter, "grantor" means every person by whom an estate or interest in land is:
(1) created;
(2) granted;
(3) bargained;
(4) sold;
(5) conveyed;
(6) transferred; or
(7) assigned.

Sec. 2. (a) A conveyance of land that is:
(1) worded in substance as "A.B. conveys and warrants to C.D." (insert a description of the premises) "for the sum of" (insert the consideration); and

C o p y

(2) dated and signed, sealed, and acknowledged by the grantor;

is a conveyance in fee simple to the grantee and the grantee's heirs and assigns with a covenant as described in subsection (b).

(b) A conveyance in fee simple under subsection (a) includes a covenant from the grantor for the grantor and the grantor's heirs and personal representatives that the grantor:

(1) is lawfully seized of the premises;

(2) has good right to convey the premises;

(3) guarantees the quiet possession of the premises;

(4) guarantees that the premises are free from all encumbrances; and

(5) will warrant and defend the title to the premises against all lawful claims.

Sec. 3. (a) Estates tail are abolished.

(b) An estate that under common law is a fee tail:

(1) is considered a fee simple; and

(2) if the estate is not limited by a valid remainder, is considered a fee simple absolute.

Sec. 4. Lineal and collateral warranties with all their incidents are abolished. However, the heirs and devisees of a person who has made a covenant or agreement is answerable upon that covenant or agreement:

(1) to the extent of property descended or devised to the heirs and devisees; and

(2) in the manner prescribed by law.

Chapter 2. Estate

Sec. 1. (a) This section does not apply to:

(1) mortgages;

(2) conveyances in trust; or

(3) conveyances made to husband and wife.

(b) Every estate vested in executors or trustees as executors shall be held by them in joint tenancy.

(c) Except as provided in subsection (b), a conveyance or devise of land or of any interest in land made to two (2) or more persons creates an estate in common and not in joint tenancy unless:

(1) it is expressed in the conveyance or devise that the grantees or devisees hold the land or interest in land in joint tenancy and to the survivor of them; or

(2) the intent to create an estate in joint tenancy manifestly appears from the tenor of the instrument.

Sec. 2. A deed of release or quitclaim passes all the estate that

C o p y

the grantor (as defined in IC 32-17-1-1) may convey by a deed of bargain and sale.

Sec. 3. (a) A freehold estate and a chattel real may be created to begin at a future day.

(b) An estate for life:

(1) may be created in a term of years with or without the intervention of a precedent estate; and

(2) a remainder may be limited on the estate for life.

(c) A remainder of a freehold or a chattel real, either contingent or vested, may be created, expectant on the termination of a term of years.

Sec. 4. A remainder may be limited on a contingency. If the contingency occurs, the contingency abridges or determines the precedent estate.

Sec. 5. A conveyance made by a tenant for life or years that purports to grant or convey a greater estate than the tenant possesses or can lawfully convey:

(1) does not result in a forfeiture of the tenants's estate; and

(2) passes to the grantee or alienee all the estate that the tenant may lawfully convey.

Chapter 3. Tenancy

Sec. 1. (a) This section applies to a written contract in which a husband and wife:

(1) purchase real estate; or

(2) lease real estate with an option to purchase.

(b) Except as provided in subsection (d), a contract described in subsection (a) creates an estate by the entireties in the husband and wife. The interest of neither party is severable during the marriage.

(c) Upon the death of either party to the marriage, the survivor is considered to have owned the whole of all rights under the contract from its inception.

(d) If:

(1) a contract described in subsection (a) expressly creates a tenancy in common; or

(2) it appears from the tenor of a contract described in subsection (a) that the contract was intended to create a tenancy in common;

the contract shall be construed to create a tenancy in common.

Sec. 2. If a husband and wife are divorced while a contract described in section 1(b) of this chapter is in effect, the husband and wife own the interest in the contract and the equity created by the contract in equal shares.

C o p y

Sec. 3. If:

(1) a husband and wife execute a title bond or contract for the conveyance of real estate owned by them as tenants by the entireties; and

(2) one (1) of the spouses dies:

(A) during the continuance of the marriage; and

(B) before the whole of the agreed purchase price has been paid;

the interest of the deceased spouse in the unpaid part of the purchase price passes to the surviving spouse in the same right as the surviving spouse's rights of survivorship in real estate held as tenants by the entireties.

Sec. 4. (a) A joint deed of conveyance by a husband and wife is sufficient to convey and pass any interest described in the deed of either or both of them in land held by them as:

(1) tenants in common;

(2) joint tenants; or

(3) tenants by the entireties.

(b) An executed and recorded power of attorney by one (1) spouse to the other spouse authorizing the conveyance by the attorney in fact of any interest owned:

(1) individually by the grantor (as defined in IC 32-17-1-1) of the power of attorney; or

(2) with the grantor's spouse;

enables the attorney in fact through the exercise of the power of attorney to effectively convey the interest in land by individually making a deed of conveyance.

Chapter 4. Partition Proceedings

Sec. 1. (a) The following persons may compel partition of land held in joint tenancy or tenancy in common as provided under this chapter:

(1) A person that holds an interest in the land as a joint tenant or tenant-in-common either:

(A) in the person's own right; or

(B) as executor or trustee.

(2) If the sale of the estate of a decedent who held an interest in the land as a joint tenant or tenant in common is necessary, the decedent's administrator or executor.

(b) A trustee, an administrator, or an executor may be made a defendant in an action for the partition of real estate to answer as to any interest the trustee, administrator, or executor has in the real estate.

C o p y

Sec. 2. (a) A person described in section 1(a) of this chapter may file a petition to compel partition in the circuit court or court having probate jurisdiction of the county in which the land or any part of the land is located.

(b) A petition filed under subsection (a) must contain the following:

(1) A description of the premises.

(2) The rights and titles in the land of the parties interested.

Sec. 3. The proceedings, practice, and pleadings for an action under this chapter are the same as in civil suits, except as otherwise provided in this chapter.

Sec. 4. (a) If:

(1) upon trial of any issue;

(2) upon default; or

(3) by consent of parties;

the court determines that partition should be made, the court shall award an interlocutory judgment that partition be made to parties who desire partition.

(b) In issuing a judgment under subsection (a), the court shall:

(1) specify the share assigned to each party; and

(2) take into consideration advancements to heirs of a person dying intestate.

(c) If the court issues a judgment under subsection (a), any part of the premises remaining after the partition belongs to the persons entitled to the premises, subject to a future partition.

(d) If:

(1) upon trial of any issue;

(2) upon default; or

(3) by confession or consent of parties;

the court determines that the land for which partition is demanded cannot be divided without damage to the owners, the court may order the whole or any part of the premises to be sold as provided under section 12 of this chapter.

Sec. 5. Notwithstanding section 4 of this chapter, a court may not order or affirm partition of any real estate contrary to the intention of a testator expressed in the testator's will.

Sec. 6. Upon judgment of partition, the court shall appoint three (3) individuals as commissioners who:

(1) are disinterested resident freeholders;

(2) reside and own land in the county in which court is held; and

(3) are not related to any of the parties;

C o p y

who shall make partition of the land in accordance with the judgment of the court.

Sec. 7. (a) Before discharging their duties, the commissioners appointed under section 6 of this chapter shall take an oath to faithfully perform the duties of their trust.

(b) The oath described in subsection (a) must:

(1) if taken in open court, be entered in the court's order book; and

(2) if not taken in open court, be endorsed on the warrant issued to the commissioners to make the partition.

Sec. 8. Two (2) or more persons may, if they choose, have their shares set off together.

Sec. 9. (a) The commissioners shall report to the court regarding their activities under this chapter.

(b) The commissioners shall make the report required under this section:

(1) in open court; or

(2) by signing and swearing to the report before a person authorized to administer oaths.

(c) A report filed under this section must specify the shares assigned to each party by:

(1) divisions;

(2) lots;

(3) metes and bounds; or

(4) plats.

Sec. 10. If the court confirms a report filed under section 9 of this chapter, the court shall:

(1) spread the report on the order book;

(2) enter a judgment of partition in accordance with the report; and

(3) record the report and judgment in a separate book kept for that purpose.

Sec. 11. (a) Before confirming a report filed under section 9 of this chapter, the court may, if the court determines that good cause exists, set aside the report.

(b) If the court sets aside a report under subsection (a):

(1) the court may:

(A) recommit the duty of partition to the same commissioners; or

(B) appoint other commissioners in the same manner as the original commissioners; and

(2) the commissioners shall perform the duties described in

C o p y

this chapter.

Sec. 12. (a) If the commissioners report to the court that the whole or part of the land of which partition is demanded can not be divided without damage to the owners, the court may order the whole or any part of the land to be sold at public or private sale on terms and conditions prescribed by the court.

(b) If the court orders a sale under this section, the order shall provide for reasonable public notice of the sale.

(c) If the court orders a sale under this section but does not order the sale to be made for cash, the court shall require that the purchaser make a cash payment of at least one-third (1/3) of the purchase price to the commissioner appointed under section 14 of this chapter at the time of the sale.

(d) Land sold under this section may not be sold for less than:

(1) if sold at public sale, two-thirds (2/3) of its appraised value; and

(2) if sold at private sale, its appraised value.

The court shall determine the appraised value of the land in the same manner as in cases of sales of land on execution.

(e) If only a part of land is sold under this section, the remainder may be partitioned as provided under this chapter.

(f) If the value of land ordered by the court to be sold at private sale does not exceed one thousand dollars ($1,000), the land may, in the discretion of the court, be sold without any notice of sale being had or given.

(g) In all cases, the purchaser of land sold under this section has rights in all crops planted on the land after the sale.

(h) The court may:

(1) approve reports of sale by commissioners in partition proceedings; and

(2) order the deed delivered to the purchaser.

Sec. 13. If the court confirms partial partition:

(1) the shares assigned are full shares; and

(2) the residue reserved for sale is discharged from all title or claim of the parties receiving assignment of their shares under the partition.

Sec. 14. (a) If the court orders a sale under section 12 of this chapter, the court shall appoint a commissioner, other than a commissioner appointed to make partition, to conduct the sale.

(b) A commissioner appointed under this section shall file a bond payable to the state of Indiana in an amount determined by the court, conditioned for the faithful discharge of the duties of the

C o p y

commissioner's trust.

Sec. 15. (a) If the court determines that:

(1) land is sold under section 12 of this chapter for cash; or

(2) land is sold under section 12 of this chapter for partial credit and that the first or cash payment of the purchase price is paid;

the court shall order the commissioner appointed under section 14 of this chapter, or some other person, to execute a conveyance to the purchaser.

(b) A conveyance made under this section bars all claims of the prior owners of the land as if the prior owners had executed the conveyance.

(c) If partial credit is given for land sold under section 12 of this chapter, the court shall, at the time the court orders the conveyance to be made under this section, also order and direct that, concurrently with the execution of the conveyance, the purchaser shall execute to the commissioner a mortgage upon the land to secure the deferred payments of the purchase price of the land.

(d) The commissioner shall place a mortgage executed under this section upon record as required by law.

Sec. 16. Commissioners appointed to make partition, or to sell, may not purchase the land partitioned or sold by the commissioners.

Sec. 17. The commissioner shall pay the proceeds of a sale under this chapter after payment of just costs and expenses to the persons entitled to the proceeds according to their respective shares, under the direction of the court.

Sec. 18. (a) Any two (2) of the persons named as commissioners to make partition may perform the duties required by this chapter.

(b) The court may fill a vacancy of a commissioner.

Sec. 19. (a) The occurrence of a vacancy does not invalidate the previous acts of the commissioners.

(b) A successor commissioner shall take up and continue the proceedings, which are as valid as if the proceedings had been done by the commissioners first appointed.

Sec. 20. The court shall provide an allowance, in an amount that the court determines to be reasonable:

(1) to the commissioners for their services; and

(2) for surveying, marking, chaining, platting, and executing the necessary conveyances.

Sec. 21. (a) All costs and necessary expenses, including

C o p y

reasonable attorney's fees for plaintiff's attorney, in an amount determined by the court, shall be awarded and enforced in favor of the parties entitled to the costs and expenses against the partitioners.

(b) The court shall assign costs and expenses awarded under subsection (a) against each partitioner as the court may determine in equity, taking into consideration each partitioner's relative interest in the land or proceeds apportioned.

Sec. 22. Upon showing sufficient cause, a party to proceedings under this chapter who was not served with summons may, not more than one (1) year after a partition is confirmed, appear and open the proceedings, and obtain a review of the partition.

Sec. 23. A:

(1) person that owns:

(A) an undivided interest in fee simple in any lands; and

(B) a life estate in:

(i) the remaining part of the land; or

(ii) any part of the remaining portion of the land; or

(2) person that owns a fee in the land described in subdivision (1) that is subject to the undivided interest in fee and the life estate in the land;

may compel partition of the land and have the fee simple interest in the land set off and determined in the same manner as land is partitioned under Indiana law.

Sec. 24. (a) In a proceeding for the partition of real estate:

(1) in a state court; and

(2) in which a person less than eighteen (18) years of age is a party in interest;

the commissioners appointed to make the partition may lay off into lots or out-lots, streets, and alleys, any land included in the partition and may make a plat of the lots or out-lots, streets, and alleys and submit the plat to the court for approval or rejection.

(b) If a plat submitted under subsection (a) is approved by the court:

(1) the commissioners appointed to make the partition shall acknowledge the plat in open court;

(2) the plat must be recorded as other similar plats of like nature are recorded; and

(3) the plat is legally valid as if the plat were made by a legal proprietor of the lands who is at least eighteen (18) years of age.

(c) The court shall determine, upon the return by the

C o p y

commissioners of a plat described in subsection (b), whether it is in the interest of the parties for the land that is the subject of the partition proceeding to be laid off into lots or out-lots, streets, and alleys. If the court determines that it is in the interest of the parties, the appointed commissioners may partition the land as in other cases without detriment to the interested parties. If partition of the land is not practicable without detriment to the interested parties, the lots or out-lots may be sold by order of the court.

Chapter 5. Partition Investment Limitations

Sec. 1. This chapter applies to a person that is entitled to:

(1) an estate in real estate for life or years;

(2) an estate tail;

(3) a fee simple;

(4) a conditional, base, or qualified fee;

(5) a particular, limited, or conditional estate in real estate; or

(6) an interest in personal property;

and any other person is entitled to a vested or contingent remainder, an executory devise, or any other vested or contingent interest in the same real estate or personal property.

Sec. 2. On application of a party in interest described in section 1 of this chapter, the circuit court may, if all the parties are:

(1) parties to the proceedings and before the court; or

(2) properly served with notice as in other civil actions;

decree a sale, exchange, or lease of the real estate, or sale or exchange of the personal property, if the court considers a sale, exchange, or lease to be advantageous to the parties concerned.

Sec. 3. If the court decrees a sale, exchange, or lease under section 2 of this chapter, the court shall direct the investment of the proceeds of the:

(1) sale;

(2) terms of the instrument of exchange or lease; or

(3) limitations of the reversion and rents and income;

so as to inure as by the original grant, devise, or condition to the use of the same parties who would be entitled to the property sold or leased or the income of the personal property.

Sec. 4. If all persons in being are parties who would be entitled to the property sold or leased or the income of the personal property if the contingency had happened at the date of the commencement of the proceedings, a decree under section 2 of this chapter is binding on any person that claims an interest in the real estate or personal property:

(1) under any party to the decree;

C o p y

(2) under any person from whom a party to the decree claims; or

(3) from, under, or by the original:

(A) deed;

(B) will; or

(C) instrument;

by which the particular, limited, or conditional estate with remainders or executory devisees was created.

Sec. 5. (a) The circuit court:

(1) of the county in which a will, deed, or instrument:

(A) is probated or recorded; and

(B) under or from which a party claims or derives the party's interest in the real or personal property that is the subject of the will, deed, or instrument; or

(2) that has jurisdiction of a trust from which the property is derived;

has jurisdiction to hear and determine the rights of the parties under this chapter. Proceedings under this chapter are commenced by complaint as in other civil actions.

(b) For an infant defendant who is a member of the class for whom property that is the subject of a proceeding under this chapter is held:

(1) in reversion;

(2) in remainder; or

(3) upon condition;

the court shall appoint a special guardian ad litem who is not related to any of the parties interested in the property. The living members stand for and represent the whole class, and the parties stand for and represent the full title and whole interest in the property.

Sec. 6. If the proceeds under section 3 of this chapter are invested in personal property, the court may, in the court's decree, direct additional investment:

(1) in securities; and

(2) upon terms and conditions;

that the court considers to be in the best interests of the parties.

Chapter 6. Powers of Appointment-Renunciation or Exercise

Sec. 1. This chapter applies to a person who holds a power of appointment under any of the following:

(1) A last will and testament of a decedent.

(2) A deed.

(3) An indenture of trust inter vivos.

C o p y

(4) An insurance policy.

(5) Any other contract or instrument.

Sec. 2. A person described in section 1 of this chapter may execute an appropriate written instrument to, in whole or in part:

(1) renounce the person's right of appointment; or

(2) exercise the person's power of appointment one (1) or more times.

Sec. 3. A renouncement of a right of appointment is final and irrevocable unless the right to revoke the renouncement or to repossess the right of appointment is expressly reserved in the instrument of renouncement.

Sec. 4. Unless a person exercising a power of appointment expressly renounces and surrenders the right to revoke an appointment in the instrument of appointment, the person may subsequently revoke the appointment and may periodically:

(1) exercise;

(2) revoke the exercise of; and

(3) reexercise the power of appointment.

Sec. 5. A subsequent exercise of a right of appointment is a revocation of all prior appointments to the extent that the subsequent appointment conflicts or is inconsistent with any prior appointments.

Sec. 6. The last unrevoked exercise of a power of appointment is effective and controlling.

Chapter 7. Disclaiming Property Interests

Sec. 1. As used in this chapter, "creation of the interest" means the date on which the person creating the interest does not have a power to:

(1) revoke the transfer; or

(2) determine by any means the recipient of the interest or of its benefits.

Sec. 2. As used in this chapter, "fiduciary" means any trustee, personal representative, or other person acquiring an interest for the benefit of others.

Sec. 3. (a) As used in this chapter, "interest" means a present or future interest that is either equitable or legal.

(b) The term includes a power in trust and a power to consume, appoint, or apply an interest for any purpose.

Sec. 4. (a) As used in this chapter, "joint tenancy" means any interest with the right of survivorship.

(b) The term includes a:

(1) tenancy by the entireties;

C o p y

(2) multiple party account (as defined in IC 32-17-11-5) with the right of survivorship; and

(3) joint interest of spouses under IC 32-17-11-29.

Sec. 5. (a) As used in this chapter, "person" means any individual, corporation, organization, or other entity that is entitled to possess, enjoy, or exercise power over an interest.

(b) The term includes a trustee and a person succeeding to a disclaimed interest.

Sec. 6. (a) As used in this chapter, "property" means tangible or intangible property, regardless of its location, that is either real or personal.

(b) The term includes:

(1) the right to receive proceeds under a life insurance policy or annuity; and

(2) an interest in an employee benefit plan.

Sec. 7. (a) A person to whom an interest devolves by whatever means may disclaim the interest in whole or in part as provided in this chapter.

(b) The personal representative, guardian, or conservator of a person to whom an interest devolves may disclaim the interest on behalf of the person.

(c) A disclaimer must:

(1) be in writing;

(2) describe the property and the interest in the property to be disclaimed; and

(3) be signed by the person to whom the interest devolves or the person's personal representative, guardian, or conservator.

Sec. 8. (a) This section applies to a disclaimer of an interest that:

(1) has devolved from a decedent either:

(A) by the laws of intestacy; or

(B) under a testamentary instrument, including a power of appointment exercised by a testamentary instrument; and

(2) is not an interest with the right of survivorship.

(b) Subject to subsections (c) and (d), a disclaimer described in subsection (a) is effective only if it is:

(1) filed in a court in which proceedings concerning the decedent's estate:

(A) are pending; or

(B) if no proceedings are pending, could be pending if commenced; and

(2) delivered in person or mailed by first class United States

C o p y

mail to:

(A) the personal representative of the decedent; or

(B) the holder of the legal title to the property to which the interest relates.

(c) A disclaimer of an interest in real property is effective under subsection (b) only if it is recorded in each county where the real property is located.

(d) A disclaimer is effective under this section only if the requirements of subsection (b) and, if applicable, subsection (c) are accomplished not later than nine (9) months after:

(1) if a present interest is disclaimed, the death of the person; or

(2) if a future interest is disclaimed, the later of:

(A) the event by which the final taker of the interest is ascertained; or

(B) the day on which the disclaimant becomes twenty-one (21) years of age.

(e) If a provision has not been made for another devolution, an interest disclaimed under this section devolves as follows:

(1) If the disclaimant is a fiduciary, as if the disclaimed interest had never been created in the disclaimant.

(2) In all other cases, as if the disclaimant had predeceased the person.

(f) A disclaimer under this section relates back for all purposes that relate to the interest disclaimed to the time immediately before the death of the person.

Sec. 9. (a) This section applies to a disclaimer of an interest that has devolved under a life insurance policy or annuity.

(b) A disclaimer described in subsection (a) is effective only if it is:

(1) delivered in person; or

(2) mailed by first class United States mail;

to the issuer of the policy or annuity not later than nine (9) months after the death of the insured or annuitant.

(c) If a provision has not been made for another devolution, an interest disclaimed under this section devolves as follows:

(1) If the disclaimant is a fiduciary, as if the disclaimed interest had never been created in the disclaimant.

(2) In all other cases, as if the disclaimant had predeceased the insured or annuitant.

(d) A disclaimer under this section relates back for all purposes that relate to the interest disclaimed to the time immediately before

C o p y

the death of the insured or annuitant.

Sec. 10. (a) This section applies to a disclaimer of an interest in a joint tenancy created by any means, including:

(1) an intestacy;

(2) a testamentary instrument; or

(3) the exercise of a power of appointment by a testamentary instrument.

(b) A disclaimer described in subsection (a) is effective only if the requirements of section 12 of this chapter are accomplished not later than nine (9) months after the event by which the final taker of the entire interest is ascertained.

(c) If a provision has not been made for another devolution, an interest disclaimed under this section devolves as follows:

(1) If the disclaimant is a fiduciary, as if the disclaimed interest had never been created in the disclaimant.

(2) In all other cases, as if the disclaimant had died immediately before the creation of the interest.

(d) A disclaimer under this section relates back for all purposes that relate to the interest disclaimed to the time immediately before the creation of the interest.

Sec. 11. (a) This section applies to a disclaimer of an interest that has devolved by means other than those described in sections 8, 9, and 10 of this chapter, including an interest that has devolved under:

(1) a nontestamentary instrument; or

(2) the exercise of a power of appointment by a nontestamentary instrument.

(b) A disclaimer described in subsection (a) is effective only if the requirements of section 12 of this chapter are accomplished not later than nine (9) months after:

(1) if a present interest is disclaimed, the creation of the interest; or

(2) if a future interest is disclaimed, the later of:

(A) the event by which the final taker of the interest is ascertained; or

(B) the day on which the disclaimant becomes twenty-one (21) years of age.

(c) If no provision has been made for another devolution, an interest disclaimed under this section devolves as follows:

(1) If the disclaimant is a fiduciary, as if the disclaimed interest had never been created in the disclaimant.

(2) In all other cases, as if the disclaimant had died

C o p y

immediately before the creation of the interest.

(d) A disclaimer under this section relates back for all purposes that relate to the interest disclaimed to the time immediately before the creation of the interest.

Sec. 12. (a) A disclaimer of an interest under section 10 or 11 of this chapter is effective only if it is delivered in person or mailed by first class United States mail either to:

(1) the transferor of the interest or the transferor's personal representative; or

(2) the holder of the legal title to the property to which the interest relates.

(b) A disclaimer of an interest in real property under section 10 or 11 of this chapter is effective only if it is recorded in each county where the real property is located.

Sec. 13. (a) This section applies to a future interest that would have taken effect in possession or enjoyment if it had not been disclaimed.

(b) If a provision has not been made for another devolution, a future interest described in subsection (a) takes effect for all purposes as if the disclaimant had died before the event by which the final taker of the interest is ascertained.

Sec. 14. (a) When a disclaimer becomes effective, it:

(1) constitutes an unqualified and irrevocable refusal to accept the disclaimed interest; and

(2) is binding upon the disclaimant and all persons claiming through or under the disclaimant.

(b) A written waiver of the right to disclaim in whole or in part:

(1) is irrevocable upon signing by the disclaimant, or the disclaimant's personal representative, guardian, or conservator;

(2) bars the right, to the extent set forth in the waiver, to disclaim after the waiver becomes irrevocable; and

(3) is binding upon the person waiving and all persons claiming through or under the person waiving.

Sec. 15. The right to disclaim an interest is barred after any of the following events:

(1) An assignment, conveyance, encumbrance, pledge, or transfer of the interest.

(2) A contract for any of the events listed in subdivision (1).

(3) A sale or other disposition of the interest under judicial process.

Sec. 16. The right to disclaim an interest or a benefit under an

C o p y

interest is barred by an acceptance of the interest or benefit, to the extent that the interest or benefit is accepted.

Sec. 17. The right to disclaim exists regardless of a spendthrift provision or similar restriction on the interest of the person disclaiming.

Sec. 18. This chapter does not abridge the right of any person to assign, convey, release, disclaim, or renounce an interest arising under this chapter or any other law.

Sec. 19. A court may consult the official comments published by the probate code study commission to determine the underlying reasons, purposes, and policies of this chapter and may use the official comments as a guide in the construction and application of this chapter.

Sec. 20. If the right to disclaim an interest exists on July 1, 1983, under IC 29-1-6-4 (repealed), IC 30-4-2-3 (repealed), or IC 30-4-2-4 (repealed), the interest may be disclaimed by complying with this chapter:

(1) if a present interest is disclaimed, before April 1, 1984; or

(2) if a future interest is disclaimed, not later than nine (9) months after the later of:

(A) the event by which the final taker of the interest is ascertained; or

(B) the day on which the disclaimant becomes twenty-one (21) years of age.

Chapter 8. Uniform Statutory Rule Against Perpetuities

Sec. 1. (a) Except as provided in subsection (b), this chapter applies to a nonvested property interest or a power of appointment that is created on or after May 8, 1991. For purposes of this section, a nonvested 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.

(b) If a nonvested property interest or a power of appointment was created before May 8, 1991, and:

(1) is determined in a judicial proceeding commenced on or after May 8, 1991, to violate this state's rule against perpetuities as that rule existed before May 8, 1991; or

(2) may violate this state's rule against perpetuities as that rule existed before May 8, 1991;

a court upon the petition of an interested person shall reform the disposition by inserting a savings clause that most closely preserves the transferor's plan of distribution and is within the limits of the

C o p y

rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

Sec. 2. This chapter does not apply to the following:

(1) A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of any of the following:

(A) A premarital or postmarital agreement.

(B) A separation or divorce settlement.

(C) A spouse's election.

(D) A similar arrangement arising out of a prospective, an existing, or a previous marital relationship between the parties.

(E) A contract to make or not to revoke a will or trust.

(F) A contract to exercise or not to exercise a power of appointment.

(G) A transfer in satisfaction of a duty of support.

(H) 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 nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision.

(6) A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, a profit sharing, a stock bonus, a health, a disability, a death benefit, an income deferral, or other current or deferred benefit plan for one (1) or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power

C o p y

of appointment that is created by an election of a participant or a beneficiary or spouse.

(7) A property interest, power of appointment, or arrangement that was not subject to the common law rule against perpetuities or is excluded by another Indiana statute.

(8) A:

(A) provision for the accumulation of an amount of the income of a trust estate reasonably necessary for the upkeep, repair, or proper management of the subject of the estate;

(B) direction in a trust that provides for the allocation wholly or in part to the principal of the trust of stock dividends or stock rights derived from shares held in a trust;

(C) provision for a sinking or reserve fund; or

(D) statutory provision directing an accumulation.

Sec. 3. (a) A nonvested property interest is valid if:

(1) when the interest is created, the interest is certain to vest or terminate not later than twenty-one (21) years after the death of an individual then alive; or

(2) the interest either vests or terminates within ninety (90) years after the interest's creation.

(b) A general power of appointment not presently exercisable because of a condition precedent is valid if:

(1) when the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy not later than twenty-one (21) years after the death of an individual then alive; or

(2) the condition precedent either is satisfied or becomes impossible to satisfy within ninety (90) years after the condition precedent's creation.

(c) A nongeneral power of appointment or a general testamentary power of appointment is valid if:

(1) when the power is created, the power is certain to be irrevocably exercised or otherwise to terminate not later than twenty-one (21) years after the death of an individual then alive; or

(2) the power is irrevocably exercised or otherwise terminates within ninety (90) years after the power's creation.

(d) In determining whether a nonvested property interest or a power of appointment is valid under subsection (a)(1), (b)(1), or (c)(1), the possibility that a child will be born to an individual after

C o p y

the individual's death is disregarded.

Sec. 4. (a) Except as provided in subsections (b) and (c) and in section 1(a) of this chapter, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(b) For purposes of this chapter, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of:

(1) a nonvested property interest; or

(2) a property interest subject to a power of appointment described in section 3(b) or 3(c) of this chapter;

the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(c) For purposes of this chapter, a nonvested 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 nonvested property interest or power of appointment in the original contribution was created.

Sec. 5. (a) This section applies to a clause in a governing instrument that:

(1) purports to:

(A) postpone the vesting or termination of any interest or trust until;

(B) disallow the vesting or termination of any interest or trust beyond;

(C) require all interests or trusts to vest or terminate not later than; or

(D) operate in any similar fashion upon;

the occurrence of an event described in subdivision (2); and

(2) takes effect upon the later of the following occurrences:

(A) The expiration of a period that exceeds twenty-one (21) years or that might exceed twenty-one (21) years after the death of the survivor of lives in being at the creation of the trust or other property arrangement.

(B) The death of, or the expiration of a period not exceeding twenty-one (21) years after the death of, the survivor of specified lives in being at the creation of the trust or other property arrangement.

(b) If a clause described in subsection (a) appears in an instrument creating a trust or other property arrangement, then, in measuring a period from the creation of a trust or other

C o p y

property arrangement, the portion of the clause that pertains to the period that exceeds twenty-one (21) years or that might exceed twenty-one (21) years after the death of the survivor of lives in being at the creation of the trust or other property arrangement is not valid. The court shall construe the clause as becoming effective upon:

(1) the death of; or

(2) the expiration of the period not exceeding twenty-one (21) years after the death of;

the survivor of the specified lives in being at the creation of the trust or other property arrangement.

Sec. 6. Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely preserves the transferor's plan of distribution and is within the ninety (90) years allowed by section 3(a)(2), 3(b)(2), or 3(c)(2) of this chapter if:

(1) a nonvested property interest or a power of appointment becomes invalid under section 3 of this chapter;

(2) a class gift is not but might become invalid under section 3 of this chapter and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(3) a nonvested property interest that is not validated by section 3(a)(1) of this chapter can vest but not within ninety (90) years after the interest's creation.

Chapter 9. Uniform Act on Transfer on Death Securities

Sec. 1. This chapter applies to registrations of securities:

(1) in beneficiary form regardless of the date of registration; and

(2) by persons who die after June 30, 1997.

Sec. 2. As used in this chapter, "beneficiary form" means a registration form for a security that indicates:

(1) the present owner of the security; and

(2) the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

Sec. 3. As used in this chapter, "register" means:

(1) to issue a certificate showing the ownership of a certificated security; or

(2) in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

Sec. 4. (a) As used in this chapter, "registering entity" means a person who originates or transfers a security title by registration.

(b) The term includes:

C o p y

(1) a broker maintaining security accounts for customers; and
(2) a transfer agent or other person acting for or as an issuer of securities.

Sec. 5. (a) As used in this chapter, "security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer.

(b) The term includes a certificated security, an uncertificated security, and a security account.

Sec. 6. As used in this chapter, "security account" means:

(1) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; or

(2) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, regardless of whether the cash was credited to the account before the owner's death.

Sec. 7. (a) Only individuals whose registration of a security shows:

(1) sole ownership by one (1) individual; or

(2) multiple ownership by two (2) or more individuals with right of survivorship, rather than as tenants in common;

may obtain registration in beneficiary form.

(b) Multiple owners of a security registered in beneficiary form hold as:

(1) joint tenants with right of survivorship; or

(2) tenants by the entireties;

and not as tenants in common.

Sec. 8. (a) A security may be registered in beneficiary form if the form is authorized by this or a similar statute of:

(1) the state of:

(A) organization of the issuer or registering entity;

(B) the location of the registering entity's principal office; or

(C) the office of its transfer agent or its office making the registration; or

(2) the state listed as the owner's address at the time of registration.

(b) Notwithstanding subsection (a), a registration governed by the law of a jurisdiction in which this or similar legislation:

copy

(1) is not in force; or

(2) was not in force when a registration in beneficiary form was made;

is presumed to be valid and authorized as a matter of contract law.

Sec. 9. A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

Sec. 10. To be effective, registration in beneficiary form must be shown by:

(1) the words "transfer on death" or the abbreviation "TOD"; or

(2) the words "pay on death" or the abbreviation "POD";

after the name of the registered owner and before the name of a beneficiary.

Sec. 11. (a) The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death.

(b) A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all of the then surviving owners without the consent of the beneficiary.

Sec. 12. (a) On the death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners.

(b) On proof of death of all owners and compliance with the applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners.

(c) Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common.

(d) If a beneficiary does not survive the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

Sec. 13. (a) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registering entity offers registration in beneficiary form, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this chapter.

(b) By accepting a request for registration of a security in

C o p y

beneficiary form, the registering entity agrees that the registration will be implemented on the death of the deceased owner as provided in this chapter.

(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if the registering entity registers a transfer of the security in accordance with section 11 of this chapter and does so in good faith reliance on:

(1) the registration;

(2) this chapter; and

(3) information provided to it by:

(A) affidavit of the personal representative of the deceased owner;

(B) the surviving beneficiary;

(C) the surviving beneficiary's representatives; or

(D) other information available to the registering entity.

(d) The protections of this chapter do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects the registering entity's right to protection under this chapter.

(e) The protection provided by this chapter to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

Sec. 14. (a) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this chapter and is not testamentary.

(b) This chapter does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of Indiana.

Sec. 15. (a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests:

(1) for registrations in beneficiary form; and

(2) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary.

C o p y

(b) The terms and conditions established under subsection (a) may provide for the following:

(1) Proving death.

(2) Avoiding or resolving any problems concerning fractional shares.

(3) Designating primary and contingent beneficiaries.

(4) Substituting a named beneficiary's descendants to take in the place of the named beneficiary if the beneficiary has died. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes". This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to survive the owner, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate.

(c) In addition to the items described in subsection (b), terms and conditions established under subsection (a) may also include:

(1) other forms of identifying beneficiaries who are to take on one (1) or more contingencies; and

(2) rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form.

(d) The following are illustrations of registrations in beneficiary form that a registering entity may authorize:

(1) Sole owner-sole beneficiary: John S. Brown TOD (or POD) John S. Brown, Jr.

(2) Multiple owners-sole beneficiary: John S. Brown, Mary B. Brown, JT TEN, TOD John S. Brown, Jr.

(3) Multiple owners-primary and secondary (substituted) beneficiaries as follows:

(A) John S. Brown, Mary B. Brown, JT TEN, TOD John S. Brown, Jr. SUB BENE Peter Q. Brown; or

(B) John S. Brown, Mary B. Brown, JT TEN, TOD John S. Brown, Jr. LDPS.

Chapter 10. Limitations on Possibility of Reverter or Rights of Entry for a Breach of a Condition Subsequent

Sec. 1. This chapter does not apply to the following:

(1) A conveyance made for the purpose of extinguishing a possibility of reverter or a right of entry.

(2) The rights of:

C o p y

(A) a mortgagee based on the terms of the mortgage;
(B) a trustee or beneficiary under a trust deed in the nature of a mortgage based on the terms of the trust deed;
(C) a grantor under a vendor's lien reserved in a deed;
(D) a lessor under a lease for a term of years; or
(E) a person with a separate property interest in coal, oil, gas, or other minerals.

Sec. 2. A possibility of reverter or right of entry for breach of a condition subsequent concerning real property is invalid after thirty (30) years from the date the possibility of reverter or right of entry is created, notwithstanding a period of creation longer than thirty (30) years:

(1) if the breach of the condition has not occurred; and
(2) despite whether the possibility of reverter or right of entry was created before, on, or after July 1, 1993.

Sec. 3. A person may not commence an action for recovery of any part of real property after June 30, 1994, based on a possibility of reverter or right of entry for a breach of a condition subsequent if:

(1) the breach of the condition occurred before July 1, 1993; and
(2) the possibility of reverter or right of entry was created before July 1, 1963.

Chapter 11. Multiple Party Accounts

Sec. 1. (a) As used in this chapter, "account" means a contract of deposit of funds between a depositor and a financial institution.

(b) The term includes a checking account, savings account, certificate of deposit, share account, and other like arrangement.

Sec. 2. As used in this chapter, "beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee.

Sec. 3. (a) As used in this chapter, "financial institution" means any organization authorized to do business in Indiana under IC 28 or federal law relating to financial institutions.

(b) The term includes the following:

(1) Banks and trust companies.
(2) Building and loan associations.
(3) Industrial loan and investment companies.
(4) Savings banks.
(5) Credit unions.

Sec. 4. As used in this chapter, "joint account" means an account payable on request to one (1) or more of two (2) or more

C o p y

parties whether or not mention is made of any right of survivorship.

Sec. 5. (a) As used in this chapter, "multiple party account" means any of the following types of accounts:

(1) A joint account.

(2) A P.O.D. account.

(3) A trust account.

(b) The term does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, or accounts controlled by one (1) or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization, or a regular fiduciary or trust account where the relationship is established other than by deposit agreement.

Sec. 6. As used in this chapter, "net contribution" of a party to a joint account as of any given time means the sum of:

(1) all deposits made by or for the party; minus

(2) all withdrawals made by or for the party that have not been paid to or applied to the use of any other party; plus

(3) a pro rata share of any interest or dividends included in the current balance.

The term includes any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question.

Sec. 7. (a) As used in this chapter, "party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple party account. A P.O.D. payee or beneficiary of a trust account is a party only after the account becomes payable to the payee or beneficiary by reason of the payee's or beneficiary's surviving the original payee or trustee.

(b) Unless the context otherwise requires, the term includes a guardian, conservator, personal representative, or assignee, including an attaching creditor, of a party. The term also includes a person identified as a trustee of an account for another whether or not a beneficiary is named.

(c) The term does not include:

(1) any named beneficiary unless the beneficiary has a present right of withdrawal; or

(2) a person who is merely authorized to make a request as the agent of another.

Sec. 8. As used in this chapter, "payment" of sums on deposit includes the following:

C o p y

(1) Withdrawal.
(2) Payment on check or other directive of a party.
(3) Any pledge of sums on deposit by a party.
(4) Any set-off, reduction, or other disposition of all or part of any account pursuant to a pledge.

Sec. 9. As used in this chapter, "proof of death" includes a death certificate, an affidavit of death, or a record or report that is prima facie proof of death under IC 29-2-6, IC 29-2-7 (before its repeal), or IC 29-2-14.

Sec. 10. As used in this chapter, "P.O.D. account" means an account payable on request to:

(1) one (1) person during the person's lifetime and on the person's death to at least one (1) P.O.D. payee; or
(2) one (1) or more persons during their lifetimes and on the death of all of them to one (1) or more P.O.D. payees.

Sec. 11. As used in this chapter, "P.O.D. payee" means a person designated on a P.O.D. account as one to whom the account is payable on request after the death of one (1) or more persons.

Sec. 12. As used in this chapter, "request" means:

(1) a proper request for withdrawal; or
(2) a check or order for payment;

that complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution. If the financial institution conditions withdrawal or payment on advance notice, for purposes of this section, the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

Sec. 13. As used in this chapter, "sums on deposit" means the balance payable on a multiple party account, including interest, dividends, and any deposit life insurance proceeds added to the account by reason of the death of a party.

Sec. 14. (a) As used in this chapter, "trust account" means an account in the name of at least one (1) party as trustee for at least one (1) beneficiary if:

(1) the relationship is established by the form of the account and the deposit agreement with the financial institution; and
(2) there is no subject of the trust other than the sums on deposit in the account.

It is not essential that payment to the beneficiary be mentioned in the deposit agreement.

(b) The term does not include the following:

C o p y

(1) A regular trust account under a testamentary trust.

(2) A trust agreement that has significance apart from the account.

(3) A fiduciary account arising from a fiduciary relation such as attorney-client.

Sec. 15. As used in this chapter, "withdrawal" includes payment to a third person pursuant to a check or other directive of a party.

Sec. 16. (a) The provisions of sections 17, 18, and 19 of this chapter concerning beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple party accounts:

(1) apply only to controversies between:

(A) the parties or the P.O.D. payees or beneficiaries of multiple party accounts; and

(B) creditors and other successors of:

(i) the parties; or

(ii) the P.O.D. payees or beneficiaries of multiple party accounts; and

(2) do not affect the power of withdrawal of the parties or the P.O.D. payees or beneficiaries of multiple party accounts as determined by the terms of account contracts.

(b) The provisions of sections 22 through 27 of this chapter govern the liability and set-off rights of financial institutions that make payments under sections 22 through 27 of this chapter.

Sec. 17. (a) Unless there is clear and convincing evidence of a different intent, during the lifetime of all parties, a joint account belongs to the parties in proportion to the net contributions by each party to the sums on deposit.

(b) A P.O.D. account belongs to the original payee during the original payee's lifetime and not to the P.O.D. payee or payees. If at least two (2) parties are named as original payees, subsection (a) governs the rights of the parties during their lifetimes.

(c) Unless:

(1) a contrary intent is manifested by the terms of the account or the deposit agreement; or

(2) there is other clear and convincing evidence of an irrevocable trust;

a trust account belongs beneficially to the trustee during the trustee's lifetime. If at least two (2) parties are named as trustee on the account, subsection (a) governs the beneficial rights of the trustees during their lifetimes. If there is an irrevocable trust, the account belongs beneficially to the beneficiary.

C o p y

Sec. 18. (a) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created. If there are at least two (2) surviving parties, their respective ownerships during lifetime are:

(1) in proportion to their previous ownership interests under section 17 of this chapter; and

(2) augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before the person's death.

The right of survivorship continues between the surviving parties.

(b) If the account is a P.O.D. account, on death of the original payee or of the survivor of at least two (2) original payees, any sums remaining on deposit belong to the P.O.D. payee or payees who survive the original payee. If at least two (2) P.O.D. payees survive, there is no right of survivorship between the P.O.D. payees unless the terms of the account or deposit agreement expressly provide for survivorship.

(c) If the account is a trust account, on death of the trustee or the survivor of at least two (2) trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries who survive the trustee, unless there is clear and convincing evidence of a contrary intent. If at least two (2) beneficiaries survive, there is no right of survivorship between the beneficiaries unless the terms of the account or deposit agreement expressly provide for survivorship.

(d) Except as provided in subsections (a) through (c), the death of any party to a multiple party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of the decedent's estate.

(e) A right of survivorship arising:

(1) from the express terms of the account; or

(2) under:

(A) this section;

(B) a beneficiary designation in a trust account; or

(C) a P.O.D. payee designation;

cannot be changed by will.

Sec. 19. (a) The provisions of section 18 of this chapter as to rights of survivorship are determined by the form of the account at the death of a party.

(b) The form of an account may be altered by written order

copy

given by a party to the financial institution to:

(1) change the form of the account; or

(2) stop or vary payment under the terms of the account.

(c) An order or request described in subsection (b) must be:

(1) signed by a party;

(2) received by the financial institution during the party's lifetime; and

(3) not countermanded by another written order of the same party during the party's lifetime.

Sec. 20. Any transfers resulting from the application of section 18 of this chapter are:

(1) effective by reason of:

(A) the account contracts involved; and

(B) this chapter; and

(2) not to be considered as:

(A) testamentary; or

(B) subject to IC 29.

Sec. 21. (a) A multiple party account is not effective against the estate of a deceased party to transfer to a survivor sums needed to pay claims, taxes, and expenses of administration, including the statutory allowance to the surviving spouse or dependent children, if other assets of the estate are insufficient.

(b) To the extent necessary to discharge the claims and charges described in subsection (a) that remain unpaid after application of the decedent's estate, a surviving party, P.O.D. payee, or beneficiary who receives payment from a multiple party account after the death of a deceased party shall account to the decedent's personal representative for amounts the decedent owned beneficially immediately before the decedent's death.

(c) A survivor of a multiple party account is liable for that portion of the total amount payable to the decedent's estate that the decedent's beneficial interest in the survivor's account bears to the total of the decedent's beneficial interests in all multiple party accounts.

(d) A survivor of a multiple party account against whom an action is brought by the decedent's estate is entitled to have any other survivor of any multiple party account made a party to the action.

(e) A proceeding to assert liability under this section may not be commenced:

(1) unless the personal representative has received a written demand by a:

C o p y

(A) surviving spouse;
(B) creditor; or
(C) person acting for a dependent child of the decedent; and
(2) later than one (1) year following the death of the person.
(f) The personal representative shall administer sums recovered under this section as part of the decedent's estate.
(g) This section does not:
(1) affect the right of a financial institution to make payment on a multiple party account according to the terms of the account; or
(2) make a financial institution liable to the estate of a deceased party unless the institution has been served with process in a proceeding by the personal representative before the institution makes payment.
Sec. 22. (a) Financial institutions may enter into multiple party accounts to the same extent that they may enter into single party accounts.
(b) Any multiple party account may be paid, on request, to any one (1) or more of the parties.
(c) For purposes of establishing net contributions, a financial institution is not required to inquire as to:
(1) the source of funds received for deposit to a multiple party account; or
(2) the proposed application of any sum withdrawn from an account.
Sec. 23. (a) Except as provided in subsection (b), any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded.
(b) Payment may not be made to the personal representative or heirs of a deceased party unless:
(1) proofs of death are presented to the financial institution showing that the decedent was the last surviving party; or
(2) there is no right of survivorship under section 18 of this chapter.
Sec. 24. A P.O.D. account may be paid, on request:
(1) to any original party to the account;
(2) upon presentation to the financial institution of proof of death showing that the P.O.D. payee survived all persons named as original payees, the P.O.D. payee, or the personal representative or heirs of a deceased P.O.D. payee; and

C o p y

(3) if proof of death is presented to the financial institution showing that a deceased original payee was the survivor of all other persons named on the account either as an original payee or as P.O.D. payee, the personal representative or heirs of the decedent.

Sec. 25. A trust account may be paid, on request:

(1) to any trustee;

(2) unless the financial institution has received written notice that the beneficiary has a vested interest not dependent upon the beneficiary surviving the trustee, if proof of death is presented to the financial institution showing that the decedent was the survivor of all other persons named on the account either as trustee or beneficiary, to the personal representative or heirs of a deceased trustee; and

(3) upon presentation to the financial institution of proof of death showing that the beneficiary or beneficiaries survived all persons named as trustee, to the beneficiary or beneficiaries.

Sec. 26. (a) Payment made under section 22, 23, 24, or 25 of this chapter discharges the financial institution from all claims for amounts paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees, or beneficiaries, or their successors.

(b) The protection provided under this section does not extend to payments made after a financial institution has received written notice from any party able to request present payment to the effect that withdrawals in accordance with the terms of the account should not be permitted.

(c) Unless a notice described in subsection (b) is withdrawn by the person giving it, the successor of any deceased party must concur in any demand for withdrawal if the financial institution is to be protected under this section.

(d) No other notice or any other information shown to have been available to a financial institution affects the institution's right to the protection provided under this section.

(e) The protection provided under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of funds in or withdrawn from multiple party accounts.

Sec. 27. (a) Without qualifying any other statutory right to set off or lien and subject to any contractual provision, if a party to a multiple party account is indebted to a financial institution, the

C o p y

financial institution has a right to set off against the account in which the party has, or had immediately before the party's death, a present right of withdrawal.

(b) The amount of the account subject to set off as described in subsection (a) is that proportion to which the debtor is, or was immediately before the debtor's death, beneficially entitled.

(c) In the absence of proof of net contributions, the amount of the account subject to set off as described in subsection (a) is an equal share with all parties having present rights of withdrawal.

Sec. 28. (a) Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, pension plan, trust agreement, conveyance, or any other written instrument effective as a contract, gift, conveyance, or trust is considered to be nontestamentary, and this title and IC 29 do not invalidate the instrument or any provision:

(1) That money or other benefits due to, controlled, or owned by a decedent before the person's death shall be paid after the person's death to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.

(2) That any money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promisor before payment or demand.

(3) That any property that is the subject of the instrument shall pass to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.

(b) This section does not limit the rights of creditors under other Indiana laws.

Sec. 29. (a) This section does not apply to an account.

(b) Except as provided in subsection (c), personal property that is owned by two (2) or more persons is owned by them as tenants in common unless expressed otherwise in a written instrument.

(c) Upon the death of either husband or wife:

(1) household goods:

(A) acquired during marriage; and

(B) in possession of both husband and wife; and

(2) any:

(A) promissory note;

(B) bond;

(C) certificate of title to a motor vehicle; or

(D) other written or printed instrument;

C o p y

evidencing an interest in tangible or intangible personal property in the name of both husband and wife;

becomes the sole property of the surviving spouse unless a clear contrary intention is expressed in a written instrument.

Chapter 12. Contracts Concerning United States Lands

Sec. 1. A contract for valid consideration:

(1) to sell any interest, real or supposed, in any land belonging to the United States;

(2) for the occupancy of land belonging to the United States; or

(3) for any improvement made on land belonging to the United States;

may not be voided by either party or the party's heirs, executors, administrators, or assigns if the nature and extent of the interest were, at the time of contract, known to the party, and the party's consent to the interest was obtained without fraud, conspiracy, or misrepresentation.

SECTION 3. IC 32-18 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

ARTICLE 18. INTERESTS OF CREDITORS IN PROPERTY

Chapter 1. Assignment of Real and Personal Property for the Benefit of Creditors

Sec. 1. (a) A debtor who is in embarrassed or failing circumstances may make a general assignment of all the debtor's property in trust for the benefit of all the debtor's bona fide creditors.

(b) Except as provided in this chapter, an assignment described in subsection (a) that is made after March 19, 1859, is considered fraudulent and void.

(c) A debtor who is:

(1) in embarrassed or failing circumstances; and

(2) making a general assignment of all the debtor's property as provided in this chapter;

may select the debtor's trustee. The trustee shall serve and qualify, unless creditors representing an amount of at least one-half (1/2) of the liabilities of the debtor petition the court for the removal of the trustee and the appointment of another trustee. If the petition is filed, the judge of the circuit or superior court in which the debtor resides shall immediately remove the trustee and appoint a suitable disinterested party to act as trustee in place of the removed trustee.

C o p y

(d) This chapter may not be construed to prevent a debtor from preferring a particular creditor by an assignment not made under this chapter that:

(1) conveys less than all of the debtor's property;

(2) is made for the benefit of less than all of the debtor's creditors; or

(3) is made by other means;

if the action is taken in good faith and not as a part of, or in connection with, a general assignment made under this chapter. However, a corporation may not prefer any creditor if a director of the corporation is a surety on the indebtedness preferred or has been a surety on the indebtedness within four (4) months before the preference.

Sec. 2. (a) An assignment under this chapter must be:

(1) by indenture; and

(2) signed and acknowledged before a person who is authorized to take the acknowledgment of deeds.

(b) The indenture must, within ten (10) days after the execution, be filed with the recorder of the county in which the assignor resides. The recorder shall record the indenture of assignment the same as deeds are recorded.

(c) The indenture of assignment must:

(1) contain a full description of all real estate assigned; and

(2) be accompanied by a schedule containing a particular enumeration and description of all the personal property assigned.

(d) The assignor shall make oath before a person authorized to administer oaths. The oath must:

(1) verify the indenture and schedule and contain a statement of all the property, rights, and credits belonging to the assignor, or of which the assignor has knowledge, and that the assignor has not, directly or indirectly, transferred or reserved a sum of money or article of property for the assignor's own use or the benefit of another person; and

(2) indicate the assignor has not acknowledged a debt or confessed a judgment to a person for a sum greater than was justly owing to the person, or with the intention of delaying or defrauding the assignor's creditors.

(e) An assignment under this chapter may not convey to the assignee an interest in property assigned until the assignment is recorded as provided in this section.

Sec. 3. (a) Not later than fifteen (15) days after the execution of

C o p y

the assignment, the trustee shall file a copy of the assignment and schedule in the office of the clerk of the circuit court of the county in which the debtor resides. The trustee shall state under oath, before execution of the trust:

(1) that the trustee will faithfully execute the trust, and the property assigned has been actually delivered into the trustee's possession for the uses declared in the assignment; and

(2) what the probable value of the assigned property is.

(b) The trustee shall, at the time the assignment and schedule is filed under subsection (a), file with the clerk a written undertaking to the state with at least one (1) sufficient surety. The bond to be approved by the clerk:

(1) must be in a sum double the amount of the value of the property assigned; and

(2) conditioned for the faithful discharge of the duties of the trustee's trust.

The bond must be for the use of a person injured by the action of the trustee.

Sec. 4. The clerk of the circuit court shall minute the filing of the copy of indenture, schedule, and undertaking in the proper book under section 3 of this chapter.

Sec. 5. (a) If the trustee fails to comply with the provisions of sections 1 through 4 of this chapter, the judge of the circuit court or the clerk of the circuit court may, at the instance of the assignor or a creditor, by petition:

(1) remove the trustee; and

(2) appoint another suitable person as trustee.

(b) A replacement trustee shall:

(1) comply with the requirements specified in this chapter;

(2) immediately take possession and control of the property assigned; and

(3) enter upon the execution of the trust, as provided in this chapter.

Sec. 6. (a) Immediately after complying with the requirements set forth in this chapter, the trustee shall give notice of the trustee's appointment by publication, three (3) weeks successively, in a newspaper printed and published in the county. If a newspaper is not printed and published in the county, the trustee shall:

(1) place written notice in at least five (5) of the most public places in the county; and

(2) publish notice in a newspaper printed and published in the

C o p y

nearest county, for the time and in the manner mentioned in reference to publication in the county where the assignor resides.

(b) The trustee shall, within thirty (30) days after beginning the duties of the trust, make and file, under oath, a full and complete inventory of all the property, real and personal, the rights, credits, interests, profits, and collaterals that the trustee obtains, or of which the trustee may have obtained knowledge as belonging to the assignor. If:

(1) any property not mentioned in an inventory comes into the trustee's hands; or

(2) the trustee obtains satisfactory information of the existence of property not mentioned in an inventory;

the trustee shall file an additional inventory of the property as described in this section.

Sec. 7. The trustee, not more than twenty (20) days after filing the inventory mentioned in section 6 of this chapter, shall cause the property mentioned in the inventory to be appraised by two (2) reputable householders of the neighborhood. The appraisers, before proceeding to discharge their duty, must take and subscribe an oath that they will honestly appraise the property mentioned in the inventory filed by the trustee. The oath must be filed, together with the appraisement, with the clerk of the circuit court.

Sec. 8. The appraisers shall, in the presence of the trustee:

(1) appraise each article mentioned in the inventory at its true value; and

(2) set down opposite each article respectively the value fixed by them in dollars and cents.

Sec. 9. (a) If the assignor is a resident householder of Indiana, the appraisers shall set off to the assignor articles of property or so much of the real estate mentioned in the inventory as the assignor may select, not to exceed three hundred dollars ($300).

(b) The appraisers shall, in an appraisement, specify what articles of property and the value of the property, or what part of the real estate and its value, they have set apart to the assignor.

Sec. 10. (a) The trustee, as soon as possible after an appraisement is filed, shall collect the rights and credits of the assignor. Except for property set off by the assignor as exempt, the trustee shall sell at public auction the appraised property after giving thirty (30) days notice of the time and place of sale:

(1) by publication in a newspaper printed and published in the county; or

C o p y

(2) if a newspaper is not printed and published in the county, by posting written or printed notices in at least five (5) of the most public places in the county.

(b) The trustee shall sell the appraised property to the highest bidder for cash, or upon credit, the trustee taking notes with security to be approved by the trustee, waiving relief from valuation or appraisement laws, payable not more than twelve (12) months after the date, with interest.

(c) The trustee must make a full return, under oath, of the sale to the clerk of the circuit court. The clerk shall file the return with the other papers in the case. However, a court may, upon the sworn petition of the trustee, a creditor, or the assignor, for good cause shown, extend the time for selling the property, or any part of the property, for as much time as the court determines will serve the best interests of the creditors. The court may extend the credit on sales for not more than two (2) years.

(d) The court may, upon the sworn petition of the trustee or of a majority of the creditors showing that the property may deteriorate in value by delay or that it will be beneficial to the creditors to have an early sale order the property sold upon notice of the time, place, and terms of sale, and in a manner the court determines is best.

(e) The court may authorize the property sold at private sale at not less than its appraised value if it is shown that a private sale would be beneficial to the creditors of the assignor. The court shall supervise the estate of the assignor and may make all necessary orders in the interest of the creditors for its control and management by the trustee before the sale. In the interest of all parties, the court may upon petition of the assignee, if the wife of the assignor is a party to the petition, order partition of the land of the assignor, before sale, between the assignee and wife of the assignor. The court shall set off to the wife her inchoate one-third (1/3) in the land before sale. If the court finds that the land cannot be partitioned without detriment to the interest of the creditors of the assignor, the court may make an order directing the sale of all the land conveyed to the assignee by the assignor, including the wife's one-third (1/3) inchoate interest. The one-third (1/3) of the money for which the land is sold shall be paid to the wife of the assignor when collected. The assignee shall, after sale, compel the trustee to report the money in the trustee's hands for distribution, and shall compel the money to be paid into court for distribution if the assets are shown to be sufficient to pay a ten percent (10%)

C o p y

dividend upon the indebtedness. The distribution may be ordered from time to time when, on application of any person interested, it is shown to the court that there is sufficient funds in the hands of the trustee to pay the dividend of ten percent (10%).

Sec. 11. The trustee shall, within six (6) months after beginning the duties of the trust, report to the judge of the circuit court, under oath:

(1) the amount of money in the trustee's hands from:

(A) the sale of property; and

(B) collections; and

(2) the amount still uncollected.

The trustee shall also, in the report, list all claims of creditors that have been presented to the trustee against the assignor. The trustee shall denote the claims that the trustee concludes should be allowed and those that the trustee determines not to allow.

Sec. 12. The clerk of the court shall spread the report and list upon the appearance docket of the court. The clerk shall distinguish between the claims the trustee has determined to allow and the claims the trustee has refused to allow. In all cases in which the trustee has refused to allow a claim, and in which a creditor objects to the allowance of the claim of another creditor, the judge may order the case to stand for trial at the next term of the court. The trial shall be governed by the rules regulating the trials of similar actions in the circuit court. If, after trial of the claim, the court is satisfied that the claim is valid and just, the court shall order the claim to be allowed and paid as other similar claims are paid. The court shall also make an order with respect to costs as the court considers just.

Sec. 13. (a) A part of the property assigned on which there are liens or encumbrances may be sold by the trustee subject to the liens or encumbrances.

(b) However, if the trustee is satisfied that the general fund would be materially increased by the payment of the liens or encumbrances, the trustee shall make application, by petition, to the judge of the circuit court for an order to pay the liens and encumbrances before selling the property. Before the holder of any lien or encumbrance is entitled to receive any part of the holder's debt from the general fund, the holder shall proceed to enforce the payment of the debt by sale, or otherwise, of the property on which the lien or encumbrance exists. For the residue of the claim, the holder of the lien or encumbrance shall share pro rata with the other creditors, if entitled to do so under Indiana law.

C o p y

Sec. 14. If the court confirms the report made as provided under section 11 of this chapter and if no contested claims are standing on the docket as provided under section 12 of this chapter, the court shall order the trustee to pay all money in the trustee's hands to the clerk of the court. The clerk, after deducting the costs incident to the execution of the trust, including an allowance to the trustee as the court considers just, shall:

(1) distribute the money among the creditors according to this chapter; and

(2) take receipts from each creditor.

Sec. 15. (a) If a creditor or the trustee, by verified petition, asks the court for the examination of the assignor or any person to whom any part of the person's property has been transferred within six (6) months before the assignment, the circuit or superior court may issue an order for the examination of:

(1) the assignor;

(2) a person or officer of a corporation to whom a transfer is believed to have been fraudulently made;

(3) a a person or officer of an association to whom a transfer is believed to have been fraudulently made; and

(4) a person alleged to have been concerned in the transfer.

(b) A person described in subsection (a) may be brought before the court and, on oath, be compelled to answer all questions put to the person pertinent to the alleged transaction. The court may stay further transfers and subject property that has been fraudulently withheld or transferred to the operation of the general trust. The assignor or person shall be interrogated or be compelled to answer all questions concerning the disposition of the property of the assignor. The assignor may be interrogated and compelled to answer all questions concerning the management of the assignor's business and affairs for the six (6) months before the assignment. The assignor shall be compelled to produce all books, papers, and accounts in reference to the assignor's business affairs during the six (6) months preceding the assignment.

Sec. 16. A person who files a claim with the trustee must make oath that the claim is just and lawful and no part of the claim is for usurious interest. If a claim or part of a claim is for usurious interest, it must be deducted from the claims before they are allowed. The trustee may administer an oath to a creditor in reference to the validity and justice of a claim.

Sec. 17. A trustee may compound or compromise a debt or claim belonging to the assignor that cannot be otherwise recovered

C o p y

without endangering the recovery of the claim or debt.

Sec. 18. (a) The trustee shall, at the expiration of one (1) year after entering upon the duties of the trust or at the next term of the court after the expiration of one (1) year after entering upon the duties of the trust, make a final report to the court.

(b) After a hearing and determination, if the judge is satisfied with and approves the report, the judge shall order the trustee to be discharged from the trust. However, the judge may, for good cause shown, grant further time to the trustee to file a final account.

Sec. 19. (a) The judge of the circuit court may, upon the petition of a creditor or the assignor, remove a trustee under this chapter for good cause shown and appoint a successor.

(b) If a vacancy occurs by death, resignation, or removal of a trustee from Indiana, the judge may fill the vacancy and shall order a trustee who is removed to surrender all property in the trustee's hands belonging to the trust to the successor. The court may require a trustee removed under this section to pay to the clerk of the court all money in the trustee's hands, and on or before the next term, the trustee shall make and file a full and final report showing the condition of the trust and the trustee's management of the trust while under the trustee's control. If the court is satisfied with the report and the trustee has fully complied with this chapter and paid all money in the trustee's hands to the clerk of the court, the court may discharge the trustee.

Sec. 20. This chapter may not be construed to prevent a party aggrieved by an order or decree of the court under this chapter from having an appeal as in other civil actions.

Sec. 21. (a) For whatever services the clerk of the circuit court is required to perform under this chapter, the clerk is allowed the same fees as are allowed the clerk by law for similar services in other civil proceedings.

(b) The appraisers under this chapter are entitled to one dollar ($1) per day each for their services.

(c) The judge shall remunerate the trustee for the trustee's services in executing the trust out of the general fund as the judge considers just and proper.

Sec. 22. (a) A surviving partner of a firm doing business in Indiana has full power to make assignments under this chapter.

Chapter 2. Uniform Fraudulent Transfer Act

Sec. 1. (a) This chapter applies to all transfers made and obligations incurred after June 30, 1994.

C o p y

(b) This chapter does not apply to a transfer made or an obligation incurred before July 1, 1994.

Sec. 2. (a) As used in this chapter, "asset" means property of a debtor.

(b) The term does not include any of the following:

(1) Property, to the extent the property is encumbered by a valid lien.

(2) Property, to the extent the property is generally exempt under law other than federal bankruptcy law.

(3) An interest in property held in tenancy by the entireties to the extent the interest is not subject to process by a creditor holding a claim against only one (1) tenant.

Sec. 3. As used in this chapter, "claim" means a right to payment, whether the right is:

(1) reduced to judgment or not;

(2) liquidated or unliquidated;

(3) fixed or contingent;

(4) matured or unmatured;

(5) disputed or undisputed;

(6) legal or not;

(7) equitable or not; or

(8) secured or unsecured.

Sec. 4. As used in this chapter, "creditor" means a person who has a claim.

Sec. 5. As used in this chapter, "debt" means liability on a claim.

Sec. 6. As used in this chapter, "debtor" means a person who is liable on a claim.

Sec. 7. (a) As used in this chapter, "lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation.

(b) The term includes any of the following:

(1) A security interest created by agreement.

(2) A judicial lien obtained by legal or equitable process or proceedings.

(3) A common law lien.

(4) A statutory lien.

Sec. 8. As used in this chapter, "person" means an individual, a partnership, a corporation, a limited liability company, an association, an organization, a government, a governmental subdivision or agency, a business trust, an estate, a trust, or any other legal or commercial entity.

Sec. 9. As used in this chapter, "property" means anything that

C o p y

can be the subject of ownership.

Sec. 10. (a) As used in this chapter, "transfer" means any mode of disposing of or parting with an asset or an interest in an asset, whether the mode is direct or indirect, absolute or conditional, or voluntary or involuntary.

(b) The term includes payment of money, release, lease, and creation of a lien or other encumbrance.

Sec. 11. As used in this chapter, "valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

Sec. 12. (a) For purposes of this section, assets do not include property that has been:

(1) transferred, concealed, or removed with intent to hinder, delay, or defraud creditors; or

(2) transferred in a manner making the transfer voidable under this chapter.

(b) For purposes of this section, debts do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset under this section.

(c) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.

(d) A debtor who is generally not paying the debtor's debts as they become due is presumed to be insolvent. This presumption imposes upon the party against whom the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

(e) A partnership is insolvent if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over each general partner's nonpartnership debts.

Sec. 13. (a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied. Value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For purposes of sections 14(2) and 15 of this chapter, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset through a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default

C o p y

under a mortgage, deed of trust, or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by the debtor and transferee to be contemporaneous and is in fact substantially contemporaneous.

Sec. 14. A transfer made or an obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(B) intended to incur or believed or reasonably should have believed that the debtor would incur debts beyond the debtor's ability to pay as the debts became due.

Sec. 15. A transfer made or an obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if:

(1) the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and

(2) the debtor:

(A) was insolvent at that time; or

(B) became insolvent as a result of the transfer or obligation.

Sec. 16. The following apply for purposes of this chapter:

(1) A transfer is made:

(A) with respect to an asset that is real property other than a fixture (but including the interest of a seller or purchaser under a contract for the sale of the asset), when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(B) with respect to an asset that is not real property or that

C o p y

is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien (other than under this chapter) that is superior to the interest of the transferee.

(2) If applicable law permits a transfer to be perfected under subdivision (1) and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is considered made immediately before the commencement of the action.

(3) If applicable law does not permit a transfer to be perfected under subdivision (1), the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

(5) An obligation is incurred:

(A) if oral, when it becomes effective between the parties; or

(B) if evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

Sec. 17. (a) In an action for relief against a transfer or an obligation under this chapter, a creditor, subject to the limitations in section 18 of this chapter, may obtain any of the following:

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim.

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by IC 34-25-2-1 or any other applicable statute providing for attachment or other provisional remedy against debtors generally.

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure, any of the following:

(A) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred, its proceeds, or of other property.

(B) Appointment of a receiver to take charge of the asset transferred or of the property of the transferee.

(C) Any other relief the circumstances require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court orders, may levy execution on the asset transferred or its proceeds.

Sec. 18. (a) A transfer or an obligation is not voidable under

C o p y

section 14(1) of this chapter against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this chapter, to the extent a transfer is voidable in an action by a creditor under section 17(a)(1) of this chapter, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(1) the first transferee of the asset or the person for whose benefit the transfer was made; or

(2) any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

(c) If the judgment under subsection (b) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this chapter, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(1) a lien on or a right to retain any interest in the asset transferred;

(2) enforcement of any obligation incurred; or

(3) a reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under section 14(2) or section 15 of this chapter if the transfer results from:

(1) termination of a lease upon default by the debtor when the termination is permitted by the lease and applicable law; or

(2) enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code.

Sec. 19. A cause of action with respect to a fraudulent transfer or obligation under this chapter is extinguished unless brought as follows:

(1) If brought under section 14(1) of this chapter, an action is extinguished unless brought not later than the later of the following:

(A) Four (4) years after the transfer was made or the obligation was incurred.

(B) One (1) year after the transfer or obligation was or could reasonably have been discovered by the claimant.

C o p y

(2) If brought under section 14(2) or 15(1) of this chapter, an action is extinguished unless it is brought not later than four (4) years after the transfer was made or the obligation was incurred.

Sec. 20. Unless superseded by this chapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, equitable subordination, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement this chapter.

Sec. 21. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Chapter 3. Resale of Insolvent Debtors' Real Estate

Sec. 1. In a sale of real estate by:

(1) a receiver; or

(2) an assignee or trustee under IC 32-18-1;

a person may, before the confirmation of the sale by the proper court, file with the clerk of the court, or in open court, a bond in the sum sufficient to secure the sale. The surety for the bond must be approved by the clerk or the court.

Sec. 2. If on resale of the real estate, or any part of the real estate, the real estate sells for ten percent (10%) more than the amount bid at the previous sale, the court may not confirm the sale but order the real estate resold. If on resale the additional sum is not realized, the person posting the bond is liable for the difference. It is the duty of the receiver, assignee, or trustee to institute and prosecute the suit, which is for the use and benefit of the trust.

SECTION 4. IC 32-19 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

ARTICLE 19. DESCRIBING REAL PROPERTY; INDIANA COORDINATE SYSTEM

Chapter 1. Designation of Indiana Coordinate System; Zones

Sec. 1. The systems of plane coordinates that have been established by the National Ocean Survey/National Geodetic Survey (formerly the United States Coast and Geodetic Survey) or its successors for defining and stating the positions or locations of points on the surface of the earth within Indiana are known and designated as the "Indiana coordinate system of 1927" and the "Indiana coordinate system of 1983".

Sec. 2. (a) For the purpose of the use of the systems described in section 1 of this chapter, Indiana is divided into an east zone and a

C o p y

west zone.

(b) The area included in the following counties constitutes the east zone:

Adams
Allen
Bartholomew
Blackford
Brown
Cass
Clark
Dearborn
Decatur
DeKalb
Delaware
Elkhart
Fayette
Floyd
Franklin
Fulton
Grant
Hamilton
Hancock
Harrison
Henry
Howard
Huntington
Jackson
Jay
Jefferson
Jennings
Johnson
Kosciusko
LaGrange
Madison
Marion
Marshall
Miami
Noble
Ohio
Randolph
Ripley
Rush

Copy

St. Joseph
Scott
Shelby
Steuben
Switzerland
Tipton
Union
Wabash
Washington
Wayne
Wells
Whitley.

(c) The area included in the following counties constitutes the west zone:

Benton
Boone
Carroll
Clay
Clinton
Crawford
Daviess
Dubois
Fountain
Gibson
Greene
Hendricks
Jasper
Knox
Lake
LaPorte
Lawrence
Martin
Monroe
Montgomery
Morgan
Newton
Orange
Owen
Parke
Perry
Pike
Porter

Copy

Posey
Pulaski
Putnam
Spencer
Starke
Sullivan
Tippecanoe
Vanderburgh
Vermillion
Vigo
Warren
Warrick
White.

Sec. 3. (a) To more precisely describe the Indiana coordinate system of 1927, the following descriptions by the National Ocean Survey/National Geodetic Survey are adopted:

(1) The "Indiana coordinate system of 1927, east zone" is a transverse Mercator projection of the Clarke spheroid of 1866, having a central meridian 85 degrees 40 minutes west of Greenwich, on which meridian the scale is set at one part in 30,000 too small. The origin of coordinates is at the intersection of the meridian 85 degrees 40 minutes west of Greenwich and the parallel 37 degrees 30 minutes north latitude. This origin is given the coordinates: x = 500,000 feet and y = 0 feet.

(2) The "Indiana coordinate system of 1927, west zone" is a transverse Mercator projection of the Clarke spheroid of 1866, having a central meridian 87 degrees 05 minutes west of Greenwich, on which meridian the scale is set at one part in 30,000 too small. The origin of coordinates is at the intersection of the meridian 87 degrees 05 minutes west of Greenwich and the parallel 37 degrees 30 minutes north latitude. This origin is given the coordinates: x = 500,000 feet and y = 0 feet.

(b) To more precisely describe the Indiana coordinate system of 1983, the following description by the National Ocean Survey/National Geodetic Survey is adopted:

(1) The "Indiana coordinate system of 1983, east zone" is a transverse Mercator projection of the North American Datum of 1983, having a central meridian 85 degrees 40 minutes west of Greenwich, on which meridian the scale is set at one part in 30,000 too small. The origin of coordinates is at the

C o p y

intersection of the meridian 85 degrees 40 minutes west of Greenwich and the parallel 37 degrees 30 minutes north latitude. This origin is given the coordinates: x = 100,000 meters and y = 250,000 meters.

(2) The "Indiana coordinate system of 1983, west zone" is a transverse Mercator projection of the North American Datum of 1983, having a central meridian 87 degrees 05 minutes west of Greenwich, on which meridian the scale is set at one part in 30,000 too small. The origin of coordinates is at the intersection of the meridian 87 degrees 05 minutes west of Greenwich and the parallel 37 degrees 30 minutes north latitude. This origin is given the coordinates: x = 900,000 meters and y = 250,000 meters.

(c) To locate the position of the coordinate systems on the surface of the earth in Indiana, the following shall be used:

(1) The position of the Indiana coordinate system of 1927 shall be determined from horizontal geodetic control points established throughout Indiana in conformity with the standards of accuracy and specifications for first-order and second-order geodetic surveying as prepared and published by the Federal Geodetic Control Committee (FGCC) of the United States Department of Commerce, whose geodetic positions have been rigidly adjusted on the North American Datum of 1927, and whose coordinates have been computed on the Indiana coordinate system of 1927. Standards and specifications of the FGCC (or its successors) in force on the date of the survey apply.

(2) The position of the Indiana coordinate system 1983 shall be determined from horizontal geodetic control points established throughout Indiana in conformity with the standards of accuracy and specifications for first-order and second-order geodetic surveying as prepared and published by the Federal Geodetic Control Committee (FGCC) of the United States Department of Commerce, whose geodetic positions have been rigidly adjusted on the North American Datum of 1983, and whose coordinates have been computed on the Indiana coordinate system of 1983. Standards and specifications of the FGCC (or its successors) in force on the date of the survey apply.

Sec. 4. (a) As established for use in the east zone, the Indiana coordinate system of 1927 or the Indiana coordinate system of 1983:

C o p y

(1) shall be named; and

(2) in any land description in which it is used, shall be designated the:

(A) "Indiana coordinate system of 1927, east zone"; or

(B) "Indiana coordinate system of 1983, east zone".

(b) As established for use in the west zone, the Indiana coordinate system of 1927 or the Indiana coordinate system of 1983:

(1) shall be named; and

(2) in any land description in which it is used. shall be designated, the:

(A) "Indiana coordinate system of 1927, west zone"; or

(B) "Indiana coordinate system of 1983, west zone".

Sec. 5. If a tract of land to be defined by a single description extends from one (1) into the other of the east zone or the west zone:

(1) the positions of all points on the boundaries of the tract may be referred to as either the east zone or the west zone; and

(2) the zone that is used must be specifically named in the description.

Sec. 6. (a) The use of the term "Indiana coordinate system of 1927" or "Indiana coordinate system of 1983" on any map, report of survey, or other document shall be limited to coordinates based on the Indiana coordinate system described in this chapter.

(b) Beginning January 1, 1990, the Indiana coordinate system of 1927 may not be used, and only the Indiana coordinate system of 1983 may be used.

Chapter 2. Coordinates; Geodetic Control Monuments

Sec. 1. (a) The plane coordinates of a point on the earth's surface, used to express the position or location of that point in the appropriate zone of the Indiana coordinate system described in IC 32-19-1, must consist of two (2) distances expressed in:

(1) U.S. Survey feet (1 meter = 39.37/12 feet) and decimals of a foot when using the Indiana coordinate system of 1927; and

(2) meters and decimals of a meter and United States Survey feet and decimals of a foot when using the Indiana coordinate system of 1983.

(b) The distance described in subsection (a) that gives the position in an east-and-west direction is called the "x-coordinate". The distance described in subsection (a) that gives the position in a north-and-south direction is called the "y-coordinate". These

C o p y

coordinates must be made to depend upon and conform to plane rectangular coordinate values for the monumented points of the North American Horizontal Geodetic Control Network as published by the National Ocean Survey/National Geodetic Survey or its successors, if the successor's plane coordinates have been computed on the Indiana coordinate system of 1927 or the Indiana coordinate system of 1983. Any station may be used for establishing a survey connection to the Indiana coordinate system of 1927 or the Indiana coordinate system of 1983.

Sec. 2. (a) Coordinates based on the Indiana coordinate system of 1927 or the Indiana coordinate system of 1983 purporting to define the position of a point on a land boundary may not be presented to be recorded in any public land records or deed records unless the recording document also contains:

(1) a description of the nearest first-order or second-order horizontal geodetic control monument from which the coordinates being recorded were determined; and

(2) the method of survey for the determination.

(b) If the position of the described first-order or second-order geodetic control monument is not published by the National Geodetic Survey (or its successors), the recording document must contain a certification signed by a land surveyor registered under IC 25-21.5 stating that the subject control monument and its coordinates were established and determined in conformance with the specifications given in IC 32-19-1-3.

(c) The publishing of the existing control stations or the acceptance with intent to publish the newly established control stations by the National Geodetic Survey constitutes evidence of adherence to the FGCC specifications. Horizontal geodetic control monuments shall be permanently monumented and control data sheets prepared and filed so that a densification of the control network is accomplished.

(d) The surveying techniques and positioning systems used to produce first-order or second-order geodetic precision shall be identified. Annotation must accompany state plane coordinate values when they are used to less than second-order precision.

Chapter 3. Descriptions of Land Using the Indiana Coordinate System

Sec. 1. If coordinates based on the Indiana coordinate system are used to describe any tract of land, which in the same document is also described by reference to any subdivision, line, or corner of the United States public land surveys:

C o p y

(1) the description by coordinates shall be construed as supplemental to the basic description of the subdivision, line, or corner contained in the official plats and field notes filed of record; and

(2) in the event of any conflict, the description by reference to the subdivision, line, or corner of the United States public land surveys prevails over the description by coordinates.

Sec. 2. This article does not require a purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the Indiana coordinate system.

Chapter 4. Geodetic Adviser

Sec. 1. (a) Purdue University shall establish the office of geodetic adviser for the state.

(b) The geodetic adviser is appointed by and serves at the discretion of Purdue University. Purdue University shall determine the amount of compensation for the geodetic adviser.

Sec. 2. (a) The geodetic adviser is responsible for the implementation of a new system of geodetic control monuments in the form of a high accuracy geodetic reference network that is part of the National Spatial Reference System and that meets the needs of geodetic and geographic information users.

(b) The geodetic adviser shall coordinate and assist in the following:

(1) The design of the geodetic reference network.

(2) The establishment of any geodetic reference monument.

(3) The maintenance of data base control stations, to the extent that funding is available.

(4) The establishment and implementation of quality control and quality assurance programs for the geodetic reference network.

(5) The assistance and training of users of the geodetic reference network.

Sec. 3. (a) The state, a state agency (as defined in IC 4-13-1-1), or a unit (as defined in IC 36-1-2-23) may provide funding from available funds for the activities described in this chapter.

(b) A unit (as defined in IC 36-1-2-23) may pay the cost of any geodetic reference monument that is established within the boundaries of that unit.

(c) Money in the county surveyor's corner perpetuation fund collected under IC 36-2-7-10 or IC 36-2-19 may be used for purposes of this chapter.

Sec. 4. A county legislative body may adopt an ordinance:

C o p y

(1) prohibiting a person from moving, changing, or otherwise altering a monument that is part of the National Spatial Reference System; and

(2) prescribing a monetary penalty for violation of the ordinance.

Any money collected for a violation of the ordinance shall be deposited in the county surveyor's corner perpetuation fund.

SECTION 5. IC 32-20 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

ARTICLE 20. MARKETABLE TITLE FOR REAL PROPERTY

Chapter 1. Purpose and Application

Sec. 1. (a) This article shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title as described in IC 32-20-3-1, subject only to the limitations that are described in IC 32-20-3-2.

(b) However, this article does not change the law affecting the capacity to own land of a person claiming a marketable record title under this article.

Sec. 2. This article may not be construed to do the following:

(1) Extend the period to bring an action or to do any other required act under any statutes of limitations.

(2) Except as specifically provided in this article, affect the operation of any statutes governing the effect of the recording or the failure to record any instrument affecting land.

Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Marketable record title" means a title of record, as described in IC 32-20-3-1, that operates to extinguish interests and claims existing before the effective date of the root of title, as provided in IC 32-20-3-3.

Sec. 3. "Muniments" means the records of title transactions in the chain of title of a person that:

(1) purport to create the interest in land claimed by the person; and

(2) upon which the person relies as a basis for the marketability of the person's title;

commencing with the root of title and including all subsequent transactions.

C o p y

Sec. 4. "Person dealing with land" includes:

(1) a purchaser of an estate or interest in an estate;

(2) a mortgagee;

(3) a levying or attaching creditor;

(4) a land contract vendee; or

(5) a person seeking to:

(A) acquire an estate or interest in an estate; or

(B) impose a lien on an estate.

Sec. 5. "Records" includes all official public records that affect title to land.

Sec. 6. "Root of title" means that title transaction in the chain of title of a person:

(1) that purports to create the interest claimed by the person;

(2) upon which the person relies as a basis for the marketability of the person's title; and

(3) that is the most recent to be recorded as of a date at least fifty (50) years before the time when marketability is being determined.

The effective date of the root of title is the date on which it is recorded.

Sec. 7. "Title transaction" means any transaction affecting title to any interest in land, including the following:

(1) Title by will or descent.

(2) Title by tax deed.

(3) Title by trustee's, referee's, guardian's, executor's, administrator's, commissioner's, or sheriff's deed.

(4) Title by decree of a court.

(5) Title by warranty deed, quitclaim deed, or mortgage.

Chapter 3. Interests in Title

Sec. 1. A person who has an unbroken chain of title of record to an interest in land for at least fifty (50) years has a marketable record title to that interest, subject to section 2 of this chapter. A person is considered to have this unbroken chain of title when:

(1) the official public records disclose a title transaction of record that occurred at least fifty (50) years before the time the marketability is determined; and

(2) the title transaction purports to create an interest in:

(A) the person claiming the interest; or

(B) a person from whom, by one (1) or more title transactions of record, the purported interest has become vested in the person claiming the interest;

with nothing appearing of record purporting to divest the

C o p y

claimant of the purported interest.

Sec. 2. Marketable record title is subject to the following:

(1) All interests and defects that are inherent in the muniments of which the chain of record title is formed. However, a general reference in the muniments, or any one (1) of them, to:

(A) easements;

(B) use restrictions; or

(C) other interests created before the root of title;

is not sufficient to preserve them, unless specific identification is made in the muniments of a recorded title transaction that creates the easement, use restriction, or other interest.

(2) All interests preserved by:

(A) the filing of proper notice; or

(B) possession by the same owner continuously for at least fifty (50) years, in accordance with IC 32-20-4-1.

(3) The rights of any person arising from adverse possession or adverse user, if the period of adverse possession or adverse user was wholly or partly subsequent to the effective date of the root of title.

(4) Any interest arising out of a title transaction recorded after the effective date of the root of title from which the unbroken chain of title of record is started. However, the recording shall not revive or give validity to any interest that has been extinguished before the time of the recording by the operation of section 3 of this chapter.

(5) The exceptions stated in IC 32-20-4-3 concerning:

(A) rights of reversioners in leases;

(B) rights of any lessee in and to any lease; and

(C) easements and interests in the nature of easements.

(6) All interests of the department of environmental management in land used for the disposal of hazardous wastes arising from the recording of a restrictive covenant under IC 13-22-3-3.

Sec. 3. Subject to section 2 of this chapter, marketable record title is held by its owner and is taken by a person dealing with the land free and clear of all interests, claims, or charges whose existence depends upon any act, transaction, event, or omission that occurred before the effective date of the root of title. All the interests, claims, or charges, however denominated, whether:

(1) legal or equitable;

(2) present or future; or

C o p y

(3) asserted by a person who is:
(A) sui juris or under a disability;
(B) within or outside Indiana;
(C) natural or corporate; or
(D) private or governmental;

are void.

Chapter 4. Notice of Claim

Sec. 1. (a) A person claiming an interest in land may preserve and keep effective that interest by filing for record during the fifty (50) year period immediately following the effective date of the root of title of the person whose record title would otherwise be marketable, a notice in writing, verified by oath, setting forth the nature of the claim. A disability or lack of knowledge of any kind on the part of anyone does not suspend the running of the fifty (50) year period. Notice may be filed for record by the claimant or by a person acting on behalf of any claimant who is:

(1) under a disability;
(2) unable to assert a claim on the claimant's behalf; or
(3) one (1) of a class whose identity cannot be established or is uncertain at the time of filing the notice of claim for record.

(b) If the same record owner of any possessory interest in land has been in possession of the land continuously for a period of at least fifty (50) years, during which period:

(1) title transaction with respect to the interest does not appear of record in the record owner's chain of title;
(2) notice has not been filed by the record owner or on behalf of the record owner as provided in subsection (a); and
(3) possession continues to the time when marketability is being determined;

the period of possession is considered equivalent to the filing of the notice immediately preceding the termination of the fifty (50) year period described in subsection (a).

(c) If:

(1) a person claims the benefit of an equitable restriction or servitude that is one (1) of a number of substantially identical mutual restrictions on the use of tracts in a platted subdivision, the plat of which is recorded as provided by law; and
(2) the subdivision plan provides for an association, corporation, committee, or other similar group that is empowered to determine whether the restrictions are to be terminated or continued at the expiration of a stated period

C o p y

not exceeding fifty (50) years, and, by the terms of this provision, it is determined that:

(A) the restrictions are not to be terminated; or

(B) the restrictions are to be continued because no determination to terminate has been made;

then the officer or other person authorized to represent the association, corporation, committee, or other similar group may preserve and keep in effect all the restrictions by filing a notice as provided in subsection (a) on behalf of all owners of land in the subdivision for the benefit of whom the restrictions exist.

Sec. 2. (a) To be effective and to be entitled to be recorded, the notice referred to in section 1 of this chapter must contain the following:

(1) An accurate and full description of all land affected by the notice in specific terms. However, if the claim is founded upon a recorded instrument, then the description in the notice may be the same as that contained in the recorded instrument.

(2) The name and address of the claimant.

(3) The name and address of the person preparing the notice if other than the claimant.

This notice must be filed for record in the office of the recorder of a county where the land described is situated.

(b) A county recorder shall accept all notices presented to the recorder that describe land located in the county that the recorder serves. The recorder shall enter and record full copies of the notice in the same way that deeds are recorded. Each recorder shall charge the same fees for recording a notice as are charged for recording deeds.

(c) Each recorder shall index the notices in the same manner that deeds are indexed. Until the notice is recorded and correctly indexed, a notice does not comply with section 1 of this chapter regarding notice.

Sec. 3. (a) Failure to file the notice required under this chapter does not bar:

(1) a lessor or the lessor's successor as a reversioner of the lessor's right to possession on the expiration of any lease; or

(2) a lessee or the lessee's successor of the lessee's rights in and to any lease.

(b) Failure to file the notice required under this chapter does not bar or extinguish any easement, interest in the nature of an easement, or any rights appurtenant to an easement granted, excepted, or reserved by the instrument creating the easement or

C o p y

interest, including any rights for future use, if the existence of the easement or interest is evidenced by the location beneath, upon, or above any part of the land described in the instrument of any pipe, valve, road, wire, cable, conduit, duct, sewer, track, pole, tower, or other physical facility and whether or not the existence of the facility is observable. However, equitable restrictions or servitudes on the use of land are not considered easements or interests in the nature of easements as that phrase is used in this section.

Chapter 5. Slander of Title

Sec. 1. A person may not use the privilege of filing notices under this article to slander the title to land.

Sec. 2. In any action to quiet title to land, if the court finds that a person has filed a claim only to slander title to land, the court shall:

(1) award the plaintiff all the costs of the action, including attorney's fees that the court allows to the plaintiff; and

(2) decree that the defendant asserting the claim shall pay to the plaintiff all damages that the plaintiff may have sustained as the result of the notice of claims having been filed for record.

SECTION 6. IC 32-21 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

ARTICLE 21. CONVEYANCE PROCEDURES FOR REAL PROPERTY

Chapter 1. Statute of Frauds; Writing Requirements

Sec. 1. (a) This section does not apply to a lease for a term of not more than three (3) years.

(b) A person may not bring any of the following actions unless the promise, contract, or agreement on which the action is based, or a memorandum or note describing the promise, contract, or agreement on which the action is based, is in writing and signed by the party against whom the action is brought or by the party's authorized agent:

(1) An action charging an executor or administrator, upon any special promise, to answer damages out of the executor's or administrator's own estate.

(2) An action charging any person, upon any special promise, to answer for the debt, default, or miscarriage of another.

(3) An action charging any person upon any agreement or promise made in consideration of marriage.

(4) An action involving any contract for the sale of land.

C o p y

(5) An action involving any agreement that is not to be performed within one (1) year from the making of the agreement.

(6) An action involving an agreement, promise, contract, or warranty of cure concerning medical care or treatment. However, this subdivision does not affect the right to sue for malpractice or negligence.

Sec. 2. The consideration that is the basis of a promise, contract, or agreement described in section 1 of this chapter does not need to be in writing but may be proved.

Sec. 3. A conveyance of an existing trust in land, goods, or things in action is void unless the conveyance is in writing and signed by the party making the conveyance or by the party's lawful agent.

Sec. 4. Nothing contained in any Indiana law may be construed to prevent any trust from arising or being extinguished by implication of law.

Sec. 5. Nothing contained in any Indiana statute may be construed to abridge the powers of courts to compel the specific performance of agreements in cases of part performance of the agreements.

Sec. 6. An action may not be brought against a person for a representation made by the person concerning the character, conduct, credit, ability, trade, or dealings of any other person, unless the representation is in writing and signed by the person or by the person's lawful agent.

Sec. 7. If a conveyance of or charge upon an estate contains a provision for revocation at the will of the grantor, the provision is void as to subsequent purchasers from the grantor, for a valuable consideration, of the estate or interest subject to the provision, even though the provision is not expressly revoked.

Sec. 8. If the power to revoke a conveyance of any interest in land, and to reconvey the interest, is given to any person other than the grantor in the conveyance, and the person given the power conveys the interest to a purchaser for a valuable consideration, the subsequent conveyance is valid.

Sec. 9. If a conveyance to a purchaser under either section 7 or 8 of this chapter is made before the person making the conveyance is entitled to execute the person's power of revocation, the conveyance is valid from the time the power of revocation vests in the person.

Sec. 10. A contract for the payment of any sum of money or thing of value, as a commission or reward for the finding or

C o p y

procuring by one (1) person of a purchaser for the real estate of another, is not valid unless the contract is in writing and signed by the owner of the real estate or the owner's legally appointed and duly qualified representative. For purposes of this section, any general reference to the real estate that is sufficient to identify the real estate is a sufficient description of the real estate.

Sec. 11. If executed in a foreign country, conveyances, mortgages, and other instruments in writing that would be admitted to record under the recording laws of this state must be acknowledged by the grantor or person executing the instrument and proved before any diplomatic or consular officer of the United States, duly accredited, or before any officer of the foreign country who, by the laws of that country, is authorized to take acknowledgments or proof of conveyances. If the acknowledgment or proof is in the English language and attested by the official seal of the officer acknowledging it, the instrument may be admitted to record. However, if the acknowledgment or proof is in a language other than English or is not attested by an official seal, then the instrument must be accompanied by a certificate of a diplomatic or consular officer of the United States attesting:

(1) that the instrument is duly executed according to the laws of the foreign country;

(2) that the officer certifying the acknowledgment or proof had legal authority to do so; and

(3) to the meaning of the instrument, if the instrument is made in a foreign language.

Sec. 12. It is not necessary to affix a private seal or ink scroll necessary to validate a conveyance of land or an interest in land executed by a natural person, business trust, or corporation. It is not necessary for the officer taking the acknowledgment of the conveyance to use an ink scroll or seal unless the officer is required by law to keep an official seal.

Sec. 13. Except for a bona fide lease for a term not exceeding three (3) years, a conveyance of land or of any interest in land shall be made by a deed that is:

(1) written; and

(2) subscribed, sealed, and acknowledged by the grantor (as defined in IC 32-17-1-1) or by the grantor's attorney.

Sec. 14. A conveyance of land by attorney is not good unless the attorney is empowered by a written instrument that is subscribed, sealed, and acknowledged by the attorney's principal in the same manner that is required for a conveyance by the attorney's

C o p y

principal.

Sec. 15. A conveyance of land that is:

(1) worded in substance as "A.B. quitclaims to C.D." (here describe the premises) "for the sum of" (here insert the consideration); and

(2) signed, sealed, and acknowledged by the grantor (as defined in IC 32-17-1-1);

is a good and sufficient conveyance in quitclaim to the grantee and the grantee's heirs and assigns.

Sec. 16. It is not necessary to use the words "heirs and assigns of the grantee" to create in the grantee an estate of inheritance. If it is the intention of the grantor (as defined in IC 32-17-1-1) to convey any lesser estate, the grantor shall express that intention in the deed.

Chapter 2. Recording Process

Sec. 1. As used in this chapter, "grantor" has the meaning set forth in IC 32-17-1-1.

Sec. 2. As used in this chapter, "tract" means an area of land that is:

(1) under common fee simple ownership;

(2) contained within a continuous border; and

(3) a separately identified parcel for property tax purposes.

Sec. 3. For a conveyance, a mortgage, or an instrument of writing to be recorded, it must be:

(1) acknowledged by the grantor; or

(2) proved before a:

(A) judge;

(B) clerk of a court of record;

(C) county auditor;

(D) county recorder;

(E) notary public;

(F) mayor of a city in Indiana or any other state;

(G) commissioner appointed in a state other than Indiana by the governor of Indiana;

(H) minister, charge d'affaires, or consul of the United States in any foreign country;

(I) clerk of the city county council for a consolidated city, city clerk for a second class city, or clerk-treasurer for a third class city;

(J) clerk-treasurer for a town; or

(K) person authorized under IC 2-3-4-1.

Sec. 4. (a) This section applies when a conveyance, mortgage, or

C o p y

other instrument that is required to be recorded is acknowledged in any county in Indiana other than the county in which the instrument is required to be recorded.

(b) The acknowledgment must be:

(1) certified by the clerk of the circuit court of the county in which the officer resides; and

(2) attested by the seal of that court.

However, an acknowledgment before an officer having an official seal, if the acknowledgment is attested by that official seal, is sufficient without a certificate.

Sec. 5. To record in Indiana a conveyance that is acknowledged outside Indiana but within the United States, the conveyance must be:

(1) certified by the clerk of any court of record of the county in which the officer receiving the acknowledgment resides; and

(2) attested by the seal of that court.

However, an acknowledgment before an officer having an official seal that is attested by the officer's official seal is sufficient without a certificate.

Sec. 6. A deed may be proved according to the rules of common law before any officer who is authorized to take acknowledgments. A deed that is proved in the manner provided in this section is entitled to be recorded.

Sec. 7. The following or any other form substantially the same is a good or sufficient form of acknowledgment of a deed or mortgage:

"Before me, E.F. (judge or justice, as the case may be) this _____ day of _____, A.B. acknowledged the execution of the annexed deed, (or mortgage, as the case may be.)"

Sec. 8. (a) If before a public officer authorized to receive acknowledgment of deeds:

(1) the grantor of a deed intends to sign the deed with the grantor's mark; and

(2) in all other cases when the public officer has good cause to believe that the contents and purport of the deed are not fully known to the grantor;

it is the duty of the public officer before signature to fully explain to the grantor the contents and purport of the deed.

(b) The failure of the public officer to comply with subsection (a) does not affect the validity of a deed.

Sec. 9. A certificate of the acknowledgment of a conveyance or

C o p y

other instrument in writing that is required to be recorded, signed, and sealed by the officer taking the acknowledgment shall be written on or attached to the deed. When by law the certificate of the clerk of the proper county is required to accompany the acknowledgment, the certificate shall state that:

(1) the officer before whom the acknowledgment was taken was, at the time of the acknowledgment, acting lawfully; and

(2) the clerk's signature to the certificate of acknowledgment is genuine.

Sec. 10. A recorder of deeds shall keep a book having each page divided into five (5) columns that are headed as follows:

Date of Reception.	Names of Grantors.	Names of Grantees.	Description of Land.	Vol. and Page Where Recorded.

The recorder shall enter in this book all deeds and other instruments left with the recorder to be recorded. The recorder shall note in the first column the day and hour of receiving the deed or instrument and shall note the other particulars in the appropriate columns. A deed or instrument is considered recorded at the time the date of reception is noted by the recorder.

Sec. 11. (a) This section applies to a conveyance or other instrument entitled by law to be recorded.

(b) The recorder of the county in which the land included in a conveyance or other instrument is situated shall record the deed or other instrument together with the requisite certificate of acknowledgment or proof endorsed on the deed or other instrument or annexed to the deed or other instrument.

(c) Unless a certificate of acknowledgment is recorded with a deed, the record of the conveyance or other instrument or a transcript may not be read or received in evidence.

Sec. 12. The:

(1) certificate of the acknowledgment of a conveyance or instrument of writing;

(2) the record; or

(3) the transcript of the record;

is not conclusive and may be rebutted and the force and effect of it contested by a party affected by the conveyance or instrument.

Sec. 13. (a) If the auditor of the county or the township assessor under IC 6-1.1-5-9 and IC 6-1.1-5-9.1 determines it necessary, an instrument transferring fee simple title to less than the whole of a tract that will result in the division of the tract into at least two (2) parcels for property tax purposes may not be recorded unless the auditor or township assessor is furnished a drawing or other

C o p y

reliable evidence of the following:

(1) The number of acres in each new tax parcel being created.

(2) The existence or absence of improvements on each new tax parcel being created.

(3) The location within the original tract of each new tax parcel being created.

(b) Any instrument that is accepted for recording and placed of record that bears the endorsement required by IC 36-2-11-14 is presumed to comply with this section.

Chapter 3. Effect of Recording

Sec. 1. As used in this chapter, "conveyance" means:

(1) an instrument of writing concerning land or an interest in land, except a last will and testament;

(2) a lease for a term not exceeding three (3) years; or

(3) an executory contract for the sale and purchase of land;

for purposes of the acknowledgment or proof of the instrument, lease, or contract, the recording of the instrument, lease, or contract, and the force and effect of that recording.

Sec. 2. As used in this chapter, "grantor" has the meaning set forth in IC 32-17-1-1.

Sec. 3. A conveyance of any real estate in fee simple or for life, a conveyance of any future estate, or a lease for more than three (3) years after the making of the lease is not valid and effectual against any person other than:

(1) the grantor;

(2) the grantor's heirs and devisees; and

(3) persons having notice of the conveyance or lease;

unless the conveyance or lease is made by a deed recorded within the time and in the manner provided in this chapter.

Sec. 4. The following may be recorded in the county where the land to which the letter or contract relates is situated:

(1) Letters of attorney containing a power to a person to:

(A) sell or convey land; or

(B) sell and convey land as the agent of the owner of the land.

(2) An executory contract for the sale or purchase of land when proved or acknowledged in the manner prescribed in this chapter for the proof or acknowledgment of conveyances.

The record when recorded and the certified transcript of the record may be read in evidence in the same manner and with the same effect as a conveyance.

Chapter 4. Priority of Recorded Transactions

C o p y

Sec. 1. (a) A:

(1) conveyance or mortgage of land or of any interest in land; and

(2) a lease for more than three (3) years;

must be recorded in the recorder's office of the county where the land is situated.

(b) A conveyance, mortgage, or lease takes priority according to the time of its filing. The conveyance, mortgage, or lease is fraudulent and void as against any subsequent purchaser, lessee, or mortgagee in good faith and for a valuable consideration if the purchaser's, lessee's, or mortgagee's deed, mortgage, or lease is first recorded.

Sec. 2. (a) This section applies to an instrument regardless of when the instrument was recorded, except that this section does not divest rights that vested before May 1, 1993.

(b) An assignment, a mortgage, or a pledge of rents and profits arising from real estate that is intended as security, whether contained in a separate instrument or otherwise, must be recorded under section 1 of this chapter.

(c) When an assignment, a mortgage, or a pledge of rents and profits is recorded under subsection (b), the security interest of the assignee, mortgagee, or pledgee is immediately perfected as to the assignor, mortgagor, pledgor, and any third parties:

(1) regardless of whether the assignment, mortgage, or pledge is operative:

(A) immediately;

(B) upon the occurrence of a default; or

(C) under any other circumstances; and

(2) without the holder of the security interest taking any further action.

(d) This section does not apply to security interests in:

(1) farm products;

(2) accounts or general intangibles arising from or relating to the sale of farm products by a farmer;

(3) timber to be cut; or

(4) minerals or the like (including oil and gas);

that may be perfected under IC 26-1-9.1.

Sec. 3. (a) This section applies when:

(1) a deed purports to contain an absolute conveyance of any estate in land; and

(2) is made or intended to be made defeasible by a:

(A) deed of defeasance;

copy

(B) bond; or
(C) other instrument.

(b) The original conveyance is not defeated or affected against any person other than:

(1) the maker of the defeasance;
(2) the heirs or devisees of the maker of the defeasance; or
(3) persons having actual notice of the defeasance;

unless the instrument of defeasance is recorded in the manner provided by law within ninety (90) days after the date of the deed.

Chapter 5. Residential Real Estate Sales Disclosure

Sec. 1. (a) This chapter applies only to a sale of, an exchange of, an installment sales contract for, or a lease with option to buy residential real estate that contains not more than four (4) residential dwelling units.

(b) This chapter does not apply to the following:

(1) Transfers ordered by a court, including transfers:
(A) in the administration of an estate;
(B) by foreclosure sale;
(C) by a trustee in bankruptcy;
(D) by eminent domain;
(E) from a decree of specific performance;
(F) from a decree of divorce; or
(G) from a property settlement agreement.

(2) Transfers by a mortgagee who has acquired the real estate at a sale conducted under a foreclosure decree or who has acquired the real estate by a deed in lieu of foreclosure.

(3) Transfers by a fiduciary in the course of the administration of the decedent's estate, guardianship, conservatorship, or trust.

(4) Transfers made from at least one (1) co-owner solely to at least one (1) other co-owner.

(5) Transfers made solely to any combination of a spouse or an individual in the lineal line of consanguinity of at least one (1) of the transferors.

(6) Transfers made because of the record owner's failure to pay any federal, state, or local taxes.

(7) Transfers to or from any governmental entity.

(8) Transfers involving the first sale of a dwelling that has not been inhabited.

(9) Transfers to a living trust.

Sec. 2. As used in this chapter, "buyer" means a transferee in a transaction described in section 1 of this chapter.

C o p y

Sec. 3. As used in this chapter, "closing" means a transfer of an interest described in section 1 of this chapter by a deed, installment sales contract, or lease.

Sec. 4. As used in connection with disclosure forms required by this chapter, "defect" means a condition that would have a significant adverse effect on the value of the property, that would significantly impair the health or safety of future occupants of the property, or that if not repaired, removed, or replaced would significantly shorten or adversely affect the expected normal life of the premises.

Sec. 5. As used in this chapter, "disclosure form" refers to a disclosure form prepared under section 8 of this chapter or a disclosure form that meets the requirements of section 8 of this chapter.

Sec. 6. As used in this chapter, "owner" means the owner of residential real estate that is for sale, exchange, lease with an option to buy, or sale under an installment contract.

Sec. 7. The Indiana real estate commission established by IC 25-34.1-2-1 shall adopt a specific disclosure form that contains the following:

(1) Disclosure by the owner of the known condition of the following areas:

(A) The foundation.

(B) The mechanical systems.

(C) The roof.

(D) The structure.

(E) The water and sewer systems.

(F) Other areas that the Indiana real estate commission determines are appropriate.

(2) A notice to the prospective buyer that contains substantially the following language:

"The prospective buyer and the owner may wish to obtain professional advice or inspections of the property and provide for appropriate provisions in a contract between them concerning any advice, inspections, defects, or warranties obtained on the property.".

(3) A notice to the prospective buyer that contains substantially the following language:

"The representations in this form are the representations of the owner and are not the representations of the agent, if any. This information is for disclosure only and is not intended to be a part of any contract between the buyer and owner.".

C o p y

(4) A disclosure by the owner that an airport is located within a geographical distance from the property as determined by the Indiana real estate commission. The commission may consider the differences between an airport serving commercial airlines and an airport that does not serve commercial airlines in determining the distance to be disclosed.

Sec. 8. An owner may prepare or use a disclosure form that contains the information required in the disclosure form under section 7 of this chapter and any other information the owner determines is appropriate.

Sec. 9. A disclosure form is not a warranty by the owner or the owner's agent, if any, and the disclosure form may not be used as a substitute for any inspections or warranties that the prospective buyer or owner may later obtain.

Sec. 10. (a) An owner must complete and sign a disclosure form and submit the form to a prospective buyer before an offer for the sale of the residential real estate is accepted.

(b) An appraiser retained to appraise the residential real estate for which the disclosure form has been prepared shall be given a copy of the form upon request. This subsection applies only to appraisals made for the buyer or an entity from which the buyer is seeking financing.

(c) Before closing, an accepted offer is not enforceable against the buyer until the owner and the prospective buyer have signed the disclosure form. After closing, the failure of the owner to deliver a disclosure statement form to the buyer does not by itself invalidate a real estate transaction.

Sec. 11. The owner is not liable for any error, inaccuracy, or omission of any information required to be delivered to the prospective buyer under this chapter if:

(1) the error, inaccuracy, or omission was not within the actual knowledge of the owner or was based on information provided by a public agency or by another person with a professional license or special knowledge who provided a written or oral report or opinion that the owner reasonably believed to be correct; and

(2) the owner was not negligent in obtaining information from a third party and transmitting the information.

Sec. 12. (a) An owner does not violate this chapter if the owner subsequently discovers that the disclosure form is inaccurate as a result of any act, circumstance, information received, or agreement

C o p y

subsequent to the delivery of the disclosure form. However, at or before settlement, the owner is required to disclose any material change in the physical condition of the property or certify to the purchaser at settlement that the condition of the property is substantially the same as it was when the disclosure form was provided.

(b) If at the time disclosures are required to be made under subsection (a) an item of information required to be disclosed is unknown or not available to the owner, the owner may state that the information is unknown or may use an approximation of the information if the approximation is clearly identified, is reasonable, is based on the actual knowledge of the owner, and is not used to circumvent the disclosure requirements of this chapter.

Sec. 13. (a) Notwithstanding section 12 of this chapter, if a prospective buyer receives a disclosure form or an amended disclosure form after an offer has been accepted that discloses a defect, the prospective buyer may after receipt of the disclosure form and within two (2) business days nullify the contract by delivering a written rescission to the owner or the owner's agent, if any.

(b) A prospective buyer is not liable for nullifying a contract under this section and is entitled to a return of any deposits made in the transaction.

Chapter 6. Psychologically Affected Properties

Sec. 1. As used in this chapter, "agent" means a real estate agent or other person acting on behalf of the owner or transferee of real estate or acting as a limited agent.

Sec. 2. As used in this chapter, "limited agent" means an agent who, with the written and informed consent of all parties to a real estate transaction, is engaged by both the seller and buyer or both the landlord and tenant.

Sec. 3. As used in this chapter, "psychologically affected property" includes real estate or a dwelling that is for sale, rent, or lease and to which one (1) or more of the following facts or a reasonable suspicion of facts apply:

(1) That an occupant of the property was afflicted with or died from a disease related to the human immunodeficiency virus (HIV).

(2) That an individual died on the property.

(3) That the property was the site of:

(A) a felony under IC 35;

(B) criminal gang (as defined in IC 35-45-9-1) activity;

C o p y

(C) the discharge of a firearm involving a law enforcement officer while engaged in the officer's official duties; or

(D) the illegal manufacture or distribution of a controlled substance.

Sec. 4. As used in this chapter, "transferee" means a purchaser, tenant, lessee, prospective purchaser, prospective tenant, or prospective lessee of the real estate or dwelling.

Sec. 5. An owner or agent is not required to disclose to a transferee any knowledge of a psychologically affected property in a real estate transaction.

Sec. 6. An owner or agent is not liable for the refusal to disclose to a transferee:

(1) that a dwelling or real estate is a psychologically affected property; or

(2) details concerning the psychologically affected nature of the dwelling or real estate.

However, an owner or agent may not intentionally misrepresent a fact concerning a psychologically affected property in response to a direct inquiry from a transferee.

Chapter 7. Adverse Possession

Sec. 1. In any suit to establish title to land or real estate, possession of the land or real estate is not adverse to the owner in a manner as to establish title or rights in and to the land or real estate unless the adverse possessor or claimant pays and discharges all taxes and special assessments due on the land or real estate during the period the adverse possessor or claimant claims to have possessed the land or real estate adversely. However, this section does not relieve any adverse possessor or claimant from proving all the elements of title by adverse possession required by law.

Sec. 2. Title to real property owned by the state or a political subdivision (as defined in IC 36-1-2-13) may not be alienated by adverse possession.

Chapter 8. Tax Sale Surplus Disclosure

Sec. 1. This chapter applies to a transfer of property made after June 30, 2001, that transfers ownership of the property from a delinquent taxpayer to another person after the property is sold at a tax sale under IC 6-1.1-24 and before the tax sale purchaser is issued a tax sale deed under IC 6-1.1-25-4.

Sec. 2. A taxpayer must file a tax sale surplus fund disclosure form in duplicate with the county auditor before the taxpayer may transfer title to property if:

(1) the taxpayer owes delinquent taxes on the property;

C o p y

(2) the property was sold at a tax sale under IC 6-1.1-24; and
(3) a part of the tax sale purchaser's bid on the property was deposited into the tax sale surplus fund under IC 6-1.1-24-7.

Sec. 3. A tax sale surplus fund disclosure form must contain the following information:

(1) The name and address of the taxpayer transferring the property.
(2) The name and address of the person acquiring the property.
(3) The proposed date of transfer.
(4) The purchase price for the transfer.
(5) The date the property was sold at a tax sale under IC 6-1.1-24.
(6) The amount of the tax sale purchaser's bid that was deposited into the tax sale surplus fund under IC 6-1.1-24-7.

Sec. 4. The tax sale surplus fund disclosure form must be signed by the taxpayer transferring the property and acknowledged before an officer authorized to take acknowledgments of deeds.

Sec. 5. The county auditor shall:

(1) stamp the tax sale surplus fund disclosure form to indicate the county auditor's receipt of the form; and
(2) remit the duplicate to the taxpayer.

Sec. 6. The state board of accounts shall prescribe the tax sale surplus fund disclosure form required by this chapter.

Chapter 9. Written Instruments by Members of the Armed Forces

Sec. 1. (a) In addition to the acknowledgment of written instruments and the performance of other notarial acts in the manner and form otherwise authorized by the laws of this state, a person:

(1) who is serving in or with the armed forces of the United States wherever located;
(2) who is serving as a merchant seaman outside the limits of the United States included within the fifty (50) states and the District of Columbia; or
(3) who is outside the limits of the United States by permission, assignment, or direction of any department or office of the United States government in connection with any activity pertaining to the prosecution of any war in which the United States is engaged;

may acknowledge any instruments, attest documents, subscribe oaths and affirmations, give depositions, execute affidavits, and

C o p y

perform other notarial acts before any commissioned officer with the rank of second lieutenant or higher in the active services of the Army of the United States or the United States Marine Corps or before any commissioned officer with the rank of ensign or higher in the active service of the United States Navy or the United States Coast Guard, or with equivalent rank in any other component part of the armed forces of the United States.

(b) The commissioned officer before whom a notarial act is performed under this section shall certify the instrument with the officer's official signature and title in substantially the following form:

With the Armed Forces (or other component part of)
)ss
the armed forces) of the United States at [1]_____
)
The foregoing instrument was acknowledged this _____
day of _____ 20___ by [2]_____ serving (in) the armed forces of the
(with)
United States) _____ (as a merchant seaman outside the limits of the United States) (as a person not in the armed forces, but outside the limits of the United States by permission, assignment, or direction of a department of the United States Government in connection with an activity pertaining to the prosecution of the war), before me, a commissioned officer in the active service of the (Army of the United States) (United States Marine Corps) (United States Navy) (United States Coast Guard) (or equivalent rank in any other component part of the armed forces).

(Signature of officer)

_____

Rank and Branch

Footnote 1. In the event that military considerations preclude disclosure of the place of execution or acknowledgment the words "an undisclosed place" may be supplied instead of the appropriate city or county, state, and country.

Footnote 2. If by a natural person or persons, insert name or names; if by a person acting in a representative or official capacity or as attorney-in-fact, then insert name of person acknowledging the instrument, followed by an accurate description of the capacity in which he acts including the name of the person, corporation, or other entity represented.

Sec. 2. An acknowledgment or other notarial act made substantially in the form prescribed by section 1 of this chapter is

C o p y

prima facie evidence:

(1) that the person named in the instrument as having acknowledged or executed the instrument:

(A) appeared in person before the officer taking the acknowledgment;

(B) was personally known to the officer to be the person whose name was subscribed to the instrument; and

(C) acknowledged that the person signed the instrument as a free and voluntary act for the uses and purposes set forth in the instrument;

(2) if the acknowledgment or execution is by a person in a representative or official capacity, that the person acknowledging or executing the instrument acknowledged it to be the person's free and voluntary act in such capacity or the free and voluntary act of the principal, person, or entity represented; and

(3) if the acknowledgment or other notarial act is by a person as an officer of a corporation, that the person was known to the officer taking the acknowledgment or performing any other notarial act to be a corporate officer and that the instrument was executed and acknowledged for and on behalf of the corporation by the corporate officer with proper authority from the corporation, as the free and voluntary act of the corporation.

Sec. 3. An instrument acknowledged or executed as provided in this chapter is not invalid because of a failure to state in the instrument the place of execution or acknowledgment.

Sec. 4. An acknowledgment or other notarial act made substantially as provided in this chapter constitutes prima facie proof of the facts recited in the instrument and, without further or other authentication, entitles any document so acknowledged or executed to be filed and recorded in the proper offices of record and received in evidence before the courts of this state, to the same extent and with the same effect as documents acknowledged or executed in accordance with any other provision of law now in force or that may be enacted.

Chapter 10. Conveyances in Which the Grantor and Another Are Named as Grantees

Sec. 1. As used in this chapter:

(1) "person" includes a person who may be married; and

(2) "persons" includes persons who may be married to each other.

C o p y

Sec. 2. (a) A person who owns real property or an interest in real property that the person has the power to convey may effectively convey the property or interest by a conveyance naming as grantees that person and one (1) or more other persons.

(b) Two (2) or more persons who own real property or an interest in real property that the persons have the power to convey may effectively convey the property or interest by a conveyance naming as grantees one (1) or more of those persons and one (1) or more other persons.

(c) A conveyance under subsection (a) or (b) has the same effect as to whether it creates an estate in:

(1) severalty;
(2) joint tenancy with right of survivorship;
(3) tenancy by the entirety; or
(4) tenancy in common;

as if the conveyance were a conveyance from a stranger who owned the property or interest to the persons named as grantees in the conveyance.

Sec. 3. (a) Two (2) or more persons who own real property or an interest in real property that they have power to convey may effectively convey the property or interest by a conveyance naming as grantee or grantees one (1) or more of those persons.

(b) A conveyance under subsection (a) has the same effect, as to whether it creates an estate in:

(1) severalty;
(2) joint tenancy with right of survivorship;
(3) tenancy by the entirety; or
(4) tenancy in common;

as if the conveyance were a conveyance from a stranger who owned the property or interest to the person or persons named as grantee or grantees in the conveyance.

Chapter 11. Responsible Property Transfer Law

Sec. 1. In addition to any other requirements concerning the conveyance of real property, a transferor of property (as defined in IC 13-11-2-174) may be required to deliver a disclosure document under IC 13-25-3 to each of the other parties to a transfer of the property at least thirty (30) days before the transfer.

SECTION 7. IC 32-22 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

ARTICLE 22. CONVEYANCE LIMITATIONS OF REAL

C o p y

PROPERTY

Chapter 1. Limitations on Persons Who May Convey Real Property

Sec. 1. Except as provided in section 3 of this chapter, a:

(1) mentally incompetent person; or

(2) person less than eighteen (18) years of age;

may not alienate land or any interest in land.

Sec. 2. (a) This section does not apply to any sale or contract made and entered into before September 19, 1881.

(b) In all sales of real estate by a person less than eighteen (18) years of age, the person may not disaffirm the sale without first restoring to the purchaser the consideration received in the sale, if the person falsely represented himself or herself to the purchaser to be at least eighteen (18) years of age and the purchaser acted in good faith, relied upon the person's representations in the sale, and had good cause to believe the person to be at least eighteen (18) years of age.

Sec. 3. Any person who is:

(1) less than eighteen (18) years of age; and

(2) married to a person who is at least eighteen (18) years of age;

may convey, mortgage, or agree to convey any interest in real estate or may make any contract concerning the interest, with the consent of the circuit, superior, or probate court of the county where the person resides, upon payment of the fee required under IC 33-19-5-4.

Sec. 4. A judge may give consent under section 3 of this chapter to a conveyance or mortgage and to any note secured by the mortgage, agreement, or contract if the judge determines that it would benefit the person described in section 3 of this chapter and that it would be prejudicial to the spouse of the person if the execution of the instrument were prevented. The judge shall endorse the judge's consent on the instrument and sign it, and the instrument so certified is valid for all purposes as if the married person were at least eighteen (18) years of age. However, the judge has the power, in the judge's discretion, to examine witnesses concerning the propriety or necessity of executing the instrument.

Sec. 5. (a) If a person owning real estate desires to sell the real estate or a part of the real estate and the person's spouse is, at the time, mentally incompetent, the person, upon complying with this section, may sell and convey the real estate by deed without the joinder of the mentally incompetent spouse. The conveyance has

C o p y

the same effect as would the joint deed of both spouses.

(b) Before a deed is made under this section, the owner intending to sell the real estate shall, by petition, apply to the court having probate jurisdiction in the county where the real estate or a part of the real estate to be sold is situated, alleging that the owner's spouse is mentally incompetent and that the incompetency is probably permanent. Upon the filing of the petition, notice shall be given to the person alleged to be mentally incompetent, either by service of process, as provided by law for service of process against incompetent persons in other civil actions, or, if the person alleged to be incompetent is by affidavit shown to be a nonresident of Indiana, by publication.

(c) After notice and upon or after the return day of the notice, the legally appointed guardian, if any, of the person alleged to be mentally incompetent or, if there is no guardian, a guardian ad litem for the person appointed by the court, shall make any proper defense to the application. The matter of the petition shall be submitted to the court, and if the allegations are proved to the satisfaction of the court, the court shall make and enter a finding that the person alleged to be incompetent is incompetent, and that the incompetency is probably permanent.

(d) Upon the filing by the petitioner with the clerk of the court of a bond, in an amount and with surety approved by the court, that is payable to the state and conditioned to:

(1) keep the mentally incompetent spouse from becoming a county charge; and

(2) account to the spouse, upon restoration to competency, if the spouse demands it, fifty percent (50%) of the purchase money received for the real estate upon sale;

the court shall enter an order authorizing the whole title to be conveyed by the petitioner without the joinder of the mentally incompetent spouse.

(e) A deed made under an order of court under this section has the same effect as the deed of an unmarried person competent to convey real estate.

(f) If it is shown to the satisfaction of the court having probate jurisdiction in the county in which lands authorized to be sold under this section are located that:

(1) the lands were sold under an order authorizing the sale;

(2) the entire proceeds of the sale were invested in other real estate located in Indiana;

(3) the land purchased with the proceeds of the sale was of no

C o p y

less value than the land sold under the order;

(4) the title to the land purchased with the proceeds of the sale was taken in the name of the person having a mentally incompetent spouse; and

(5) the mentally incompetent spouse will not suffer any loss as a result of the investment described in subdivision (2);

the court shall enter an order discharging the bond described in subsection (d) and releasing the sureties from all liabilities on the bond.

Chapter 2. Rights of Aliens to Hold and Convey Real Property

Sec. 1. The title of any resident of Indiana who was in actual possession of any land on or before November 1, 1851, or the title of any person holding under the resident may not be defeated or prejudiced by:

(1) the alienism of the resident; or

(2) the alienism of any other person through whom the resident's title was derived.

Sec. 2. All aliens residing in Indiana who have declared their intention to become citizens of the United States, conformably to the laws of the United States, may acquire and hold real estate in the same manner as citizens of Indiana. Any alien, whether the alien resides in Indiana or elsewhere, may:

(1) make loans of money and take and accept mortgages upon real estate within Indiana to secure the payment of the loans or of any bona fide indebtedness owing from any person to a the alien; and

(2) take, hold, transmit, and convey any real estate acquired, held, or obtained by the process of laws:

(A) in the collection of debts; or

(B) by any procedure for the enforcement of any lien or claim on the lien, whether created by mortgage or otherwise;

as fully as a citizen of Indiana may take, hold, transmit, or convey the real estate.

Sec. 3. (a) Except as provided in section 4 of this chapter, all aliens residing in Indiana who have not declared their intention to become citizens of the United States may:

(1) acquire and hold land by devise and descent only; and

(2) convey land acquired and held under subdivision (1):

(A) not later than five (5) years after the date the land is acquired; or

(B) if subsection (c) applies, not later than the date on

C o p y

which the land escheats to the state under subsection (c).

(b) Except as provided in subsection (c), land acquired by an alien under subsection (a) escheats to the state five (5) years after the date the land is acquired if the land is not conveyed during those five (5) years.

(c) If:

(1) land is acquired and held by an alien under subsection (a);

(2) the acquisition of the land by the alien by devise or descent is subject to the settlement of the estate of the decedent from whom the land is acquired; and

(3) the final settlement of the estate of the decedent from whom the land is acquired occurs more than five (5) years after the date of death of the decedent;

the land escheats to the state two (2) years after the date of the final settlement of the estate.

(d) If an alien, during the pendency of the settlement of the estate as described in subsection (c), becomes a naturalized citizen of the United States and of the state in which the alien resides, the alien:

(1) is relieved of all disabilities of aliens as to ownership of real estate;

(2) may continue to hold real estate acquired by devise or descent; and

(3) may further acquire and hold real estate in the same manner and with the same power as a citizen of the United States.

Sec. 4. (a) Sections 2 and 3 of this chapter do not prevent the holder of any lien upon or interest in real estate from taking a valid title to real estate:

(1) in which the holder has the interest; or

(2) upon which the holder has the lien.

(b) Except as provided in subsection (c), nothing in this chapter prevents any alien, whether the alien resides in Indiana or elsewhere, from taking, holding, transmitting, or conveying any real estate in Indiana that is acquired, held, or obtained by the process of law:

(1) in the collection of debts; or

(2) by any procedure for the enforcement of any lien or claim on the lien, whether created by mortgage or otherwise;

as fully as a citizen of Indiana may take, hold, transmit, or convey the real estate.

(c) An alien may not hold real estate acquired as described in

C o p y

subsection (b) for more than five (5) years.

Sec. 5. (a) Natural persons who are aliens, whether they reside in the United States or any foreign country, subject to sections 6 and 7 of this chapter, may:

(1) acquire real estate by purchase, devise, or descent;

(2) hold and enjoy real estate; and

(3) convey, devise, transmit, mortgage, or otherwise encumber real estate;

in the same manner and with the same effect as citizens of Indiana or the United States.

(b) The title of any real estate inherited, mortgaged, conveyed, or devised is not affected by the alienage of any person from or through whom the title is claimed or derived.

Sec. 6. (a) If an alien acquires land in Indiana in excess of three hundred and twenty (320) acres, the alien shall, not later than five (5) years after acquiring the excess or becoming eighteen (18) years of age, unless the alien becomes a citizen of the United States, convey all lands acquired by the alien in Indiana. If the alien dies within the five (5) year period without having conveyed, this chapter does not prevent the alien's heirs or devisees from inheriting or taking the unconveyed lands by devise from or through the alien. If an alien acquires the excess above three hundred and twenty (320) acres and the excess remains unconveyed at the end of five (5) years after the acquisition of the excess:

(1) the excess escheats to the state; and

(2) the attorney general shall file an information in the circuit or superior court of the county in which the land is situated:

(A) alleging the ground upon which recovery is claimed; and

(B) making all persons interested parties to the information.

(b) The attorney general shall, at the time of filing the information referred to in subsection (a), file in the office of the clerk of the court a notice containing:

(1) the title of the court;

(2) the names of all the parties to the suit, if known, and if not known, then by the designation of "unknown heirs", as is provided in suits to quiet title;

(3) a description of the real estate; and

(4) a statement of the nature of the action.

The clerk shall record the notice in lis pendens records as of the

C o p y

date and hour of filing, and the land and all of the land owned by the alien and described in the information and notice shall, upon hearing and judgment, upon the information, escheat to the state.

(c) Any person, firm, or corporation, who, before the filing of the information and notice, in good faith and for a valuable consideration has acquired, or except for the alienage of the person or persons from or through whom claim is made, would have acquired, by deed, mortgage, contract, legal proceeding, or otherwise, any right, title, interest, or lien to, in, or upon the land, or any part of the land, is not prejudiced or affected by the alienage of the person or persons, and the right, title, interest, or lien is in all respects as valid as if the alienage of the person or persons did not exist, and may be set by the owner or owners of the land and is fully protected in any proceeding for the recovery or to enforce the escheat of the land to the state.

Sec. 7. This chapter does not affect:

(1) the title to any real estate recovered or conveyed before March 6, 1905, by or under the authority of the state as escheated land;

(2) litigation pending on March 6, 1905, involving the escheat of land to the state; or

(3) the title of the state to any land to which the state has claimed, asserted, or attempted to assert title before March 6, 1905, by an action in any court of Indiana.

SECTION 8. IC 32-23 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

ARTICLE 23. CONVEYANCE OF PROPERTY INTERESTS LESS THAN FEE SIMPLE

Chapter 1. Easements: By Prescription

Sec. 1. The right-of-way, air, light, or other easement from, in, upon, or over land owned by a person may not be acquired by another person by adverse use unless the use is uninterrupted for at least twenty (20) years.

Sec. 2. The owner of land described in section 1 of this chapter, or the agent or guardian of the owner, may give notice to a claimant of a right or easement described in section 1 of this chapter that the owner, or the agent or guardian of the owner, will dispute the claimant's claim to a right or easement by adverse use.

Sec. 3. Notice provided to a claimant under section 2 of this chapter must be:

(1) in writing; and

C o p y

(2) served by an officer on the:

(A) claimant, if the claimant can be found; or

(B) if the claimant cannot be found, on the claimant's agent or the claimant's guardian;

or if the claimant, the claimant's agent, and the claimant's guardian cannot be found, a copy of the written notice shall be posted, for not less than ten (10) days, in a conspicuous place on or adjoining the premises where the right is disputed.

Sec. 4. The service or notice required under section 3 of this chapter must be endorsed by the officer serving the notice, on the original paper, and returned to the party giving the notice. The party that gives the notice shall record the original paper and endorsement of service or notice in the recorder's office of the county where the land is located. The served or posted and recorded notice is, at the time of record, an interruption of the adverse use.

Chapter 2. Easements in Gross: Alienation, Inheritance, Assignment

Sec. 1. As used in this chapter, "easement in gross of a commercial character" means an easement:

(1) for the transmission or distribution of natural gas, petroleum products, or cable television signals;

(2) for the provision of telephone or water service; or

(3) for the transmission, distribution, or transformation of electricity.

Sec. 2. An easement in gross of a commercial character, including an easement acquired by eminent domain, that is created after June 30, 1989, may be alienated, inherited, or assigned in whole or in part unless the instrument creating the easement provides otherwise.

Sec. 3. (a) This section does not apply to an easement in gross of a commercial character that is created after June 30, 1989.

(b) An easement in gross that was created after July 6, 1961, may be alienated, inherited, or assigned in whole or in part if the instrument that created the easement in real property states that the easement may be alienated, inherited, or assigned.

Sec. 4. This chapter does not revive or reinstate an expired, a terminated, or an abandoned easement in gross of a commercial character.

Sec. 5. (a) An easement that is created after June 30, 1989, must cross-reference the original recorded plat. However, if the real property from which the easement is being created is not platted,

C o p y

the easement must cross-reference the most recent deed of record in the recorder's office. The recorder shall charge a fee for recording the easement in accordance with IC 36-2-7-10.

(b) When a release of easement is recorded in the office of the county recorder in the county where the property is situated, the release document must cross-reference the original easement document and reflect the name of the current owner of the property to whom the easement is being released as shown on the property tax records of the county.

Chapter 3. Easements: Way of Necessity

Sec. 1. If:

(1) land that belongs to a landowner in Indiana is shut off from a public highway because of the:

(A) straightening of a stream under Indiana law;

(B) construction of a ditch under Indiana law; or

(C) erection of a dam that is constructed by the state or by the United States or an agency or a political subdivision of the state or of the United States under Indiana law; and

(2) the owner of the lands described in subdivision (1) is unable to secure an easement or right-of-way on and over the land that is adjacent to the affected land, and intervening between the land and the public highways that are most convenient to the land because:

(A) an adjacent and intervening landowner refuses to grant an easement; or

(B) the interested parties cannot agree upon the consideration to be paid by the landowner that is deprived of access to the highway;

the landowner of the affected land shall be granted the right of easement established as a way of necessity as provided under IC 32-24-1.

Chapter 4. Solar Easement

Sec. 1. As used in this chapter, "passive solar energy system" means a structure specifically designed to retain heat that is derived from solar energy.

Sec. 2. As used in this chapter, "solar easement" means an easement obtained for the purpose of exposure of a solar energy device or a passive solar energy system to the direct rays of the sun.

Sec. 3. As used in this chapter, "solar energy device" means an artifice, an instrument, or the equipment designed to receive the direct rays of the sun and convert the rays into heat, electricity, or

C o p y

another form of energy to provide heating, cooling, or electrical power.

Sec. 4. A solar easement:

(1) must be created in writing; and

(2) is subject to the conveyancing and recording requirements of this title.

Sec. 5. An instrument that creates a solar easement must include the following:

(1) The vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property that is subject to the solar easement, and a description of the real property to which the solar easement is appurtenant.

(2) Any terms and conditions under which the solar easement is granted or will be terminated.

Chapter 5. Uniform Conservation Easement Act

Sec. 1. (a) This chapter applies to any interest created after September 1, 1984, that complies with this chapter, whether the interest is designated:

(1) as a conservation easement;

(2) as a covenant;

(3) as an equitable servitude;

(4) as a restriction;

(5) as an easement; or

(6) otherwise.

(b) This chapter applies to any interest created before September 1, 1984, if the interest would have been enforceable had the interest been created after September 1, 1984, unless retroactive application contravenes the constitution or laws of Indiana or the United States.

(c) This chapter does not invalidate any interest, whether designated:

(1) as a conservation easement;

(2) as a preservation easement;

(3) as a covenant;

(4) as an equitable servitude;

(5) as a restriction;

(6) as an easement; or

(7) otherwise;

if the designated interest is enforceable under another law of this state.

(d) This chapter shall be applied and construed to effectuate the general purpose of the chapter to make uniform the laws with

C o p y

respect to the subject of the chapter among the states that enact language consistent with this chapter.

Sec. 2. As used in this chapter, "conservation easement" means a nonpossessory interest of a holder in real property that imposes limitations or affirmative obligations with the purpose of:

(1) retaining or protecting natural, scenic, or open space values of real property;

(2) assuring availability of the real property for agricultural, forest, recreational, or open space use;

(3) protecting natural resources;

(4) maintaining or enhancing air or water quality; or

(5) preserving the historical, architectural, archeological, or cultural aspects of real property.

Sec. 3. As used in this chapter, "holder" means:

(1) a governmental body that is empowered to hold an interest in real property under the laws of Indiana or the United States; or

(2) a charitable corporation, charitable association, or charitable trust, the purposes or powers of which include:

(A) retaining or protecting the natural, scenic, or open space values of real property;

(B) assuring the availability of real property for agricultural, forest, recreational, or open space use;

(C) protecting natural resources;

(D) maintaining or enhancing air or water quality; or

(E) preserving the historical, architectural, archeological, or cultural aspects of real property.

Sec. 4. As used in this chapter, "third party right of enforcement" means a right that is:

(1) provided in a conservation easement to enforce any of the conservation easement's terms; and

(2) granted to a governmental body, charitable corporation, charitable association, or charitable trust that is eligible to be a holder but is not a holder.

Sec. 5. (a) Except as otherwise provided in this chapter, a conservation easement may be:

(1) created;

(2) conveyed;

(3) recorded;

(4) assigned;

(5) released

(6) modified;

C o p y

(7) terminated; or

(8) otherwise altered or affected;

in the same manner as other easements.

(b) A right or duty in favor of or against a holder and a right in favor of a person having a third party right of enforcement does not arise under a conservation easement before the conservation easement is accepted by the holder and the acceptance is recorded.

(c) Except as provided in section 6(b) of this chapter, a conservation easement is unlimited in duration unless the instrument creating the conservation easement provides otherwise.

(d) An interest in real property is not impaired by a conservation easement if the interest exists at the time the conservation easement is created, unless the owner of the interest is a party to the conservation easement or consents to the conservation easement.

Sec. 6. (a) An action that affects a conservation easement may be brought by:

(1) an owner of an interest in the real property burdened by the easement;

(2) a holder of the easement;

(3) a person having a third party right of enforcement; or

(4) a person authorized by other law.

(b) This chapter does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity, or the termination of a conservation easement by agreement of the grantor and grantee.

Sec. 7. A conservation easement is valid even though:

(1) the conservation easement is not appurtenant to an interest in real property;

(2) the conservation easement can be or has been assigned to another holder;

(3) the conservation easement is not of a character that has been recognized traditionally at common law;

(4) the conservation easement imposes a negative burden;

(5) the conservation easement imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

(6) the benefit does not touch or concern real property; or

(7) there is no privity of estate or of contract.

Sec. 8. For the purposes of IC 6-1.1, real property that is subject to a conservation easement shall be assessed and taxed on a basis that reflects the easement.

C o p y

Chapter 6. Easements: WPA Projects

Sec. 1. (a) If:

(1) a landowner in Indiana has had a pond or lake built on the landowner's real estate by the federal Works Progress Administration; and

(2) as a requisite to the building of the pond or lake, the landowner has given a lease in writing to the state relative to the building, upkeep, and use of the pond or lake;

the department of natural resources may, upon application in writing to the department of natural resources, release any easement the state may have to the real estate.

Sec. 2. A release under section 1 of this chapter may be filed with the recorder of the county in which the real estate is situated and recorded in the miscellaneous record in the recorder's office.

Chapter 7. Oil and Gas: Estates in Land

Sec. 1. As used in this chapter, "oil and gas" means petroleum and mineral oils and gaseous substances of whatever character naturally lying or found beneath the surface of land.

Sec. 2. As used in this chapter, "oil and gas estate in land" means the aggregate of all rights in land that affect the oil and gas in, on, under, or that may be taken from beneath the surface of the land.

Sec. 3. As used in this chapter, "operations for oil and gas", unless otherwise indicated by the context of this chapter, means:

(1) the:

(A) exploration;

(B) testing;

(C) surveying; or

(D) other investigation;

of the potential of the land for oil and gas;

(2) the actual drilling or preparations for drilling of wells for oil and gas on the land; or

(3) any other actions directed toward the eventual production or attempted production of oil and gas from the land.

Sec. 4. (a) As used in this chapter, "person in interest" means the owner of a beneficial interest in the oil and gas estate in land, whether the interest is held for life, for a term of years, or in fee.

(b) The term includes a lessee, licensee, or duly qualified agent of the owner.

(c) The term does not include a mortgagee or security assignee of the owner if the mortgagee or security assignee does not have a right to the control or operation of the premises for oil and gas.

C o p y

Sec. 5. As used in this chapter, "surface rights" means all rights relating to the occupancy, user, or ownership of the surface of land affected by this chapter.

Sec. 6. A grant or reservation contained in an instrument that affects land in Indiana and that purports to convey or transfer an interest in the oil and gas in, on, under, or that may be produced from beneath the surface of the land transfers the following expressed rights and privileges in addition to any other rights naturally flowing from the character of the instrument in law to the named recipient:

(1) A person in interest in the oil and gas estate in land may enter the land for the purpose of:

(A) exploring, prospecting, testing, surveying, or otherwise investigating the land to determine the potential of the land for oil or gas production; or

(B) otherwise conducting operations for oil and gas on the land;

whether or not the person is also the owner, lessee, or licensee of an owner of an interest in the surface rights in the land.

(2) A person in interest in the oil and gas estate in land in Indiana may enter the land to drill a well or test well on the land for the production or attempted production of oil and gas regardless of whether the:

(A) person is also the owner, lessee, or licensee of an owner of an interest in the surface rights in the land; and

(B) owner of the remaining rights in the land consents to the entrance and drilling.

A person that drills a well under this subdivision shall provide an accounting to the remaining or nonparticipating persons in interest in the oil and gas estate in the land, for their respective proportionate shares of the net profits arising from the operations conducted upon the land for oil or gas. In calculating the profits, a reduction may not be made from the gross proceeds of the production of oil and gas, except for expenses that are reasonably or necessarily incurred in connection with the drilling, completion, equipping, and operation of the wells drilled upon the premises during the period in which the relationship of cotenancy existed between the person drilling the well and the person whose interest is sought to be charged with the respective proportionate part of the cost of the drilling.

(3) A person who may enter and enters land in Indiana for the

C o p y

purpose of exploring, prospecting, testing, surveying, or otherwise investigating the potential of the land for oil and gas, or for the purpose of conducting operations on the land for the production of oil and gas, is accountable to the owner of the surface of the land for the actual damage resulting from the person's activities on the land to:

(A) the surface of the land;

(B) improvements to the land; or

(C) growing crops on the land.

However, a person who enters land under this subdivision is not liable for punitive damages. This subdivision does not increase damages between a lessor and a lessee in a valid and subsisting oil and gas lease that specifies damages if damages are not due other than damages that are expressly provided by contract between cotenants or the lessees of cotenants of a like estate in the land. This section does not authorize the location of a well for oil and gas nearer than two hundred (200) feet to an existing house, barn, or other structure (except fences) without the express consent of the owner of the structure.

(4) The right to conduct operations for oil and gas upon land located in Indiana includes the right to:

(A) install and maintain physical equipment on the land; and

(B) use the portion of the surface of the land that is reasonably necessary for the operations;

subject to the payment of damages resulting from the installation only of the equipment specified in this subdivision.

Sec. 7. (a) Interests in the oil and gas in, on, under, or that may be taken from beneath the surface of land located in Indiana may be created:

(1) for life;

(2) for a term of years; or

(3) in fee;

in the manner and to the extent that other interests in real estate and title are created.

(b) Title to the estates specified under subsection (a) may be vested in one (1) or more persons by:

(1) sole ownership;

(2) tenancy in common;

(3) joint tenancy;

(4) tenancy by the entireties; or

C o p y

(5) another manner recognized under Indiana law.

(c) Interests or estates specified in this section are freely alienable, in whole or in part, in the same manner as are other interests in real estate.

Sec. 8. (a) This chapter does not limit the rights of parties to contract with regard to the oil and gas estate affecting lands in Indiana:

(1) to the extent permitted by; and

(2) in a manner consistent with;

the nature of the estate in law as specified under this chapter.

(b) This chapter is intended to declare the law of this state with regard to the subject matter treated in this chapter as the law existed before March 5, 1951.

(c) This chapter does not affect the rights or powers of any commission, board, or authority duly constituted for the regulation of the oil and gas industry in Indiana.

Chapter 8. Oil and Gas: Cancellation of Contracts and Leases for Oil and Gas

Sec. 1. (a) Leases for oil and gas that are recorded in Indiana are void:

(1) after a period of one (1) year has elapsed since:

(A) the last payment of rentals on the oil and gas lease as stipulated in the lease or contract; or

(B) operation for oil or gas has ceased, both by the nonproduction of oil or gas and the nondevelopment of the lease; and

(2) upon the written request of the owner of the land, accompanied by the affidavit of the owner stating that:

(A) no rentals have been paid to or received by the owner or any person, bank, or corporation in the owner's behalf for a period of one (1) year after they have become due; and

(B) the leases and contracts have not been operated for the production of oil or gas for one (1) year.

Sec. 2. (a) The recorder of the county in which real estate described in section 1 of this chapter is situated shall certify upon the face of the record of the oil and gas lease that:

(1) the leases and contracts are invalid and void by reason of nonpayment of rentals; and

(2) the oil and gas lease is canceled of record.

(b) The request and affidavit shall be recorded in the miscellaneous records of the recorder's office.

C o p y

Sec. 3. If, at any time after the cancellation of a lease and contract and within the term provided in the lease or contract, the lessee submits to the recorder:

(1) a receipt or a canceled check, or an affidavit, showing that the rental has been paid; or

(2) an affidavit that:

(A) the lease has been operated within a period of one (1) year before the cancellation, as stipulated in the lease or contract; and

(B) the affidavit of the lessor provided under this chapter is false or fraudulent;

the cancellation is void, and the recorder shall so certify at the place where the cancellation of the lease and contract has been entered.

Sec. 4. The owner of a lease that is canceled by a county recorder under this chapter may, not more than six (6) months after the date of cancellation of the lease, appeal the order and record of cancellation in the circuit court of the county in which the land is located.

Chapter 9. Oil and Gas: Purchase of and Payment for Crude Oil

Sec. 1. (a) A person, firm, limited liability company, or corporation that purchases crude oil that is pumped from an oil well in Indiana shall pay for the crude oil:

(1) not more than sixty (60) days after the date of the examination and approval of abstracts of title that are furnished by owners of interests and that show good title in the owners of interests; and

(2) after the purchasers have received executed division orders from the owners of interests.

Sec. 2. If a person, firm, limited liability company, or corporation described in section 1 of this chapter:

(1) fails to pay for the crude oil:

(A) not more than sixty (60) days after the date of the examination and approval of title; and

(B) after the purchasers have received executed division orders from the owners of interests; or

(2) has failed to notify the known claimants of an interest of the purchaser's reason for nonpayment to the claimants of an interest;

the purchaser shall pay interest at the rate of six percent (6%) per year on the unpaid balance from the date on which the purchaser was required to pay for the crude oil under this chapter to the date

C o p y

of payment.

Chapter 10. Lapse of Mineral Interest

Sec. 1. As used in this chapter, "mineral interest" means the interest that is created by an instrument that transfers, by:

(1) grant;

(2) assignment;

(3) reservation; or

(4) otherwise;

an interest of any kind in coal, oil and gas, and other minerals.

Sec. 2. An interest in coal, oil and gas, and other minerals, if unused for a period of twenty (20) years, is extinguished and the ownership reverts to the owner of the interest out of which the interest in coal, oil and gas, and other minerals was carved. However, if a statement of claim is filed in accordance with this chapter, the reversion does not occur.

Sec. 3. (a) A mineral interest is considered to be used when:

(1) minerals are produced under the mineral interest;

(2) operations are conducted on the mineral interest for injection, withdrawal, storage, or disposal of water, gas, or other fluid substances;

(3) rentals or royalties are paid by the owner of the mineral interest for the purpose of delaying or enjoying the use or exercise of the rights;

(4) a use described in subdivisions 1 through 3 is carried out on a tract with which the mineral interest may be unitized or pooled for production purposes;

(5) in the case of coal or other solid minerals, there is production from a common vein or seam by the owners of the mineral interest; or

(6) taxes are paid on the mineral interest by the owner of the mineral interest.

(b) A use under or authorized by an instrument that creates a mineral interest continues in force all rights granted by the instrument.

Sec. 4. (a) The statement of claim under section 2 of this chapter must:

(1) be filed by the owner of the mineral interest before the end of the twenty (20) year period set forth in section 2 of this chapter; and

(2) contain:

(A) the name and address of the owner of the mineral interest; and

C o p y

(B) a description of the land on or under which the mineral interest is located.

(b) A statement of claim described in subsection (a) must be filed in the office of the recorder of deeds in the county in which the land is located.

(c) Upon the filing of a statement of claim within the time provided in this section, the mineral interest is considered to be in use on the date the statement of claim is filed.

Sec. 5. Failure to file a statement of claim within the time provided in section 4 of this chapter does not cause a mineral interest to be extinguished if the owner of the mineral interest:

(1) was, at the time of the expiration of the period specified in section 4 of this chapter, the owner of ten (10) or more mineral interests in the county in which the mineral interest is located;

(2) made a diligent effort to preserve all the mineral interests that were not being used and, not more than ten (10) years before the expiration of the period specified in section 4 of this chapter, preserved other mineral interests in the county by filing statements of claim as required under this chapter;

(3) failed to preserve the mineral interest through inadvertence; and

(4) filed the statement of claim required under this chapter:

(A) not more than sixty (60) days after publication of notice as specified in section 6 of this chapter; and

(B) if a notice referred to in clause (A) is not published, not more than sixty (60) days after receiving actual knowledge that the mineral interest had lapsed.

Sec. 6. (a) A person who succeeds to the ownership of a mineral interest may, upon the lapse of the mineral interest, give notice of the lapse of the mineral interest by:

(1) publishing notice in a newspaper of general circulation in the county in which the mineral interest is located; and

(2) if the address of the mineral interest owner is shown of record or can be determined upon reasonable inquiry, by mailing, not more than ten (10) days after publication, a copy of the notice to the owner of the mineral interest.

(b) The notice required under subsection (a) must state:

(1) the name of the owner of the mineral interest, as shown of record;

(2) a description of the land; and

(3) the name of the person giving the notice.

copy

(c) If a copy of the notice required under subsection (a) and an affidavit of service of the notice are promptly filed in the office of the recorder in the county where the land is located, the record is prima facie evidence in a legal proceeding that notice was given.

Sec. 7. Upon the filing of the statement of claim specified in section 4 of this chapter or the proof of service of notice specified in section 6 of this chapter in the recorder's office for the county where a mineral interest is located, the recorder shall:

(1) record the filing in a book to be kept for that purpose, to be known as the "dormant mineral interest record"; and

(2) indicate by marginal notation on the instrument creating the original mineral interest the filing of the statement of claim or affidavit of publication and service of notice.

Sec. 8. The provisions of this chapter may not be waived at any time before the expiration of the twenty (20) year period provided in section 2 of this chapter.

Chapter 11. Abandoned Railroad Rights-of-Way

Sec. 1. This chapter does not apply to a railroad right-of-way that is abandoned as part of a demonstration project for the relocation of railroad lines from the central area of a city as provided under Section 163 of the Federal-Aid Highway Act of 1973 (P.L.93-87, Title I, Section 163).

Sec. 2. As used in this chapter, "public utility" has the meaning set forth in IC 8-1-8.5-1.

Sec. 3. (a) As used in this chapter, "railroad" refers to a railroad company.

(b) The term includes a person to whom any part of a right-of-way was transferred under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.).

Sec. 4. (a) As used in this chapter, "right-of-way" means a strip or parcel of real property in which a railroad has acquired an interest for use as a part of the railroad's transportation corridor.

(b) The term does not refer to any real property interest in the strip or parcel.

Sec. 5. "Right-of-way fee" refers to the fee simple interest in the real property through which a right-of-way runs.

Sec. 6. (a) Except as provided in subsection (b) and in sections 7 and 8 of this chapter, a right-of-way is considered abandoned if any of subdivisions (1) through (3) apply:

(1) Before February 28, 1920, both of the following occurred:

(A) The railroad discontinued use of the right-of-way for railroad purposes.

C o p y

(B) The rails, switches, ties, and other facilities were removed from the right-of-way.

(2) After February 27, 1920, both of the following occur:

(A) The Interstate Commerce Commission or the United States Surface Transportation Board issues a certificate of public convenience and necessity relieving the railroad of the railroad's common carrier obligation on the right-of-way.

(B) The earlier of the following occurs:

(i) Rails, switches, ties, and other facilities are removed from the right-of-way, making the right-of-way unusable for continued rail traffic.

(ii) At least ten (10) years have passed from the date on which the Interstate Commerce Commission or the United States Surface Transportation Board issued a certificate of public convenience and necessity relieving the railroad of its common carrier obligation on the right-of-way.

(3) The right-of-way was abandoned under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.).

(b) A right-of-way is not considered abandoned if:

(1) rail service continues on the right-of-way; or

(2) the railroad has entered into an agreement preserving rail service on the right-of-way.

Sec. 7. A right-of-way is not considered abandoned if the Interstate Commerce Commission or the United States Surface Transportation Board imposes on the right-of-way a trail use condition under 16 U.S.C. 1247(d).

Sec. 8. (a) A right-of-way is not considered abandoned if the following conditions are met:

(1) The railroad sells the railroad's rights in the right-of-way before abandoning the right-of-way.

(2) The purchaser of the railroad's rights in the right-of-way is not a railroad.

(3) The purchaser purchases the right-of-way for use by the purchaser to transport goods or materials by rail.

(b) A railroad may discontinue rail service on the right-of-way without abandoning the right-of-way.

Sec. 9. If a railroad conveys its interest in a right-of-way, the railroad conveys not more than the interest it holds at the time of the conveyance.

Sec. 10. (a) This section applies if a railroad does not own the

C o p y

right-of-way fee.

(b) If a railroad abandons its right to a railroad right-of-way, the railroad's interest vests in the owner of the right-of-way fee with a deed that contains a description of the real property that includes the right-of-way.

(c) If a deed described in subsection (b) does not exist, then the railroad's interest vests in the owner of the adjoining fee. The interest of the railroad that vests in the owner of the adjoining fee is for the part of the right-of-way from the center line of the right-of-way to the adjoining property line.

Sec. 11. (a) The vesting of a railroad's interest under section 10 of this chapter does not divest a valid public utility, communication, cable television, fiber optic, or pipeline easement, license, or legal occupancy if the railroad granted the easement before the date on which the railroad abandoned the right-of-way.

(b) This chapter does not deprive a public utility, communication company, cable television company, fiber optic company, or pipeline company of the use of all or part of a right-of-way if, at the time of abandonment, the company:

(1) is occupying and using all or part of the right-of-way for the location and operation of the company's facilities; or

(2) has acquired an interest for use of all or part of the right-of-way.

(c) This chapter does not do the following:

(1) Limit the right of the owner of a right-of-way fee to demand compensation from a railroad or a utility for the value of an interest taken and used or occupied after abandonment.

(2) Grant to the owner of a right-of-way fee the right to obtain duplicative compensation from a utility or pipeline company for the value of the use of any portion of the right-of-way that is subject to the terms of an agreement previously entered into between the utility or pipeline company and the owner of the right-of-way fee. For purposes of this subdivision, "pipeline" does not include a coal slurry pipeline.

Sec. 12. (a) A person may bring an action to establish full rights of possession of the person's right-of-way fee in any part of a right-of-way that is burdened by an easement for railroad purposes not more than thirty (30) years after the right-of-way is abandoned under this chapter.

(b) A person may commence an action to establish the person's ownership of a right-of-way fee in any part of a right-of-way by

C o p y

enforcing a possibility of reverter or a right of entry under IC 32-17-10.

Sec. 13. Except as provided in section 14 of this chapter, the ownership of a right-of-way fee is determined under the same principles that fee simple ownership in property is otherwise determined under Indiana law.

Sec. 14. For purposes of this chapter, the following are not adverse possessions or prescriptive easements to the owner and do not establish title or rights to the real property:

(1) Possession of a right-of-way by a nonrailroad purchaser under section 8 of this chapter.

(2) Possession of a right-of-way by a public utility or under a communication, cable television, fiber optic, or pipeline easement, license, or legal occupancy under section 11 of this chapter.

(3) Possession of a right-of-way by a responsible party (as defined in IC 8-4.5-1-17).

Sec. 15. If a railroad owns a right-of-way fee that becomes landlocked after the right-of-way is abandoned, the railroad retains an easement of necessity in the abandoned right-of-way:

(1) from the landlocked property to the nearest public highway, road, or street; and

(2) to the extent necessary to reach and use the landlocked fee interest for its intended purpose.

SECTION 9. IC 32-24 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

ARTICLE 24. EMINENT DOMAIN

Chapter 1. General Procedures

Sec. 1. As used in section 5 of this chapter, "condemnor" means any person authorized by Indiana law to exercise the power of eminent domain.

Sec. 2. As used in section 5 of this chapter, "owner" means the persons listed on the tax assessment rolls as being responsible for the payment of real estate taxes imposed on the property and the persons in whose name title to real estate is shown in the records of the recorder of the county in which the real estate is located.

Sec. 3. (a) Any person that may exercise the power of eminent domain for any public use under any statute may exercise the power only in the manner provided in this article, except as otherwise provided by law.

(b) Before proceeding to condemn, the person:

C o p y

(1) may enter upon any land to examine and survey the property sought to be acquired; and

(2) must make an effort to purchase for the use intended the land, right-of-way, easement, or other interest, in the property.

(c) If the land or interest in the land, or property or right is owned by a person who is an incapacitated person (as defined in IC 29-3-1-7.5) or less than eighteen (18) years of age, the person seeking to acquire the property may purchase the property from the guardian of the incapacitated person or person less than eighteen (18) years of age. If the purchase is approved by the court appointing the guardian and the approval is written upon the face of the deed, the conveyance of the property purchased and the deed made and approved by the court are valid and binding upon the incapacitated person or persons less than eighteen (18) years of age.

(d) The deed given, when executed instead of condemnation, conveys only the interest stated in the deed.

(e) If property is taken by proceedings under this article, the entire fee simple title may be taken and acquired if the property is taken for any purpose other than a right-of-way.

Sec. 4. (a) If the person seeking to acquire the property does not agree with the owner of an interest in the property or with the guardian of an owner concerning the damages sustained by the owner, as provided in section 1 of this chapter, the person seeking to acquire the property may file a complaint for that purpose with the clerk of the circuit court of the county where the property is located.

(b) The complaint must state the following:

(1) The name of the person seeking to acquire the property. This person shall be named as the plaintiff.

(2) The names of all owners, claimants to, and holders of liens on the property, if known, or a statement that they are unknown. These owners, claimants, and holders of liens shall be named as defendants.

(3) The use the plaintiff intends to make of the property or right sought to be acquired.

(4) If a right-of-way is sought, the location, general route, width, and the beginning and end points of the right-of-way.

(5) A specific description of each piece of property sought to be acquired and whether the property includes the whole or only part of the entire parcel or tract. If property is sought to

C o p y

be acquired by the state or by a county for a public highway or by a municipal corporation for a public use and the acquisition confers benefits on any other property of the owner, a specific description of each piece of property to which the plaintiff alleges the benefits will accrue. Plats of property alleged to be affected may accompany the descriptions.

(6) That the plaintiff has been unable to agree for the purchase of the property with the owner, owners, or guardians, as the case may be, or that the owner is mentally incompetent or less than eighteen (18) years of age and has no legally appointed guardian, or is a nonresident of Indiana.

(c) All parcels lying in the county and required for the same public use, whether owned by the same parties or not, may be included in the same or separate proceedings at the option of the plaintiff. However, the court may consolidate or separate the proceedings to suit the convenience of parties and the ends of justice. The filing of the complaint constitutes notice of proceedings to all subsequent purchasers and persons taking encumbrances of the property, who are bound by the notice.

Sec. 5. (a) As a condition precedent to filing a complaint in condemnation, and except for an action brought under IC 8-1-13-19 (repealed), a condemnor may enter upon the property as provided in this chapter and must, at least thirty (30) days before filing a complaint, make an offer to purchase the property in the form prescribed in subsection (c). The offer must be served personally or by certified mail upon:

(1) the owner of the property sought to be acquired; or

(2) the owner's designated representative.

(b) If the offer cannot be served personally or by certified mail, or if the owner or the owner's designated representative cannot be found, notice of the offer shall be given by publication in a newspaper of general circulation in the county in which the property is located or in the county where the owner was last known to reside. The notice must be in the following form:

NOTICE

TO: _____, _____ (owner(s)), _____ (condemnor) needs your property for a _____(description of project), and will need to acquire the following from you: _____ (general

C o p y

description of the property to be acquired). We have made you a formal offer for this property that is now on file in the Clerk's Office in the _____ County Court House. Please pick up the offer. If you do not respond to this notice or accept the offer by ____ (a date 30 days from 1st date of publication) 20___, we shall file a suit to condemn the property.

_____
Condemnor

The condemnor must file the offer with the clerk of the circuit court with a supporting affidavit that diligent search has been made and that the owner cannot be found. The notice shall be published twice as follows:

(1) One (1) notice immediately.

(2) A subsequent publication at least seven (7) days and not more than twenty-one (21) days after the publication under subdivision (1).

(c) The offer to purchase must be in the following form:

UNIFORM PROPERTY OR EASEMENT
ACQUISITION OFFER

_____ (condemnor) is authorized by Indiana law to obtain your property or an easement across your property for certain public purposes. _____ (condemnor) needs (your property) (an easement across your property) for a _____ (brief description of the project) and needs to take _____ (legal description of the property or easement to be taken; the legal description may be made on a separate sheet and attached to this document if additional space is required)

It is our opinion that the fair market value of the (property) (easement) we want to acquire from you is $ ____, and, therefore, _____ (condemnor) offers you $ _____ for the above described (property) (easement). You have twenty-five (25) days from this date to accept or reject this offer. If you accept this offer, you may expect payment in full within ninety (90) days after signing the documents accepting this offer and executing the easement, and provided there are no difficulties in clearing liens or other problems with title to land. Possession will be required thirty (30) days after you have received your payment in full.

HERE IS A BRIEF SUMMARY OF YOUR OPTIONS AND LEGALLY PROTECTED RIGHTS:

1. By law, _____ (condemnor) is required to make a good faith effort to purchase (your property) (an easement

C o p y

across your property).
2. You do not have to accept this offer.
3. However, if you do not accept this offer, and we cannot come to an agreement on the acquisition of (your property) (an easement), _____ (condemnor) has the right to file suit to condemn and acquire the (property) (easement) in the county in which the property is located.
4. You have the right to seek advice of an attorney, real estate appraiser, or any other person of your choice on this matter.
5. You may object to the public purpose and necessity of this project.
6. If _____ (condemnor) files a suit to condemn and acquire (your property) (an easement) and the court grants its request to condemn, the court will then appoint three appraisers who will make an independent appraisal of the (property) (easement) to be acquired.
7. If we both agree with the court appraisers' report, then the matter is settled. However, if either of us disagrees with the appraisers' report to the court, either of us has the right to ask for a trial to decide what should be paid to you for the (property) (easement) condemned.
8. If the court appraisers' report is not accepted by either of us, then _____ (condemnor) has the legal option of depositing the amount of the court appraisers' evaluation with the court. And if such a deposit is made with the court, _____ (condemnor) is legally entitled to immediate possession of the (property) (easement). You may, subject to the approval of the court, make withdrawals from the amount deposited with the court. Your withdrawal will in no way affect the proceedings of your case in court, except that, if the final judgment awarded you is less than the withdrawal you have made from the amount deposited, you will be required to pay back to the court the amount of the withdrawal in excess of the amount of the final judgment.
9. The trial will decide the full amount of damages you are to receive. Both of us will be entitled to present legal evidence supporting our opinions of the fair market value of the property or easement. The court's decision may be more or less than this offer. You may employ, at your cost, appraisers and attorneys to represent you at this time or at any time during the course of the proceeding described in this notice. (The condemnor may insert here any other information

C o p y

pertinent to this offer or required by circumstances or law).
10. If you have any questions concerning this matter you may contact us at:
_____
_____
(full name, mailing and street address and phone of the condemnor)
This offer was made to the owner(s):
_____of_____,
_____of_____,
_____of_____,
_____of_____,
on the _____ day of _____ 20___,
BY:
_____
(signature)
_____
(printed name and title)
Agent of: _____
(condemnor)

If you decide to accept the offer of $ _____ made by _____ (condemnor) sign your name below and mail this form to the address indicated above. An additional copy of this offer has been provided for your file.

ACCEPTANCE OF OFFER

I (We), _____, _____, _____, owner(s) of the above described property or interest in property, hereby accept the offer of $ _____ made by _____ (condemnor) on this _____ day of _____, 20___.

_____
_____
_____
_____

NOTARY'S CERTIFICATE

STATE OF _____)
)SS:
COUNTY OF _____)

Subscribed and sworn to before me this ____ day of _____, 20___.

My Commission Expires: _____

_____

Copy

(Signature)

_____

(Printed) NOTARY PUBLIC

(d) If the condemnor has a compelling need to enter upon property to restore utility or transportation services interrupted by disaster or unforeseeable events, the provisions of subsections (a), (b), and (c) do not apply for the purpose of restoration of utility or transportation services interrupted by the disaster or unforeseeable events. However, the condemnor shall be responsible to the property owner for all damages occasioned by the entry, and the condemnor shall immediately vacate the property entered upon as soon as utility or transportation services interrupted by the disaster or unforeseeable event have been restored.

Sec. 6. (a) Upon the filing of a complaint under this chapter, the circuit court clerk shall issue a notice requiring the defendants to appear before the court on the day to be fixed by the plaintiff by indorsement on the complaint at the time of filing the complaint, and to show cause, if any, why the property sought to be condemned should not be acquired. The notice shall be substantially in the following form:

In the _____ Court of Indiana.

To the Sheriff of _____ County, Indiana:

You are hereby commanded to notify _____, defendants, to appear before the _____ Court of _____ County, Indiana on the ____ day of _____, 20_____, at _____ o'clock, __ M. to show cause, if any, they have why the property sought to be acquired in the complaint of _____ should not be acquired.

Witness my hand and the seal of the court affixed at _____, Indiana, this ___ day of _____, 20_____.

Clerk of _____ Court.

(b) The notice shall be served in the same manner as a summons is served in civil actions. Upon a showing by affidavit that any defendant is a nonresident of Indiana or that the defendant's name or residence is unknown, publication and proof of the notice may be made as provided in section 7 of this chapter.

Sec. 7. (a) The notice, upon its return, must show its:

(1) service for ten (10) days; or

(2) proof of publication for three (3) successive weeks in a weekly newspaper of general circulation printed and published in the English language in the county in which the property sought to be acquired is located.

C o p y

The last publication of the notice must be five (5) days before the day set for the hearing.

(b) The clerk of the court in which the proceedings are pending, upon the first publication of the notice, shall send to the post office address of each nonresident owner whose property will be affected by the proceedings a copy of the notice, if the post office address of the owner or owners can be ascertained by inquiry at the office of the treasurer of the county.

(c) The court, being satisfied of the regularity of the proceedings and the right of the plaintiff to exercise the power of eminent domain for the use sought, shall appoint three (3) disinterested freeholders of the county to assess the damages, or the benefits and damages, as the case may be, that the owner or owners severally may sustain, or be entitled to, by reason of the acquisition.

Sec. 8. (a) A defendant may object to the proceedings:

(1) because the court does not have jurisdiction either of the subject matter or of the person;

(2) because the plaintiff does not have the right to exercise the power of eminent domain for the use sought; or

(3) for any other reason disclosed in the complaint or set up in the objections.

(b) Objections under subsection (a) must be:

(1) in writing;

(2) separately stated and numbered; and

(3) filed not later than the first appearance of the defendant.

(c) The court may not allow pleadings in the cause other than the complaint, any objections, and the written exceptions provided for in section 11 of this chapter. However, the court may permit amendments to the pleadings.

(d) If an objection is sustained, the plaintiff may amend the complaint or may appeal from the decision in the manner that appeals are taken from final judgments in civil actions. All the parties shall take notice and are bound by the judgment in an appeal.

(e) If the objections are overruled, the court shall appoint appraisers as provided for in this chapter. Any defendant may appeal the interlocutory order overruling the objections and appointing appraisers in the manner that appeals are taken from final judgments in civil actions upon filing with the circuit court clerk a bond:

(1) with the penalty that the court fixes;

(2) with sufficient surety;

C o p y

(3) payable to the plaintiff; and

(4) conditioned for the diligent prosecution of the appeal and for the payment of the judgment and costs that may be affirmed and adjudged against the appellants.

The appeal bond must be filed not later than ten (10) days after the appointment of the appraisers.

(f) All the parties shall take notice of and be bound by the judgment in the appeal.

(g) The transcript must be filed in the office of the clerk of the supreme court not later than thirty (30) days after the filing of the appeal bond. The appeal does not stay proceedings in the cause.

Sec. 9. (a) Each appraiser shall take an oath that:

(1) the appraiser has no interest in the matter; and

(2) the appraiser will honestly and impartially make the assessment.

(b) After the appraisers are sworn as provided in subsection (a), the judge shall instruct the appraisers as to:

(1) their duties as appraisers; and

(2) the measure of the damages and benefits, if any, they allow.

(c) The appraisers shall determine and report all of the following:

(1) The fair market value of each parcel of property sought to be acquired and the value of each separate estate or interest in the property.

(2) The fair market value of all improvements pertaining to the property, if any, on the portion of the property to be acquired.

(3) The damages, if any, to the residue of the property of the owner or owners caused by taking out the part sought to be acquired.

(4) The other damages, if any, that will result to any persons from the construction of the improvements in the manner proposed by the plaintiff.

(d) If the property is sought to be acquired by the state or by a county for a public highway or a municipal corporation for a public use that confers benefits on any property of the owner, the report must also state the benefits that will accrue to each parcel of property, set opposite the description of each parcel of property whether described in the complaint or not.

(e) Except as provided in subsection (f), in estimating the damages specified in subsection (c), the appraisers may not deduct

C o p y

for any benefits that may result from the improvement.

(f) In the case of a condemnation by the state or by a county for a public highway or a municipal corporation for public use, the appraisers shall deduct any benefits assessed from the amount of damage allowed, if any, under subsection (c)(3) and (c)(4) and the difference, if any, plus the damages allowed under subsection (c)(1) and (c)(2) shall be the amount of the award. However, the damages awarded may not be less than the damages allowed under subsection (c)(1) and (c)(2). Upon the trial of exceptions to the award by either party, a like measure of damages must be followed.

(g) For the purpose of assessing compensation and damages, the right to compensation and damages is considered to have accrued as of the date of the service of the notice provided in section 6 of this chapter, and actual value of compensation and damages at that date shall be:

(1) the measure of compensation for all property to be actually acquired; and

(2) the basis of damages to property not actually acquired but injuriously affected;

except as to the damages stated in subsection (c)(4).

Sec. 10. (a) If the plaintiff pays to the circuit court clerk the amount of damages assessed under section 9 of this chapter, the plaintiff may take possession of and hold the interest in the property so acquired for the uses stated in the complaint, subject to the appeal provided for in section 8 of this chapter. But the amount of the benefits or damages is subject to review as provided in section 11 of this chapter.

(b) Upon payment by the plaintiff of the amount of the award of the court appointed appraisers, the plaintiff shall file or cause to be filed with the auditor of the county in which the property is located a certificate, certifying the amount paid to the circuit court clerk and including the description of the property being acquired. The auditor of the county shall then transfer the property being acquired to the plaintiff on the tax records of the county.

Sec. 11. (a) Any party to an action under this chapter aggrieved by the assessment of benefits or damages may file written exceptions to the assessment in the office of the circuit court clerk. Exceptions to the assessment must be filed not later than twenty (20) days after the filing of the report.

(b) The cause shall further proceed to issue, trial, and judgment as in civil actions. The court may make orders and render findings

C o p y

and judgments that the court considers just.

(c) Notice of filing of the appraisers' report shall be given by the circuit court clerk to all known parties to the action and their attorneys of record by certified mail. The period of exceptions shall run from and after the date of mailing. Either party may appeal a judgment as to benefits or damages as in civil actions.

(d) Twenty (20) days after the filing of the report of the appraisers, and if the plaintiff has paid the amount of damages assessed to the circuit court clerk, any one (1) or more of the defendants may file a written request for payment of each defendant's proportionate share of the damages held by the circuit court clerk. The defendants making a request for payment must also file sufficient copies of the request for service upon the plaintiff and all other defendants not joining in the request. The defendants making the request may withdraw and receive each defendant's proportionate share of the damages upon the following terms and conditions:

(1) Each written request must:

(A) be verified under oath; and

(B) state:

(i) the amount of the proportionate share of the damages to which each of the defendants joining in the request is entitled;

(ii) the interest of each defendant joining in the request; and

(iii) the highest offer made by the plaintiff to each of the defendants for each defendant's respective interests in or damages sustained in respect to the property that has been acquired by the plaintiff.

(2) Upon the filing of a written request for withdrawal and payment of damages to any of the defendants, the circuit court clerk shall immediately issue a notice to the plaintiff and all defendants of record in the cause who have not joined in the request for payment. The notice must contain the following:

(A) The names of the parties.

(B) The number of the cause.

(C) A statement that a request for payment has been filed.

(D) A notice to appear on a day, to be fixed by the court, and show cause, if any, why the amounts requested should not be withdrawn and paid over by the circuit court clerk to those defendants requesting the amounts to be paid.

C o p y

(E) A copy of the request for payment.

If a defendant not requesting payment is a nonresident of Indiana, or if that defendant's name or residence is unknown, publication and proof of the notice and request for payment shall be made as provided in section 4 of this chapter.

(3) After a hearing held after notice of a written request made under this section, the court shall determine and order the payment by the circuit court clerk of the proportionate shares of the damages due to the defendants requesting payment. Any of the defendants may appeal an order under this subdivision within the same time and in the same manner as provided for allowable appeals from interlocutory orders in civil actions.

(4) If exceptions to the appraisers' report have been duly filed by the plaintiff or any defendant, the circuit court clerk may not make payment to any defendant of any part of the damages deposited with the clerk by the plaintiff until the defendants requesting payment have filed with the circuit court clerk a written undertaking, with surety approved by the court, for the repayment to the plaintiff of all sums received by those defendants in excess of the amount or amounts awarded as damages to those defendants by the judgment of the court upon trial held on the exceptions to the assessment of damages by the appraisers. However, the court may waive the requirement of separate surety as to any defendant who is a resident freeholder of the county in which the cause is pending and who is owner of real property in Indiana that is liable to execution, not included in the real property appropriated by the plaintiff, and equal in value to the amount by which the damages to be withdrawn exceed the amount offered to the defendants as stated in their request or the amount determined by the court if the plaintiff has disputed the statement of the offer. A surety or written undertaking may not be required for a defendant to withdraw those amounts previously offered by the plaintiff to the defendant if the plaintiff has previously notified the court in writing of the amounts so offered. The liability of any surety does not exceed the amount by which the damages to be withdrawn exceed the amount offered to the defendants with whom the surety joins in the written undertaking. Each written undertaking filed with the circuit court clerk shall be immediately recorded by the clerk in the order book and

C o p y

entered in the judgment docket, and from the date of the recording and entry the written undertaking is a lien upon all the real property in the county owned by the several obligors, and the undertaking is also a lien upon all the real property owned by the several obligors in each county of Indiana in which the plaintiff causes a certified copy of the judgment docket entry to be recorded, from the date of the recording.

(5) The withdrawal and receipt from the circuit court clerk by any defendant of that defendant's proportionate share of the damages awarded by the appraisers, as determined by the court upon the written request and hearing, does not operate and is not considered as a waiver of any exceptions duly filed by that defendant to the assessment of damages by the appraisers.

(6) In any trial of exceptions, the court or jury shall compute and allow interest at an annual rate of eight percent (8%) on the amount of a defendant's damages from the date plaintiff takes possession of the property. Interest may not be allowed on any money paid by the plaintiff to the circuit court clerk:

(A) after the money is withdrawn by the defendant; or

(B) that is equal to the amount of damages previously offered by the plaintiff to any defendant and which amount can be withdrawn by the defendant without filing a written undertaking or surety with the court for the withdrawal of that amount.

Sec. 12. (a) Not later than ten (10) days before a trial involving the issue of damages, the plaintiff shall, and a defendant may, file and serve on the other party an offer of settlement. Not more than five (5) days after the date offer of settlement is served, the party served may respond by filing and serving upon the other party an acceptance or a counter offer of settlement. The offer must state that it is made under this section and specify the amount, exclusive of interest and costs, that the party serving the offer is willing to accept as just compensation and damages for the property sought to be acquired. The offer or counter offer supersedes any other offer previously made under this chapter by the party.

(b) An offer of settlement is considered rejected unless an acceptance in writing is filed and served on the party making the offer before the trial on the issue of the amount of damages begins.

(c) If the offer is rejected, it may not be referred to for any purpose at the trial but may be considered solely for the purpose of awarding costs and litigation expenses under section 14 of this

C o p y

chapter.

(d) This section does not limit or restrict the right of a defendant to payment of any amounts authorized by law in addition to damages for the property taken from the defendant.

(e) This section does not apply to an action brought under IC 8-1-13-19 (repealed).

Sec. 13. (a) The Indiana department of transportation or any state board, agency, or commission that succeeds the department in respect to the duties to locate, relocate, construct, reconstruct, repair, or maintain the public highways of Indiana, having the right to exercise the power of eminent domain for the public use, in its action for condemnation is not required to prove that an offer of purchase was made to the property owner in an action under this article.

(b) The court shall on the return day fixed at the time of the filing of the complaint appoint appraisers as provided by law and fix a day not later than ten (10) days after the date of the court's order for the appraisers to appear, qualify, and file their report of appraisal.

(c) If the appraisers appointed by the court fail to appear, qualify, and file their report of appraisal as ordered by the court, the court shall discharge the appraisers and appoint new appraisers in the same manner as provided in subsection (b).

Sec. 14. (a) Except as provided in subsection (b), the plaintiff shall pay the costs of the proceedings.

(b) If there is a trial, the additional costs caused by the trial shall be paid as ordered by the court. However, if there is a trial and the amount of damages awarded to the defendant by the judgment, exclusive of interest and costs, is greater than the amount specified in the last offer of settlement made by the plaintiff under section 12 of this chapter, the court shall allow the defendant the defendant's litigation expenses in an amount not to exceed two thousand five hundred dollars ($2,500).

Sec. 15. (a) If the person seeking to take property under this article fails:

(1) to pay the assessed damages not later than one (1) year after the appraisers' report is filed, if exceptions are not filed to the report;

(2) to pay:

(A) the damages assessed if exceptions are filed to the appraisers' report and the exceptions are not sustained; or

(B) the damages assessed and costs if exceptions are filed

copy

to the appraisers' report and the exceptions are sustained; not later than one (1) year after the entry of the judgment, if an appeal is not taken from the judgment;

(3) to pay the damages assessed or the judgment rendered in the trial court not later than one (1) year after final judgment is entered in the appeal if an appeal is taken from the judgment of the trial court; or

(4) to take possession of the property and adapt the property for the purpose for which it was acquired not later than five (5) years after the payment of the award or judgment for damages, except where a fee simple interest in the property is authorized to be acquired and is acquired;

the person seeking to acquire the property forfeits all rights in the property as fully and completely as if the procedure to take the property had not begun.

(b) An action to declare a forfeiture under this section may be brought by any person having an interest in the property sought to be acquired, or the question of the forfeiture may be raised and determined by direct allegation in any subsequent proceedings, by any other person to acquire the property for a public use. In the subsequent proceedings the person seeking the previous acquisition or the person's proper representatives, successors, or assigns shall be made parties.

Sec. 16. A person having an interest in property that has been or may be acquired for a public use without the procedures of this article or any prior law followed is entitled to have the person's damages assessed under this article substantially in the manner provided in this article.

Sec. 17. All laws and parts of laws in conflict with the provisions of this chapter are hereby repealed: provided, that this repeal shall not affect proceedings pending on April 15, 1905, but such proceedings may be completed as if this chapter had never been passed.

Chapter 2. Procedures for Cities and Towns

Sec. 1. As used in this chapter, "fiscal officer" means:

(1) the city controller of a consolidated city or second class city;

(2) the city clerk-treasurer of a third class city; or

(3) the town clerk-treasurer of a town.

Sec. 2. As used in this chapter, "municipality" means a city or town.

Sec. 3. As used in this chapter, "property" refers to real

C o p y

property or personal property.

Sec. 4. As used in this chapter, "works board" means:

(1) the board of public works or the board of public works and safety of a city; or

(2) the legislative body of a town.

Sec. 5. If:

(1) a municipality has the power to acquire property under this chapter; or

(2) another statute provides for proceedings by a municipality for acquiring property under this chapter;

the board exercising those powers may proceed under IC 32-24-1 instead of this chapter.

Sec. 6. (a) This chapter applies if the works board of a municipality wants to acquire property for the use of the municipality or to open, change, lay out, or vacate a street, an alley, or a public place in the municipality, including a proposed street or alley crossings of railways or other rights-of-way.

(b) The works board must adopt a resolution that the municipality wants to acquire the property. The resolution must describe the property that may be injuriously or beneficially affected. The board shall have notice of the resolution published in a newspaper of general circulation published in the municipality once each week for two (2) consecutive weeks. The notice must name a date, at least ten (10) days after the last publication, at which time the board will receive or hear remonstrances from persons interested in or affected by the proceeding.

(c) The works board shall consider the remonstrances, if any, and then take final action, confirming, modifying, or rescinding its original resolution. This action is conclusive as to all persons.

Sec. 7. (a) When the final action under section 6 of this chapter is taken, the works board shall have prepared the following:

(1) A list of all the owners or holders of the property, and of interests in it, sought to be acquired or to be injuriously affected.

(2) If a street, alley, or public place is to be opened, laid out, changed, or vacated in the municipality, or within four (4) miles of it, a list of the owners or holders of property, and of interests in it, to be beneficially affected by the work.

(b) The list required by subsection (a) may not be confined to the owners of property along the line of the proposed work but must include all property taken, benefitted, or injuriously affected. In addition to the names, the list must show, with reasonable

C o p y

certainty, a description of each piece of property belonging to those persons that will be acquired or affected, either beneficially or injuriously. A greater certainty in names or descriptions is not necessary for the validity of the list than is required in the assessment of taxes.

Sec. 8. (a) Upon the completion of the list, the works board shall award the damages sustained and assess the benefits accruing to each piece of property on the list.

(b) When the assessments or awards are completed, the works board shall have a written notice served upon the owner of each piece of property, showing the amount of the assessment or award, by leaving a copy of the notice at the owner's last usual place of residence in the municipality or by delivering a copy to the owner personally.

(c) If the owner is a nonresident, or if the owner's residence is unknown, the municipality shall notify the owner by publication in a daily newspaper of general circulation in the municipality once each week for three (3) successive weeks.

(d) The notices must also name a day, at least ten (10) days after service of notice or after the last publication, on which the works board will receive or hear remonstrances from persons with regard to the amount of their respective awards or assessments.

(e) Persons not included in the list of the assessments or awards and claiming to be entitled to them are considered to have been notified of the pendency of the proceedings by the original notice of the resolution of the works board.

Sec. 9. (a) If a person having an interest in property affected by the proceedings is mentally incompetent or less than eighteen (18) years of age, the works board shall certify that fact to the municipality's attorney.

(b) The municipality's attorney shall apply to the proper court and secure the appointment of a guardian for the person less than eighteen (18) years of age or the mentally incompetent person. The works board shall give notice to the guardian, who shall appear and defend the interest of the protected person. However, if the protected person already has a guardian, the notice shall be served on that guardian. The requirements of notice to the guardian are the same as for other notices.

(c) If there is a defect in the proceedings with respect to at least one (1) interested person, the defect does not affect the proceedings except as it may concern the interest or property of those persons, and the defect does not affect any other person concerned.

C o p y

(d) In case of a defect, supplementary proceedings of the same general character as those prescribed by this chapter may be initiated in order to correct the defect.

Sec. 10. (a) A person notified or considered to be notified under this chapter may appear before the works board on the day fixed for hearing remonstrances to awards and assessments and remonstrate in writing against them.

(b) After the remonstrances have been received, the works board shall either sustain or modify the awards or assessments in the case of remonstrances that have been filed. The works board shall sustain the award or assessment in the case of an award or assessment against which a remonstrance has not been filed.

(c) A person remonstrating in writing who is aggrieved by the decision of the works board may, not later than twenty (20) days after the decision is made, take an appeal to a court that has jurisdiction in the county in which the municipality is located. The appeal affects only the assessment or award of the person appealing.

Sec. 11. (a) The appeal may be taken by filing an original complaint in the court against the municipality within the time required by section 10(c) of this chapter, setting forth the action of the works board with respect to the assessment and stating the facts relied upon as showing an error on the part of the board. The court shall rehear the matter of the assessment de novo and confirm, reduce, or increase the assessment. If the court reduces the amount of benefit assessed or increases the amount of damages awarded, the plaintiff may recover costs. If the court confirms the amount of the assessment, the plaintiff may not recover costs. The judgment of the court is conclusive, and an appeal may not be taken from the court's judgment.

(b) If upon appeal the benefits assessed or damages awarded by the works board are reduced or increased, the municipality may, upon the payment of costs, discontinue the proceedings. It may also, through the works board, make and adopt an additional assessment against all the property originally assessed in the proceeding, or that part that is benefitted, in the manner provided for the original assessment. However, such an assessment against any one (1) piece of property may not exceed ten percent (10%) of the original assessment against it.

(c) If the municipality decides to discontinue the proceedings upon payment of costs and if assessments for benefits have already been paid, the amounts paid shall be paid back to the person or

C o p y

persons paying them.

Sec. 12. (a) Upon completion of the assessment list by the works board, the list shall be delivered to the fiscal officer of the municipality. From the time the respective amounts of benefits are assessed, or if a lot or parcel has sustained both benefits and damages because of an improvement as stated in the assessment list, then the excess of benefits assessed over damages awarded constitutes a lien superior to all other liens except taxes against the respective lot or parcel.

(b) The fiscal officer of the municipality shall immediately prepare a list of the excess of benefits, to be known as the local assessment list. If the municipality is a second class city and the county treasurer collects money due the city, the local assessment list shall be delivered to the county treasurer.

(c) The duties of the fiscal officer of the municipality and county treasurer are the same as prescribed with regard to assessments for street improvement. The provisions of the statute relating to:

(1) the payment of street improvement assessments by installments on the signing of waivers and issuance of bonds and coupons in anticipation;

(2) the duties of the fiscal officer and the county treasurer in relation to them; and

(3) the enforcement of payment of assessments in proceedings for the improvement of streets by the works board;

applies to these assessments.

Sec. 13. (a) The benefit assessments are due and payable to the fiscal officer or county treasurer from the time of the preparation or delivery of the assessment duplicate.

(b) If an assessment is not paid within sixty (60) days, the municipality, by its attorney, shall proceed to foreclose the liens as mortgages are foreclosed, with similar rights of redemption, and have the property sold to pay the assessments. The municipality may recover costs, with reasonable attorney's fees, and interest from the expiration of the sixty (60) days allowed for payment, at the rate of six percent (6%) per year.

(c) If the person against whom the assessment is made is a resident of the municipality, demand for payment must be made by delivering to the person personally, or leaving at the person's last or usual place of residence, a notice of the assessment and demand for payment.

Sec. 14. The works board may determine if any part of the damages awarded shall be paid out of funds appropriated for the

C o p y

use of the board. However, not more than two thousand dollars ($2,000) in damages may be paid out of the municipality's funds for any improvement or condemnation except under an ordinance appropriating money for the specific improvement or condemnation. All benefits assessed and collected by the fiscal officer or county treasurer are subject to draft, in the usual manner, upon certificate by the works board in favor of persons to whom damages have been awarded. Any surplus remaining above actual awards belongs to the municipality. The works board may delay proceedings until the benefits have been collected.

Sec. 15. (a) Upon completion of the award of damages or whenever any time for delay as provided has expired, the works board shall make out certificates for the proper amounts and in favor of the proper persons. Presentation of the certificates to the fiscal officer of the municipality entitles the person to a warrant on the fiscal officer or the county treasurer. The certificates or vouchers shall, whenever practicable, be actually tendered to the persons entitled to them, but when this is impracticable, they shall be kept for the persons in the office of the works board. The making and fixing of the certificate is a valid and effectual tender to the person entitled to it, and the certificate must be delivered to that person on request.

(b) If a dispute or doubt arises as to which person the money shall be paid, the works board shall make out the certificate in favor of the municipality's attorney for the use of the persons entitled to it. The attorney shall draw the money and pay it into court in a proper proceeding, requiring the various claimants to interplead and have their respective rights determined.

(c) If an injunction is obtained because damages have not been paid or tendered, the works board may tender the certificate for the amount with interest from the time of entry upon the property, if any has been made, including all accrued costs. The injunction shall then be dissolved. The pendency of an appeal does not affect the validity of a tender made under this section, but the municipality may proceed with its acquisition of the property in question. However, when a lot or parcel has sustained both benefits and damages because of improvements as stated in the assessment list, only an excess of damages awarded over benefits assessed is payable under this section.

Sec. 16. (a) This section applies whenever the works board of a municipality located upon or adjoining a harbor connected with a navigable stream or lake, or upon any navigable channel, slip,

C o p y

waterway, or watercourse, wants to acquire for the use of the municipality any property for a right-of-way for seawalls, docks, or other improvement of the harbor, channel, slip, waterway or watercourse.

(b) The works board shall adopt a resolution that the municipality wants to acquire the property, describing the property that may be injuriously or beneficially affected. All proceedings necessary for the completion of and payment for any such undertaking, including notice, remonstrance, appeal, letting of and performance of contracts, assessment and collection of payment for benefits, and the determination and payment of damages to property, are the same, to the extent applicable, as those proceedings for street improvements of the municipality by its works board or other entity charged by statute with the performance of those duties on behalf of the municipality.

Chapter 3. Procedures for State Government

Sec. 1. If the governor considers it necessary:

(1) to acquire property on which to construct public buildings for the state; or

(2) to acquire property adjoining state property on which buildings have been erected;

the governor may order the attorney general to file an action in the name of the state. The attorney general shall file the action in a court that has jurisdiction in the county in which the property is located. The state's petition must ask that appraisers be appointed to appraise the value of the property considered necessary to be acquired for the public uses of the state.

Sec. 2. Upon filing the petition, the attorney general shall provide the owners of the property the notice required by law in the commencement of a civil action. It is sufficient to make defendants to the petition all persons who are in possession of the property and those who appear to be the owners or to have any interest in the property by the tax duplicates and the records in the offices of the auditor and recorder of the county. After notice has been given, the court shall appoint three (3) resident freeholders of the county where the property is located to appraise the value of the property.

Sec. 3. (a) Before entering upon their duties, the appraisers shall take and subscribe an oath that they will honestly appraise the property at its fair cash value.

(b) The appraisers shall make a report of their appraisement within a time fixed by the court.

C o p y

(c) If the appraisers fail for any cause to make a report within the time fixed by the court, the court may extend the time or may appoint other appraisers.

Sec. 4. (a) After the appraisers file their report, any of the defendants may, within a reasonable time fixed by the court, file exceptions to the report, alleging that the appraisement of the property, as made by the appraisers, is not the true cash value of the property. If exceptions are filed, a trial on the exceptions shall be held by the court or before a jury, if asked by either party.

(b) The circuit court clerk shall give notice of filing of the appraisers' report to all known parties to the action and their attorneys of record by certified mail.

(c) Upon the trial of the exceptions, the court may revise, correct, amend, or confirm the appraisement in accordance with the finding of the court or verdict of the jury.

(d) The court shall apportion the costs accruing in the proceedings as justice may require.

(e) Changes of venue may be had as in other cases.

Sec. 5. When the value of the property has been finally determined by the court, the governor may provide for the amount so found and may direct the auditor of state to draw a warrant on the treasurer of state to be paid out of any fund available in favor of the clerk of the circuit court. The clerk shall receive the money and hold it in court for the use of the owners and other persons adjudged to be entitled to the money.

Sec. 6. Upon payment to the clerk of the circuit court and the filing of a receipt for the payment of the money in open court as a part of the proceedings of the cause, the court shall direct the clerk of the circuit court to:

(1) execute a deed conveying the title of the property to the state of Indiana; and

(2) deliver the deed to the governor.

Chapter 4. Procedures for Utilities and Other Corporations

Sec. 1. (a) A person, firm, partnership, limited liability company, or corporation authorized to do business in Indiana and authorized to:

(1) furnish, supply, transmit, transport or distribute electrical energy, gas, oil, petroleum, water, heat, steam, hydraulic power, or communications by telegraph or telephone to the public or to any town or city; or

(2) construct, maintain or operate turnpikes, toll bridges, canals, public landings, wharves, ferries, dams, aqueducts,

C o p y

street railways, or interurban railways for the use of the public or for the use of any town or city;

may take, acquire, condemn, and appropriate land, real estate, or any interest in the land or real estate.

(b) A person described in subsection (a) has all accommodations, rights, and privileges necessary to accomplish the use for which the property is taken. A person acting under subsection (a) may use acquired, condemned, or appropriated land to construct railroad siding, switch, or industrial tracks connecting its plant or facilities with the tracks of any common carrier.

Sec. 2. The condemnor may take, acquire, condemn, and appropriate a fee simple estate, title, and interest in an amount of land as the condemnor considers necessary for the condemnor's proper uses and purposes. However, for rights-of-way, the condemnor shall take, acquire, condemn, and appropriate an easement.

Sec. 3. The appropriation and condemnation of land and easements in land authorized under this chapter shall be made under IC 32-24-1, except as otherwise provided in this chapter.

Sec. 4. (a) This section applies to a public utility that appropriates by condemnation procedures an easement for right-of-way purposes on land zoned or used for agricultural purposes.

(b) If a public utility makes a uniform easement acquisition offer under IC 32-24-1-5 or a settlement offer under IC 32-24-1-12 in excess of five thousand dollars ($5,000), the owner of the land may elect to accept as compensation either a lump sum payment or annual payments for a period not to exceed twenty (20) years.

(c) The landowner must elect either the lump sum payment or the annual payment method at the time the landowner:

(1) accepts the public utility's offer under IC 32-24-1-5 or IC 32-24-1-12 to purchase an easement;

(2) accepts the appraisers' award; or

(3) is awarded damages by a judgment in a proceeding under this article.

The grant of easement or judgment, whichever is applicable, must state the method of payment the landowner has elected to receive.

(d) If the land is owned by more than one (1) person, the election to receive annual payments must be unanimous among all record owners to be binding upon the public utility.

(e) Selection of the lump sum method of payment irrevocably

C o p y

binds the landowner and the landowner's successors in interest.

(f) The annual amount payable must be equal to the lump sum payment that would have otherwise been made by the utility divided by the number of years the landowner elects to receive the annual payments plus interest at a rate agreed upon by the public utility and the landowner on the balance remaining at the end of each year. The public utility shall make the annual payment as close as practicable to the date of the landowner's acceptance of the public utility's offer or the date of the judgment granting the utility the easement. If the public utility and the landowner are unable to agree upon the interest rate, the interest rate shall be the average annual effective interest rate for all new Federal Land Bank Loans, computed on the basis of the twelve (12) month period immediately preceding the date of settlement.

(g) A landowner who withdraws the appraisers' award under IC 32-24-1-11 may receive only a lump sum payment from the clerk at that time. If the landowner is later awarded a judgment for damages that exceeds the amount of the appraisers' award, the landowner may elect either method of compensation only to the extent that the damages exceed the appraisers' award remaining to be paid by the public utility as a result of the judgment.

(h) A landowner who elects the annual payment method may terminate the election by giving notarized written notice to the public utility at least ninety (90) days before the annual date of payment. The public utility may prescribe reasonable forms for the notice and may require that these forms be used for the notice to be effective. In the event the landowner terminates this election, the public utility shall pay the landowner in a single payment the difference between the lump sum and the total of all annual payments previously paid by the public utility. Upon the landowner's receipt of this payment, the public utility's payment obligations cease.

(i) If a landowner sells the landowner's entire interest in the servient estate, the landowner shall give the public utility prompt notarized written notice of the sale, together with a copy of the deed specifying the name and address of the landowner's successor in interest. If the public utility receives the notice less than ninety (90) days before the date of an annual payment, the public utility may make this annual payment to the landowner but must make all successive payments to the landowner's successors and assigns.

(j) If a landowner sells less than the landowner's entire interest in the servient estate, the public utility may continue to make the

C o p y

annual payments to the landowner.

(k) A public utility shall make annual payments to the landowner only for the time the servient estate continues to be zoned or used for agricultural purposes. If the servient estate is no longer zoned or used for agricultural purposes, the public utility shall pay to the landowner the difference between the lump sum and the total of all annual payments previously paid by the public utility. Upon the landowner's receipt of this payment, the public utility's payment obligations cease.

(l) This section is binding upon the heirs, successors, and assigns of the landowner and the public utility.

(m) Every offer of a public utility under IC 32-24-1-5 and IC 32-24-1-12 must include the following statement in at least ten (10) point boldface type capital letters:

> **"IF THIS OFFER IS OVER FIVE THOUSAND DOLLARS ($5,000), YOU MAY ELECT UNDER IC 32-24-4-4 TO ACCEPT PAYMENT IN A LUMP SUM PAYMENT OR IN ANNUAL PAYMENTS FOR A PERIOD NOT TO EXCEED TWENTY (20) YEARS WITH INTEREST. IF YOU ELECT ANNUAL PAYMENTS, THEN POSSESSION WILL BE REQUIRED THIRTY (30) DAYS AFTER YOU HAVE RECEIVED YOUR FIRST ANNUAL PAYMENT.".**

(n) Every offer of a public utility under IC 32-24-1-5 and IC 32-24-1-12 must also include a form to be used by the landowner to accept the offer that substantially contains the following:

ACCEPTANCE OF OFFER

I (We),_____,_____,_____, landowner(s) of the above described property or interest in property hereby accept the offer of $_____ made by _____ (condemnor) on this ___ day of _____, 20___. Please check one of the following if the offer is in excess of five thousand dollars ($5,000):

( ) I (We) elect to accept payment in a lump sum.

( ) I (We) elect to accept payment in annual payments for a period of ____ years with interest as determined under IC 32-24-4-4.

_____

_____

_____

_____

NOTARY'S CERTIFICATE

Copy

STATE OF _____)
)SS:
COUNTY OF_____)

Subscribed and sworn to before me this ___ day of _____, 20___. My Commission Expires: _____

_____
(Signature)

_____
(Printed) NOTARY PUBLIC.

Chapter 5. Eminent Domain for Gas Storage

Sec. 1. Whereas, the storage of gas in subsurface strata or formations of the earth in Indiana tends to insure a more adequate supply of gas to domestic, commercial, and industrial consumers of gas in this state and materially promotes the economy of the state, the storage of gas is declared to be in public interest and for the welfare of Indiana and the people of Indiana and to be a public use.

Sec. 2. (a) A person, firm, limited liability company, municipal corporation, or other corporation authorized to do business in Indiana and engaged in the business of transporting or distributing gas by means of pipelines into, within, or through Indiana for ultimate public use may condemn:

(1) land subsurface strata or formations;
(2) other necessary land rights;
(3) land improvements and fixtures, in or on land, except buildings of any nature; and
(4) the use and occupation of land subsurface strata or formations;

for constructing, maintaining, drilling, utilizing, and operating an underground gas storage reservoir.

(b) The following rights in land may be condemned for use in connection with the underground storage of gas:

(1) To drill and operate wells in and on land.
(2) To install and operate pipelines.
(3) To install and operate equipment, machinery, fixtures, and communication facilities.
(4) To create ingress and egress to explore and examine subsurface strata or underground formations.
(5) To create ingress and egress to construct, alter, repair, maintain, and operate an underground storage reservoir.
(6) To exclusively use any subsurface strata condemned.
(7) To remove and reinstall pipe and other equipment used in

C o p y

connection with rights condemned under subdivisions (1) through (6).

(c) Acquisition of subsurface rights in land for gas storage purposes by condemnation under this section must be without prejudice to any subsequent proceedings that may be necessary under this section to acquire additional subsurface rights in the same land for use in connection with the underground storage. Surface rights in land necessary for the accomplishment of the purposes set forth in this section may be condemned.

(d) Except with respect to a proceeding under this chapter to:

(1) acquire the right to explore and examine a subsurface stratum or formation in land; and

(2) create the right of ingress and egress for operations connected to the acquisition; and subject to subsection (e), as a condition precedent to the exercise of the right to condemn any underground stratum, formation, or interest reasonably expected to be used or useful for underground gas storage, a condemnor first must have acquired by purchase, option, lease, or other method not involving condemnation, the right, or right upon the exercise of an option, if any, to store gas in at least sixty per cent (60%) of the stratum or formation. This must be computed in relation to the total surface acreage overlying the entire stratum or formation considered useful for the purpose.

(e) A tract under which the stratum or formation sought to be condemned is owned by two (2) or more persons, firms, limited liability companies, or corporations must be credited to the condemnor as acquired by it for the purpose of computing the percentage of acreage acquired by the condemnor in complying with the requirement of subsection (d) if the condemnor acquires from the owner or owners of an undivided three-fourths (3/4) part or interest or more of the underground stratum or formation, by purchase, option, lease, or other method not involving condemnation, the right, or right upon the exercise of an option, if any, to store gas in the stratum or formation. It is not necessary for the condemnor to have acquired any interest in the property in which the condemnee has an interest before instituting a proceeding under this chapter.

Sec. 3. (a) The rights acquired by condemnation must be without prejudice to the rights and interests of the owners or their lessees to:

(1) execute oil and gas leases;

C o p y

(2) drill or bore to any other strata or formation not condemned; and

(3) produce oil and gas discovered.

However, any drilling and all operations in connection with the drilling must be performed in a manner that protects the strata or formations condemned against the loss of gas and against contamination of the reservoir by water, oil, or other substance that will affect the use of the condemned strata or formations for gas storage purposes.

(b) If the owners of mineral rights or the owners' lessees drill into land in which gas storage rights have been condemned under this chapter, the owners of mineral rights or their lessees shall give notice to the owner of the gas storage stratum, formation, or horizon at least thirty (30) days before commencing the drilling. The notice must specify the location and nature of the operations, including the depth to be drilled. The notice must be given by United States registered or certified mail, return receipt requested, and addressed to the usual business address of the owner or owners of the gas storage stratum or formation condemned under this chapter.

(c) It is the duty of the owner of a gas storage stratum or formation to designate all necessary procedures for protecting the gas storage area. The actual costs incurred over and above customary and usual drilling and other costs that would have been incurred without compliance with the requirements shall be borne by the owner of the gas storage stratum or formation. An owner or lessee of mineral interests other than gas storage rights is not responsible for an act done under such a requirement or the consequences of this act.

Sec. 4. Only the rights in land necessary for use in connection with underground storage of gas and those subsurface strata adaptable for underground storage of gas may be appropriated and condemned under this chapter. Rights in the subsurface of land constituting a part of a geological structure are deemed necessary to the operation of an underground storage reservoir in the structure. In determining the compensation to be paid to the owner of an oil producing stratum, or interest in the stratum, condemned under this chapter, proof may be offered and consideration must be given to potential recovery, if any, of oil from a stratum by secondary or other subsequent recovery processes in addition to potential recovery by a primary process.

Sec. 5. The appropriation and condemnation of subsurface

C o p y

strata or formations in land rights in and easements in land and subsurface strata or formations authorized by this chapter must be made under IC 32-24-1.

Chapter 6. Exceptions to Eminent Domain Assessments

Sec. 1. (a) A party may file a written objection in a proceeding for the condemnation or appropriation of property for public use brought by:

(1) the state of Indiana;
(2) a commission, a department, or an agency of the state;
(3) a county;
(4) a township;
(5) a city;
(6) a town; or
(7) a taxing district;

under a law of the state authorizing the assessment of damages or benefits, appraisal, compensation, condemnation, or appropriation of property for public use.

(b) A party aggrieved by:

(1) the assessment of compensation or damages;
(2) the fixing of the value of the property involved; or
(3) the fixing of benefits;

as set forth in the report of an appraiser filed in a proceeding described in subsection (a) may file written exceptions in the office of the clerk of the court in which the cause is pending within ten (10) days after filing the report. After the objections are filed, the cause shall proceed to issue, trial, and judgment as in civil actions in accordance with the provisions of the law not in conflict with this chapter governing the procedure in eminent domain as defined in IC 32-24-1.

Sec. 2. In the exercise of the power of eminent domain, notice of filing of the appraisers' report shall be given by the clerk of the court to all known parties to the action by certified mail. Any period of exceptions after which the parties are barred from disputing the appraisal and condemnation shall run from the date of mailing.

SECTION 10. IC 32-25 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

ARTICLE 25. CONDOMINIUMS

Chapter 1. Application of Law

Sec. 1. This article applies to property if:

(1) the sole owner of the property; or

C o p y

(2) all of the owners of the property;

submit the property to this article by executing and recording a declaration under this article.

Sec. 2. (a) The following are subject to this article and to declarations and bylaws of associations of co-owners adopted under this article:

(1) Condominium unit owners.

(2) Tenants of condominium unit owners.

(3) Employees of condominium unit owners.

(4) Employees of tenants of condominium owners.

(5) Any other persons that in any manner use property or any part of property submitted to this article.

(b) All agreements, decisions, and determinations lawfully made by an association of co-owners in accordance with the voting percentages established in:

(1) this chapter;

(2) the declaration; or

(3) the bylaws;

are binding on all condominium unit owners.

Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Association of co-owners" means all the co-owners acting as an entity in accordance with the:

(1) articles;

(2) bylaws; and

(3) declaration.

Sec. 3. "Building" means a structure containing:

(1) at least two (2) condominium units; or

(2) at least two (2) structures containing at least one (1) condominium unit.

Sec. 4. "Common areas and facilities", unless otherwise provided in the declaration or lawful amendments to the declaration, means:

(1) the land on which the building is located;

(2) the building:

(A) foundations;

(B) columns;

(C) girders;

(D) beams;

(E) supports;

(F) main walls;

C o p y

(G) roofs;
(H) halls;
(I) corridors;
(J) lobbies;
(K) stairs;
(L) stairways;
(M) fire escapes;
(N) entrances; and
(O) exits.
(3) the:
(A) basements;
(B) yards;
(C) gardens;
(D) parking areas;
(E) storage spaces;
(F) swimming pools; and
(G) other recreational facilities;
(4) the premises for the lodging of:
(A) janitors; or
(B) persons in charge of the property;
(5) installations of central services, such as:
(A) power;
(B) light;
(C) gas;
(D) hot and cold water;
(E) heating;
(F) refrigeration;
(G) air conditioning; and
(H) incinerating;
(6) the:
(A) elevators;
(B) tanks;
(C) pumps;
(D) motors;
(E) fans;
(F) compressors;
(G) ducts;
(H) apparatus; and
(I) installations;
existing for common use;
(7) community and commercial facilities provided for in the declaration; and

Copy

(8) all other parts of the property:
(A) necessary or convenient to its:
(i) existence;
(ii) maintenance; and
(iii) safety; or
(B) normally in common use.

Sec. 5. "Common expenses" means:
(1) all sums lawfully assessed against the co-owners by the association of co-owners;
(2) expenses of:
(A) administration;
(B) maintenance;
(C) repair; or
(D) replacement;
of the common areas and facilities;
(3) expenses agreed upon as common expenses by the association of co-owners; and
(4) expenses declared common expenses by:
(A) this chapter;
(B) the declaration; or
(C) the bylaws.

Sec. 6. "Common profits" means the balance remaining, after the deduction of the common expenses, of all:
(1) income;
(2) rents;
(3) profits; and
(4) revenues;
from the common areas and facilities.

Sec. 7. "Condominium" means real estate:
(1) lawfully subjected to this chapter by the recordation of condominium instruments; and
(2) with respect to which the undivided interests in the common areas and facilities are vested in the condominium unit owners.

Sec. 8. "Condominium instruments" means:
(1) the:
(A) declaration;
(B) bylaws;
(C) plats; and
(D) floor plans;
of the condominium; and
(2) any exhibits or schedules to the items listed in subdivision

Copy

(1).

Sec. 9. "Condominium unit" means:

(1) an enclosed space:

(A) that consists of one (1) or more rooms occupying all or part of a floor or floors in a structure of one (1) or more floors or stories, regardless of whether the enclosed space is designed:

(i) as a residence;

(ii) as an office;

(iii) for the operation of any industry or business; or

(iv) for any other type of independent use; and

(B) that has:

(i) a direct exit to a public street or highway; or

(ii) an exit to a thoroughfare or to a given common space leading to a thoroughfare; and

(2) the undivided interest in the common elements appertaining to an enclosed space referred to in subdivision (1).

Sec. 10. "Contractable condominium" means a condominium from which one (1) or more portions of the condominium real estate may be withdrawn.

Sec. 11. "Co-owner" means a person who owns:

(1) a condominium unit in fee simple; and

(2) an undivided interest in the common areas and facilities; in the percentage established in the declaration.

Sec. 12. "Declarant" means any person who:

(1) executes or proposes to execute a declaration; or

(2) executes an amendment to a declaration to expand an expandable condominium.

Sec. 13. "Declaration" means the instrument by which the property is submitted to this article. The term refers to a declaration as it may be lawfully amended from time to time.

Sec. 14. "Expandable condominium" means a condominium to which real estate may be added.

Sec. 15. "Limited common areas and facilities" means the common areas and facilities designated in the declaration as reserved for use of:

(1) a certain condominium unit; or

(2) certain condominium units;

to the exclusion of the other condominium units.

Sec. 16. "Majority" or "majority of co-owners" means the co-owners with at least fifty-one percent (51%) of the votes, in

C o p y

accordance with the percentages assigned in the declaration to the condominium units for voting purposes.

Sec. 17. "Person" means:

(1) an individual;

(2) a firm;

(3) a corporation;

(4) a partnership;

(5) an association;

(6) a trust;

(7) any other legal entity; or

(8) any combination of the entities listed in subdivisions (1) through (7).

Sec. 18. "Property" means:

(1) the land;

(2) the building;

(3) all improvements and structures on the land or the building; and

(4) all:

(A) easements;

(B) rights; and

(C) appurtenances;

pertaining to the land or the building.

Sec. 19. "To record" means to record in accordance with the laws of the state.

Sec. 20. "Unit number" means the:

(1) number;

(2) letter; or

(3) combination of numbers and letters;

designating the condominium unit in the declaration.

Chapter 3. Classification of Property

Sec. 1. A condominium unit and the unit's undivided interest in the common areas and facilities constitute real property.

Chapter 4. Ownership Interest in Condominiums

Sec. 1. (a) If property is submitted to the condominium, each condominium unit owner is seized of:

(1) the fee simple title to;

(2) the exclusive ownership of; and

(3) the exclusive possession of;

the owner's condominium unit and undivided interest in the common areas and facilities.

(b) A condominium unit may be:

(1) individually conveyed;

Copy

(2) individually encumbered; and
(3) the subject of:
(A) ownership;
(B) possession;
(C) sale; and
(D) all types of juridic acts inter vivos or causa mortis;
as if the condominium unit were sole and entirely independent of the other condominium units in the building of which the condominium unit forms a part.

(c) Individual titles and interests with respect to condominium units are recordable.

Sec. 2. A condominium unit may be held and owned by two (2) or more persons:
(1) as joint tenants;
(2) as tenants in common;
(3) as tenants by the entirety; or
(4) in any other real property tenancy relationship recognized under the law of the state.

Sec. 3. (a) Each condominium unit owner is entitled to an undivided interest in the common areas and facilities as designated in the declaration. Except as provided in subsection (b), the undivided interest must be expressed as a percentage interest based on:
(1) the size of the unit in relation to the size of all units in the condominium;
(2) the value of each condominium unit in relation to the value of all condominium units in the condominium; or
(3) the assignment of an equal percentage undivided interest to each condominium unit.

An undivided interest allocated to each condominium unit in accordance with this subsection must be indicated in a schedule of undivided interests in the declaration. However, if the declaration does not specify the method of allocating the percentage undivided interests, an equal percentage undivided interest applies to each condominium unit. The total undivided interests allocated in accordance with subdivision (1) or (2) must equal one hundred percent (100%).

(b) With respect to an expandable condominium, the declaration may allocate undivided interests in the common area on the basis of value if:
(1) the declaration prohibits the creation of any condominium units not substantially identical to the condominium units

C o p y

depicted on the recorded plans of the declaration; or

(2) the declaration:

(A) prohibits the creation of any condominium units not described in the initial declaration; and

(B) contains a statement on the value to be assigned to each condominium unit created after the date of the declaration.

(c) Interests in the common areas may not be allocated to any condominium units to be created within any additional land until the plats and plans and supplemental declaration depicting the condominium units to be created are recorded. Simultaneously with the recording of the plats and plans for the condominium units to be created, the declarant must execute and record an amendment to the initial declaration reallocating undivided interests in the common areas so that the future condominium units depicted on the plats and plans will be allocated undivided interests in the common areas on the same basis as the condominium units depicted in the prior recorded plats and plans.

(d) Except as provided in IC 32-25-8-3, the undivided interest of the owner of the condominium unit in the common areas and facilities, as expressed in the declaration, is permanent and may not be altered without the consent of the co-owners. A consent to alteration must be stated in an amended declaration, and the amended declaration must be recorded. The undivided interest may not be transferred, encumbered, disposed of, or separated from the condominium unit to which it appertains, and any purported transfer, encumbrance, or other disposition is void. The undivided interest is considered to be conveyed or encumbered with the condominium unit to which it appertains even though the undivided interest is not expressly mentioned or described in the conveyance or other instrument.

(e) The common areas and facilities shall remain undivided. A condominium unit owner or any other person may bring an action for partition or division of any part of the common areas and facilities if the property has been removed from this chapter as provided in IC 32-25-8-12 and IC 32-25-8-16. Any covenant to the contrary is void.

(f) Each condominium unit owner:

(1) may use the common areas and facilities in accordance with the purpose for which the common areas and facilities were intended; and

(2) may not, in the owner's use of the common areas and facilities, hinder or encroach upon the lawful rights of the

C o p y

other co-owners.

(g) The:

(1) necessary work of:

(A) maintenance;

(B) repair; and

(C) replacement;

of the common areas and facilities; and

(2) the making of any additions or improvements to the common areas and facilities:

may be carried out only as provided in this chapter and in the bylaws.

(h) The association of condominium unit owners has the irrevocable right, to be exercised by the manager or board of directors, to have access to each condominium unit from time to time during reasonable hours as is necessary for:

(1) the maintenance, repair, or replacement of any of the common areas and facilities:

(A) in the condominium unit; or

(B) accessible from the condominium unit; or

(2) making emergency repairs in the condominium unit necessary to prevent damage to:

(A) the common areas and facilities; or

(B) another condominium unit.

Sec. 4. (a) Except as provided in subsection (d) or (e), the co-owners are bound to contribute pro rata, in the percentages computed under section 3 of this chapter, toward:

(1) the expenses of administration and of maintenance and repair of the general common areas and facilities and, in the proper case, of the limited common areas and facilities of the building; and

(2) any other expense lawfully agreed upon.

(b) A co-owner may not exempt the co-owner from contributing toward the expenses referred to in subsection (a) by:

(1) waiver of the use or enjoyment of the common areas and facilities; or

(2) abandonment of the condominium unit belonging to the co-owner.

(c) All sums assessed by the association of co-owners shall be established by using generally accepted accounting principles applied on a consistent basis and shall include the establishment and maintenance of a replacement reserve fund. The replacement reserve fund may be used for capital expenditures and replacement

C o p y

and repair of the common areas and facilities and may not be used for usual and ordinary repair expenses of the common areas and facilities. The fund shall be:

(1) maintained in a separate interest bearing account with a bank or savings association authorized to conduct business in the county in which the condominium is established; or

(2) invested in the same manner and in the same types of investments in which the funds of a political subdivision may be invested:

(A) under IC 5-13-9; or

(B) as otherwise provided by law.

Assessments collected for contributions to the fund are not subject to gross income tax or adjusted gross income tax.

(d) If permitted by the declaration, the declarant or a developer (or a successor in interest of either) that is a co-owner of unoccupied condominium units offered for the first time for sale is excused from contributing toward the expenses referred to in subsection (a) for those units for a period that:

(1) is stated in the declaration;

(2) begins on the day that the declaration is recorded; and

(3) terminates no later than the first day of the twenty-fourth calendar month following the month in which the closing of the sale of the first condominium unit occurs.

However, if the expenses referred to in subsection (a) incurred by the declarant, developer, or successor during the period referred to in this subsection exceed the amount assessed against the other co-owners, the declarant, developer, or successor shall pay the amount by which the expenses incurred by the declarant, developer, or successor exceed the expenses assessed against the other co-owners.

(e) If the declaration does not contain the provisions referred to in subsection (d), the declarant or a developer (or a successor in interest of either) that is a co-owner of unoccupied condominium units offered for the first time for sale is excused from contributing toward the expenses referred to in subsection (a) for those units for a stated period if the declarant, developer, or successor:

(1) has guaranteed to each purchaser in the purchase contract, the declaration, or the prospectus, or by an agreement with a majority of the other co-owners that the assessment for those expenses will not increase over a stated amount during the stated period; and

(2) has obligated itself to pay the amount by which those

C o p y

expenses incurred during the stated period exceed the assessments at the guaranteed level under subdivision (1) receivable during the stated period from the other co-owners.

Chapter 5. Conveyance Procedures

Sec. 1. (a) At the time of the first conveyance of each condominium unit:

(1) every mortgage and other lien affecting the condominium unit, including the unit's percentage of undivided interest in the common areas and facilities, must be paid and satisfied of record; or

(2) the condominium unit being conveyed and the unit's percentage of undivided interest in the common areas and facilities must be released from the mortgage or other lien by partial release.

(b) A partial release under subsection (a)(2) must be recorded.

Sec. 2. (a) Except as provided in subsection (b), in a voluntary conveyance, the grantee of a condominium unit is jointly and severally liable with the grantor for all unpaid assessments against the grantor for the grantor's share of the common expenses incurred before the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts of common expenses paid by the grantee.

(b) The grantee:

(1) is entitled to a statement from the manager or board of directors setting forth the amount of the unpaid assessments against the grantor; and

(2) is not liable for, nor shall the condominium unit conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount set forth in the statement.

Chapter 6. Liens and Encumbrances

Sec. 1. (a) After a declaration is recorded under this article and while the property remains subject to this article, a lien may not arise or be effective against the property as a whole. Except as provided in subsection (b), liens or encumbrances may arise or be created only against:

(1) each condominium unit; and

(2) the undivided interest in the common areas and facilities appurtenant to each unit;

in the same manner and under the same conditions as liens or encumbrances may arise or be created against any other parcel of real property.

(b) Labor performed or materials furnished with the consent or

C o p y

at the request of a condominium unit owner, the owner's agent, or the owner's contractor or subcontractor may not be the basis for filing a lien under any lien law against the condominium unit or any other property of any other co-owner not expressly consenting to or requesting the performance of the labor or the furnishing of the materials. However, express consent is considered to be given by the owner of any condominium unit in the case of emergency repairs to the condominium unit. Labor performed or materials furnished for the common areas and facilities, if authorized by the association of co-owners, the manager, or board of directors in accordance with this article, the declaration, or the bylaws:

(1) are considered to be performed or furnished with the express consent of each co-owner;

(2) constitute the basis for the filing of a lien under any lien law against each of the condominium units; and

(3) are subject to subsection (c).

(c) If a lien against two (2) or more condominium units becomes effective, the owner of a condominium unit against which the lien is effective may remove the owner's:

(1) unit; and

(2) undivided interest in the common areas and facilities appurtenant to the unit;

from the lien by payment of the fractional or proportional amounts attributable to the unit. After the payment, discharge of the lien, or other satisfaction of the lien, the condominium unit and the undivided interest in the common areas and facilities appurtenant to the condominium unit are free and clear of the lien. A partial payment, partial satisfaction of the lien, or discharge of the lien may not prevent the lienholder from proceeding against any condominium unit and the undivided interest in the common areas and facilities appurtenant to the condominium unit that remain subject to the lien.

Sec. 2. Subject to any restrictions and limitations in the condominium instruments, the declarant has a transferable easement over and upon the common areas and facilities for the purpose of:

(1) making improvements within:

(A) the condominium; or

(B) additional real estate;

under those instruments and this article; and

(2) doing all things reasonably necessary and proper in connection with the improvements referred to in subdivision

C o p y

(1).

Sec. 3. (a) All sums assessed by the association of co-owners but unpaid for the share of the common expenses chargeable to any condominium unit constitute a lien on the unit effective at the time of assessment. The lien has priority over all other liens except:

(1) tax liens on the condominium unit in favor of any:

(A) assessing unit; or

(B) special district; and

(2) all sums unpaid on a first mortgage of record.

(b) A lien under subsection (a) may be filed and foreclosed by suit by the manager or board of directors, acting on behalf of the association of co-owners, under laws of Indiana governing mechanics' and materialmen's liens. In any foreclosure under this subsection:

(1) the condominium unit owner shall pay a reasonable rental for the unit, if payment of the rental is provided in the bylaws; and

(2) the plaintiff in the foreclosure is entitled to the appointment of a receiver to collect the rental.

(c) The manager or board of directors, acting on behalf of the association of co-owners, may, unless prohibited by the declaration:

(1) bid on the condominium unit at foreclosure sale; and

(2) acquire, hold, lease, mortgage, and convey the condominium unit.

(d) Suit to recover a money judgment for unpaid common expenses is maintainable without foreclosing or having the lien securing the expenses.

(e) If the mortgagee of a first mortgage of record or other purchaser of a condominium unit obtains title to the unit as a result of foreclosure of the first mortgage, the acquirer of title, or the acquirer's successors and assigns, is not liable for the share of the common expenses or assessments by the association of co-owners chargeable to the unit that became due before the acquisition of title to the unit by the acquirer. The unpaid share of common expenses or assessments is considered to be common expenses collectible from all of the co-owners, including the acquirer or the acquirer's successors and assigns.

Chapter 7. Declaration

Sec. 1. (a) The owner of the land on which a condominium is declared shall record with the recorder of the county in which the land is situated a declaration. Except as provided in section 2 or 3

C o p y

of this chapter, the declaration must include the following:

(1) A description of the land on which the building and improvements are or are to be located.

(2) A description of the building, stating:

(A) the number of stories and basements; and

(B) the number of condominium units.

(3) A description of the common areas and facilities.

(4) A description of the limited common areas and facilities, if any, stating to which condominium units their use is reserved.

(5) The percentage of undivided interest in the common areas and facilities appertaining to each condominium unit and its owner for all purposes, including voting.

(6) A statement of the percentage of votes by the condominium unit owners required to determine whether to:

(A) rebuild;

(B) repair;

(C) restore; or

(D) sell;

the property if all or part of the property is damaged or destroyed.

(7) Any covenants and restrictions in regard to the use of:

(A) the condominium units; and

(B) common areas and facilities.

(8) Any further details in connection with the property that:

(A) the person executing the declaration considers desirable; and

(B) are consistent with this article.

(9) The method by which the declaration may be amended in a manner consistent with this chapter.

(b) A true copy of the bylaws shall be annexed to and made a part of the declaration.

(c) The record of the declaration shall contain a reference to the:

(1) book;

(2) page; and

(3) date of record;

of the floor plans of the building affected by the declaration.

Sec. 2. (a) If a condominium is an expandable condominium, the declaration shall contain, in addition to the matters specified in section 1 of this chapter:

(1) a general plan of development showing:

C o p y

(A) the property subject to the condominium;
(B) areas into which expansion may be made; and
(C) the maximum number of condominium units in additional phases that may be added;
(2) a schedule or formula for determining the percentage of undivided interests in the common areas and facilities that will appertain to each condominium unit as each additional phase is added; and
(3) a time limit, not exceeding ten (10) years, within which the phase or phases may be added to the condominium.

(b) If additional phases are not developed within five (5) years after the recordation of the declaration, the development of additional phases is not considered to be part of:
(1) a common scheme; and
(2) development of the entire condominium.

Sec. 3. If a condominium is a contractable condominium, the declaration shall contain, in addition to matters specified in section 1 of this chapter:
(1) an explicit reservation of an option to contract the condominium;
(2) a statement of any limitations on the option to contract the condominium;
(3) a date, not later than ten (10) years after the recording of the declaration, upon which the option to contract the condominium will expire;
(4) a statement of any circumstances that will terminate the option to contract the condominium before the expiration date referred to in subdivision (3);
(5) a legally sufficient description of all withdrawable land;
(6) a statement as to whether portions of the withdrawable land may be withdrawn from the condominium at different times; and
(7) a statement of any limitations:
(A) fixing the boundaries of portions of the withdrawable land; or
(B) regulating the order in which the portions may be withdrawn.

Sec. 4. (a) Simultaneously with the recording of the declaration, a set of floor plans of the condominium or building shall be filed in the office of the county recorder. The set of floor plans must include the following:
(1) The relation of the condominium or building to lot lines.

C o p y

(2) The:
(A) layout;
(B) elevation;
(C) location;
(D) unit numbers; and
(E) dimensions;
of the condominium units.
(3) The name of the condominium or building, or that it has no name.
(4) The verified statement of a registered architect or licensed professional engineer certifying that the set of floor plans is an accurate copy of portions of the plans of the building as filed with and approved by the municipal or other governmental subdivision having jurisdiction over the issuance of permits for the construction of buildings.

(b) If the set of floor plans referred to in subsection (a) does not include a verified statement by an architect or engineer that the plans fully and accurately depict the layout, location, unit numbers, and dimensions of the condominium units as built, an amendment to the declaration must be recorded before the first conveyance of any condominium unit. The amendment to the declaration must have attached to it a verified statement of a registered architect or licensed professional engineer certifying that the filed set of floor plans or the set of floor plans being filed simultaneously with the amendment fully and accurately depicts the layout, location, unit numbers, and dimensions of the condominium units as built. The set of floor plans shall:
(1) be kept by the recording officer in a separate file for each building;
(2) be indexed in the same manner as a conveyance entitled to be recorded;
(3) be numbered serially in the order of receipt;
(4) be designated "condominium unit ownership", with the name of the building, if any; and
(5) contain a reference to the:
(A) book
(B) page; and
(C) date of recording;
of the amendment to the declaration.

(c) The record of the amendment to the declaration referred to in subsection (b) shall contain a reference to the file number of the set of floor plans of the building affected by the amendment to the

C o p y

declaration.

Sec. 5. (a) Each condominium unit in a building shall be designated, on the set of floor plans referred to in section 4 of this chapter, by letter, number, or other appropriate designation.

(b) Any instrument recognized by the state for the conveyance or transfer of interests in title, which describes the apartment by using the designation referred to in subsection (a) followed by the words "in (name) Condominium as recorded in Book _____, p. __, under the date of _____, _____, of the records of _____ County, Indiana", is considered to contain a good and sufficient description for all purposes.

(c) Any conveyance or transfer of interest in title of a condominium unit is considered also to convey the undivided interests of the owner in the common areas and facilities, both general and limited, appertaining to the condominium unit without specifically or particularly referring to the undivided interests. The:

(1) contents;
(2) form;
(3) method of preparation;
(4) recording of an instrument of conveyance; and
(5) interpretation of an instrument of conveyance;

are governed by the law of Indiana relating to real property.

(d) Each instrument or deed of conveyance also shall include the following:

(1) A statement of the use for which the condominium unit is intended.
(2) A statement of the restrictions on the use of the condominium unit.
(3) The percentage of undivided interest appertaining to the condominium unit in the common areas and facilities.
(4) The amount of any unpaid current or delinquent assessments of common expenses.
(5) Any other details and restrictions that:
(A) the grantor and grantee consider desirable; and
(B) are consistent with the declaration.

(e) Failure to make a statement in the deed as required by subsection (d)(4) does not:

(1) invalidate the title conveyed by the deed; or
(2) absolve a grantee under the deed from liability for any unpaid current or delinquent assessments of common expenses against a condominium unit on the date of its

C o p y

conveyance.

(f) Upon the request of a:

(1) condominium unit owner;

(2) prospective grantee;

(3) title insurance company; or

(4) mortgagee;

the secretary or other authorized officer of the association of co-owners shall provide, within five (5) days of the request, a statement of the amount of current and delinquent assessments of common expenses against a particular condominium unit.

Sec. 6. (a) Except as provided in subsection (b), if the declaration for a condominium is in conformity with section 2 of this chapter, it is presumed that any owner of a condominium unit in that condominium has consented to the changes in the percentage of undivided interest in the common areas and facilities appertaining to the owner's unit.

(b) An owner of a condominium unit who entered an agreement to purchase that unit before the recordation of the declaration may not be presumed to have consented to the changes referred to in subsection (a) unless the owner:

(1) was provided a copy of:

(A) the expansion provisions; or

(B) the declaration; and

(2) made a written acknowledgment of the receipt of the provisions before entering the purchase agreement.

(c) The reallocation of percentage of undivided interests in the common areas and facilities vests when the amendment to the declaration incorporating the reallocated percentages is recorded.

(d) When the amendment to the declaration incorporating:

(1) the addition of condominium units;

(2) the expansion of common areas and facilities; or

(3) both addition and expansion as described in subdivisions (1) and (2);

is recorded, all liens, including mortgage liens, are released as to the percentage of undivided interests in the common areas and facilities described in the declaration (before amendment of the declaration) and shall attach to the reallocated percentage of undivided interests in the common areas and facilities described in the amendment to the declaration as though the liens had attached to those percentage interests on the date of the recordation of the mortgage or other document that evidences the creation of the lien. The percentage interest in the common areas and facilities

C o p y

appertaining to additional condominium units being added by the amendment to the declaration are subject to mortgage liens and other liens upon the recordation of the amendment to the declaration.

Chapter 8. Administration of Condominiums

Sec. 1. The administration of every property is governed by bylaws. A true copy of the bylaws shall be annexed to and made a part of the declaration. A modification of or amendment to the bylaws is valid only if:

(1) the modification or amendment is set forth in an amendment to the declaration; and

(2) the amendment is recorded.

Sec. 2. The bylaws must provide for the following:

(1) With respect to the board of directors:

(A) the election of the board from among the co-owners;

(B) the number of persons constituting the board;

(C) the expiration of the terms of at least one-third (1/3) of the directors annually;

(D) the powers and duties of the board, including whether the board may engage the services of a manager or managing agent;

(E) the compensation, if any, of the directors; and

(F) the method of removal from office of directors.

(2) The method of calling meetings of the co-owners and the percentage, if other than a majority of co-owners, that constitutes a quorum.

(3) The election from among the board of directors of a president, who shall preside over the meetings of:

(A) the board of directors; and

(B) the association of co-owners.

(4) The election of a secretary, who shall keep the minute book in which resolutions shall be recorded.

(5) The election of a treasurer, who shall keep the financial records and books of account.

(6) The maintenance, repair, and replacement of the common areas and facilities and payments for that maintenance, repair, and replacement, including the method of approving payment vouchers.

(7) The manner of collecting from each condominium owner the owner's share of the common expenses.

(8) The designation and removal of personnel necessary for the maintenance, repair, and replacement of the common

C o p y

areas and facilities.

(9) The method of adopting and of amending administrative rules governing the details of the operation and use of the common areas and facilities.

(10) The restrictions on and requirements respecting the use and maintenance of the condominium units and the use of the common areas and facilities that are:

(A) not set forth in the declaration; and

(B) designed to prevent unreasonable interference with the use of their respective units and of the common areas and facilities by the several co-owners.

(11) The percentage of votes required to amend the bylaws.

(12) Other provisions consistent with this article considered necessary for the administration of the property.

Sec. 3. (a) The following shall be recorded:

(1) A declaration.

(2) An amendment to a declaration.

(3) An instrument by which this article may be waived.

(4) An instrument affecting the property or any condominium unit.

(b) A declaration and any amendment to a declaration are valid only if the declaration or amendment is recorded.

(c) All of the laws of the state applicable to the recording of instruments affecting real property apply to the recording of instruments affecting any interest in a condominium unit.

(d) In addition to the records and indexes required to be maintained by the recording officer, the recording officer shall maintain an index or indexes in which:

(1) the record of each declaration contains a reference to the record of each conveyance of a condominium unit affected by the declaration; and

(2) the record of each conveyance of a condominium unit contains a reference to the declaration of the building of which the condominium unit is a part.

Sec. 4. (a) A declarant may:

(1) maintain:

(A) sales offices;

(B) management offices; and

(C) model condominium units;

in the condominium only if the condominium instruments provide for those items; and

(2) specify the rights of the declarant with regard to the:

copy

(A) number;
(B) size;
(C) location; and
(D) relocation;
of the items referred to in subdivision (1).

(b) If the declarant ceases to be a condominium unit owner:

(1) an item referred to in subsection (a)(1) that is not designated a condominium unit by the condominium instruments becomes part of the common areas and facilities; and

(2) the declarant ceases to have any rights to the item referred to in subdivision (1) unless the item is removed promptly from the condominium real estate under a right reserved in the condominium instruments to make the removal.

Sec. 5. A condominium unit owner may not make an alteration or structural change that would:

(1) jeopardize the soundness or safety of the property;
(2) reduce the value of the property; or
(3) impair any easement or hereditament;

unless the condominium unit owner has obtained the unanimous consent of all the other co-owners.

Sec. 6. The:

(1) common profits of the property shall be credited to; and
(2) common expenses of the property shall be charged to;

the condominium unit owners according to the percentage of the owners' undivided interests in the common areas and facilities.

Sec. 7. (a) Taxes, assessments, and other charges of:

(1) the state;
(2) any political subdivision;
(3) any special improvement district; or
(4) any other taxing or assessing authority;

shall be assessed against and collected on each condominium unit. Taxes, assessments, and other charges referred to in this subsection may not be assessed and collected on the building or property as a whole.

(b) Each condominium unit shall be carried on the tax books as a separate and distinct entity for the purpose of taxes, assessments, and other charges.

(c) A forfeiture or sale of the building or property as a whole for delinquent taxes, assessments, or charges may not divest or affect the title to a condominium unit if taxes, assessments, and charges on the condominium unit are currently paid.

C o p y

Sec. 8. (a) The manager or board of directors shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing:

(1) the maintenance and repair expenses of the common areas and facilities; and

(2) any other expenses incurred.

(b) The records and the vouchers authorizing the payments shall be available for examination by the co-owners at convenient hours of weekdays.

Sec. 9. (a) The co-owners, through the association of co-owners, shall purchase:

(1) a master casualty policy, payable as part of the common expenses, affording fire and extended coverage in an amount consonant with the full replacement value of the improvement that in whole or in part comprises the common areas and facilities; and

(2) a master liability policy in an amount:

(A) required by the bylaws;

(B) required by the declaration; or

(C) revised from time to time by a decision of the board of directors of the association.

(b) The policy referred to in subsection (a)(2) shall cover:

(1) the association of co-owners;

(2) the executive organ, if any;

(3) the managing agent, if any;

(4) all persons acting, or who may come to act, as agents or employees of any of the entities referred to in subdivisions (1) through (3) with respect to:

(A) the condominium;

(B) all condominium unit owners; and

(C) all other persons entitled to occupy any unit or other portions of the condominium.

(c) Other policies required by the condominium instruments may be obtained by the co-owners through the association, including:

(1) worker's compensation insurance;

(2) liability insurance on motor vehicles owned by the association;

(3) specialized policies covering land or improvements on which the association has or shares ownership or other rights; and

C o p y

(4) officers' and directors' liability policies.

(d) When any policy of insurance has been obtained by or on behalf of the association of co-owners, the officer required to send notices of meetings of the association of co-owners shall promptly furnish to each co-owner or mortgagee whose interest may be affected written notice of:

(1) the obtainment of the policy; and

(2) any subsequent changes to or termination of the policy.

Sec. 10. (a) In case of fire or any other casualty or disaster, other than complete destruction of all buildings containing the condominium units:

(1) the improvements shall be reconstructed; and

(2) the insurance proceeds shall be applied to reconstruct the improvements.

(b) In the event of complete destruction of all of the buildings containing condominium units:

(1) the buildings shall not be reconstructed, except as provided in subdivision (2), and the insurance proceeds, if any, shall be divided among the co-owners:

(A) in the percentage by which each owns an undivided interest in the common areas and facilities; or

(B) proportionately according to the fair market value of each condominium unit immediately before the casualty as compared with the fair market value of all other condominium units;

as specified in the bylaws of the condominium; and

(2) the property shall be considered as to be removed from the condominium under section 16 of this chapter, unless by a vote of two-thirds (2/3) of all of the co-owners a decision is made to rebuild the building.

(c) If a decision is made under subsection (b)(2) to rebuild the building, the insurance proceeds shall be applied, and any excess of construction costs over insurance proceeds shall be contributed as provided in this section in the event of less than total destruction of the buildings.

(d) A determination of total destruction of the buildings containing condominium units shall be made by a vote of two-thirds (2/3) of all co-owners at a special meeting of the association of co-owners called for that purpose.

Sec. 11. (a) If:

(1) the:

(A) improvements are not insured; or

copy

(B) insurance proceeds are not sufficient to cover the cost of repair or reconstruction; and

(2) the property is not to be removed from the condominium; the co-owners shall contribute the balance of the cost of repair or reconstruction in the percentage by which a condominium unit owner owns an undivided interest in the common areas and facilities as expressed in the declaration.

(b) The amount of the contribution under subsection (a):

(1) is assessed as part of the common expense; and

(2) constitutes a lien from the time of assessment of the contribution as provided in IC 32-25-6-3.

Sec. 12. The following apply if, under section 10 of this chapter, it is not determined by the co-owners to rebuild after a casualty or disaster has occurred:

(1) The property is considered to be owned in common by the condominium unit owners.

(2) The undivided interest in the property owned in common that appertains to each condominium unit owner is the percentage of undivided interest previously owned by the owner in the common areas and facilities.

(3) Any liens affecting any of the condominium units are considered to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the condominium unit owner in the property.

(4) The property is subject to an action for partition at the suit of any condominium unit owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any;

(A) are considered as one (1) fund; and

(B) are divided among all the condominium unit owners in a percentage equal to the percentage of undivided interest owned by each owner in the property, after first paying out of the respective shares of the condominium unit owners, to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each condominium unit owner.

Sec. 13. (a) Subject to the declaration and this chapter, a declarant may add additional real estate to an expandable condominium if an amendment to the declaration required by subsection (b) is executed in the manner described in section 3 of this chapter. The expansion is effective when the instruments required by subsection (b) are recorded.

C o p y

(b) In expanding the condominium, the declarant shall:

(1) prepare, execute, and record amendments to the condominium instruments; and

(2) record new plats and plans under IC 32-25-7-1 and IC 32-25-7-4.

The amendment to the declaration shall assign an identifying number to each condominium unit within the real estate being added and shall reallocate undivided interests in the common areas and facilities under IC 32-25-4-3.

Sec. 14. (a) Subject to:

(1) the declaration;

(2) condominium instruments; and

(3) this chapter;

a declarant may withdraw withdrawable land from a contractable condominium unless the withdrawal is prohibited by subsection (c). The contraction is effective when the instruments required by subsection (b) are recorded.

(b) In contracting the condominium, the declarant shall prepare, execute, and record an amendment to the declaration and condominium instruments:

(1) containing a legally sufficient description of the land being withdrawn; and

(2) stating the fact of withdrawal.

(c) If a portion of the withdrawable land was described under IC 32-25-7-3(6) and IC 32-25-7-3(7), that portion may not be withdrawn if any person other than the declarant owns a condominium unit situated on that portion of the withdrawable land. If that portion of the withdrawable land was not described under IC 32-25-7-3(6) and IC 32-25-7-3(7), none of the withdrawable land may be withdrawn if any person other than the declarant owns a condominium unit situated on that portion of the withdrawable land.

Sec. 15. If a declarant reserves an option in the declaration to not expand the condominium, the declarant shall:

(1) make a full disclosure of that option to every prospective buyer in writing before the buyer enters an agreement to purchase a condominium unit; and

(2) obtain and retain an instrument acknowledging receipt of that disclosure by the prospective buyer.

Sec. 16. (a) All of the co-owners may remove a property from this article by a recorded removal instrument if the holders of all liens affecting any of the condominium units:

C o p y

(1) consent in a recorded instrument to the removal; or

(2) agree in a recorded instrument that their liens be transferred to the percentage of the undivided interest of the condominium unit owner in the property as provided in this section.

(b) If it is determined under section 10 of this chapter that all of the buildings containing condominium units have been totally destroyed:

(1) the property is considered removed from this article; and

(2) an instrument reciting the removal under section 10 of this chapter shall be recorded and executed by the association of co-owners.

(c) At the time of recording under subsection (b)(2), the property is removed from this article.

(d) Upon removal of the property from this article, the property is considered to be owned in common by the condominium unit owners. The undivided interest in the property owned in common that appertains to each condominium unit owner is the percentage of undivided interest previously owned by the owner in the common areas and facilities.

(e) Under the circumstances described in subsection (a) or in subsections (b) through (d), the property is subject to an action for partition at the suit of any condominium unit owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any:

(1) are considered as one (1) fund; and

(2) are divided among all the condominium unit owners in a percentage equal to the percentage of undivided interest owned by each owner in the property, after first paying out of the respective shares of the condominium unit owners, to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each condominium unit owner.

(f) A removal under this section does not bar the subsequent resubmission of the property to this article.

Chapter 9. Actions and Proceedings

Sec. 1. (a) Each condominium unit owner shall comply with:

(1) the articles of incorporation or association;

(2) the bylaws;

(3) any administrative rules adopted under:

(A) the articles of incorporation or association; or

(B) the bylaws; and

Copy

(4) the covenants, conditions, and restrictions set forth in:
(A) the declaration; or
(B) the deed to the owner's condominium unit.

(b) Failure to comply as required under subsection (a) is grounds for an action:
(1) to recover sums due;
(2) for damages;
(3) for injunctive relief; or
(4) for any other legal or equitable relief;
maintainable by the manager or board of directors on behalf of the association of co-owners or by an aggrieved co-owner.

(c) The association of co-owners may be organized as:
(1) a nonprofit corporation under:
(A) IC 23-7-1.1 (before its repeal August 1, 1991); or
(B) IC 23-17; or
(2) an unincorporated association.

Sec. 2. (a) The board of directors, or the manager with the approval of the board of directors, may bring an action on behalf of two (2) or more of the condominium unit owners, as their respective interests appear, with respect to any cause of action relating to:
(1) the common areas and facilities; or
(2) more than one (1) condominium unit.
An action brought under this subsection does not limit the rights of any condominium unit owner.

(b) Service of process on two (2) or more condominium unit owners in any action relating to:
(1) the common areas and facilities; or
(2) more than one (1) condominium unit;
may be made on the person designated in the declaration to receive service of process.

SECTION 11. IC 32-26 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

ARTICLE 26. FENCES

Chapter 1. Fencing Associations

Sec. 1. (a) Five (5) or more persons may form a fencing association if the persons are interested in:
(1) enclosing land with one (1) general fence; or
(2) doing any other work necessary to protect land and to secure crops raised on land.

(b) The enclosed land described in subsection (a) must be:

C o p y

(1) improved land;
(2) used for purposes of cultivation; and
(3) situated in an area that is:
(A) definitely described by sections or subdivisions of sections; or
(B) sufficiently described by metes and bounds, and on or near any stream, watercourse, lake, pond, or marsh, and subject to overflow from any stream, watercourse, lake, pond, or marsh.

(c) The association shall adopt and subscribe articles, which must specify the name and objects of the association.

Sec. 2. (a) Three (3) or more members of the association may give notice of an election to choose directors for the association.

(b) The notices must:
(1) be written or printed;
(2) specify the time and location of the election; and
(3) be posted for at least ten (10) days before the election in at least five (5) public places in each township where the contemplated work will occur.

(c) The location of the election must be near the contemplated work.

Sec. 3. At the election, at least five (5) of the association members shall elect by ballot at least three (3) but not more than seven (7) association members as directors of the association.

Sec. 4. (a) After the election of directors, the association shall record articles of association in the office of the recorder of the county where the proposed fence will be located.

(b) The articles must specify the following:
(1) The name and objects of the association.
(2) The names of the association's officers for the first year.
(3) The character of the work proposed.
(4) The location where the fence is to be located.

(c) After recording the articles of association, the association is a body corporate and politic by the name and style adopted, with all the rights, incidents, and liabilities of bodies corporate.

(d) Any person owning land in the area may at any time become a member of the association by signing the articles of association.

Sec. 5. (a) The board of directors shall petition the board of commissioners of the county where the fence is to be located.

(b) The petition must do the following:
(1) Be signed by the owners of the major part of the improved land.

C o p y

(2) Give a full description of the contemplated work, specifying particularly:

(A) the points of beginning and ending of the work;

(B) the course and distances of the work;

(C) the manner and character of the gates to be placed on all public highways crossed;

(D) the nature and character of the improvement;

(E) a detailed statement of the projected cost, as accurately as the projected cost can conveniently be stated; and

(F) the description of the area to be enclosed.

(3) Request the appointment of viewers to view and apportion among the owners of real estate in the area the cost of the improvement, and all expenses that:

(A) are incurred procuring the improvement; and

(B) are considered to be necessary in maintaining the improvement for one (1) year after the completion of the fence.

(c) The apportionment of the cost and expenses incurred under this chapter must be made according to the number of acres of land owned by each landowner that is improved and used for the purposes of cultivation, as described in section 6 of this chapter.

(d) The board of commissioners, on proof that the signers of the petition own the major part of the improved land in the area, shall hear and consider the petition. If the board of commissioners decides the improvement is a public utility and is in the best interests of the owners of the lands in the area, the board of commissioners shall appoint three (3) viewers.

(e) The viewers, who may not be members of the association or interested in the proposed work, shall make the apportionments described in subsection (b)(3) among the landowners.

(f) The viewers shall be furnished:

(1) a copy of the plan and profile of the proposed work; and

(2) a certified copy of the order of the board of commissioners for their appointment.

(g) The viewers shall meet at a time and place in the area to make the apportionment as fixed by the board of commissioners.

(h) Before the apportionment begins, the owners of improved land in the area are entitled to notice of the time when and place where the viewers will begin the examination of lands and the apportionment of assessments by written or printed notices posted at the door of the courthouse of the county and five (5) public places in the area.

C o p y

Sec. 6. (a) At the time and place named by the board of commissioners and fixed by the notices, the appointed viewers shall do the following:

(1) Meet and inspect the lands improved and used for cultivation in the area.

(2) Assess against the owners of the improved land the costs and expenses of the improvement. The costs and expenses shall be apportioned among them severally, according to the number of acres of improved land owned by each owner.

(3) Hear and determine any complaints at that time regarding the assessment.

(b) the appointed viewers have the authority to:

(1) hear evidence;

(2) swear and examine witnesses;

(3) reexamine any lands;

(4) cause surveys and measurements to be made; and

(5) adjourn periodically until the viewers complete the apportionment of assessments.

Sec. 7. (a) The appointed viewers, after having completed their apportionment, shall submit a written report of their work to the board of commissioners, together with a tabular statement of the assessments made.

(b) The directors of the association shall record the written report by the appointed viewers in the office of the recorder of the county.

(c) From the recording date of the written report, the assessments in the written report shall be respectively a lien on each tract of land described in the written report for the amount assessed to the tract.

Sec. 8. (a) The board of directors may make annual assessments after the first assessment for the purpose of repairing and maintaining the improvement and for other necessary expenses.

(b) The board of directors shall apportion the annual assessments among the owners and file a tabular statement of the apportionment and assessment in the recorder's office.

(c) The tabular statement of the apportionment and assessment is a lien on the tracts of land respectively assessed and may be collected in the same manner as the original assessment.

Sec. 9. (a) If the owners of land have, under or by virtue of any law of Indiana or by mutual consent, erected a fence before March 14, 1877, as described in this chapter, the landowners may:

(1) organize an association according to the provisions of this

C o p y

chapter;

(2) file their articles of association in the office of the recorder; and

(3) petition the board of commissioners as provided in subsection (b).

(b) The petition must show that:

(1) the fence was built before March 14, 1877; and

(2) the goal of the organization is to maintain the fence in good order and repair, as though built under this chapter.

(c) The board of commissioners shall consider the petition. If the board of commissioners is satisfied that:

(1) the owners of the major part of the land improved and used for the purposes of cultivation enclosed by the fence signed the petition; and

(2) the maintenance of the improvement is of public utility and for the best interests of the owners of the land in the area;

the board of commissioners shall make an order allowing the board of directors of the association to make assessments for that purpose, as provided in section 8 of this chapter.

(d) After the directors of the association follow the steps provided in section 8 of this chapter, the association is a body corporate and politic, as though originally organized under this chapter, and has all the rights and powers granted in this chapter.

(e) All liens that then exist in favor of any creditor that financed the improvement, or against any lands on account of the improvement, shall be preserved and may be enforced, either according to the law under which the liens were created or according to this chapter.

Sec. 10. (a) The board of directors shall appoint a president, secretary, and treasurer.

(b) The treasurer shall give a bond:

(1) sufficient in penalties and securities;

(2) payable to the association by its corporate name; and

(3) conditioned for:

(A) the faithful discharge of the treasurer's duties; and

(B) the safekeeping and prompt payment, according to the order of the board of directors, of all money accessible to the treasurer.

(c) A majority of the board of directors is a quorum for the transaction of business.

(d) Previous notice of any regular or adjourned meeting of the directors is not necessary.

C o p y

Sec. 11. If a vacancy occurs in the office of director, the other members of the board shall fill the vacancy by a pro tempore appointment from the members of the association. The appointment continues until the next annual election and until a successor is elected and qualified.

Sec. 12. The president, secretary, and treasurer continue in office for one (1) year and until their successors in office are elected and qualified.

Sec. 13. The treasurer may not draw money, except upon the order of the president and secretary.

Sec. 14. Each year, before the expiration of the treasurer's term, and more often if the board of directors requires, the treasurer shall present the treasurer's vouchers and settle with the board.

Sec. 15. (a) If the board of directors finds that any lands that will be affected by the proposed work have been omitted from the assessment or that any mistake has occurred in the assessment, the board may order a supplemental assessment for the correction of mistakes.

(b) The owners of all lands directly affected by the supplemental assessment shall have notice of the time and place of making the supplemental assessment and of a time when and place where the owners may be heard regarding the supplemental assessment in the same manner as in respect to the original assessment.

(c) The supplemental assessment, when completed, shall be filed for record in the same manner as the original assessment.

(d) The supplemental assessment shall, from that date, be a lien on the lands described in the supplemental assessment in like manner as the original assessment.

Sec. 16. The board of directors may, without reference to the completion of the proposed work, order:

(1) the payment of the assessment in installments as it considers proper; or

(2) the payment in full at a stated time.

Sec. 17. Payment of the assessments may be enforced by suit in any court with jurisdiction as for ordinary debts or by the foreclosure of the lien in any court with jurisdiction in the same manner as is provided by law for the foreclosure of mortgages and the sale of mortgaged premises for the collection of debts.

Sec. 18. (a) The proposed work shall be awarded by the board of directors by contract to the lowest responsible bidder, after suitable advertisements, as a whole or in sections or subdivisions as the board considers most advantageous.

C o p y

(b) The board of directors may purchase any fence built along the line of the proposed fence and use the fence instead of building new fencing.

Sec. 19. If the association wishes to appropriate any land for the construction or maintenance of any work, the association must proceed in the manner required by law for the assessment of like damages in case of the construction of railroads or other similar works.

Sec. 20. Every association organized under this chapter with the concurrence of three-fourths (3/4) of its members, expressed by resolution at any regular meeting of the association, may:

(1) correct or perfect any incorrect or imperfect description of the proposed work; or

(2) provide for the extension of the proposed work beyond the limits prescribed in the original articles of the association.

Sec. 21. An association may not commence an action to enforce any lien upon land for assessments made five (5) years after the date of recording the schedule of the assessment constituting a lien, as contemplated by this chapter. Any assessment made under any former law of Indiana upon the same subject, when action is not pending for the enforcement of the assessment, is prima facie satisfied upon the record five (5) years after the recording of the schedule of the assessment.

Sec. 22. The association may pass any rules and impose reasonable fines and penalties to insure the success of the object of the association's incorporation. The association may:

(1) employ individuals to keep the fence in repair;

(2) employ gatekeepers to attend to the gates on all public highways;

(3) employ keepers of pounds to impound and care for all stock found running at large in the area enclosed by the fence;

(4) make bylaws regulating:

(A) when stock may run at large in the enclosed area; and

(B) the number of cattle, horses, and swine each landowner or occupant of lands in the enclosed area may be allowed to permit to run at large.

Sec. 23. A person may not throw down the common fence. A person who throws down a common fence shall pay to the association at least five dollars ($5) but not more than twenty dollars ($20), recoverable before any court with jurisdiction. A person who throws down a common fence is liable for all damages that accrue because of the person's actions. Damages are

C o p y

recoverable under this subsection in the same manner as a forfeiture.

Sec. 24. It is a Class C infraction for a person to allow the person's stock to run at large in the enclosed area unless expressly permitted to do so by the board of directors of the association. A person who violates this section is liable to all persons whose lands are trespassed upon for consequential damages.

Sec. 25. (a) Any stock found roving about in the enclosed area contrary to the laws or regulations of the association shall be taken up and impounded at the expense of the owner. The poundkeeper shall:

(1) if the owner is known, notify the owner, in writing, of the impounding of the stock; or

(2) if the owner is unknown, post for ten (10) days a written or printed description of the stock at the public gates of the association and three (3) other public places in the township where the fence is located.

(b) If, after the expiration of ten (10) days, the owner fails to reclaim and pay the expenses of keeping and posting the stock and the damages caused by the stock to any owner or occupant of land in the area, the stock shall, upon ten (10) days further notice, be sold to pay the expenses and damages.

(c) If, after payment for the stock, there is a remaining balance, the balance shall be deposited in the treasury of the association for the benefit of the owner. If no claim is made for the remaining balance for six (6) months, it shall vest in the association.

Chapter 2. Enclosures, Trespassing Animals, and Partition Fences

Sec. 1. (a) As used in this chapter, "lawful fence" means any structure typically used by husbandmen for the enclosure of property.

(b) The term includes:

(1) a cattle guard;

(2) a hedge;

(3) a ditch; and

(4) any other structure that witnesses knowledgeable about fences testify is sufficient to enclose property.

Sec. 2. (a) This subsection applies in a township for which the board of county commissioners has adopted an ordinance that allows domestic animals to run at large in unenclosed public areas. If a domestic animal breaks into an enclosure or enters upon the property of another person that is enclosed by a lawful fence, the

C o p y

person injured by the actions of the domestic animal may recover the amount of damage done.

(b) This subsection applies in a township for which the board of county commissioners has not adopted an ordinance that allows domestic animals to run at large in unenclosed public areas. If a domestic animal breaks into an enclosure or enters upon the property of another person, it is not necessary for the person injured by the actions of the domestic animal to allege or prove the existence of a lawful fence to recover for the damage done.

Sec. 3. (a) The owner of a domestic animal described in section 2 of this chapter may:

(1) tender to the person injured by the domestic animal:

(A) any costs that have accrued; and

(B) an amount, in lieu of damage, which equals or exceeds the amount of damages awarded by the court or by a jury in an action filed to recover damages caused by the actions of the domestic animal; or

(2) offer in writing to confess judgment for the amounts set forth in subdivision (1);

before an action filed to recover damages caused by a domestic animal described in section 2 of this chapter proceeds to trial.

(b) If the person injured by the domestic animal described in section 2 of this chapter rejects the tender or offer under subsection (a) and causes a trial for damages to proceed, the person injured:

(1) shall pay the costs of the trial; and

(2) may recover only the damages awarded.

Sec. 4. Except as provided in this chapter, if a domestic animal breaks into the enclosure of a person who is not the owner of the domestic animal, the person, without regard to the season of the year:

(1) may confine the animal in the same manner as a stray animal may be confined; and

(2) shall proceed under IC 32-34-8 for stray animals.

Sec. 5. A person described in section 4 of this chapter shall, within twenty-four (24) hours after confining a stray animal, give notice to the owner of the animal, if the owner is known and can be immediately found.

Sec. 6. Before posting or advertising a stray animal, a person described in section 4 of this chapter shall procure from two (2) disinterested property owners an examination and assessment of the damages caused by the stray animal with a certificate of the

C o p y

damages. Damages under this section may include reasonable pay for the persons making the assessment.

Sec. 7. A notice or advertisement described in section 6 of this chapter must specify the following:

(1) The fact of trespass in the enclosure of the person confining the stray animal.

(2) The damages assessed, including pay for the person making the assessment.

Sec. 8. The owner of a stray animal confined under section 4 of this chapter may demand the stray animal from the person who confined the stray animal only if the following conditions are met:

(1) The owner proceeds under IC 32-34-8-18 to prove that the stray animal is the owner's property.

(2) The owner pays the costs allowed in the case of stray animals.

(3) The owner pays the damages and the costs of assessment.

Sec. 9. (a) Within five (5) days after the owner of a stray animal confined under section 4 of this chapter receives a notice under section 7 of this chapter, the owner may file a civil action to:

(1) controvert the amount of damages assessed; or

(2) deny the trespass.

(b) If the owner of a stray animal confined under section 4 of this chapter files an action under subsection (a), the cause shall be docketed for trial.

Sec. 10. Either party in an action filed under section 9 of this chapter may demand a jury.

Sec. 11. If damages are assessed against the owner of a stray animal in a trial under this chapter, the owner must pay the damages and all costs assessed against the owner before the owner may recover the owner's property.

Sec. 12. If the verdict or finding in a trial under this chapter is that the stray animal confined under section 4 of this chapter did not commit the trespass, a judgment shall be entered against the person who confined the stray animal for all costs and damages that are assessed.

Sec. 13. If a stray animal confined under section 4 of this chapter is sold under IC 32-34-8, the person who confined the stray animal may retain out of the sale price of the stray animal the damages sustained by the person and the costs of assessing the damages in addition to the costs and allowances recoverable under IC 32-34-8.

Sec. 14. In an action filed under this chapter, if the court or jury

C o p y

finds the fence through which a stray animal breaks is not a lawful fence, the animal shall be released to the animal's owner and the occupant of the enclosure shall pay costs and damages to the animal's owner.

Sec. 15. When a fence that is already erected becomes a partition fence because previously unenclosed property is enclosed, the person who encloses the previously unenclosed property shall pay to the owner of the existing fence fifty percent (50%) of the value of the existing fence, as estimated by the owner of the existing fence.

Sec. 16. (a) If a person who encloses previously unenclosed property refuses to pay the owner of an existing fence under section 15 of this chapter, the owner may file a civil action for recovery of the amount due under section 15 of this chapter.

(b) This subsection applies if, before a trial under subsection (a):

(1) the person who encloses the previously unenclosed property offers to the owner of an existing fence; and

(2) the owner of the existing fence refuses to accept;

an amount equal to or larger than the damages awarded at the trial and the costs accrued up to the date of the offer. The owner of the existing fence shall pay the costs of the action and receive only the damages assessed.

Sec. 17. A person who encloses property that has previously been unenclosed may not join the new fence to another person's existing fence without the consent of the owner of the existing fence. If consent to join the new fence with the existing fence is not given, each property owner shall give property that is equivalent to fifty percent (50%) of the width of a lane, or a reasonable distance, for the erection of the second fence.

Sec. 18. This section applies to a person who ceases to use the person's property or opens the person's enclosures. A person to whom this section applies may not remove any part of the person's fence that forms a partition fence between the person's property and the enclosure of any other person until the person to whom this section applies has first given six (6) months notice of the person's intention to remove the fence to any person who may be interested in the removal of the fence.

Sec. 19. (a) This section applies to a person who, by mistake, erects a fence on the property of another person.

(b) Within six (6) months after the determination of the legal property line, a person to whom this section applies may enter upon the other person's property and remove the fence that the

C o p y

person to whom this section applies erected. Before entering upon the other person's property, the person to whom this section applies must pay or offer to pay to the other person reasonable damages for injury caused in passing over the property to remove the fence.

Sec. 20. If the fence to be removed under section 19 of this chapter forms any part of a fence enclosing a field of another party on which there is a crop, the person to whom section 19 of this chapter applies may not remove the fence in a manner that exposes the field until the crop:

(1) has been gathered and removed, or secured from injury; or

(2) might, with reasonable diligence, have been gathered and secured. After the conditions set forth in this section have been met, the person to whom section 19 of this chapter applies may immediately remove the fence and materials, whether or not more than six (6) months have elapsed since the legal property line was determined.

Chapter 3. Recording Agreements to Erect and Repair Fences

Sec. 1. Adjoining property owners who elect to erect, repair, maintain, or pay for fences separating their lands in a manner other than that set forth under this article shall do so by written agreement. When the agreement is signed by the adjoining property owners, the agreement must be recorded in the office of the recorder in the county or counties in which the adjoining properties are situated.

Sec. 2. This chapter may not be held or construed as annulling or abrogating any subsisting legal right created under or any cause of action that arose and was fully accrued under any law or agreement if the legal right became effective before January 1, 1950.

Chapter 4. Cutting of Live Fences Along Public Highways

Sec. 1. (a) This chapter:

(1) does not apply to:

(A) a highway intersection located within a city or town; or

(B) a building of a substantial character that is located at the intersection of highways; and

(2) except for the provisions of this chapter concerning hedge fences, applies only to the intersection of a state highway with another state highway, a county highway, or a township highway.

(b) Except as provided in subsection (c), the owner of a hedge or

Copy

live fence along the line of a highway shall cut and trim down the hedge or live fence to a height of not more than five (5) feet once in each calendar year.

(c) This subsection applies if a hedge, live fence, or natural growth other than a tree connects with or is found at a highway intersection, adjacent to a curve where the view of the highway may be obstructed, or at a railway right-of-way. The owner of a hedge, live fence, or other growth to which this subsection applies shall trim and maintain the hedge, live fence, or other growth at a height of not more than five (5) feet above the level of the center of the traveled road bed in the highway that adjoins the hedge, live fence, or other growth:

(1) throughout the year;

(2) for a distance of:

(A) one hundred (100) feet, if the obstruction is a hedge or live fence; or

(B) fifty (50) feet, if the obstruction consists of any other natural growths; and

(3) beginning at the intersection of the highway and continuing along the lines dividing the highways and the adjoining property.

(d) This subsection applies to a tree growing within fifty (50) feet of the intersection of a highway with:

(1) another highway; or

(2) a steam or interurban railroad.

The owner of a tree to which this subsection applies shall trim the tree so that the view at the intersection is not obstructed.

(e) Except for a natural elevation of land, an obstruction to the view at the intersection of a highway with another highway or a steam or interurban railroad that exceeds a height of five (5) feet above the center of the highway may not be maintained at the intersection.

(f) After May 22, 1933, a building may not be erected within fifty (50) feet of an intersection to which this chapter applies.

Sec. 2. (a) The trustee of each township, the county highway superintendent, the Indiana department of transportation, or other officer in control of the maintenance of a highway shall between January 1 and April 1 of each year, examine all hedges, live fences, natural growths along highways, and other obstructions described in section 1 of this chapter in their respective jurisdictions. If there are hedges, live fences, other growths, or obstructions along the highways that have not been cut, trimmed down, and maintained

C o p y

in accordance with this chapter, the owner shall be given written notice to cut or trim the hedge or live fence and to burn the brush trimmed from the hedge or live fence and remove any other obstructions or growths.

(b) The notice required under subsection (a) must be served by reading the notice to the owner or by leaving a copy of the notice at the owner's usual place of residence.

(c) If the owner is not a resident of the township, county, or state where the hedge, live fence, or other obstructions or growth is located, the notice shall be served upon the owner's agent or tenant residing in the township. If an agent or a tenant of the owner does not reside in the township, the notice shall be served by mailing a copy of the notice to the owner, directed to the owner's last known post office address.

(d) If the owner, agents, or tenants do not proceed to cut and trim the fences and burn the brush trimmed from the fences or remove any obstructions or growths within ten (10) days after notice is served, the township trustee, county highway superintendent, or Indiana department of transportation shall immediately:

(1) cause the fences to be cut and trimmed or obstructions or growths removed in accordance with this chapter; and

(2) burn the brush trimmed from the fences.

All expenses incurred under this subsection shall be assessed against and become a lien upon the land in the same manner as road taxes.

(e) The township trustee, county highway superintendent, or Indiana department of transportation having charge of the work performed under subsection (d) shall prepare an itemized statement of the total cost of the work of removing the obstructions or growths and shall sign and certify the statement to the county auditor of the county in which the land is located. The county auditor shall place the statement on the tax duplicates. The county treasurer shall collect the costs entered on the duplicates at the same time and in the same manner as road taxes are collected. The treasurer may not issue a receipt for road taxes unless the costs entered on the duplicates are paid in full at the same time the road taxes are paid. If the costs are not paid when due, the costs shall become delinquent, bear the same interest, be subject to the same penalties, and be collected at the same time and in the same manner as other unpaid and delinquent taxes.

Sec. 3. The prosecuting attorney shall prosecute a suit under

C o p y

section 2(e) of this chapter in the name of the state on relation of the supervisor or county highway superintendent. The prosecuting attorney shall receive a fee of ten dollars ($10), collected as a part of the costs of the suit, for bringing a suit under this section.

Chapter 5. Cutting Live Fences Between Adjoining Lands

Sec. 1. A hedge or other live fence grown along the lines dividing properties owned by different persons in Indiana shall be cut and trimmed down to the height of not more than five (5) feet and to a width of not more than three (3) feet once in each calendar year.

Sec. 2. (a) Upon receiving a complaint in writing signed by an owner of land adjoining a hedge or fence to which this chapter applies alleging that the owner of the fence has neglected to cut and trim the hedge or fence, the township trustee shall examine, within five (5) days after receiving the complaint, the hedge or other live fence.

(b) If the hedge or other live fence that is the subject of the complaint under subsection (a) has not been cut and trimmed, the township trustee shall give the owner of the hedge or other live fence written notice to cut and trim the hedge or other live fence and to remove the brush to the owner's property within thirty (30) days after receiving the notice.

(c) The notice required under subsection (b) must be served by reading the notice to the owner or by leaving a copy of the notice at the owner's usual place of residence. If the owner of properties divided by the hedge or other live fence is not a resident of the township where the hedge or other live fence is located, the notice shall be served by mailing a copy of the notice to the owner directed to the owner's last known post office address.

(d) If the owner or the owner's agents or tenants do not cut and trim the fences and remove the brush, the trustee shall, immediately after the expiration of thirty (30) days, cause the hedge or other live fence to be cut and trimmed and the brush removed to the owner's property.

(e) The trustee shall recover all expenses incurred under subsection (d) by bringing a suit against the owner of the property on which the hedge or live fence is situated before the county court, the circuit court, or the superior court of the county in which the hedge or other live fence is situated. Collection of the expenses and any judgment recovered shall be without relief from valuation or appraisement laws.

Sec. 3. The prosecuting attorney shall prosecute a suit under this chapter in the name of the state on relation of a township trustee.

C o p y

The prosecuting attorney shall receive ten dollars ($10) collected as part of the cost of the suit, for bringing a suit under this section.

Chapter 6. Enclosure of Land Subject to Flooding

Sec. 1. (a) The owners of real property in a county who own the major portion of the property in the county that is:

(1) improved and used for purposes of agriculture;

(2) in an area that is:

(A) definitely described by sections or subdivisions of sections; or

(B) sufficiently described by metes and bounds; and

(3) situated upon or near, and subject to overflow from:

(A) a stream;

(B) a watercourse;

(C) a lake;

(D) a pond; or

(E) a marsh;

may petition the board of commissioners of the county, asking permission to enclose the properties within one (1) general fence that has swinging gates on all public highways crossed by the fence. A petition under this subsection must set forth the kind of fence and gates desired.

(b) Upon the receipt of a petition under subsection (a), the board of county commissioners shall appoint as viewers three (3) reputable householders of the county who are not related by blood or marriage to any of the parties interested in the subject of the petition. After being sworn to faithfully and fairly perform the services required of them, the viewers shall proceed:

(1) within a reasonable time after the viewers' appointment; and

(2) after giving publication of the viewers' intention by posting written or printed notices describing the properties in the townships where the properties are located;

to inspect the properties and make an assessment against the owners of the properties for the cost of the fence.

(c) The cost of the fence shall be apportioned between the owners of the properties severally according to the number of acres of improved land owned by each owner and the benefits accruing to the owners severally because of the fence.

Sec. 2. (a) After having performed the duties required under section 1 of this chapter, the viewers shall, as soon as practicable, submit a report in writing to the board of county commissioners of the viewers' actions and a tabular statement of the viewers'

C o p y

assessment. The report submitted under this section is sufficient authority for the board of county commissioners to issue an order for the erection or construction of the fence and gates if there is no remonstrance against the erection of the fence and gates.

(b) If a remonstrance is made under subsection (a), the board of county commissioners may order or refuse to order the erection of the fence or gate, in the board's discretion.

(c) If the order under subsection (a) is not made because of a mistake or error committed by the viewers, other viewers may be appointed to perform the same service and submit a report.

Sec. 3. (a) A certified copy of the report of the viewers, as approved by the board of commissioners, shall be filed in the office of the county auditor.

(b) Thirty (30) days after the fence and gates described in section 1 of this chapter have been constructed, any person interested in the fence and gates may make an affidavit before the county auditor showing which property owners have not paid their several assessments. The county auditor shall enter the sums assessed against the delinquent persons upon the tax duplicate to be collected by the treasurer as other taxes are collected. When the assessments have been collected, the money shall be paid out to the property owners who have voluntarily paid the cost of the fence, in proportion to the amount of the property owners' several assessments.

Sec. 4. The viewers appointed under this chapter may, if necessary, employ a surveyor, who shall be paid for the surveyor's services as may be agreed upon. The board of county commissioners shall fix the compensation of the viewers for their services. The entire cost and expenses of the proceedings are a part of the cost of the erection of the fence and gates and shall be collected in the same manner.

Sec. 5. A person who owns property enclosed under this chapter may not allow stock to run at large upon the enclosed property during the period beginning March 16 and ending December 25 of any year.

Chapter 7. Recording Fencemarks; Removal of Marked Fencing From Overflowed Lands

Sec. 1. If petitioned by at least twenty (20) property owners in the county, the board of county commissioners shall furnish a blank book to the recorder of the county, paid for out of the county fund, in which the county recorder shall keep a record of marks of rails and plank fencing that are adopted by the property owners of

C o p y

the county.

Sec. 2. The county recorder shall charge a fee in accordance with IC 36-2-7-10 for the recording of each mark from the person adopting and having the mark recorded. The recorder may not record two (2) marks that exactly correspond.

Sec. 3. Any person who has the person's rails or plank fencing marked and recorded as provided under this chapter may, if the rails or plank fencing are removed by high water and overflow off the person's property on to the property of another person, remove the rails and plank fencing on to the person's own property at any time of the year. The owner of the rails or plank fencing is responsible for and shall pay all damages that may be done to growing grain on the property from which the rails or plank fencing are removed or over which the rails or plank fencing are hauled.

Chapter 8. Recovery of Property Moved by High Water

Sec. 1. (a) When the fence rails or other property of a person in Indiana are removed by high water and lodged upon the real property of another person, the owner of the fence rails or other property may proceed, within sixty (60) days after the fence rails or other property are lodged, upon the real property on which the fence rails or other property are lodged.

(b) If the owner of the real property refuses to deliver up the fence rails or other property, the parties shall each select an arbitrator, who shall examine or hear evidence upon all the circumstances and facts and determine the case.

(c) If the arbitrators selected under subsection (b) cannot agree, the arbitrators shall select an umpire. The decision of a majority of the arbitrators and the umpire is final.

Sec. 2. Before the arbitrators proceed under section 1 of this chapter, the arbitrators must swear, before a person who may administer oaths, to discharge the arbitrators' duties faithfully, impartially, and according to law.

Sec. 3. If at least ten (10) persons claim the same property under section 1 of this chapter, the persons shall give notice to all interested persons of the time and place of the arbitration. Upon hearing all the facts and circumstances in the case, the arbitrators shall award to each person making a claim a proportion of the property as the arbitrators consider reasonable and just.

Sec. 4. It is not a trespass for a person to go upon the real property of another person for the purposes set forth in this chapter. A person who goes upon the real property of another

C o p y

person under this chapter shall go upon the route that will do the least possible injury to the real property, if it is practicable and convenient.

Chapter 9. Partition Fences

Sec. 1. A fence that is used by adjoining property owners as a partition fence, unless otherwise agreed upon by the property owners, is considered a partition fence and shall be repaired, maintained, and paid for as provided under this chapter.

Sec. 2. (a) The owner of a property that:

(1) is located outside;

(2) abuts; or

(3) is adjacent to;

the boundary of the corporate limits of a town or city shall separate the owner's property from adjoining properties by a partition fence constructed upon the line dividing or separating the properties regardless of when the properties were divided.

(b) Except as otherwise provided in this chapter, and if a division of the partition fence has not been made between the property owners for the building, repairing, or rebuilding of the partition fence:

(1) for a partition fence built along a property line than runs from north to south:

(A) the owner whose property lies to the east of the fence shall build the north half of the fence; and

(B) the owner whose land lies to the west of the fence shall build the south half of the fence; and

(2) for a partition fence built along a property line that runs from east to west:

(A) the owner whose property lies north of the fence shall build the west half of the fence; and

(B) the owner whose property lies to the south of the fence shall build the east half of the fence.

(c) Notwithstanding subsection (b), if either property owner has constructed one-half (1/2) of a partition fence that is not the portion required under subsection (b) and has maintained that portion of the partition fence for a period of not less than five (5) years, the property owner may continue to maintain the portion of the fence.

(d) If a property owner fails to build, rebuild, or repair a partition fence after receiving notice under this chapter, the township trustee of the township in which the property is located shall build, rebuild, or repair the fence as provided under this

C o p y

chapter.

Sec. 3. (a) A partition fence shall be built, rebuilt, and kept in repair at the cost of the property owners whose properties are enclosed or separated by the fences proportionately according to the number of rods or proportion of the fence the property owner owns along the line of the fence, whether the property owner's title is a fee simple or a life estate.

(b) If a property owner fails or refuses to compensate for building, rebuilding, or repairing the property owner's portion of a partition fence, another property owner who is interested in the fence, after having built, rebuilt, or repaired the property owner's portion of the fence, shall give to the defaulting property owner or the defaulting property owner's agent or tenant twenty (20) days notice to build, rebuild, or repair the defaulting property owner's portion of the fence. If the defaulting property owner or the defaulting property owner's agent or tenant fails to build, rebuild, or repair the fence within twenty (20) days, the complaining property owner shall notify the township trustee of the township in which the properties are located of the default.

(c) This subsection applies if the fence sought to be established, rebuilt, or repaired is on a township line. Unless disqualified under subsection (h), the complaining property owner shall notify the trustee of the township in which the property of the complaining property owner is located of the default under subsection (b), and the trustee has jurisdiction in the matter.

(d) The township trustee who receives a complaint under this section shall:

(1) estimate the costs for building, rebuilding, or repairing the partition fence; and

(2) within a reasonable time after receiving the complaint, make out a statement and notify the defaulting property owner of the probable cost of building, rebuilding, or repairing the fence.

If twenty (20) days after receiving a notice under this subsection the defaulting property owner has not built, rebuilt, or repaired the fence, the trustee shall build or repair the fence. The trustee may use only the materials for the fences that are most commonly used by the farmers of the community.

(e) If the trustee of a township is disqualified to act under subsection (h), the trustee of an adjoining township who resides nearest to where the fence is located shall act on the complaint upon receiving a notice by a property owner who is interested in

C o p y

the fence.

(f) A lawful partition fence is any one (1) of the following that is sufficiently tight and strong to hold cattle, hogs, horses, mules, and sheep:

(1) A straight board and wire fence, a straight wire fence, a straight board fence, or a picket fence four (4) feet high.

(2) A straight rail fence four and one-half (4 1/2) feet high.

(3) A worm rail fence five (5) feet high.

(g) This subsection applies if a ditch or creek crosses the division line between two (2) property owners, causing additional expense in the maintenance of the part over the stream. If the property owners cannot agree upon the proportionate share of each property owner, the township trustee shall appoint three (3) disinterested citizens who shall apportion the partition fence to be built by each property owner.

(h) If a township trustee is:

(1) related to any of the interested property owners; or

(2) an interested property owner;

the trustee of any other township who resides nearest to where the fence is located shall act under this chapter.

(i) This subsection applies if a ditch or creek forms, covers, or marks the dividing line or a part of the dividing line between the properties of separate and different property owners so that partition fences required under this chapter cannot be built and maintained on the dividing line. The partition fences shall be built and maintained under this chapter as near to the boundary line as is practical, and each property owner shall build a separate partition fence on the property owner's property and maintain the fence at the property owner's cost.

(j) This subsection applies where a partition fence required under this chapter crosses a ditch or creek and it is impracticable to construct or maintain that portion of the fence that crosses the ditch or creek as a stationary fence. Instead of the portion of the fence that would cross the ditch or creek, there shall be constructed, as a part of the partition fence, floodgates or other similar structures that are sufficiently high, tight, and strong to turn hogs, sheep, cattle, mules, and horses or other domestic animals. The floodgates or other similar structures shall be constructed to swing up in times of high water and to connect continuously with the partition fences.

(k) This subsection applies if the building and maintenance of the floodgates or other similar structure required under subsection

C o p y

(j) causes additional expenses and the property owners cannot agree upon the character of floodgates or other similar structure, or upon the proportionate share of the cost to be borne by each property owner. The township trustee, upon notice in writing from either property owner of a disagreement and the nature of the disagreement, shall appoint three (3) disinterested citizens of the township who shall determine the kind of structure and apportion the cost of the floodgate or other structure between the property owners, taking into consideration the parts of the fence being maintained by each property owner.

(l) The determination of a majority of the arbitrators of any matter or matters submitted to them under this section is final and binding on each property owner. The compensation of the arbitrators is two dollars ($2) each, which shall be paid by the property owners in the proportion each property owner is ordered to bear the expense of a gate or structure.

(m) This subsection applies if either or both of the property owners fail to construct or compensate for constructing the structure determined upon by the arbitrators in the proportion determined within thirty (30) days after the determination. The township trustee shall proceed at once to construct the gate or structure and collect the cost of the gate or structure, including the compensation of the arbitrators, from the defaulting property owner in the same manner as is provided for ordinary partition fences. The floodgate or other structure shall be repaired, rebuilt, or replaced according to the determination of the arbitrators.

Sec. 4. (a) As soon as the township trustee has had a fence built, rebuilt, or repaired under this chapter, the trustee shall make out a certified statement in triplicate of the actual cost incurred by the trustee in the building, rebuilding, or repairing the fence. One (1) copy must be handed to or mailed to the property owner affected by the work, one (1) copy must be retained by the trustee as a record for the township, and one (1) copy must be filed in the auditor's office of the county in which the fence is located and in which the property of the property owner affected by the work is located. At the same time the trustee shall also file with the county auditor a claim against the county for the amount shown in the statement filed with the county auditor.

(b) The county auditor shall:

(1) examine the claims and statement as other claims are examined; and

(2) present the claims and statements to the board of county

C o p y

commissioners at the next regular meeting.

Unless there is an apparent error in the statement or claim, the board of county commissioners shall make allowance, and the county auditor shall issue a warrant for the amount claimed to the township trustee submitting the claim out of the county general fund without an appropriation being made by the county council.

(c) The amount paid out of the county general fund under subsection (b) shall be:

(1) placed by the county auditor on the tax duplicate against the property of the property owner affected by the work;

(2) collected as taxes are collected; and

(3) when collected, paid into the county general fund.

Sec. 5. The township trustee has no personal liability for a contract the trustee makes under this chapter for building, rebuilding, or repairing fences under this chapter. The contractor shall receive payment from the township funds, which shall be reimbursed when the contract price is paid into the county treasury.

Sec. 6. This chapter shall be liberally construed in favor of the objects and purposes for which it is enacted and shall apply to all land, whether enclosed or unenclosed, cultivated or uncultivated, wild or wood lot.

Chapter 10. Spite Fences as Nuisance

Sec. 1. A structure in the nature of a fence unnecessarily exceeding six (6) feet in height, maliciously:

(1) erected; or

(2) maintained;

for the purpose of annoying the owners or occupants of adjoining property, is considered a nuisance.

Sec. 2. (a) An owner or occupant injured either in the owner's or occupant's comfort or the enjoyment of the owner's or occupant's adjoining property by the nuisance described in section 1 of this chapter may bring an action for:

(1) damages in compensation for the nuisance;

(2) the abatement of the nuisance; and

(3) all other remedies for the prevention of a nuisances.

(b) The provisions of law concerning actions for nuisance are applicable to an action under subsection (a).

SECTION 12. IC 32-27 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

ARTICLE 27. CONSTRUCTION WARRANTIES ON REAL

C o p y

PROPERTY

Chapter 1. Statutory Home Improvement Warranties

Sec. 1. (a) This chapter applies only to a home improvement that is made under a home improvement contract.

(b) This chapter applies only to a home improvement contract entered into after June 30, 1992.

Sec. 2. The warranties defined by this chapter become effective on the warranty date.

Sec. 3. (a) As used in this chapter, "home" means an attached or detached single family dwelling.

(b) The term includes an attached garage.

(c) The term does not include:

(1) a driveway;
(2) a walkway;
(3) a patio;
(4) a boundary wall;
(5) a retaining wall not necessary for the structural stability of the home;
(6) landscaping;
(7) a fence;
(8) an offsite improvement;
(9) an appurtenant recreational facility; or
(10) other similar item.

Sec. 4. As used in this chapter, "home improvement" means any alteration, repair, or other modification of an existing home.

Sec. 5. As used in this chapter, "home improvement contract" means a written agreement between a remodeler and an owner to make a home improvement.

Sec. 6. As used in this chapter, "load bearing parts of the home" means the following:

(1) Foundation systems and footings.
(2) Beams.
(3) Girders.
(4) Lintels.
(5) Columns.
(6) Walls and partitions.
(7) Floor systems.
(8) Roof framing systems.

Sec. 7. As used in this chapter, "major structural defect" means actual physical damage to the load bearing functions of the load bearing parts of the home that:

(1) were installed, altered, or repaired by the remodeler in the

C o p y

course of remodeling the home; or

(2) although not installed, altered, or repaired by the remodeler, were directly damaged by the work of the remodeler;

to the extent that the home becomes unsafe, unsanitary, or otherwise unlivable.

Sec. 8. As used in this chapter, "owner" means a person who:

(1) owns the home; and

(2) contracts with the remodeler to perform the home improvement work in the home improvement contract.

The term includes any of the owner's successors in title before the expiration of the warranties defined by this chapter.

Sec. 9. As used in this chapter, "person" means an individual, a corporation, a limited liability company, a business trust, an estate, a trust, a partnership, an association, a cooperative, or other legal entity.

Sec. 10. As used in this chapter, "remodeler" means a person who contracts with an owner to alter, repair, or modify the owner's home.

Sec. 11. As used in this chapter, "warranty date" means the date by which all home improvements and work under the home improvement contract have been substantially completed so the owner can occupy and use the improvement in the manner contemplated by the home improvement contract.

Sec. 12. (a) In performing home improvements and in contracting to perform home improvements, a remodeler may warrant to the owner the following:

(1) During the two (2) year period beginning on the warranty date, the home improvement must be free from defects in workmanship or materials.

(2) During the two (2) year period beginning on the warranty date, the home improvement must be free from defects caused by faulty installation of:

(A) new plumbing systems;

(B) new electrical systems;

(C) new heating, cooling, and ventilating systems; or

(D) extended parts of existing systems.

The warranty does not cover appliances, fixtures, or items of equipment that are installed under the home improvement contract.

(3) During the four (4) year period beginning on the warranty date, the home improvement must be free from defects caused

C o p y

by faulty workmanship or defective materials in the roof or roof systems of the home improvement.

(4) During the ten (10) year period beginning on the warranty date, the home improvement and affected load bearing parts of the home must be free from major structural defects.

(b) The warranties provided in this section survive the passing of legal or equitable title in the home to subsequent persons.

Sec. 13. (a) A remodeler may disclaim all implied warranties only if all of the following conditions are met:

(1) The warranties defined in this chapter are expressly provided for in the home improvement contract between a remodeler and an owner.

(2) The performance of the warranty obligations is guaranteed by an insurance policy in an amount equal to the contract price made under the home improvement contract.

(3) The remodeler carries completed operations products liability insurance covering the remodeler's liability for reasonably foreseeable consequential damages arising from a defect covered by the warranties provided by the remodeler.

(b) The disclaimer must be printed in a minimum size of 10 point boldface type setting forth that the warranties defined by this chapter replace the implied warranties that have been disclaimed by the remodeler. The owner must affirmatively acknowledge by complete signature that the owner has read, understands, and voluntarily agrees to the disclaimer.

(c) The owner must acknowledge the disclaimer of implied warranties by signing, at the time of execution of the home improvement contract, a separate one (1) page notice attached to the home improvement contract that includes the following language:

"NOTICE OF WAIVER OF IMPLIED WARRANTIES

I recognize that by accepting the express warranties and the insurance covering those warranties for the periods provided in this home improvement contract, I am giving up the right to any claims for implied warranties, which may be greater than the express warranties. Implied warranties are unwritten warranties relating to the reasonable expectations of a homeowner with regard to the remodeling and home improvement of the homeowner's home, as those reasonable expectations are defined by the courts on a case by case basis.".

(d) If there is a default of the:

C o p y

(1) insurance for the performance of the warranty obligations; or

(2) completed operations products liability insurance;

the disclaimer by the remodeler is void.

Sec. 14. (a) If a remodeler breaches a warranty set forth in section 12 of this chapter, the owner may bring an action against the remodeler for:

(1) damages arising from the breach; or

(2) specific performance.

(b) If damages are awarded for a breach of a warranty set forth in section 12 of this chapter, the award may not be for more than:

(1) the actual damages that are:

(A) necessary to effect repair of the defect that is the cause of the breach; or

(B) the difference between the value of the home without the defect and the home with the defect;

(2) the reasonably foreseeable consequential damages arising from the defect covered by the warranty; and

(3) attorney's fees, if those fees are provided for in the written contract between the parties.

Sec. 15. (a) The warranties defined in this chapter are in addition to any other rights created by contract between the parties.

(b) The remedies provided in section 14 of this chapter do not limit any remedies available in an action that is not predicated on the breach of an express or implied warranty defined by this chapter.

Chapter 2. New Home Construction Warranties

Sec. 1. The warranties defined by this chapter (or IC 34-4-20.5 or IC 32-15-7 before their repeal) become effective on the warranty date attributed to a new home.

Sec. 2. As used in this chapter, "initial home buyer" means a person who executes a contract with a builder to buy a new home and who:

(1) occupies the new home as its first occupant; and

(2) occupies the new home as a residence.

Sec. 3. As used in this chapter, "major structural defect" means actual damage to the load bearing part of a new home, including actual damage due to:

(1) subsidence;

(2) expansion; or

(3) lateral movement;

C o p y

of the soil affecting the load bearing function, unless the subsidence, expansion, or lateral movement of the soil is caused by flood, earthquake, or some other natural disaster.

Sec. 4. (a) As used in this chapter, "new home" means a new dwelling occupied for the first time after construction.

(b) The term does not include:

(1) a detached garage;
(2) a driveway;
(3) a walkway;
(4) a patio;
(5) a boundary wall;
(6) a retaining wall not necessary for the structural stability of the new home;
(7) landscaping,
(8) a fence;
(9) nonpermanent construction material;
(10) an off-site improvement;
(11) an appurtenant recreational facility; or
(12) other similar item.

Sec. 5. (a) As used in this chapter, "home buyer" means a purchaser of a new home.

(b) The term includes any owner of the new home before the expiration of the warranties defined by this chapter.

Sec. 6. As used in this chapter, "builder" means a person who constructs new homes for sale, including the construction of new homes on land owned by home buyers.

Sec. 7. As used in this chapter, "warranty date" means the date of the first occupancy of the new home as a residence by the initial home buyer.

Sec. 8. (a) In selling a completed new home, and in contracting to sell a new home to be completed, the builder may warrant to the initial home buyer the following:

(1) During the two (2) year period beginning on the warranty date, the new home will be free from defects caused by faulty workmanship or defective materials.
(2) During the two (2) year period beginning on the warranty date, the new home will be free from defects caused by faulty installation of:
(A) plumbing;
(B) electrical;
(C) heating;
(D) cooling; or

C o p y

(E) ventilating;

systems, exclusive of fixtures, appliances, or items of equipment.

(3) During the four (4) year period beginning on the warranty date, the new home will be free from defects caused by faulty workmanship or defective materials in the roof or roof systems of the new home.

(4) During the ten (10) year period beginning on the warranty date, the new home will be free from major structural defects.

(b) The warranties provided in this section (or IC 34-4-20.5-8 or IC 32-15-7 before their repeal) survive the passing of legal or equitable title in the new home to a home buyer.

Sec. 9. (a) A builder may disclaim all implied warranties only if all of the following conditions are met:

(1) The warranties defined in this chapter are expressly provided for in the written contract between a builder and an initial home buyer of a new home.

(2) The performance of the warranty obligations is backed by an insurance policy in an amount at least equal to the purchase price of the new home.

(3) The builder carries completed operations products liability insurance covering the builder's liability for reasonably foreseeable consequential damages arising from a defect covered by the warranties provided by the builder.

(b) The disclaimer must be printed in a minimum size of 10 point boldface type setting forth that the statutory warranties of this chapter are in lieu of the implied warranties that have been disclaimed by the builder, and the initial home buyer must affirmatively acknowledge by complete signature that the home buyer has read, understands, and voluntarily agrees to the disclaimer. Additionally, the initial home buyer must acknowledge the disclaimer of implied warranties by signing, at the time of execution of the contract, a separate one (1) page notice, attached to the contract, that includes and begins with the following language:

"NOTICE OF WAIVER OF IMPLIED WARRANTIES

I recognize that by accepting the express warranties and the insurance covering those warranties for the periods of time provided in this contract, I am giving up the right to any claims for implied warranties, which may be greater than the express warranties. Implied warranties are unwritten warranties relating to the reasonable expectations of a

C o p y

homeowner with regard to the construction of the homeowner's home, as those reasonable expectations are defined by the courts on a case by case basis.".

(c) If there is a default of either:

(1) the insurance for the performance of the warranty obligations; or

(2) the completed operations products liability insurance;

the disclaimer by the builder is void from and after the default.

Sec. 10. (a) If a builder provides and breaches a warranty set forth in section 8 of this chapter (or IC 34-4-20.5-8 or IC 32-15-7-8 before their repeal), the home buyer may bring an action against the builder for:

(1) damages arising from the breach; or

(2) specific performance.

(b) If damages are awarded for a breach of a warranty set forth in section 8 of this chapter (or IC 34-4-20.5-8 or IC 32-15-7-8 before their repeal), the award may be for not more than:

(1) the actual damages, which are either:

(A) the amount necessary to effect repair of the defect that is the cause of the breach; or

(B) the amount of the difference between the value of the new home without the defect and the value of the new home with the defect;

(2) the reasonably foreseeable consequential damages arising from the defect covered by the warranty; and

(3) attorney's fees, if those fees are provided for in the written contract between the parties.

Sec. 11. (a) The warranties set forth in this chapter (or IC 34-4-20.5 or IC 32-15-7 before their repeal) are in addition to any rights created by contract between the parties.

(b) The remedies provided in section 10 of this chapter (or IC 34-4-20.5-10 or IC 32-15-7-10 before their repeal) do not limit any remedies available in an action that is not predicated upon the breach of an express or implied warranty set forth in this chapter (or IC 34-4-20.5 or IC 32-15-7 before their repeal) or otherwise existing.

SECTION 13. IC 32-28 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

ARTICLE 28. LIENS ON REAL PROPERTY

Chapter 1. Record of Liens; Duty to Satisfy Record After Release or Discharge of Liens

C o p y

Sec. 1. (a) This section applies to a person, a firm, a limited liability company, a corporation, a copartnership, an association, an administrator, an executor, a guardian, a trustee, or another person who is the owner, holder, or custodian of any mortgage, mechanic's lien, judgment, or other lien recorded in Indiana.

(b) When the debt or obligation and the interest on the debt or obligation that the mortgage, mechanic's lien, judgment, or other lien secures has been fully paid, lawfully tendered, and discharged, the owner, holder, or custodian shall:

(1) release;

(2) discharge; and

(3) satisfy of record;

the mortgage, mechanic's lien, judgment, or other lien.

(c) If the release, discharge, or satisfaction is a release, discharge, or satisfaction in part, the instrument must:

(1) state on its face that the instrument is a:

(A) partial release;

(B) partial discharge; or

(C) partial satisfaction; and

(2) describe what portion of the mortgage, mechanic's lien, judgment, or other lien is released, discharged, or satisfied.

Sec. 2. (a) This section applies if:

(1) the mortgagor or another person having the right to demand the release of a mortgage or lien makes a written demand, sent by registered or certified mail with return receipt requested, to the owner, holder, or custodian to release, discharge, and satisfy of record the mortgage, mechanic's lien, judgment, or other lien; and

(2) the owner, holder, or custodian fails, neglects, or refuses to release, discharge, and satisfy of record the mortgage, mechanic's lien, judgment, or other lien as required under section 1 of this chapter not later than fifteen (15) days after the date the owner, holder, or custodian receives the written demand.

(b) An owner, holder, or custodian shall forfeit and pay to the mortgagor or other person having the right to demand the release of the mortgage or lien:

(1) a sum not to exceed five hundred dollars ($500) for the failure, neglect, or refusal of the owner, holder, or custodian to:

(A) release;

(B) discharge; and

copy

(C) satisfy of record the mortgage or lien; and

(2) costs and reasonable attorney's fees incurred in enforcing the release, discharge, or satisfaction of record of the mortgage or lien.

(c) If the court finds in favor of a plaintiff who files an action to recover damages under subsection (b), the court shall award the plaintiff the costs of the action and reasonable attorney's fees as a part of the judgment.

(d) The court may appoint a commissioner and direct the commissioner to release and satisfy the mortgage, mechanic's lien, judgment, or other lien. The costs incurred in connection with releasing and satisfying the mortgage, mechanic's lien, judgment, or other lien shall be taxed as a part of the costs of the action.

(e) The owner, holder, or custodian, by virtue of having recorded the mortgage, mechanic's lien, judgment, or other lien in Indiana, submits to the jurisdiction of the courts of Indiana as to any action arising under this section.

Chapter 2. Limitation on and Reinstatement of Liens After Destruction of Records

Sec. 1. (a) Except as provided in subsections (b) and (c), if the record of a judgment of an Indiana court that would otherwise be a lien upon real estate is destroyed, six (6) months after the date when the record is destroyed the judgment ceases to be a lien upon any real estate as against any right, title, lien on or interest in the real estate accruing to or acquired by any person for a valuable consideration and without notice.

(b) The record of a judgment does not cease to be a lien under subsection (a) six (6) months after the date when the record is destroyed if the judgment plaintiff or the assignee or owner of the judgment, less than six (6) months after the date when the record is destroyed, files an action to reinstate the record of the judgment in the court having jurisdiction of the record.

(c) If the plaintiff obtains a judgment or decree in the action filed under subsection (b), the filing of the action to reinstate the record preserves the lien of the judgment in the same manner and to the same extent as if the record had not been destroyed.

Chapter 3. Mechanic's Liens

Sec. 1. (a) A contractor, a subcontractor, a mechanic, a lessor leasing construction and other equipment and tools, whether or not an operator is also provided by the lessor, a journeyman, a laborer, or any other person performing labor or furnishing materials or machinery, including the leasing of equipment or tools, for:

C o p y

(1) the erection, alteration, repair, or removal of:
(A) a house, mill, manufactory, or other building; or
(B) a bridge, reservoir, system of waterworks, or other structure; or
(2) the construction, alteration, repair, or removal of a walk or sidewalk located on the land or bordering the land, a stile, a well, a drain, a drainage ditch, a sewer, or a cistern; or
(3) any other earth moving operation;
may have a lien as set forth in this section.

(b) A person described in subsection (a) may have a lien separately or jointly upon the:
(1) house, mill, manufactory, or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth:
(A) that the person erected, altered, repaired, moved, or removed; or
(B) for which the person furnished materials or machinery of any description; and
(2) on the interest of the owner of the lot or parcel of land:
(A) on which the structure or improvement stands; or
(B) with which the structure or improvement is connected;
to the extent of the value of any labor done or the material furnished, or both, including any use of the leased equipment and tools.

(c) All claims for wages of mechanics and laborers employed in or about a shop, mill, wareroom, storeroom, manufactory or structure, bridge, reservoir, system of waterworks or other structure, sidewalk, walk, stile, well, drain, drainage ditch, cistern, or any other earth moving operation shall be a lien on all the:
(1) machinery;
(2) tools;
(3) stock;
(4) material; or
(5) finished or unfinished work;
located in or about the shop, mill, wareroom, storeroom, manufactory or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth used in a business.

(d) If the person, firm, limited liability company, or corporation described in subsection (a) is in failing circumstances, the claims described in this section shall be preferred debts whether a claim

C o p y

or notice of lien has been filed.

(e) Subject to subsection (f), a contract for the construction, alteration, or repair of:

(1) a Class 2 structure (as defined in IC 22-12-1-5);

(2) an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5); or

(3) property that is:

(A) owned, operated, managed, or controlled by:

(i) a public utility (as defined in IC 8-1-2-1);

(ii) municipally owned utility (as defined in IC 8-1-2-1);

(iii) joint agency (as defined in IC 8-1-2.2-2);

(iv) rural electric membership corporation formed under IC 8-1-13-4; or

(v) not-for-profit utility (as defined in IC 8-1-2-125);

regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, or power to the public;

may include a provision or stipulation in the contract of the owner and principal contractor that a lien may not attach to the real estate, building, structure or any other improvement of the owner.

(f) A contract containing a provision or stipulation described in subsection (e) must meet the requirements of this subsection to be valid against subcontractors, mechanics, journeymen, laborers, or persons performing labor upon or furnishing materials or machinery for the property or improvement of the owner. The contract: must:

(1) be in writing;

(2) contain specific reference by legal description of the real estate to be improved;

(3) be acknowledged as provided in the case of deeds; and

(4) be filed and recorded in the recorder's office of the county in which the real estate, building, structure, or other improvement is situated not more than five (5) days after the date of execution of the contract.

A contract containing a provision or stipulation described in subsection (e) does not affect a lien for labor, material, or machinery supplied before the filing of the contract with the recorder.

(g) Upon the filing of a contract under subsection (f), the recorder shall:

(1) record the contract at length in the order of the time it was

C o p y

received in books provided by the recorder for that purpose;
(2) index the contract in the name of the:
(A) contractor; and
(B) owner;
in books kept for that purpose; and
(3) collect a fee for recording the contract as is provided for the recording of deeds and mortgages.

(h) A person, firm, partnership, limited liability company, or corporation that sells or furnishes on credit any material, labor, or machinery for the alteration or repair of an owner occupied single or double family dwelling or the appurtenances or additions to the dwelling to:
(1) a contractor, subcontractor, mechanic; or
(2) anyone other than the occupying owner or the owner's legal representative;
must furnish to the occupying owner of the parcel of land where the material, labor, or machinery is delivered a written notice of the delivery or work and of the existence of lien rights not later than thirty (30) days after the date of first delivery or labor performed. The furnishing of the notice is a condition precedent to the right of acquiring a lien upon the lot or parcel of land or the improvement on the lot or parcel of land.

(i) A person, firm, partnership, limited liability company, or corporation that sells or furnishes on credit material, labor, or machinery for the original construction of a single or double family dwelling for the intended occupancy of the owner upon whose real estate the construction takes place to a contractor, subcontractor, mechanic, or anyone other than the owner or the owner's legal representatives must:
(1) furnish the owner of the real estate:
(A) as named in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor; or
(B) if IC 6-1.1-5-9 applies, as named in the transfer books of the township assessor;
with a written notice of the delivery or labor and the existence of lien rights not later than sixty (60) days after the date of the first delivery or labor performed; and
(2) file a copy of the written notice in the recorder's office of the county not later than sixty (60) days after the date of the first delivery or labor performed.
The furnishing and filing of the notice is a condition precedent to the right of acquiring a lien upon the real estate or upon the

C o p y

improvement constructed on the real estate.

(j) A lien for material or labor in original construction does not attach to real estate purchased by an innocent purchaser for value without notice of a single or double family dwelling for occupancy by the purchaser unless notice of intention to hold the lien is recorded under section 3 of this chapter before recording the deed by which the purchaser takes title.

Sec. 2. (a) The entire land upon which the building, erection, or other improvement is situated, including the part of the land not occupied by the building, erection, or improvement, is subject to a lien to the extent of the right, title, and interest of the owner for whose immediate use or benefit the labor was done or material furnished.

(b) If:

(1) the owner has only a leasehold interest; or

(2) the land is encumbered by mortgage;

the lien, so far as concerns the buildings erected by the lienholder, is not impaired by forfeiture of the lease for rent or foreclosure of mortgage. The buildings may be sold to satisfy the lien and may be removed not later than ninety (90) days after the sale by the purchaser.

Sec. 3. (a) Except as provided in subsection (b), a person who wishes to acquire a lien upon property, whether the claim is due or not, must file in duplicate a sworn statement and notice of the person's intention to hold a lien upon the property for the amount of the claim:

(1) in the recorder's office of the county; and

(2) not later than ninety (90) days after performing labor or furnishing materials or machinery described in section 1 of this chapter.

The statement and notice of intention to hold a lien may be verified and filed on behalf of a client by an attorney registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court.

(b) This subsection applies to a person that performs labor or furnishes materials or machinery described in section 1 of this chapter related to a Class 2 structure (as defined in IC 22-12-1-5) or an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5). A person who wishes to acquire a lien upon property, whether the claim is due or not, must file in duplicate a sworn statement and notice of the person's intention to hold a lien upon the property for the amount of the

C o p y

claim:

(1) in the recorder's office of the county; and

(2) not later than sixty (60) days after performing labor or furnishing materials or machinery described in section 1 of this chapter.

The statement and notice of intention to hold a lien may be verified and filed on behalf of a client by an attorney registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court.

(c) A statement and notice of intention to hold a lien filed under this section must specifically set forth:

(1) the amount claimed;

(2) the name and address of the claimant;

(3) the owner's:

(A) name; and

(B) latest address as shown on the property tax records of the county; and

(4) the:

(A) legal description; and

(B) street and number, if any;

of the lot or land on which the house, mill, manufactory or other buildings, bridge, reservoir, system of waterworks, or other structure may stand or be connected with or to which it may be removed.

The name of the owner and legal description of the lot or land will be sufficient if they are substantially as set forth in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor or, if IC 6-1.1-5-9 applies, the transfer books of the township assessor at the time of filing of the notice of intention to hold a lien.

(d) The recorder shall:

(1) mail, first class, one (1) of the duplicates of the statement and notice of intention to hold a lien to the owner named in the statement and notice not later than three (3) business days after recordation;

(2) post records as to the date of the mailing; and

(3) collect a fee of two dollars ($2) from the lien claimant for each statement and notice that is mailed.

The statement and notice shall be addressed to the latest address of the owner as specifically set out in the sworn statement and notice of the person intending to hold a lien upon the property.

Sec. 4. Any otherwise valid and enforceable statement and

C o p y

notice of intention to hold a lien filed before March 10, 1967, is valid and enforceable.

Sec. 5. (a) As used in this section, "lender" refers to:

(1) an individual;

(2) a supervised financial organization (as defined in IC 24-4.5-1-301);

(3) an insurance company or a pension fund; or

(4) any other entity that has the authority to make loans.

(b) The recorder shall record the statement and notice of intention to hold a lien when presented under section 3 of this chapter in the miscellaneous record book. The recorder shall charge a fee for recording the statement and notice in accordance with IC 36-2-7-10. When the statement and notice of intention to hold a lien is recorded, the lien is created. The recorded lien relates back to the date the mechanic or other person began to perform the labor or furnish the materials or machinery. Except as provided in subsections (c) and (d), a lien created under this chapter has priority over a lien created after it.

(c) The lien of a mechanic or materialman does not have priority over the lien of another mechanic or materialman.

(d) The mortgage of a lender has priority over all liens created under this chapter that are recorded after the date the mortgage was recorded, to the extent of the funds actually owed to the lender for the specific project to which the lien rights relate. This subsection does not apply to a lien that relates to a construction contract for the development, construction, alteration, or repair of the following:

(1) A Class 2 structure (as defined in IC 22-12-1-5).

(2) An improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5).

(3) Property that is:

(A) owned, operated, managed, or controlled by:

(i) a public utility (as defined in IC 8-1-2-1);

(ii) a municipally owned utility (as defined in IC 8-1-2-1);

(iii) a joint agency (as defined in IC 8-1-2.2-2);

(iv) a rural electric membership corporation formed under IC 8-1-13-4; or

(v) a not-for-profit utility (as defined in IC 8-1-2-125);

regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, or power to the public.

copy

Sec. 6. (a) A person may enforce a lien by filing a complaint in the circuit or superior court of the county where the real estate or property that is the subject of the lien is situated. The complaint must be filed not later than one (1) year after:

(1) the date the statement and notice of intention to hold a lien was recorded under section 3 of this chapter; or

(2) subject to subsection (c), the expiration of the credit, if a credit is given.

(b) Except as provided in subsection (c), if a lien is not enforced within the time set forth in subsection (a), the lien is void.

(c) A credit does not extend the time for filing an action to enforce the lien under subsection (a)(2) unless:

(1) the terms of the credit are in writing;

(2) the credit was executed by:

(A) the lienholder; and

(B) all owners of record; and

(3) the credit was recorded:

(A) in the same manner as the original statement and notice of intention to hold a lien; and

(B) not later than one (1) year after the date the statement and notice of intention to hold a lien was recorded.

(d) If the lien is foreclosed under this chapter, the court rendering judgment shall order a sale to be made of the property subject to the lien. The officers making the sale shall sell the property without any relief from valuation or appraisement laws.

Sec. 7. (a) A person whose lien is recorded under this chapter may be a party to an action to enforce a lien.

(b) The court may, by judgment, direct a sale of the land and building for the satisfaction of the liens and costs. The sale shall not prejudice the rights of:

(1) a prior encumbrance; or

(2) an owner or other person who is not a party to the action.

(c) If several actions are brought by different claimants and are pending at the same time, the court may order the actions to be consolidated.

Sec. 8. If the proceeds of the sale of the property subject to a lien are insufficient to pay all the claimants, the court shall order the claimants to be paid in proportion to the amount due each claimant.

Sec. 9. (a) This section applies to a:

(1) subcontractor;

(2) lessor leasing construction and other equipment and tools,

C o p y

regardless of whether an operator is also provided by the lessor;

(3) journeyman; or

(4) laborer;

employed or leasing any equipment or tools used by the lessee in erecting, altering, repairing, or removing any house, mill, manufactory or other building, or bridge, reservoir, system of waterworks, or other structure or earth moving, or in furnishing any material or machinery for these activities.

(b) Except as provided in section 12 of this chapter, in order to acquire and hold a lien, a person described in subsection (a) must give to the property owner, or if the property owner is absent, to the property owner's agent, written notice particularly setting forth the amount of the person's claim and services rendered for which:

(1) the person's employer or lessee is indebted to the person; and

(2) the person holds the property owner responsible.

(c) Subject to subsections (d) and (e), the property owner is liable for the person's claim.

(d) The property owner is liable to a person described in subsection (a) for not more than the amount that is due and may later become due from the owner to the employer or lessee.

(e) A person described in subsection (a) may recover the amount of the person's claim if, after the amounts of other claims that have priority are subtracted from the amount due from the property owner to the employer or lessee, the remainder of the amount due from the property owner to the employer or lessee is sufficient to pay the amount of the person's claim.

(f) This section applies to a person described in subsection (a) who gives written notice, to the property owner or, if the property owner is absent, to the owner's agent, before labor is performed or materials or machinery is furnished. The notice must particularly set forth the amount of:

(1) labor the person has contracted to perform; or

(2) materials or machinery the person has contracted to furnish;

for the employer or lessee in erecting, altering, repairing, or removing any of the buildings or other structures described in subsection (a). A person described in subsection (a) has the same rights and remedies against the property owner for the amount of the labor performed by the person or materials or machinery

C o p y

furnished by the person after the notice is given, as are provided in this chapter for persons who serve notice after performing the labor or furnishing the materials or machinery.

(g) If an action is brought against a property owner under this section, all subcontractors, equipment lessors leasing equipment, journeymen, and laborers who have:

(1) performed labor or furnished materials or machinery; and

(2) given notice under this section;

may become parties to the action. If, upon final judgment against the property owner the amount recovered and collected is not sufficient to pay the claimants in full, the amount recovered and collected shall be divided among the claimants pro rata.

Sec. 10. (a) A lien is void if both of the following occur:

(1) The owner of property subject to a mechanic's lien or any person or corporation having an interest in the property, including a mortgagee or a lienholder, provides written notice to the owner or holder of the lien to file an action to foreclose the lien.

(2) The owner or holder of the lien fails to file an action to foreclose the lien in the county where the property is located not later than thirty (30) days after receiving the notice.

However, this section does not prevent the claim from being collected as other claims are collected by law.

(b) A person who gives notice under subsection (a)(1) by registered or certified mail to the lienholder at the address given in the recorded statement and notice of intention to hold a lien may file an affidavit of service of the notice to file an action to foreclose the lien with the recorder of the county in which the property is located. The affidavit must state the following:

(1) The facts of the notice.

(2) That more than thirty (30) days have passed since the notice was received by the lienholder.

(3) That no action for foreclosure of the lien is pending.

(4) That no unsatisfied judgment has been rendered on the lien.

(c) The recorder shall:

(1) record the affidavit of service in the miscellaneous record book of the recorder's office; and

(2) certify on the face of the record any lien that is fully released.

When the recorder records the affidavit and certifies the record under this subsection, the real estate described in the lien is

C o p y

released from the lien.

Sec. 11. (a) In an action to foreclose a lien:

(1) the defendant or owner of the property subject to the lien; or

(2) any person having an interest in the property subject to the lien, including a mortgagee or other lienholder;

may file in the action a written undertaking with surety to be approved by the court.

(b) An undertaking filed under this section must provide that the person filing it will pay any judgment that may be recovered in the action to foreclose the lien, including costs and attorney's fees allowed by the court, if the claim on which the judgment is founded is found by the court to have been a lien on the property at the time the action was filed.

(c) If an undertaking is filed and approved by the court:

(1) the court shall enter an order releasing the property from the lien; and

(2) the property shall be discharged from the lien.

Sec. 12. (a) This section applies to a person who:

(1) performs work or labor such as:

(A) grading;

(B) building embankments;

(C) making excavations for track;

(D) building:

(i) bridges;

(ii) trestlework;

(iii) works of masonry;

(iv) fencing; or

(v) other structures; or

(E) performs work of any kind;

in the construction or repair of a railroad or part of a railroad in Indiana; or

(2) furnishes material for:

(A) a bridge, trestlework, work of masonry, fence, or other structure; or

(B) use in the construction or repair of a railroad or part of a railroad;

in Indiana.

(b) The work, labor, or material described in subsection (a) may be provided under a contract:

(1) with the railroad corporation building, repairing, or owning the railroad; or

C o p y

(2) with a person, corporation, or company engaged as:
(A) lessee;
(B) contractor;
(C) subcontractor; or
(D) agent;
of the railroad corporation in the work of constructing or repairing the railroad or part of the railroad in Indiana.

(c) A person to whom this section applies may have a lien to the extent of the work or labor performed, or material furnished, or both, upon:
(1) the right-of-way and franchises of the railroad corporation; and
(2) the works and structures as set forth in this section that may be upon the right-of-way and franchise of the railroad corporation;
within the limits of the county in which the work or labor may be performed or the material may be furnished.

(d) A person performing work or labor or furnishing materials under a contract described in subsection (b)(2) is not required to give notice to the railroad corporation under section 9 of this chapter in order to acquire and hold a lien for labor performed or material furnished under the provisions of this section. The performance of the labor or the furnishing of the materials is sufficient notice to the railroad corporation. A lien that is acquired as set forth in this subsection shall be enforced as other mechanic's liens are enforced in Indiana.

(e) A person who, in doing business with a railroad company, has constructed a building or other improvement on a portion of the railroad right-of-way adjacent to the person's place of business may have a lien to the extent of the fair market value of the improvement on that portion of the right-of-way. The lien may be acquired and enforced:
(1) upon abandonment of the right-of-way by the railroad company; and
(2) against the successors in title of the railroad company.
This subsection does not apply to property that is subject to a written agreement providing for the disposition of improvements upon abandonment. Liens acquired under this subsection shall be enforced as other mechanic's liens are enforced in Indiana.

Sec. 13. A person who desires to acquire the lien provided for in section 12 of this chapter must give notice of the person's intention to hold the lien by causing the notice to be recorded in the

C o p y

recorder's office of the county in which the work was done or material furnished in the same manner and within the same time as provided in this chapter for giving notice of a mechanic's lien. A person who gives notice within the proper time may enforce the lien in the same manner as mechanic's liens are enforced. The suit must be brought within one (1) year after the time the notice was filed in the recorder's office.

Sec. 14. (a) Except as provided in subsection (b), in an action to enforce a lien under this chapter, the plaintiff or lienholder may recover reasonable attorney's fees as a part of the judgment.

(b) A plaintiff may not recover attorney's fees as part of the judgment against a property owner in an action in which the contract consideration for the labor, material, or machinery has been paid by the property owner or party for whom the improvement has been constructed.

Sec. 15. A person who knowingly or intentionally:

(1) performs labor, supplies services, or furnishes material or machinery in the:

(A) construction;

(B) repair; or

(C) remodeling;

of a building, structure, or other work;

(2) accepts payment for the labor, services, material, or machinery furnished and supplied;

(3) at the time of receiving the payment, knows that the person is indebted to another for:

(A) labor, including the cost of renting or leasing construction and other equipment and tools, whether or not an operator is also provided by the lessor;

(B) services;

(C) material; or

(D) machinery;

used or employed in the construction, repair, or remodeling;

(4) fails:

(A) at the time of receiving the payment; and

(B) with intent to defraud;

to notify in writing the person from whom the payment was received of the existence of the outstanding indebtedness; and

(5) causes the person from whom the payment was received to suffer a loss by failing under subdivision (4) to notify the person of the existence of the outstanding indebtedness;

commits a Class D felony.

C o p y

Sec. 16. (a) This section applies to a construction contract for the construction, alteration, or repair of a building or structure other than:

(1) a Class 2 structure (as defined in IC 22-12-1-5) or an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5); or

(2) property that is:

(A) owned, operated, managed, or controlled by a public utility (as defined in IC 8-1-2-1), a municipally owned utility (as defined in IC 8-1-2-1), a joint agency (as defined in IC 8-1-2.2-2), a rural electric membership corporation formed under IC 8-1-13-4, or a not-for-profit utility (as defined in IC 8-1-2-125) regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, or power to the public.

(b) A provision in a contract for the improvement of real estate in Indiana is void if the provision requires a person described in section 1 of this chapter who furnishes labor, materials, or machinery to waive a right to:

(1) a lien against real estate; or

(2) a claim against a payment bond;

before the person is paid for the labor or materials furnished.

(c) A provision in a contract for the improvement of real estate in Indiana under which one (1) or more persons agree not to file a notice of intention to hold a lien is void.

Sec. 17. A provision in a contract for the improvement of real estate in Indiana is void if the provision:

(1) makes the contract subject to the laws of another state; or

(2) requires litigation, arbitration, or other dispute resolution process on the contract occur in another state.

Sec. 18. (a) This section applies to a provider of labor, materials, or equipment under a contract for the improvement of real estate that conditions the right of the provider to receive payment on the obligor's receipt of payment from a third person with whom the provider does not have a contractual relationship.

(b) This section does not apply to a construction contract for the construction, alteration, or repair of the following:

(1) A Class 2 structure (as defined in IC 22-12-1-5).

(2) An improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5).

(3) Property that is:

C o p y

(A) owned, operated, managed, or controlled by a:
(i) public utility (as defined in IC 8-1-2-1);
(ii) municipally owned utility (as defined in IC 8-1-2-1);
(iii) joint agency (as defined in IC 8-1-2.2-2);
(iv) rural electric membership corporation formed under IC 8-1-13-4; or
(v) not-for-profit utility (as defined in IC 8-1-2-125);
regulated under IC 8; and
(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, or power to the public.

(c) An obligor's receipt of payment from a third person shall not:
(1) be a condition precedent to;
(2) limit; or
(3) be a defense to;
the provider's right to record or foreclose a lien against the real estate that was improved by the provider's labor, material, or equipment.

Chapter 4. Foreclosure and Expiration of a Mortgage or Vendor's Lien

Sec. 1. (a) A mortgage or vendor's lien upon real estate expires ten (10) years after the last installment of the debt secured by the lien becomes due, as shown by the record of the lien.

(b) An action may not be brought or maintained in the courts of Indiana to foreclose a mortgage or enforce a vendor's lien reserved by a grantor to secure the payment of an obligation secured by the mortgage or lien if the last installment of the debt secured by the mortgage or lien, as shown by the record of the mortgage or lien, has been due more than ten (10) years. However, a lien or mortgage described in this section that was created before September 1, 1982, expires twenty (20) years after the time the last installment becomes due, and an action may not be brought to foreclose the mortgage or enforce the vendor's lien when the last installment has been due more than twenty (20) years.

Sec. 2. (a) Except as provided in section 3 of this chapter, if the record of a mortgage or lien described in section 1 of this chapter does not show when the debt or the last installment of the debt secured by the mortgage or lien becomes due, the mortgage or vendor's lien expires twenty (20) years after the date on which the mortgage or lien is executed.

(b) If the date has been omitted in a mortgage or vendor's lien,

C o p y

the mortgage or vendor's lien expires twenty (20) years after the date on which the mortgage or vendor's lien is recorded. Upon the request of the owner of record of real estate encumbered by a mortgage or lien that has expired under this section, the recorder of the county in which the real estate is situated shall certify on the record that the mortgage or vendor's lien is fully paid and satisfied by lapse of time, and the real estate is released from the lien.

Sec. 3. (a) If the record of a mortgage or vendor's lien to which this chapter applies does not show the time when the debt or the last installment of the debt secured by the mortgage or vendor's lien becomes due:

(1) the original mortgagee;

(2) the owner of the mortgage; or

(3) the owner of a vendor's lien;

may file an affidavit with the recorder of the county where the mortgage or lien is recorded, stating when the debt becomes due. An affidavit must be filed under this section not later than twenty (20) years after the date of the mortgage or lien, or, if the mortgage or lien contains no date of execution, not later than twenty (20) years from the date the mortgage or vendor's lien was recorded. Upon the filing of the affidavit, the recorder shall note in the record of the mortgage or vendor's lien that an affidavit has been filed, showing the location where the affidavit is recorded.

(b) The filing of an affidavit under subsection (a) has the same effect with respect to the duration of the lien of the mortgage or vendor's lien described in the affidavit and with respect to the time within which an action may be brought or maintained to foreclose the mortgage or vendor's lien as though the time of maturity of the debt or the last installment of the debt secured by the mortgage or vendor's lien had been stated in the mortgage or vendor's lien when recorded. The affidavit is prima facie evidence of the truth of the averments contained in the affidavit. The lien of a mortgage or vendor's lien on the real estate described in the affidavit expires twenty (20) years after the time when the debt or the last installment of the debt secured by the mortgage or vendor's lien becomes due, as shown by the affidavit. Upon the expiration of a mortgage or lien as described in this section and at the request of the real estate owner, the recorder of the county in which the affidavit is recorded shall certify on the record of the mortgage or vendor's lien that the mortgage or vendor's lien is fully paid and satisfied by lapse of time and that the real estate is released from the lien.

C o p y

(c) The recorder shall charge a fee for filing the affidavit in accordance with the fee schedule established in IC 36-2-7-10.

Chapter 5. Release of Liens on Conveyance of Real Estate

Sec. 1. (a) If a grantee has satisfied a lien on real property, the grantor shall, upon the request of the grantee, record on the lien record that the lien has been satisfied.

(b) Recording on the record of a lien under subsection (a) that the lien has been satisfied operates as a complete discharge of the lien.

Sec. 2. (a) If a grantee has satisfied a lien on real property but the grantor has not recorded that the lien has been satisfied under section 1 of this chapter, the grantor shall, at the request of the grantee, certify that the lien has been satisfied. The grantor's certification shall be acknowledged by the grantor in the same manner as is required to entitle a conveyance of real property to be recorded. The grantor's certification shall be recorded by the recorder in whose office the deed is recorded, with reference to the location of the recorded deed.

(b) A recorded certification that a lien has been satisfied operates as a complete discharge of the lien.

Chapter 6. Release of Mechanic's Liens

Sec. 1. (a) If:

(1) a person owns or has an interest in real estate to which a mechanic's lien has been attached;

(2) the debt secured by the lien has satisfied or paid; and

(3) the person who owns or has an interest in the encumbered real estate demands that the lien be released;

the lienholder shall release the lien within fifteen (15) days after the demand.

(b) If the lienholder does not release the lien within fifteen (15) days after the demand, the lienholder is liable to the person who owns or has an interest in the real estate to which the mechanic's lien has been attached for the greater of:

(1) actual damages; or

(2) liquidated damages in the sum of ten dollars ($10) per day from the fifteenth day until the release or expiration of the lien.

(c) A person who owns or who has an interest in real estate to which a mechanic's lien has been attached may, at any time thirteen (13) months after the date of the filing of the notice of the lien, file in the office of the recorder of the county in which the real estate is situated an affidavit stating that no suit for the foreclosure

C o p y

of the lien is pending and that no unsatisfied judgment has been rendered on the lien.

Sec. 2. If a person who owns or has an interest in real estate encumbered by a mechanic's lien files the affidavit described in section 1(c) of this chapter, the recorder of the county in which the encumbered real estate is situated shall immediately record the affidavit and certify on the record of the lien that the mechanic's lien is fully satisfied and that the real estate described in the mechanic's lien is released from the lien. The fee of the recorder for the filing and recording of the affidavit shall be an amount prescribed by law and shall be paid by the person filing the affidavit.

Chapter 7. Mechanic's Liens and Liens on Public Improvements; Foreclosures and Expiration

Sec. 1. An action may not be brought or maintained in Indiana to foreclose or enforce a mechanic's lien filed under Indiana law when the debt secured by the lien, as shown by the record of the lien, has been due more than one (1) year. If the record of the lien does not show when the debt secured by the lien became due, an action to foreclose or enforce the lien may not be brought or maintained in Indiana more than one (1) year after the filing date of the lien.

Sec. 2. A mechanic's lien filed under Indiana law expires one (1) year after the debt secured by the lien becomes due, as shown by the record of the lien. If the record of the mechanic's lien does not show when the debt secured by the lien becomes due, the mechanic's lien expires one (1) year after the filing date of the lien.

Sec. 3. (a) Except as provided in subsection (b), the lien of an assessment for a:

(1) street;
(2) sewer;
(3) sidewalk;
(4) ditch; or
(5) other public improvement;

expires five (5) years after the assessment (including any installment payments) is due and payable, as shown by the record creating the lien.

(b) If an assessment is payable in installments, an action to enforce the lien may be brought within fifteen (15) years after the date of the approval of the record creating the lien. After the expiration of this time period, upon the request of the owner of record of the encumbered real estate, the custodian of the record

C o p y

evidencing the lien, in the jurisdiction in which the real estate is situated, shall certify on the record that the lien of the assessment for street, sewer, sidewalk, ditch, or other public improvement is satisfied and released by lapse of time and that the encumbered real estate is released from the lien.

Sec. 4. If an action to enforce a lien to which this chapter applies was commenced in Indiana before the lien expired, the lien as it existed at the time the action commenced may be enforced.

Chapter 8. Foreclosure and Expiration of Liens on Public Improvements

Sec. 1. (a) Except as provided in subsection (b), an action may not be brought for the foreclosure of a lien of an assessment for a:

(1) street;
(2) sewer;
(3) sidewalk;
(4) ditch; or
(5) other public improvement;

if the action is not commenced within five (5) years after the right of action accrues.

(b) If an assessment described in subsection (a) is payable in installments, an action may be brought within fifteen (15) years after the date of the final approval of the assessment as shown by the record creating the lien.

Chapter 9. Limiting Time for Reopening Judgments Foreclosing Liens for Public Improvements

Sec. 1. If:

(1) a court with jurisdiction in Indiana renders a judgment foreclosing a public improvement lien;
(2) the sheriff of a county sells the encumbered real estate to satisfy the lien; and
(3) the sheriff has executed a sheriff's deed for the real estate to a purchaser;

an action to reopen the judgment or invalidate the deed for any cause may not be brought unless the action is filed within one (1) year after the date of the deed.

Chapter 10. Real Estate: Employees' Lien on Strip Mines

Sec. 1. (a) As used in this chapter, "strip mine" means a tract of land on which the surface soil has been removed or is being removed or is proposed to be removed from the coal seam by one (1) group of operating machines or machinery and where mine run coal is being produced in the raw state ready for direct sale to a consumer or for transportation to a cleaning or preparation plant.

C o p y

(b) The term includes the plant used for cleaning and preparing the coal for market.

Sec. 2. (a) A person employed and working in and about a strip mine has a lien on:

(1) the strip mine;

(2) all machinery and fixtures connected with the strip mine; and

(3) everything used in and about the strip mine;

for labor performed within a two (2) month period preceding the lien. Except as provided in subdivision (b), this lien is superior to and has priority over all other liens. As against each other, these liens have priority in the order in which they accrued.

(b) A state tax lien is superior to and has priority over a lien described in subsection (a).

(c) A person desiring to acquire an employee lien as described in subsection (a) shall file within sixty (60) days after the time the payment became due in the recorder's office of the county where the mine is situated a notice of intention to hold a lien upon property for the amount of the claim. The person filing a lien shall state in the lien notice the amount of the claim and the name of the coal works, if known. If the person filing the lien does not know the name of the coal works, the person shall include in the notice any other designation describing the location of the mine. The recorder shall immediately record the notice in the location used for recording mechanic's liens. The recorder shall receive a fee in accordance with IC 36-2-7-10. If the mine is located in more than one (1) county, the notice of intention to hold a lien may be filed in any county where any part of the mine is located.

(d) Suits brought to enforce a lien created under this section must be brought within one (1) year after the date of filing notice of the lien in the recorder's office. All judgments rendered on the foreclosure of the liens must include:

(1) the amount of the claim found to be due;

(2) the interest on the claim from the time due; and

(3) a reasonable attorney's fees.

The judgment shall be collected without relief from valuation, appraisement, or state laws.

Chapter 11. Engineer's, Land Surveyor's, and Architect's Liens

Sec. 1. Registered professional engineers, registered land surveyors, and registered architects may secure and enforce the same lien that is now given to contractors, subcontractors, mechanics, journeymen, laborers, and materialmen under

C o p y

IC 32-28-3 and any statutes that supplement IC 32-28-3.

Sec. 2. A lien created under this chapter may be secured and enforced in the same manner as mechanic's liens are secured and enforced.

Chapter 12. Corporate Employees' Liens

Sec. 1. (a) Except as provided in subsection (b), the employees of a corporation doing business in Indiana, whether organized under Indiana law or otherwise, may have and hold a first and prior lien upon:

(1) the corporate property of the corporation; and

(2) the earnings of the corporation;

for all work and labor done and performed by the employees for the corporation from the date of the employees' employment by the corporation. A lien under this section is prior to all liens created or acquired after the date of the employment of the employees by the corporation, except as otherwise provided in this chapter.

(b) An employee lien arising from the sale of real estate:

(1) is limited to a lien on the real estate; and

(2) is subject to section 3 of this chapter.

Sec. 2. (a) This section does not apply to a lien acquired by any person for purchase money.

(b) Any employee wishing to acquire a lien under section 1 of this chapter upon the corporate property of any corporation or the corporation's earnings, whether the employee's claim is due or not, must file, in the recorder's office of the county where the corporation is located or doing business, notice of the employee's intention to hold a lien upon the corporation's property and earnings. The notice must state the following:

(1) The amount of the employee's claim.

(2) The date of the employee's employment.

(3) The name of the corporation.

When a notice required by this section is presented for record, the county recorder shall record the notice in the record required by law for notice of mechanic's liens. The recorder shall charge a fee for recording the notice in an amount specified in IC 36-2-7-10(b)(1) and IC 36-2-7-10(b)(2). The lien created shall relate to the time when the employee was employed by the corporation or to any subsequent date during the employee's employment, at the election of the employee. The lien has priority over all liens suffered or created after the time elected by the employee, except other employees' liens, over which the lien has no priority.

C o p y

(c) If

(1) a person other than an employee acquires a lien upon the corporate property of any corporation located or doing business in Indiana;

(2) the lien, for a period of sixty (60) days, either:

(A) remains a matter of record in the proper place specified in IC 26-1-9.1-501; or

(B) remains otherwise perfected under applicable law; and

(3) no notice of an employee's intention to hold a lien is filed by any employee of the corporation during that period;

the lien described in subdivision (1) has priority over the lien of an employee in the county where the corporation is located or doing business.

Sec. 3. (a) Notwithstanding section 2 of this chapter, an employee:

(1) whose claim is for a commission due upon the conveyance of real estate; and

(2) who wishes to acquire a lien on the real estate;

may file a notice in the recorder's office of the county in which the real estate is located of the employee's intention to hold a lien on the real estate.

(b) A notice filed under this section must:

(1) contain the same information required for a mechanic's lien;

(2) state that the claim is due upon the conveyance of the real estate; and

(3) be filed before the conveyance of the real estate by the corporation.

(c) The recorder of any county shall, when notice is presented for recording under this section:

(1) record the notice in the record required by law for notice of mechanic's liens; and

(2) charge a fee in an amount specified in IC 36-2-7-10(b)(1) and IC 36-2-7-10(b)(2).

(d) The lien created under this section must relate to:

(1) the time when the employee was employed by the corporation; or

(2) any subsequent date during the employment, at the election of the employee;

and has priority over all liens suffered or created after the date, except other employees' liens, over which there is no priority.

Sec. 4. (a) An employee having acquired a lien under this

C o p y

chapter may enforce the lien by filing a complaint in the circuit or superior court in the county where the lien was acquired at any time within six (6) months after the date of acquiring the lien, or if a credit is given, after the date of the credit.

(b) The court rendering judgment for the claim shall declare the claim a lien upon the corporation's property and order the property sold to pay and satisfy the judgment and costs, as other lands are sold on execution or decree, without relief from valuation or appraisement laws.

(c) In an action brought under this section, the court shall make orders as to the application of the earnings of the corporation that are just and equitable, whether or not the the relief is asked for in the complaint.

Sec. 5. (a) In an action brought under this chapter, all persons whose liens are recorded under section 2 of this chapter may be made parties to the action. Issues shall be made up and trials had as in other cases.

(b) The court may, when several actions are pending by different claimants to enforce liens under this chapter, order that the cases be consolidated. If the proceeds of the sale of the corporation's property or the corporation's earnings are insufficient to pay and satisfy the claimants in full, the court shall order the claimants to be paid in proportion to the amount due each, and the sale shall be made without prejudice to the rights of any prior encumbrances, owner, or other persons not parties to the action.

Sec. 6. In a proceeding commenced under this chapter, a defendant may file a written undertaking, with surety to be approved by the court, in the exercise of sound discretion, to the effect that the defendant will pay the judgments that may be recovered, and costs. An undertaking under this section releases the defendant's property from the liens created under this chapter.

Sec. 7. In all cases not specially provided for in this chapter, the law, rules, practice, and pleadings in force in reference to the enforcement of mechanic's liens apply to suits commenced under this chapter.

Chapter 13. Common Law Liens

Sec. 1. As used in this chapter, "common law lien" means a lien against real or personal property that is not:

(1) a statutory lien;

(2) a security interest created by agreement; or

(3) a judicial lien obtained by legal or equitable process or

C o p y

proceedings.

Sec. 2. As used in this chapter, "property owner" means the owner of record of real or personal property against which a common law lien is held under this chapter.

Sec. 3. As used in this chapter, "public official" means an individual who holds office in or is an employee of the executive, judicial, or legislative branch of the state or federal government or a political subdivision of the state or federal government.

Sec. 4. (a) This chapter provides the procedure for filing and releasing a common law lien.

(b) This chapter does not create a common law lien. A common law lien does not exist against the property of a public official for the performance or nonperformance of the public official's official duty. A person asserting a common law lien must prove the existence of the lien as prescribed by the common law of Indiana.

Sec. 5. (a) A person who wishes to record a common law lien must file with the county recorder of a county in which the real or personal property against which the common law lien is to be held is located a statement of the person's intention to hold a common law lien against the real or personal property.

(b) A statement of intention to hold a common law lien must meet all of the following requirements:

(1) Except as provided in subsection (d), the person filing the statement must swear or affirm that the facts contained in the statement are true to the best of the person's knowledge.

(2) The statement must be filed in duplicate.

(3) The statement must set forth:

(A) the amount claimed to be owed by the property owner to the lienholder;

(B) the name and address of the lienholder;

(C) the name of the property owner;

(D) the last address of the property owner as shown on the property tax records of the county;

(E) the legal description and street and number, if any, of the real property against which the common law lien is filed;

(F) a full description of the personal property against which the common law lien is filed, including the location of the personal property; and

(G) the legal basis upon which the person asserts the right to hold the common law lien.

(c) The recorder shall send by first class mail one (1) of the

C o p y

duplicate statements filed under subsection (b) to the property owner at the address listed in the statement within three (3) business days after the statement is recorded. The county recorder shall record the date the statement is mailed to the property owner under this subsection. The county recorder shall collect a fee of two dollars ($2) from the lienholder for each statement that is mailed under this subsection.

(d) The statement of intention to hold a common law lien required under subsection (b) may be verified and filed on behalf of a client by an attorney registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court.

Sec. 6. (a) A property owner may send to the lienholder a notice requiring the lienholder to commence suit on the common law lien. The notice to commence suit must be made by registered or certified mail to the lienholder at the address given in the lienholder's statement filed under section 5 of this chapter.

(b) If the lienholder fails to commence suit within thirty (30) days after receiving the notice to commence suit, the common law lien is void. To release the common law lien from the property, the property owner must comply with the requirements of section 7 of this chapter.

Sec. 7. (a) If a lienholder fails to commence suit after notice to commence suit is sent under section 6 of this chapter, a property owner may file an affidavit of service of notice to commence suit with the recorder of the county in which the statement of intention to hold a common law lien was recorded. The affidavit must:

(1) include:

(A) the date the notice to commence suit was received by the lienholder;

(B) a statement that at least thirty (30) days have elapsed from the date the notice to commence suit was received by the lienholder;

(C) a statement that a suit for foreclosure of the common law lien has not been filed and is not pending;

(D) a statement that an unsatisfied judgment has not been rendered on the common law lien; and

(E) a cross-reference specifying the record of the county recorder containing the statement of intention to hold a common law lien; and

(2) have attached to it a copy of:

(A) the notice to commence suit that was sent to the

C o p y

lienholder under section 6 of this chapter; and

(B) the return receipt of the notice to commence suit.

(b) The property against which the lien has been filed is released from the common law lien when the county recorder:

(1) records the affidavit of service of notice to commence suit in the miscellaneous record book of the recorder's office; and

(2) certifies in the county recorder's records that the lien is released.

(c) The county recorder shall collect a fee for filing the affidavit of service of notice to commence suit under the fee schedule established in IC 36-2-7-10.

Sec. 8. (a) When a common law lien recorded under this chapter has been satisfied, the lienholder shall record a certificate of satisfaction with the recorder of the county in which the statement of intention to hold a common law lien was recorded. The certificate must specify the record of the county recorder that contains the statement of intention to hold a common law lien filed by the lienholder under section 5 of this chapter.

(b) The certificate of satisfaction recorded under this section must discharge and release the property owner from the common law lien and bar all suits and actions on the lien.

(c) The recorder shall collect a fee for recording a certificate of satisfaction under this section in accordance with the fee schedule established in IC 36-2-7-10.

Sec. 9. A person who is injured by a common law lien that is recorded under section 5 of this chapter may bring a civil action against the lienholder for:

(1) actual damages;

(2) costs; and

(3) reasonable attorney's fees.

SECTION 14. IC 32-29 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

ARTICLE 29. MORTGAGES

Chapter 1. Mortgage of Real Estate

Sec. 1. (a) This section does not apply to security interests in rents and profits arising from real estate.

(b) Unless a mortgage specifically provides that the mortgagee shall have possession of the mortgaged premises, the mortgagee is not entitled to possession of the mortgaged premises.

Sec. 2. A mortgage may not be construed to imply a covenant for the payment of the sum intended to be secured by the mortgage

C o p y

so as to enable the mortgagee or the mortgagee's assignees or representatives to maintain an action for the recovery of this sum. If an express covenant is not contained in the mortgage for the payment and a bond or other separate instrument to secure the payment has not been given, the remedy of the mortgagee is confined to the real property described in the mortgage.

Sec. 3. A mortgage of real estate, including an instrument having the legal effect of a mortgage, may not authorize the mortgagee to sell the mortgaged property. The sale of mortgaged property by the mortgagee may only be made under a judicial proceeding.

Sec. 4. A mortgage granted by a purchaser to secure purchase money has priority over a prior judgment against the purchaser.

Sec. 5. A mortgage of land that is:

(1) worded in substance as "A.B. mortgages and warrants to C.D." (here describe the premises) "to secure the repayment of" (here recite the sum for which the mortgage is granted, or the notes or other evidences of debt, or a description of the debt sought to be secured, and the date of the repayment); and

(2) dated and signed, sealed, and acknowledged by the grantor;

is a good and sufficient mortgage to the grantee and the grantee's heirs, assigns, executors, and administrators, with warranty from the grantor (as defined in IC 32-17-1-1) and the grantor's legal representatives of perfect title in the grantor and against all previous encumbrances. However, if in the mortgage form the words "and warrant" are omitted, the mortgage is good but without warranty.

Sec. 6. After a mortgagee of property whose mortgage has been recorded has received full payment from the mortgagor of the sum specified in the mortgage, the mortgagee shall, at the request of the mortgagor, enter in the record of the mortgage that the mortgage has been satisfied. An entry in the record showing that a mortgage has been satisfied operates as a complete release and discharge of the mortgage.

Sec. 7. If a mortgage has been paid and satisfied by the mortgagor, the mortgagor may take a certificate of satisfaction, duly acknowledged by the mortgagee or the mortgagee's lawful agent, as required for the acknowledgment of conveyances to entitle them to be recorded. The certificate and acknowledgment shall be recorded by the recorder in whose office the mortgage is

C o p y

recorded, with a reference to the location of the record of the mortgage. The recorded certificate discharges and releases the mortgagor from the mortgage (or portion of the mortgage as indicated in a partial satisfaction), and bars all suits and actions on the mortgage.

Sec. 8. (a) Any mortgage of record or any part of the mortgage may be assigned by the mortgagee or any assignee of the mortgage, either by an assignment entered on the margin of the record, signed by the person making the assignment and attested by the recorder, or by a separate instrument executed and acknowledged before any person authorized to take acknowledgments, and recorded in the mortgage records of the county. The county recorder shall note the assignment in the margin by reference to the location where the assignment is recorded.

(b) The signature of a person on an assignment under subsection (a) may be a facsimile. The facsimile on the assignment is equivalent to and constitutes the written signature of the person for all requirements regarding mortgage assignments.

(c) Notwithstanding subsection (a), marginal assignments may be accepted at the discretion of the recorder. Except in a county that accepts marginal assignments of mortgage, an assignment of mortgage must be recorded on a separate written instrument from the mortgage. If a recorder accepts marginal assignments of mortgage, an instrument presented for recording in that county may not contain more than one (1) assignment. If a recorder allows an instrument to contain more than one (1) assignment, the fee for recording that instrument is provided in IC 36-2-7-10(b)(3).

(d) After entry is made of record, the mortgagor and all other persons are bound by the record, and the entry is a public record. Any assignee may enter satisfaction or release of the mortgage, or the part of the mortgage held by the assignee of record.

Sec. 9. This chapter does not affect any provisions made by law relating to the foreclosure of mortgages to the state, so far as the provisions conflict with the provisions of this chapter.

Sec. 10. (a) In addition to any other obligation secured by a mortgage, a mortgage may also secure:

(1) future obligations and advances up to the maximum amount stated in the mortgage (whether made as an obligation, made at the option of the lender, made after a reduction to a zero (0) or other balance, or made otherwise) to the same extent as if the future obligations and advances were made on the date of execution of the mortgage; and

C o p y

(2) future modifications, extensions, and renewals of any indebtedness or obligations secured by the mortgage if and to the extent that the mortgage states that the mortgage secures those future advances, modifications, extensions, and renewals.

(b) The lien of a mortgage with respect to future advances, modifications, extensions, and renewals referred to in subsection (a) has the priority to which the mortgage otherwise would be entitled under IC 32-21-4-1 without regard to the fact that the future advance, modification, extension, or renewal may occur after the mortgage is executed.

Sec. 11. (a) This chapter does not limit:

(1) the right to assign, mortgage, or pledge the rents and profits arising from real estate;

(2) the right of an assignee, a mortgagee, or a pledgee to collect rents and profits for application in accordance with an assignment, a mortgage, or a pledge; or

(3) the power of a court of equity to appoint a receiver to take charge of real estate to collect rents and profits for application in accordance with an assignment, a mortgage, or a pledge.

(b) A person may enforce an assignment, a mortgage, or a pledge of rents and profits arising from real property:

(1) whether the person has or does not have possession of the real estate; and

(2) regardless of the:

(A) adequacy of the security; or

(B) solvency of the assignor, mortgagor, or pledgor.

(c) If a person:

(1) enforces an assignment, a mortgage, or a pledge of rents and profits arising from real estate; and

(2) does not have possession of the real estate;

the obligations of a mortgagee in possession of real estate may not be imposed on the holder of the assignment, mortgage, or pledge.

Chapter 2. Recording of Assignment

Sec. 1. A person who transfers or assigns a mortgage within Indiana shall do so in writing by:

(1) noting the assignment or transfer on the record recording the mortgage; or

(2) separate written instrument.

A person who transfers or assigns a mortgage as described in this section shall cause the notation or written instrument to be

C o p y

acknowledged before an officer authorized to take acknowledgments of the execution of mortgages.

Sec. 2. In order to be recorded, a written instrument that transfers or assigns a mortgage under this chapter must state the location and business address of the person to whom the mortgage is transferred or assigned.

Chapter 3. Attestation of Releases; Legalizing Prior Release

Sec. 1. The release of a mortgage, lease, or other instrument required by law to be recorded written upon the margin, or upon the record, of any mortgage in Indiana by the party authorized to release the mortgage is not a valid release of the mortgage, lease, or other instrument unless the release is attested on the record by the recorder or deputy recorder of the county in which the mortgage is recorded.

Chapter 4. Release by State

Sec. 1. If the mortgage records of a county in Indiana indicate that a mortgage has been executed to the state and:

(1) there is no evidence of indebtedness secured by the mortgage in the possession of the treasurer of state or auditor of state; and

(2) there is no evidence in the office of the auditor of state or treasurer of state that a loan secured by the mortgage was made;

the auditor of state may release and discharge the mortgage of record.

Chapter 5. Release by Financial Institutions or Corporations

Sec. 1. (a) It is lawful for:

(1) the president, vice president, cashier, secretary, treasurer, attorney in fact, or other authorized representative of a national bank, state bank, trust company, or savings bank; or

(2) the president, vice president, general manager, secretary, treasurer, attorney in fact, or other authorized representative of any other corporation doing business in Indiana;

to release upon the record mortgages, judgments, and other record liens upon the payment of the debts secured by the liens.

(b) A release, when made upon the margin or face of the record of the mortgage, judgment, or other lien and attested by the recorder, clerk, or other officer having custody of the record of the lien, is a full discharge and satisfaction of the lien.

(c) The recorder of each county may require that each release, discharge, or satisfaction of a mortgage, judgment, or lien, or any partial release of any of these, be recorded on a separate written

C o p y

instrument. If a recorder requires the recording of each release, discharge, or satisfaction on a separate written instrument, an instrument presented for recordation in that county may not contain more than one (1) release, discharge, or satisfaction. If a recorder allows an instrument to contain more than one (1) release, discharge, or satisfaction, the fee for recording that instrument is provided in IC 36-2-7-10(b)(3).

(d) Except as provided in subsection (e), a national bank, state bank, trust company, savings bank, or other corporation may release and discharge mortgages, judgments, or other record liens by a separate written instrument signed by its:

(1) corporate name;
(2) president;
(3) vice president;
(4) cashier;
(5) secretary;
(6) treasurer;
(7) attorney in fact; or
(8) authorized representative.

A release under this subsection shall be recorded by the recorder, clerk, or other officer having custody of the record of the lien, with a reference on the margin of the record of the lien to the location where the release is recorded. Upon recordation, the release is a full discharge and satisfaction of the lien, or portion of the lien, as indicated in a partial release.

(e) A release by the attorney-in-fact may not be recorded until a written instrument specifically granting the attorney in fact the authority to release and discharge mortgages, judgments, or other record liens has been filed and recorded in the recorder's office of the county where the release is to be recorded. The written instrument must be in writing and signed and acknowledged by two (2) officers of the national bank, state bank, trust company, savings bank, or other corporation.

(f) A party may revoke the written instrument filed under subsection (e) by:

(1) noting on the written instrument granting the attorney in fact the authority to release mortgages and liens that this power has been revoked; or
(2) filing and recording in the recorder's office of the county where the written instrument described in subsection (e) of this section was filed, a separate written instrument signed and acknowledged by two (2) officers of the entity revoking

C o p y

the attorney-in-fact's authority.

The written notice of revocation described in this subsection must be attested by the recorder of the county in which the revocation is filed. The party conferring the power described in subsection (e) is bound by an act performed before written notice revoking the authority is properly attested to and filed in the county recorder's office.

Chapter 6. Mortgage Release by Title Insurance Companies

Sec. 1. As used in this chapter, "mortgage" means a mortgage or mortgage lien on an interest in real property in Indiana given to secure a loan in the original principal amount of not more than one million dollars ($1,000,000).

Sec. 2. As used in this chapter, "mortgagee" means:

(1) the grantee of a mortgage; or

(2) if a mortgage has been assigned of record, the last person to whom the mortgage has been assigned of record.

Sec. 3. As used in this chapter, "mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage. A person transmitting a payoff statement is the mortgage servicer for the mortgage described in the payoff statement.

Sec. 4. As used in this chapter, "mortgagor" means the grantor of a mortgage.

Sec. 5. As used in this chapter, "payoff statement" means a statement of the amount of:

(1) the unpaid balance of a loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage; and

(2) interest on a per day basis for the unpaid balance.

Sec. 6. As used in this chapter, "person" means an individual, a corporation, or any other legal entity.

Sec. 7. As used in this chapter, "record" means to record with the county recorder.

Sec. 8. As used in this chapter, "title insurance company" means a corporation or other business entity authorized and licensed to transact the business of insuring titles to interests in real property in Indiana under IC 27.

Sec. 9. An officer or appointed agent of a title insurance company may, on behalf of a mortgagor or a person who acquired from the mortgagor a lien against all or part of the property described in a mortgage, execute a certificate of release that

C o p y

complies with the requirements of this chapter and record the certificate of release in the real property records of each county in which the mortgage is recorded if:

(1) a satisfaction or release of the mortgage has not been executed and recorded within sixty (60) days after the date payment in full of the loan secured by the mortgage was sent in accordance with a payoff statement furnished by the mortgagee or the mortgage servicer; and

(2) the title insurance company, an officer of the title insurance company, or an agent of the title insurance company has sent to the last known address of the mortgagee or the mortgage servicer, at least thirty (30) days before executing the certificate of release, written notice of its intention to execute and record a certificate of release in accordance with this section after the expiration of the sixty (60) day period.

Sec. 10. A certificate of release executed under this chapter must contain substantially all of the following:

(1) The name of the mortgagor, the name of the original mortgagee and, if applicable, the name of the mortgage service, the date of the mortgage, the date of recording of the mortgage, and the volume and page or instrument number for the mortgage in the real property records where the mortgage is recorded, together with similar information for the last recorded assignment of the mortgage.

(2) A statement that the mortgage was in the original principal amount of not more than one million dollars ($1,000,000).

(3) A statement that the person executing the certificate of release is an officer or a duly appointed agent of a title insurance company authorized and licensed to transact the business of insuring titles to interests in real property in Indiana under IC 27.

(4) A statement that the certificate of release is made on behalf of the mortgagor or a person who acquired a lien from the mortgagor against all or part of the property described in the mortgage.

(5) A statement that the mortgagee or mortgage service provided a payoff statement that was used to make payment in full of the unpaid balance of the loan secured by the mortgage.

(6) A statement that payment in full of the unpaid balance of

C o p y

the loan secured by the mortgage was made in accordance with the written or verbal payoff statement and received by the mortgagee or mortgage servicer, as evidenced in the records of the title insurance company or its agents by:

(A) a bank check;

(B) a certified check;

(C) an escrow account check from the title company or title insurance agent;

(D) an attorney trust account check that has been negotiated by the mortgagee or mortgage servicer; or

(E) any other documentary evidence of payment to the mortgagee or mortgage servicer.

(7) A statement indicating that more than sixty (60) days have elapsed since the date payment in full was sent.

(8) A statement that after the expiration of the sixty (60) day period referred to in section 9 of this chapter, the title insurance company, its officers, or its agent sent to the last known address of the mortgagee or mortgage servicer, at least thirty (30) days before executing the certificate of release, notice in writing of its intention to execute and record a certificate of release as required under this section, with an unexecuted copy of the proposed certificate of release attached to the written notice.

(9) A statement that neither the title insurance company nor its officers or agent have received notification in writing of any reason why the certificate of release should not be executed and recorded after the expiration of the thirty (30) day notice period referred to in section 9 of this chapter.

Sec. 11. A certificate of release authorized by this chapter shall be executed and acknowledged in the same manner as required by law in Indiana for the execution and acknowledgment of a deed.

Sec. 12. (a) A title insurance company may authorize an appointed agent of the title insurance company to execute certificates of release under this chapter by recording a notice of authorization in the office of the county recorder for each county in which the duly appointed agent is authorized to execute and record certificates of release on behalf of the title insurance company. The notice of authorization must state the following:

(1) The name of the title insurance company that is authorizing an appointed agent to execute certificates of release on behalf of the title insurance company.

(2) The identity of the person who is an appointed agent of the

C o p y

title insurance company and who is authorized to execute and record certificates of release in accordance with the requirements of this chapter on behalf of the title insurance company.

(3) That the appointed agent has full authority to execute and record certificates of release in accordance with the requirements of this chapter on behalf of the title insurance company.

(b) The notice of authorization must be executed and acknowledged in the same manner as required by law in Indiana for the execution and acknowledgment of a deed.

(c) A single notice of authorization recorded in the office of a county recorder under this section constitutes the authority of the appointed agent to execute and record certificates of release in that county on behalf of the title insurance company. A separate notice of authority is not required for each certificate of release recorded by an appointed agent.

(d) The authority granted to an appointed agent by a title insurance company under this section continues until a revocation of the notice of authorization is recorded in the office of the county recorder for the county in which the notice of authorization was recorded.

(e) The delegation of authority to an appointed agent by a title insurance company under this section does not relieve the title insurance company of any liability for damages for the wrongful or erroneous execution and recording of a certificate of release by the appointed agent.

Sec. 13. A creditor or mortgage servicer may not withhold the release of a mortgage if the written mortgage payoff statement misstates the amount of the payoff and the written payoff is relied upon in good faith by an independent closing agent without knowledge of the misstatement. It is not a misstatement if the written payoff statement is not accurate as a result of a change in circumstances occurring after the issuance of the payoff statement. The release of a mortgage does not affect the ability of the creditor or mortgage servicer to collect the full amount owed without regard to a misstatement in the written payoff statement and a release of the mortgage.

Sec. 14. The acceptance of a payment by a creditor or mortgage servicer of an amount that is not sufficient to pay the amount owed does not constitute a waiver, release, accord and satisfaction, or other impairment of the creditors or mortgage servicers rights

C o p y

notwithstanding any contrary instructions or restrictive endorsements.

Sec. 15. A certificate of release prepared, executed, and recorded in accordance with the requirements of this chapter constitutes a release of the mortgage described in that certificate of release, and the county recorder shall enter and index the certificate of release in the same manner that a release or satisfaction of mortgage is entered and indexed in the records of the county recorder.

Sec. 16. (a) The execution and recording of a wrongful or erroneous certificate of release by a title insurance company or a duly appointed agent with authority from a title insurance company does not relieve the mortgagor, or anyone succeeding to or assuming the interest of the mortgagor, from any liability for the debt or other obligations secured by the mortgage that is the subject of the wrongful or erroneous certificate of release.

(b) Additionally, a title insurance company or an appointed agent with authority from a title insurance company that wrongfully or erroneously executes and records a certificate of release is liable to the mortgagee, or the assignee of the mortgagee if the mortgage has been assigned, for actual damages sustained due to the recording of a wrongful or erroneous certificate of release.

Sec. 17. (a) This chapter applies to the release of a mortgage after June 30, 2001, and before July 1, 2002, regardless of when the mortgage was created or assigned.

(b) This chapter expires July 1, 2003.

Chapter 7. Foreclosure)Redemption, Sale, Right to Retain Possession

Sec. 1. As used in this chapter, "auctioneer" means an auctioneer licensed under IC 25-6.1.

Sec. 2. For the purposes of section 4(b) of this chapter, the sale of property by the sheriff through the services of an auctioneer is "economically feasible" if the court determines that:

(1) a reasonable probability exists that, with the use of the services of an auctioneer, a valid and enforceable bid will be made at a foreclosure for a sale price equal to or greater than the amount of the judgment and the costs and expenses necessary to its satisfaction, including the costs of the auctioneer; and

(2) the reasonable probability would not exist without the use of an auctioneer.

C o p y

Sec. 3. (a) In a proceeding for the foreclosure of a mortgage executed on real estate, process may not issue for the execution of a judgment or decree of sale for a period of three (3) months after the filing of a complaint in the proceeding. However:

(1) the period shall be:

(A) twelve (12) months in a proceeding for the foreclosure of a mortgage executed before January 1, 1958; and

(B) six (6) months in a proceeding for the foreclosure of a mortgage executed after December 31, 1957, but before July 1, 1975; and

(2) if the court finds that the mortgaged real estate is residential real estate and has been abandoned, a judgment or decree of sale may be executed on the date the judgment of foreclosure or decree of sale is entered, regardless of the date the mortgage is executed.

(b) A judgment and decree in a proceeding to foreclose a mortgage that is entered by a court having jurisdiction may be filed with the clerk in any county as provided in IC 33-17-2-3. After the period set forth in subsection (a) expires, a person who may enforce the judgment and decree may file a praecipe with the clerk in any county where the judgment and decree is filed, and the clerk shall promptly issue and certify to the sheriff of that county a copy of the judgment and decree under the seal of the court.

(c) Upon receiving a certified judgment under subsection (b), the sheriff shall, subject to section 4 of this chapter, sell the mortgaged premises or as much of the mortgaged premises as necessary to satisfy the judgment, interest, and costs at public auction at the office of the sheriff or at another location that is reasonably likely to attract higher competitive bids. The sheriff shall schedule the date and time of the sheriff's sale for a time certain between the hours of 10 a.m. and 4 p.m. on any day of the week except Sunday.

(d) Before selling mortgaged property, the sheriff must advertise the sale by publication once each week for three (3) successive weeks in a daily or weekly newspaper of general circulation. The sheriff shall publish the advertisement in at least one (1) newspaper published and circulated in each county where the real estate is situated. The first publication shall be made at least thirty (30) days before the date of sale. At the time of placing the first advertisement by publication, the sheriff shall also serve a copy of the written or printed notice of sale upon each owner of the real estate. Service of the written notice shall be made as

C o p y

provided in the Indiana Rules of Trial Procedure governing service of process upon a person. The sheriff shall charge a fee of ten dollars ($10) to one (1) owner and three dollars ($3) to each additional owner for service of written notice under this subsection. The fee is:

(1) a cost of the proceeding;

(2) to be collected as other costs of the proceeding are collected; and

(3) to be deposited in the county general fund for appropriation for operating expenses of the sheriff's department.

(e) The sheriff also shall post written or printed notices of the sale in at least three (3) public places in each township in which the real estate is situated and at the door of the courthouse of each county in which the real estate is located.

(f) If the sheriff is unable to procure the publication of a notice within the county, the sheriff may dispense with publication. However, the sheriff shall state that the sheriff was not able to procure the publication and explain the reason why publication was not possible.

(g) Notices under subsections (d) and (e) must contain a statement, for informational purposes only, of the location of each property by street address, if any, or other common description of the property other than legal description. A misstatement in the informational statement under this subsection does not invalidate an otherwise valid sale.

Sec. 4. (a) A sheriff shall offer to sell and sell property on foreclosure in a manner that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer and sale.

(b) Upon prior petition of the debtor or any creditor involved in the foreclosure proceedings, the court in its order of foreclosure shall order the property sold by the sheriff through the services of an auctioneer if:

(1) the court determines that a sale is economically feasible; or

(2) all the creditors in the proceedings agree to both that method of sale and the compensation to be paid the auctioneer.

(c) An auctioneer engaged by a sheriff under this section shall conduct the auctioneer's activities as appropriate to bring the highest bid for the property on foreclosure. The advertising

C o p y

conducted by the auctioneer is in addition to any other notice required by law.

(d) The auctioneer's fee must be a reasonable amount stated in the court's order. However, if the sale by use of an auctioneer has not been agreed to by the creditors in the proceedings and the sale price is less than the amount of the judgment and the costs and expenses necessary to the satisfaction of the judgment, the auctioneer is entitled only to the auctioneer's advertising expenses plus one hundred dollars ($100). The amount due the auctioneer on account of the auctioneer's expenses and fee, if any, shall be paid as a cost of the sale from its proceeds before the payment of any other payment from the sale.

Sec. 5. The owner of the real estate subject to the issuance of process under a judgment or decree of foreclosure may, with the consent of the judgment holder endorsed on the judgment or decree of foreclosure, file with the clerk of the court a waiver of the time limitations on issuance of process set out in section 3 of this chapter. If the owner files a waiver under this section, process shall issue immediately. The consideration for waiver, whether or not expressed by its terms, shall be the waiver and release by the judgment holder of any deficiency judgment against the owner.

Sec. 6. (a) If the mortgaged real estate is located in more than one (1) county:

(1) the court of any county the mortgaged real estate is located in has jurisdiction of an action for the foreclosure of the mortgage; and

(2) all the real estate shall be sold in the county where the action is brought, unless the court orders otherwise.

(b) A judgment and decree granted by a court or a judge in an action for the foreclosure of the mortgaged real estate shall be recorded in the lis pendens record kept in the office of the clerk of each county where the real estate is located, unless the judgment and decree is filed with the clerk in the county as provided in IC 33-17-2-3.

Sec. 7. Before the sale under this chapter, any owner or part owner of the real estate may redeem the real estate from the judgment by payment to the:

(1) clerk before the issuance to the sheriff of the judgment and decree; or

(2) sheriff after the issuance to the sheriff of the judgment and decree;

of the amount of the judgment, interest, and costs for the payment

C o p y

or satisfaction of which the sale was ordered. If the owner or part owner redeems the real estate under this section, process for the sale of the real estate under judgment may not be issued or executed, and the officer receiving the redemption payment shall satisfy the judgment and vacate order of sale. However, if the real estate is redeemed by a part owner, the part owner shall have a lien on the shares of the other owners for their respective shares of the redemption money, with interest at the rate of eight (8) percent per annum, plus the costs of redemption. The lien shall be of the same force and effect as the judgment lien redeemed by the part owner and shall be enforceable by appropriate legal proceedings.

Sec. 8. In selling real estate under this chapter, the sheriff is not required to first offer the rents and profits of the real estate or separate portions or parcels of the real estate. The sheriff may offer for sale the whole body of the mortgaged real estate together with rents, issues, income, and profits of the real estate unless the court in its judgment and order of sale has otherwise ordered. If any part of the judgment, interest, or costs remains unsatisfied, the sheriff shall immediately levy the residue on the other property of the defendant.

Sec. 9. (a) A sheriff or an agent of the sheriff making a foreclosure sale under this chapter may not directly or indirectly purchase property sold by the sheriff or the sheriff's agent. If the purchaser of property sold on foreclosure fails to immediately pay the purchase money, the sheriff shall resell the property either on the same day without advertisement or on a subsequent day after again advertising in accordance with this chapter, as the judgment creditor directs. If the amount bid at the second sale does not equal the amount bid at the first sale, including the costs of the second sale, the first purchaser shall be liable for:

(1) the deficiency;

(2) damages not exceeding ten percent (10%); and

(3) interest and costs;

all of which may be recovered in a court of proper jurisdiction by the sheriff.

(b) If the property is sold, the sheriff shall pay the proceeds as provided in IC 32-30-10-14. Every sale made under this chapter must be without relief from valuation or appraisement laws and without any right of redemption.

Sec. 10. Immediately after a foreclosure sale under this chapter, the sheriff shall execute and deliver to the purchaser a deed of conveyance for the premises, which must be valid to convey all the

C o p y

right, title, and interest held or claimed by all of the parties to the action and all persons claiming under them. The sheriff shall file a return with the clerk of the court.

Sec. 11. (a) If the court appoints a receiver of mortgaged property, the receiver shall take possession of the mortgaged property, collect the rents, issues, income, and profits and apply the rents, issues, income, and profits to the payment of taxes, assessments, insurance premiums, and repairs required in the judgment of the receiver to preserve the security of the mortgage debt. The receiver shall promptly file a final report with the clerk of the court and, subject to the approval of the court, account for and pay over to the clerk, subject to the further order of the court, the balance of income or other proceeds that remain in the receiver's possession.

(b) If the mortgaged property is occupied as a dwelling by the record owner of the fee simple title, the owner shall be permitted to retain possession of the mortgaged property, rent free, until the foreclosure sale if the owner continues to pay the taxes and special assessments levied against the mortgaged property and if the owner, in the judgment of the court, does not suffer waste or other damage to the property. However, if the record owner of the fee simple title does not pay the taxes and special assessments levied against the mortgaged property, the owner may retain possession of that part of the mortgaged property, not exceeding fifteen (15) acres, that is actually occupied as a dwelling by the record owner of the fee simple title, rent free, until the sale, if the owner does not, in the judgment of the court, suffer waste or other damage to the property. The owner of any crops growing on the mortgaged property at the time of the commencement of an action for foreclosure, other than the owner of fee simple title or the owner's assigns, may enter the property to care for and harvest the crops at any time within one (1) year after the filing of the foreclosure action.

Sec. 12. If the record owner of the fee simple title has the right under section 11 of this chapter to retain possession of the mortgaged premises or any part of the mortgaged premises until the foreclosure sale, the owner may, at any time within one (1) year after the commencement of the foreclosure action, enter the premises to care for and harvest any crops growing at the time of the commencement of the foreclosure action on all or part of the mortgaged premises.

Sec. 13. There may not be a redemption from the foreclosure of

C o p y

a mortgage executed after June 30, 1931, on real estate except as provided in this chapter.

Sec. 14. The laws of Indiana in force on June 29, 1931, shall apply to the foreclosure of any mortgage executed before June 30, 1931.

Chapter 8. Parties to Foreclosure Suit; Redemption

Sec. 1. If a suit is brought to foreclose a mortgage, the mortgagee or an assignee shown on the record to hold an interest in the mortgage shall be named as a defendant.

Sec. 2. A person who fails to:

(1) have an assignment of the mortgage made to the person properly placed on the mortgage record; or

(2) be made a party to the foreclosure action;

is bound by the court's judgment or decree as if the person were a party to the suit.

Sec. 3. A person who purchases a mortgaged premises or any part of a mortgaged premises under the court's judgment or decree at a judicial sale or who claims title to the mortgaged premises under the judgment or decree, buying without actual notice of an assignment that is not of record or of the transfer of a note, the holder of which is not a party to the action, holds the premises free and discharged of the lien. However, any assignee or transferee may redeem the premises, like any other creditor, during the period of one (1) year after the sale.

Chapter 9. Name of and Service on Parties Defendant in Foreclosure Suits

Sec. 1. (a) In a suit brought in a court of Indiana to:

(1) foreclose a mortgage or other lien on real estate located in Indiana; or

(2) sell real estate located in Indiana;

if the plaintiff is required to make a person a party to the suit, the plaintiff may list the person as a defendant by the name in which the person's lien or claim appears on the public records of the county in which the suit is brought.

(b) Service of summons or notice by publication to the person, described in subsection (a) is sufficient to make the court's judgment binding as to the person.

Chapter 10. Ten Year Expiration on Lien of a Series Mortgage

Sec. 1. As used in this chapter, "series mortgage" means any mortgage, indenture of trust, or trust deed executed to create a lien on any property, whether real or personal or both, in Indiana to secure one (1) or more series of bonds, notes, or debentures. The

C o p y

term applies without regard to whether the total obligation to be secured is specifically defined, limited, or left open in the original security instrument.

Sec. 2. As used in this chapter, "final maturity date of the series mortgage" means the maturity date of the last to mature of the bonds, notes, or debentures secured by a series mortgage, as the maturity date is shown of record in the original security instrument or in a supplemental indenture subsequently recorded.

Sec. 3. As used in this chapter, "original security instrument" means the original instrument or indenture executed to evidence a series mortgage.

Sec. 4. As used in this chapter, "supplemental indenture" means an instrument or indenture executed to supplement the original security instrument, defining one (1) or more series of bonds, notes, or debentures secured, or to be secured, by the series mortgage, specifying property subject to the lien of the series mortgage or in another manner supplementing or amending the original security instrument.

Sec. 5. Notwithstanding any other Indiana statute:

(1) the lien of a series mortgage expires ten (10) years after the final maturity date of the series mortgage; and

(2) an action may not be commenced in an Indiana court to enforce or to foreclose the lien of a series mortgage more than ten (10) years after the final maturity date of the series mortgage.

Sec. 6. Notwithstanding any other Indiana statute, the lien of a series mortgage may not be impaired or injured by the passage of time other than as provided in section 5 of this chapter.

Chapter 11. Duty to Satisfy Record

Sec. 1. Unless otherwise provided in this article, if the debt or obligation, and the interest on the debt or obligation, that a mortgage secures has been fully paid, lawfully tendered, and discharged, the owner, holder, or custodian of the mortgage shall:

(1) release;

(2) discharge; and

(3) satisfy of record;

the mortgage as provided in IC 32-28-1.

SECTION 15. IC 32-30 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

ARTICLE 30. CAUSES OF ACTION CONCERNING REAL PROPERTY

C o p y

Chapter 1. Statute of Limitations in Actions Concerning Real Estate

Sec. 1. As used in this chapter, "person" means an individual, a partnership, an association, a limited liability company, a corporation, a business trust, a joint stock company, or an unincorporated organization.

Sec. 2. As used in this chapter, "contract" means an oral or a written contract.

Sec. 3. As used in this chapter, "tort" means an injury to person or property caused by a means other than a breach of contract.

Sec. 4. As used in this chapter, "date of substantial completion" means the earlier of:

(1) the date upon which construction of an improvement to real property is sufficiently completed under a contract of construction, as modified by any additions, deletions, or other amendments, so that the owner of the real property upon which the improvement is constructed can occupy and use the premises in the manner contemplated by the terms of the contract; or

(2) the date of the first beneficial use of the improvement to real property or of any portion of the improvement.

Sec. 5. An action to recover damages, whether based upon contract, tort, nuisance, or another legal remedy, for:

(1) a deficiency or an alleged deficiency in the design, planning, supervision, construction, or observation of construction of an improvement to real property;

(2) an injury to real or personal property arising out of a deficiency; or

(3) an injury or wrongful death of a person arising out of a deficiency;

may not be brought against any person who designs, plans, supervises, or observes the construction of or constructs an improvement to the real property unless the action is commenced within the earlier of ten (10) years after the date of substantial completion of the improvement or twelve (12) years after the completion and submission of plans and specifications to the owner if the action is for a deficiency in the design of the improvement.

Sec. 6. (a) Notwithstanding section 5 of this chapter, if an injury to or wrongful death of a person occurs during the ninth or tenth year after substantial completion of an improvement to real property, an action in tort to recover damages for the injury or wrongful death may be brought within two (2) years after the date

C o p y

on which the injury occurred, irrespective of the date of death.

(b) However, an action may not be brought more than:

(1) twelve (12) years after the substantial completion of construction of the improvement; or

(2) fourteen (14) years after the completion and submission of plans and specifications to the owner, if the action is for a deficiency in design;

whichever comes first.

Sec. 7. The limitation set forth in sections 5 and 6 of this chapter (or IC 34-4-20 or IC 32-15-1 before their repeal) may not be used as a defense by a person who is in actual possession or control of the real property, including an owner or a tenant, upon which an improvement has been made at the time the deficiency in the improvement constitutes the proximate cause of the injury or wrongful death for which it is proposed to bring an action.

Chapter 2. Ejectment and Quiet Title

Sec. 1. A person having a valid subsisting interest in real property and a right to the possession of the real property may recover the real property and take possession by an action brought against the tenant in possession or, if there is not a tenant, against the person claiming the title or interest in the real property.

Sec. 2. If it appears in an action brought under section 1 of this chapter that the defendant is only a tenant, the landlord may be substituted as the defendant if the landlord has received reasonable notice.

Sec. 3. Legal service on a defendant who is a nonresident:

(1) is considered served on the defendant if the service is made to the defendant's agent for the property and the defendant's agent resides in Indiana; or

(2) may be had by publication, as in other cases.

Sec. 4. In an action initiated under section 1 of this chapter, the plaintiff's complaint must contain the following information:

(1) A claim that the plaintiff is entitled to the possession of the premises, including a description of the premises.

(2) The interest the plaintiff claims in the premises.

(3) That the defendant unlawfully keeps the plaintiff from possession of the premises.

Sec. 5. The answer of the defendant to a complaint under section 4 of this chapter may contain a denial of each material statement or allegation in the plaintiff's complaint. With each denial, the defendant may give in evidence every legal or equitable defense to the action that the defendant may have.

C o p y

Sec. 6. The defendant is not required to prove the defendant is in possession of the premises to make a defense under this chapter.

Sec. 7. The plaintiff may recover in an action under this chapter for the use and occupation of the premises up to the time the use or occupation is terminated by the defendant. However, the plaintiff may not recover for the use and occupation of the premises for more than six (6) years before the commencement of the action.

Sec. 8. If the plaintiff's interest in the premises expires before the time in which the plaintiff could be put in possession of the premises, the plaintiff may obtain only a judgment for damages.

Sec. 9. If there are two (2) or more plaintiffs or defendants, one (1) or more of the plaintiffs may recover against one (1) or more of the defendants:

(1) the premises or any part of the premises;

(2) an interest in the premises; or

(3) damages;

according to the right of the parties, but the recovery may not be for an interest greater than the interest claimed by the party.

Sec. 10. A petition for a new trial under this chapter may be made by the party against whom judgment is rendered, or the party's heirs, assigns, or personal representatives, under the same restrictions and on the same grounds as allowed in other civil actions.

Sec. 11. The petition for a new trial must be filed at the time provided for the filing of petitions for a new trial in other civil actions.

Sec. 12. Third persons acquiring an interest in the subject matter of the action during the pendency of the proceedings initiated under this chapter shall take their interests subject to the final result of the proceedings.

Sec. 13. A party who, after a new trial, proves that the party is entitled to the premises that have been transferred in good faith to a purchaser may recover the proper amount of damages against the other party, either in the same action or in a subsequent action.

Sec. 14. In an action against a tenant under this chapter, the judgment is conclusive evidence against the landlord who has received notice under section 2 of this chapter.

Sec. 15. To recover through an action brought under this chapter, the plaintiff must recover on the strength of the plaintiff's own title.

Sec. 16. After:

(1) the plaintiff has filed a motion with the court;

C o p y

(2) notice has been delivered to the defendant; and

(3) a hearing at which the plaintiff has shown cause;

the court may grant an order allowing the plaintiff to enter upon the property in controversy and make a survey and admeasurement of the property for purposes of an action under this chapter.

Sec. 17. An order issued by a court under section 16 of this chapter must describe the property. A copy of the court order must be served upon the owner or person having occupancy and control of the property.

Sec. 18. If a plaintiff in an action under this chapter is entitled to damages for withholding, using, or injuring the plaintiff's property, the defendant may set off the value of any permanent improvements made to the property to the extent of the damages, unless the defendant prefers to use the law for the benefit of occupying defendants.

Sec. 19. If a defendant has demonstrated wanton aggression concerning the property that is subject to an action under this chapter, the jury may award the plaintiff exemplary damages.

Sec. 20. An action to determine and quiet a question of title to property may be brought by a plaintiff who:

(1) is in possession of the property;

(2) is out of possession of the property; or

(3) has a remainder or reversion interest in the property;

against a defendant who claims title to or an interest in the real property with a claim that is adverse to the plaintiff, even if the defendant is not in possession of the property.

Sec. 21. This chapter applies, as far as applicable, to:

(1) cases and partition cases where the title to real estate is a genuine question; and

(2) the pleadings and evidence between parties concerning questions of title to real estate.

Sec. 22. If the defendant's answer to a complaint under this chapter disclaims any interest or estate in the property, or if the defendant does not answer the complaint and the court issues a default judgment against the defendant, the defendant may not be required to pay the plaintiff's court costs.

Sec. 23. In an action by a plaintiff who is a tenant in common or joint tenant of real property against the plaintiff's cotenant, the plaintiff must show, in addition to the plaintiff's evidence of right, that defendant:

(1) denied plaintiff's right; or

C o p y

(2) did some act amounting to a denial of a plaintiff's right.

Chapter 3. Ejectment and Quiet Title

Sec. 1. (a) This section applies to all actions:

(1) in ejectment; or

(2) for the recovery of possession of real estate.

(b) At the time of filing a complaint or at any time before judgment, a plaintiff may file with the clerk of the court in which the action is filed or pending an affidavit stating the following:

(1) The plaintiff is entitled to possession of the property described in the complaint.

(2) The defendant has unlawfully retained possession of the property described in the complaint.

(3) The estimated value of the property described in the complaint.

(4) The estimated rental value of the property described in the complaint.

Sec. 2. (a) Upon the filing of an affidavit described in section 1 of this chapter, the clerk shall issue an order for a time fixed by the judge directing the defendant to appear to controvert the affidavit or to show cause why the judge should not remove the defendant from the property and put the plaintiff in possession. The order to show cause must direct the time within which the order must be served on the defendant and set forth the date, time, and place for the hearing, which may take place no earlier than five (5) business days after the date of service on the defendant.

(b) The order to show cause must state the following:

(1) The defendant may file supporting affidavits with the court.

(2) The defendant may appear and present supporting testimony at the hearing on the order to show cause.

(3) The defendant may file with the court a written undertaking to stay the delivery of the property under this chapter.

(4) The judge may issue a judgment of possession in favor of the plaintiff if the defendant fails to appear at the hearing.

Sec. 3. After reviewing the complaint, affidavits, and other evidence or testimony, the court may issue an order for possession before the hearing if probable cause appears that:

(1) the property is in immediate danger of destruction, serious harm, or sale to an innocent purchaser; or

(2) the holder of the property threatens to destroy, harm, or sell the property to an innocent purchaser.

C o p y

Sec. 4. (a) If a court issues an order of possession under section 3 of this chapter, the defendant or other person from whom possession of the property has been taken may apply to the court for an order shortening the time for hearing on the order to show cause. The court may shorten the time for the hearing and direct that the matter be heard on at least forty-eight (48) hours notice to the plaintiff. An order of possession issued under section 3 of this chapter must direct the sheriff or other executing officer to hold the property until further order of the court.

(b) If a court does not issue an order of possession under section 3 of this chapter, the court may, in addition to issuing an order to show cause, issue temporary restraining orders against the defendant as needed to preserve the rights of the parties with respect to the property and the status of the property. The court shall issue the temporary restraining orders in accordance with the rules of the supreme court governing the issuance of injunctions.

Sec. 5. (a) After the hearing on the order to show cause, the court shall:

(1) consider the pleadings, evidence, and testimony presented at the hearing; and

(2) determine with reasonable probability which party is entitled to possession, use, and enjoyment of the property.

The court's determination is preliminary pending final adjudication of the claims of the parties. If the court determines that the action is an action in which a prejudgment order of possession in plaintiff favor should issue, the court shall issue the order.

(b) The court may issue the prejudgment order of possession in favor of the plaintiff if the defendant fails to appear at the hearing on the order to show cause.

(c) If the plaintiff's property has a peculiar value that cannot be compensated by damages, the court may appoint a receiver to take possession of and hold the property until further order of the court.

Sec. 6. A court may not issue an order of possession in favor of a plaintiff other than an order of final judgment until the plaintiff has filed with the court a written undertaking in an amount fixed by the court and executed by a surety to be approved by the court binding the plaintiff to the defendant in an amount sufficient to assure the payment of any damages the defendant may suffer if the court wrongfully ordered possession of the property to the plaintiff.

Sec. 7. The court shall direct the order of possession to the

C o p y

sheriff or other officer charged with executing the order and within whose jurisdiction the property is located. The order of possession must:

(1) describe the property;

(2) direct the executing officer to:

(A) seize possession of the property unless the court issued the order without notice to the parties; and

(B) if the defendant has not filed a written undertaking as provided in section 8 of this chapter, put the plaintiff in possession of the property by removing the defendant and the defendant's personal property from the property;

(3) have attached a copy of any written undertaking filed by the plaintiff under section 6 of this chapter; and

(4) inform the defendant of the right to except to the surety upon the plaintiff's undertaking or to file a written undertaking for the repossession of the property as provided in section 8 of this chapter.

Sec. 8. (a) Before the hearing on the order to show cause or before final judgment, and within the time fixed in the order of possession, the defendant may require the return of possession of the property by filing with the court a written undertaking executed by a surety to be approved by the court stating that the defendant is bound in an amount determined by the court sufficient to assure the payment of costs assessed against the defendant for the wrongful detention of the property.

(b) If a defendant files an undertaking under this section, the defendant shall:

(1) serve a notice of filing the undertaking on the executing officer and the plaintiff or the plaintiff's attorney; and

(2) file with the court proof of service of the notice of filing the undertaking.

(c) If a defendant files an undertaking before the hearing on the order to show cause, the court shall terminate the hearing unless the plaintiff takes exception to the surety.

(d) If the property is in the possession of the executing officer when the defendant files the undertaking, the court shall return possession of the property to the defendant not more than five (5) days after service of notice of the filing of the undertaking on the plaintiff or the plaintiff's attorney.

Sec. 9. (a) If a defendant or the defendant's attorney is in open court when the court issues the order of possession, a copy of the order shall be delivered to the defendant and the delivery noted in

C o p y

the order book.

(b) If the defendant and the defendant's attorney are not present, sufficient copies of the order shall be delivered to the sheriff or other executing officer. The executing officer shall, without delay, serve upon the defendant a copy of the order of possession by delivering the order to the defendant personally or to the defendant's agent. If the executing officer cannot find the defendant or the defendant's agent, the executing officer shall leave the order at the defendant's usual place of abode or with some person of suitable age and discretion. If the defendant and the defendant's agent do not have any known usual place of abode, the executing officer shall mail the order to the defendant's last known address.

Sec. 10. If the property is in the possession or control of the defendant or the defendant's agent, the executing officer shall take the property into custody and remove the occupants from the property not earlier than forty-eight (48) hours after the order of possession is served on the defendant or the defendant's agent.

Sec. 11. The executing officer shall return the order of possession with the proceedings endorsed on the order to the court in which the action is pending not more than five (5) days after taking into custody the property described in the order.

Sec. 12. A final judgment supersedes any:

(1) prejudgment order for possession;

(2) temporary restraining order; or

(3) order temporarily changing possession of property;

issued under this chapter.

Sec. 13. Any person having a right to:

(1) recover the possession of; or

(2) quiet title to;

real estate in the name of any other person has a right to recover possession or quiet title in the person's own name. An action may not be defeated or reversed if the plaintiff could have successfully maintained the action in the name of another person to inure to the plaintiff's benefit.

Sec. 14. (a) This section applies to the following proceedings brought in a state court concerning real estate or any interest in real estate located in Indiana:

(1) An action to:

(A) quiet or determine title to;

(B) obtain title or possession of; or

(C) partition;

C o p y

real estate.

(2) An action by an executor or administrator to:

(A) sell real estate to satisfy the debts of a decedent; or

(B) enforce or foreclose a mortgage or lien on real estate.

(b) A person who institutes a proceeding described in subsection (a) may, under a circumstance set forth in subsection (c), name as a defendant any of the following individuals:

(1) A person:

(A) who may have an interest in real estate that is the subject of the proceeding; and

(B) whose name appears of record in a record concerning the real estate.

(2) A person who bears one of the following relationships to a former owner or encumbrancer of the real estate:

(A) Spouse.

(B) Widow or widower.

(C) Heir or devisee.

The person who institutes the proceeding does not have to know the name of a person described in subdivision (2).

(c) A person who institutes a proceeding described in subsection (a) may name an individual described in subsection (b) as a defendant if public records in the county in which the real estate that is the subject of the proceeding is located any of disclose the following circumstances:

(1) There is a break or hiatus in the record title of real estate.

(2) There exists:

(A) a defect in;

(B) an apparent defect in; or

(C) a cloud upon;

the title of the real estate due to a defective or inaccurate legal description of the real estate.

(3) There is no record that a grantor or mortgagor was unmarried when the deed to or mortgage on the real estate was executed.

(4) An instrument affecting the real estate, including a deed, will, or mortgage, was not properly executed.

(5) A mortgage, vendor's lien, or other lien or encumbrance affecting the real estate was not properly released.

(6) The person instituting the proceeding does not know:

(A) the name of another person who may claim an interest in the real estate based on the other person's relationship to a former owner, mortgagee, or encumbrancer of the real

C o p y

estate; or

(B) whether another person, including a person described in clause (A), who may have an interest in the real estate is alive or dead.

(d) The plaintiff in a proceeding described in subsection (a) may state the following in the complaint:

(1) The plaintiff asserts title to the real estate that is the subject of the proceeding against all other persons.

(2) The purpose of the proceeding is to quiet the title to the real estate.

(3) The plaintiff has named as defendants all persons whom the party knows may have a claim to or interest in the real estate.

(e) The plaintiff shall file with the complaint an affidavit that states the following:

(1) The complaint contains the names of all persons disclosed by public record by or through whom a claim or interest in the real estate may be asserted.

(2) The plaintiff does not know the following information about a person described in subdivision (1):

(A) Whether the person is alive or dead.

(B) The person's legal residence.

(C) The person's marital status.

(D) If the person is or has been married, the name or address of the person's spouse, widow, or widower.

(E) If the person is dead, whether the person has left any heirs or devisees.

(F) The name or legal residence of an heir or devisee.

(3) The plaintiff claims full and complete right and title in the real estate that is the subject of the proceeding described in subsection (a).

(4) The plaintiff intends to quiet title to the real estate through the proceeding.

(f) After the plaintiff files the complaint and affidavit, the plaintiff shall file an affidavit for publication of notice under IC 34-32-1.

(g) After the plaintiff files the affidavit for publication of notice described in subsection (f), the clerk of the county in which the real estate that is the subject of the proceeding described in subsection (a) is located shall publish notice of the following:

(1) The filing and pendency of the proceeding.

(2) The date on which the proceeding will take place.

C o p y

(3) Designations and descriptions of any defendant whose name and legal residence are unknown.

(4) A legal description of the real estate.

(5) The purpose of the proceeding, which is to quiet title to the real estate.

(h) After the clerk publishes notice as set forth in subsection (g), the clerk shall provide proof of the publication to the court in which the proceeding described in subsection (a) is pending. Not earlier than thirty (30) days after the last publication of notice, the court may hear and determine all matters in the proceeding as if the plaintiff had known and sued all possible claimants by their proper names. All decrees, orders, and judgments issued by the court are binding and conclusive on all parties and claimants. The proceeding shall be taken as a proceeding in rem against the real estate.

(i) If the real estate that is the subject of the proceeding described in subsection (a) is located in more than one (1) county, the plaintiff may file a complaint in a court located in any county in which the real estate is located. The plaintiff may not file a complaint in more than one (1) court. The plaintiff shall publish notice of the complaint in each county in which the real estate is located. The published notice in each county shall contain the following:

(1) The legal description of the real estate that is located in that county.

(2) The other counties in which the real estate is located.

(3) Notice that a certified copy of the final judgment in the proceeding will be filed, not more than three (3) months after the judgment is entered, in the recorder's office in each county in which the real estate is located.

Sec. 15. Section 14 of this chapter may not be construed to contravene or repeal any other Indiana law concerning title to real estate or suits or actions affecting title to real estate. Section 14 of this chapter supplements laws existing on April 26, 1915.

Sec. 16. (a) In a suit to quiet title to real estate in a state court, the plaintiff shall serve:

(1) all resident and nonresident defendants whose residence is known; and

(2) all defendants whose residence is unknown.

(b) Service on a known defendant by:

(1) the defendant's individual name;

(2) the name by which the defendant appears of record;

C o p y

(3) the name by which the defendant is commonly known; or

(4) the defendant's surname if the defendant's first name is unknown;

is sufficient, legal, and binding on and against all persons claiming from, through, or under the defendant.

(c) If a plaintiff serves a defendant by the defendant's surname only, the plaintiff or the plaintiff's attorney shall file an affidavit stating that the plaintiff does not know and has not, after diligent inquiry, been able to ascertain the first name of the defendant.

Sec. 17. (a) The clerk of a court shall enter in the civil order book all orders and decrees in any suit to quiet the title to real estate. After a court enters final judgment in a proceeding, the clerk shall certify a copy of the final judgment and deliver the certified copy to the county recorder. The clerk shall include the costs of a transcript of the proceedings and the recording fees in the costs of the proceeding.

(b) A county recorder shall procure a substantially bound book that is the size and quality of the county deed records. The book shall be known as the "Quiet Title Record". The Quiet Title Record must contain a transcript of each proceeding and an index to each transcript. The index must contain the following:

(1) An alphabetical list of plaintiffs.

(2) The date of filing of the transcript.

(3) The date of the final judgment.

(4) The date on which the final judgment was recorded.

(5) A brief description of the real estate that was the subject of the proceeding.

(6) The book and page on which the final judgment is recorded.

Sec. 18. (a) A nonresident who, if alive, would be entitled to take and to own real estate in Indiana by descent or devise is presumed dead if the following conditions are met:

(1) The nonresident has been absent from the nonresident's last place of residence in any other state or country for seven (7) years.

(2) A spouse, parent, child, or sibling of the nonresident has not heard from the nonresident for seven (7) years.

(b) The real estate that a nonresident described in subsection (a) otherwise would have taken descends from the nonresident to the nonresident's heirs under IC 29.

(c) Title that passes under subsection (b) vests in a nonresident's heirs upon full compliance with the provisions of section 19 of this

C o p y

chapter.

Sec. 19. (a) A person who claims real estate under section 18 of this chapter may file a verified complaint in the circuit or superior court of the county in which the real estate is located. The complaint must:

(1) name as a defendant the nonresident who is presumed dead under section 18 of this chapter;

(2) particularly describe the real estate; and

(3) contain a statement of the facts required by section 18 of this chapter.

(b) Notice of the pendency of the action, including the date on which the court shall hear the complaint filed under subsection (a), must be published in a daily or weekly newspaper of general circulation that is printed and published in the county seat of the county in which the real estate is located. If a newspaper does not exist, notice must be published in a newspaper that is printed and published in the county in which the real estate is located. Notice must also be published in a newspaper of general circulation that is printed and published in the county seat of the county in which the defendant last resided. If a newspaper is not printed and published in that county seat, then notice must be published in a newspaper that is printed and published in the county seat nearest to the county in which the defendant last resided.

(c) Prima facie proof of publication of notice as required by subsection (b) consists of:

(1) affidavits of the publishers of the newspapers in which the notice was published; and

(2) a printed copy of the published notice.

(d) The court shall hear the complaint filed under subsection (a) not earlier than sixty-five (65) days after notice was first published under subsection (b). If the court finds that:

(1) the defendant received sufficient notice under subsection (b); and

(2) the facts alleged in the complaint are true;

the court shall enter judgment quieting the title to the real estate in favor of the plaintiff.

(e) A judgment entered under subsection (d) becomes final and absolute three (3) years after the date it was entered unless, within those three (3) years, the defendant appears and moves to vacate the judgment.

Sec. 20. (a) A resident householder in Indiana who may claim real estate owned by the householder exempt from sale on

C o p y

execution may quiet the title to the real estate against any judgment or lien.

(b) The complaint in an action described in subsection (a) must state the following:

(1) The ownership of the real estate.

(2) The existence of a judgment against the real estate.

(3) The right of the owner to claim the real estate exempt from sale on execution.

(c) In an action described in subsection (a), the title to the real estate may be quieted against a judgment whether the householder has executed the judgment or has filed a schedule claiming an exemption from sale on execution if the court finds that the owner's interest, in value, of the real estate does not at the time of the hearing exceed any mortgages, tax, or assessment on the real estate by more than seven hundred dollars ($700).

Sec. 21. At the hearing under section 20 of this chapter, the court shall determine the value of the householder's interest in the real estate and shall set forth this amount in the decree quieting the title to the real estate. While the householder owns the real estate, the amount shall be charged against any other claim of exemption made by the householder to limit the householder's exemption in the real estate from sale on execution or other final process to the amount allowed by law.

Chapter 4. Actions for Waste

Sec. 1. (a) Wrongs that were previously remediable by an action of waste are remediable by a judgment for damages, forfeiture of the estate of the offending party, and eviction from the premises.

(b) A judgment of forfeiture and eviction may be given to a person who is entitled to the reversion against the tenant in possession only when the injury to the estate in reversion is adjudged:

(1) to be equal to the value of the tenant's estate or unexpired term; or

(2) to have been done in malice.

Sec. 2. Notwithstanding an intervening estate for life or years, a person who has a remainder or reversion in an estate may maintain an action for waste, trespass, or injury to the inheritance.

Chapter 5. Receiverships

Sec. 1. A receiver may be appointed by the court in the following cases:

(1) In an action by a vendor to vacate a fraudulent purchase of property or by a creditor to subject any property or fund

C o p y

to the creditor's claim.

(2) In actions between partners or persons jointly interested in any property or fund.

(3) In all actions when it is shown that the property, fund or rent, and profits in controversy are in danger of being lost, removed, or materially injured.

(4) In actions in which a mortgagee seeks to foreclose a mortgage. However, upon motion by the mortgagee, the court shall appoint a receiver if, at the time the motion is filed, the property is not occupied by the owner as the owner's principal residence and:

(A) it appears that the property is in danger of being lost, removed, or materially injured;

(B) it appears that the property may not be sufficient to discharge the mortgaged debt;

(C) either the mortgagor or the owner of the property has agreed in the mortgage or in some other writing to the appointment of a receiver;

(D) a person not personally liable for the debt secured by the mortgage has, or is entitled to, possession of all or a portion of the property;

(E) the owner of the property is not personally liable for the debt secured by the mortgage; or

(F) all or any portion of the property is being, or is intended to be, leased for any purpose.

(5) When a corporation:

(A) has been dissolved;

(B) is insolvent;

(C) is in imminent danger of insolvency; or

(D) has forfeited its corporate rights.

(6) To protect or preserve, during the time allowed for redemption, any real estate or interest in real estate sold on execution or order of sale, and to secure rents and profits to the person entitled to the rents and profits.

(7) In other cases as may be provided by law or where, in the discretion of the court, it may be necessary to secure ample justice to the parties.

Sec. 2. A court may not appoint:

(1) a party;

(2) an attorney representing a party; or

(3) another person interested in an action;

as a receiver in that action.

C o p y

Sec. 3. Before beginning duties as a receiver, the receiver must:
(1) swear to perform the duties of a receiver faithfully; and
(2) with one (1) or more sureties approved by the court or judge, execute a written undertaking, payable to such person as the court or the judge directs, to the effect that the receiver will:
(A) faithfully discharge the duties of receiver in the action; and
(B) obey the orders of the court or judge.

Sec. 4. If it is admitted by the pleading or examination of a party that the party has in the party's possession or under the party's control any money or other thing capable of delivery, which:
(1) is the subject of the litigation;
(2) is held by the party as trustee for another party; or
(3) belongs or is due to another party;
the court or the judge may order the money or thing to be deposited in court or with the clerk, or delivered to the other party, with or without security, subject to the further order of the court or the judge.

Sec. 5. If, in the exercise of its authority, a court or judge:
(1) has ordered the deposit or delivery of money or another thing; and
(2) the order is disobeyed;
the court or the judge, besides punishing the disobedience as contempt, may make an order requiring the sheriff to take the money or thing and deposit it or deliver it in conformity with the direction of the court or judge.

Sec. 6. Money deposited or paid into court or with the clerk in an action may not be loaned out unless consent is obtained from all parties having an interest in or making claim to the money.

Sec. 7. The receiver may, under control of the court or the judge:
(1) bring and defend actions;
(2) take and keep possession of the property;
(3) receive rents; and
(4) collect debts;
in the receiver's own name, and generally do other acts respecting the property as the court or judge may authorize.

Sec. 8. If the answer of the defendant admits part of the plaintiff's claim to be just, the court, on motion, may order the defendant to satisfy that part of the claim and may enforce the order by execution.

C o p y

Sec. 9. Receivers may not be appointed in any case until the adverse party has appeared or has had reasonable notice of the application for the appointment, except upon sufficient cause shown by affidavit.

Sec. 10. (a) In all cases commenced or pending in any Indiana court in which a receiver may be appointed or refused, the party aggrieved may, within ten (10) days after the court's decision, appeal the court's decision to the supreme court without awaiting the final determination of the case.

(b) In cases where a receiver will be or has been appointed, upon the appellant filing of an appeal bond:

(1) with sufficient surety;

(2) in the same amount as was required of the receiver; and

(3) conditioned for the due prosecution of the appeal and the payment of all costs or damages that may accrue to any officer or person because of the appeal;

the authority of the receiver shall be suspended until the final determination of the appeal.

Sec. 11. In any suit or action by a receiver appointed by any court of record in Indiana, it is only necessary for the receiver, in the receiver's complaint or pleading, to state:

(1) the court;

(2) the cause of action in which the receiver was appointed; and

(3) the date on which the receiver was appointed.

Proof of the appointment is not required on the trial of the cause unless the appointment is specially denied, in addition to the general denial filed in the cause.

Sec. 12. The clerk of the court of each county shall keep a record book suitable to enter and record statements of assets and liabilities.

Sec. 13. All claims against the assets in the hands of the receiver that are filed with the receiver shall be filed by the receiver with the clerk of the court in which the receivership is pending. The clerk shall record the claims with the statements under this chapter, resulting in a complete record of the assets and liabilities of the receivership.

Sec. 14. In all receiverships pending or begun in any court, the receiver, within the time as may be fixed by an order of the court in which the receivership is pending, shall file with the court an account or report in partial or final settlement of the liquidation or receivership proceedings.

C o p y

Sec. 15. The account or report required by section 14 of this chapter must set forth all:

(1) receipts and disbursements to the date of the accounting; and

(2) other appropriate information relative to the:

(A) administration of the receivership;

(B) liquidation of the receivership; and

(C) declaration and payment of dividends.

Sec. 16. If an account is not filed within one (1) year after the date when the receiver took possession of the assets and effects of the receivership, any party interested may petition the court for an order requiring the filing of an account.

Sec. 17. (a) Except as provided in subsection (d), upon the filing of an account or report, the clerk of the court in which the receivership is pending shall give notice of the date on which the account or report is to be heard and determined by the court.

(b) The clerk shall give the notice required by subsection (a) by publication, once each week for three (3) successive weeks in two (2) newspapers of general circulation published or circulated within the county.

(c) The date in the notice on which the account or report is to be heard and determined by the court shall be fixed not less than thirty (30) days after the date of the filing of the account or report.

(d) Publication is not required under this section if the receivership is ancillary to a mortgage foreclosure.

Sec. 18. (a) During the thirty (30) day period referred to in section 17 of this chapter, any creditor, shareholder, or other interested party may file objections or exceptions in writing to the account or report.

(b) Any objections or exceptions to the matters and things contained in an account or report and to the receiver's acts reported in the report or account that are not filed within the thirty (30) day period referred to in section 17 of this chapter are forever barred for all purposes.

Sec. 19. At the expiration of the thirty (30) day period referred to in section 17 of this chapter, the court shall, without delay:

(1) proceed with the hearing and determination of the objections or exceptions;

(2) pass upon the account or report;

(3) order the payment of a partial or final dividend; and

(4) make other appropriate orders.

Sec. 20. The court's approval of a receiver's partial account or

C o p y

report, as provided in section 14 of this chapter, releases and discharges the receiver and the surety on the receiver's bond for all matters and things related to or contained in the partial account or report.

Sec. 21. Upon the:

(1) court's approval of the receiver's final account or report, as provided in section 14 of this chapter; and

(2) receiver's performance and compliance with the court's order made on the final report;

the receiver and the surety on the receiver's bond shall be fully and finally discharged and the court shall declare the receivership estate finally settled and closed subject to the right of appeal of the receiver or any creditor, shareholder, or other interested party who has filed objections or exceptions as provided in section 18 of this chapter.

Sec. 22. (a) This section applies to any action, proceeding, or matter relating to or involving a receivership estate.

(b) Except as provided in subsections (c) and (d), a party to a proceeding described in subsection (a) is entitled to a change of judge or a change of venue from the county for the same reasons and upon the same terms and conditions under which a change of judge or a change of venue from the county is allowed in any civil action.

(c) This section does not authorize a change of venue from the county:

(1) concerning expenses allowed by the court incidental to the operation, management, or administration of the receivership estate;

(2) upon any petition or proceeding to remove a receiver; or

(3) upon the objections or exceptions to any partial or final account or report of any receiver.

(d) A change of venue is not allowed from the county of the administration of any receivership estate, or upon any petition or proceeding to remove a receiver, or upon objections or exceptions to a partial or final account or report of a receiver.

Chapter 6. Nuisance Actions

Sec. 1. As used in this chapter, "agricultural operation" includes any facility used for the production of crops, livestock, poultry, livestock products, poultry products, or horticultural products or for growing timber.

Sec. 2. As added used in this chapter, "industrial operation" includes any facility used for the:

C o p y

(1) manufacture of a product from other products;
(2) transformation of a material from one (1) form to another;
(3) mining of a material and related mine activities; or
(4) storage or disposition of a product or material.

Sec. 3. As used in this chapter, "locality":

(1) for purposes of section 9 of this chapter, means the specific area of land upon which an:
(A) agricultural operation; or
(B) industrial operation;
is conducted; and

(2) for purposes of section 10 of this chapter, means the following:
(A) The specific area of land upon which a public use airport operation is conducted.
(B) The airport imaginary surfaces as described in IC 8-21-10-8.

Sec. 4. As used in this chapter, "public use airport operation" includes any facility used as a public use airport for the landing, take off, storage, or repair of aircraft.

Sec. 5. As used in this chapter, "vicinity of the locality" means the following:

(1) Three (3) miles from the locality (as defined in section 3(2) of this chapter) of a public use airport operation that serves regularly scheduled air carrier or military turbojet aircraft.
(2) One and one-half (1.5) miles from the locality of a public use airport operation that does not serve regularly scheduled air carrier or military turbojet aircraft.

Sec. 6. Whatever is:

(1) injurious to health;
(2) indecent;
(3) offensive to the senses; or
(4) an obstruction to the free use of property;

so as essentially to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action.

Sec. 7. (a) An action to abate or enjoin a nuisance may be brought by any person whose:

(1) property is injuriously affected; or
(2) personal enjoyment is lessened;

by the nuisance.

(b) A civil action to abate or enjoin a nuisance may also be brought by:

(1) an attorney representing the county in which a nuisance

C o p y

exists; or

(2) the attorney of any city or town in which a nuisance exists.

(c) A county, city, or town that brings a successful action under this section (or IC 34-1-52-2 or IC 34-19-1-2 before their repeal) to abate or enjoin a nuisance caused by the unlawful dumping of solid waste is entitled to recover reasonable attorney's fees incurred in bringing the action.

Sec. 8. If a proper case is made, the nuisance may be enjoined or abated and damages recovered for the nuisance.

Sec. 9. (a) This section does not apply if a nuisance results from the negligent operation of an agricultural or industrial operation or its appurtenances.

(b) The general assembly declares that it is the policy of the state to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. The general assembly finds that when nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations, and many persons may be discouraged from making investments in farm improvements. It is the purpose of this section to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.

(c) For purposes of this section, the continuity of an agricultural or industrial operation shall be considered to have been interrupted when the operation has been discontinued for more than one (1) year.

(d) An agricultural or industrial operation or any of its appurtenances is not and does not become a nuisance, private or public, by any changed conditions in the vicinity of the locality after the agricultural or industrial operation, as the case may be, has been in operation continuously on the locality for more than one (1) year if:

(1) there is no significant change in the hours of operation;

(2) there is no significant change in the type of operation; and

(3) the operation would not have been a nuisance at the time the agricultural or industrial operation began on that locality.

Sec. 10. (a) This section does not apply if a nuisance results from the negligent operation of a public use airport operation or the operation's appurtenances.

(b) It is the purpose of this section to limit the circumstances

C o p y

under which a public use airport operation may be a nuisance in order to reduce the potential for the state to lose the benefits to the state's air transportation system that are provided by public use airports.

(c) A public use airport operation or any of the operation's appurtenances may not become a private or public nuisance by any changed condition in the vicinity of the locality that occurs after the public use airport operation operates continuously on the locality for more than one (1) year if the following conditions are met:

(1) The public use airport operation was not a nuisance at the time when the operation began operating at that locality.

(2) The public use airport operation is operated in accordance with the rules of the Indiana department of transportation, aeronautics section.

(3) There is no significant change in the hours of operation of the public use airport operation.

Chapter 7. Actions for Indecent Nuisances

Sec. 1 As used in this chapter, "indecent nuisance" means a:

(1) place in or upon which prostitution (as described in IC 35-45-4);

(2) public place in or upon which deviate sexual conduct (as defined in IC 35-41-1-9) or sexual intercourse (as defined in IC 35-41-1-26); or

(3) public place in or upon which the fondling of the genitals of a person;

is conducted, permitted, continued, or exists, and the personal property and contents used in conducting and maintaining the place for such a purpose.

Sec. 2. As used in this chapter, "person" has the meaning set forth in IC 35-41-1-22.

Sec. 3. As used in this chapter, "place" includes any part of a building or structure or the ground.

Sec. 4. As used in this chapter, "prosecuting official" refers to public officials who have concurrent jurisdiction to enforce this chapter, including:

(1) the attorney general;

(2) the prosecuting attorney of the circuit in which an indecent nuisance exists;

(3) the corporation counsel or city attorney of the city (if any) in which an indecent nuisance exists; or

(4) an attorney representing the county in which an indecent

C o p y

nuisance exists.

Sec. 5. As used in this chapter, "public place" means any place to which the public is invited by special or an implied invitation.

Sec. 6. The following are guilty of maintaining an indecent nuisance and may be enjoined from maintaining the indecent nuisance under this chapter:

(1) A person who uses, occupies, establishes, maintains, or conducts an indecent nuisance.

(2) The owner, agent, or lessee of any interest in an indecent nuisance.

(3) A person employed in an indecent nuisance.

Sec. 7. (a) If an indecent nuisance exists, a prosecuting official or any resident of the county in which the indecent nuisance exists may bring an action to abate the indecent nuisance and to perpetually enjoin the maintenance of the indecent nuisance.

(b) If a person other than a prosecuting official institutes an action under this chapter, the complainant shall execute a bond to the person against whom complaint is made, with good and sufficient surety to be approved by the court or clerk in a sum of at least one thousand dollars ($1,000) to secure to the party enjoined the damages the party may sustain if:

(1) the action is wrongfully brought;

(2) the action is not prosecuted to final judgment;

(3) the action is dismissed;

(4) the action is not maintained; or

(5) it is finally decided that the injunction ought not to have been granted.

The party aggrieved by the issuance of the injunction has recourse against the bond for all damages suffered, including damages to the aggrieved party's property, person, or character and including reasonable attorney's fees incurred in defending the action.

(c) A person who institutes an action and executes a bond may recover the bond and reasonable attorney's fees incurred in trying the action if the existence of an indecent nuisance is admitted or established in an action as provided in this chapter.

(d) If a prosecuting official institutes an action under this chapter (or IC 34-1-52.5 or IC 34-19-2 before their repeal) and the existence of an indecent nuisance is admitted or established in the action, the governmental entity that employs the prosecuting official is entitled to all reasonable attorney's fees incurred by the entity in instituting the action. The fees shall be deposited in:

(1) the state general fund, if the action is instituted by the

C o p y

attorney general;

(2) the operating budget of the office of the prosecuting attorney, if the action is instituted by a prosecuting attorney;

(3) the operating budget of the office of the corporation counsel or city attorney, if the action is instituted by a corporation counsel or city attorney; or

(4) the county general fund, if the action is instituted by an attorney representing the county.

Sec. 8. An indecent nuisance action must be brought in the circuit or superior court of the county in which the alleged indecent nuisance is located. The action is commenced by filing a verified complaint alleging the facts constituting the indecent nuisance.

Sec. 9. (a) After filing the complaint, a complainant may apply to the court for a preliminary injunction. The court shall grant a hearing on the complainant's motion for preliminary injunction not later than ten (10) days after it is filed.

(b) If an application for a preliminary injunction is made, the court may, on application of the complainant showing good cause, issue an ex parte restraining order restraining the defendant and all other persons from removing or in any manner interfering with the personal property and contents of the place where the indecent nuisance is alleged to exist until the decision of the court granting or refusing a preliminary injunction and until further order of the court. However, pending the court's decision, the stock in trade may not be restrained, but an inventory and full accounting of business transactions after the restraining order may be required.

(c) A restraining order issued under subsection (b) may be served by:

(1) handing to and leaving a copy of the order with a person who is:

(A) in charge of the place; or

(B) a resident of the place; or

(2) posting a copy of the order in a conspicuous place at or upon at least one (1) of the principal doors or entrances to the place.

(d) The officer serving a restraining order issued under subsection (b) shall immediately make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining alleged the indecent nuisance.

(e) Violation of a restraining order served under subsection (c) (or IC 34-1-52.5-4 or IC 34-19-2-4 before their repeal) is a contempt of court.

C o p y

(f) If a restraining order is posted under subsection (c)(2), mutilation or removal of the order while it is in force is a contempt of court if the order contains a notice stating that mutilating or removing the order while it is in force is a contempt of court.

Sec. 10. (a) In an action under this chapter:

(1) a copy of the complaint; and

(2) a notice of the time and place of the hearing on the application for a preliminary injunction, if the complainant has applied for a preliminary injunction under section 9(a) of this chapter;

shall be served upon the defendant at least five (5) days before the hearing.

(b) The owners of the place where the alleged indecent nuisance is located may be served by posting the papers in the manner prescribed by section 9(c) of this chapter for serving a restraining order.

(c) If a defendant:

(1) is granted a request for continuance; or

(2) moves for a change of venue or a change of judge;

the preliminary writ shall be granted as a matter of course.

Sec. 11. (a) If the complainant has applied for a preliminary injunction under section 9(a) of this chapter, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing on the application for the preliminary injunction:

(1) before or after the commencement of the hearing on an application for a preliminary injunction; and

(2) upon:

(A) application of either of the parties; or

(B) the court's own motion.

(b) Any evidence received upon an application for a preliminary injunction that is admissible in the trial on the merits becomes a part of the record of the trial and does not need to be repeated as to the parties at the trial on the merits.

Sec. 12. (a) If the plaintiff has applied for a preliminary injunction under section 9(a) of this chapter and, at the preliminary injunction hearing, the plaintiff proves by a preponderance of the evidence that the indecent nuisance exists as alleged in the complaint, the court shall issue a preliminary injunction, without additional bond, restraining the defendant and any other person from continuing the indecent nuisance.

(b) If a defendant is enjoined under subsection (a) and it

C o p y

appears that the person owning, in control of, or in charge of the indecent nuisance received five (5) days notice of the hearing, the court shall:

(1) declare a temporary forfeiture of the use of the real property upon which the indecent nuisance is located and the personal property located at the site; and

(2) immediately issue an order closing the place against its use for any purpose until a final decision is rendered on the application for a permanent injunction;

unless the person owning, in control of, or in charge of the indecent nuisance shows to the satisfaction of the court, by competent and admissible evidence subject to cross-examination, that the indecent nuisance complained of has been abated by the person.

Sec. 13. An order issued under section 12(b)(2) of this chapter closing a place continues in effect while the restraining order issued under section 9(b) of this chapter is in effect. If a restraining order has not been issued under section 9(b) of this chapter, the order closing the place under section 12(b)(2) of this chapter must include an order restraining the removal or interference with the personal property and contents.

Sec. 14. If a restraining order is issued under section 9(b) or 13 of this chapter:

(1) the restraining order shall be served under section 9(c) of this chapter; and

(2) the inventory of the property shall be made and filed as provided in section 9(d) of this chapter.

Sec. 15. (a) The owner of real property that has been closed or is to be closed under this chapter may appear after the filing of the complaint and before the hearing on the application for a permanent injunction and do the following:

(1) Pay all costs incurred.

(2) File a bond with sureties to be approved by the court:

(A) in the full value of the property to be ascertained by the court; and

(B) conditioned upon the owner immediately abating the indecent nuisance and preventing the indecent nuisance from being established or kept until the decision of the court is rendered on the application for a permanent injunction.

(b) If the defendant complies with subsection (a) and the court is satisfied:

(1) of the good faith of the owner of the real property; and

C o p y

(2) that the owner did not know and, with reasonable care and diligence, could not have known that the real property was used as an indecent nuisance;

the court shall, at the time of the hearing on the application for the preliminary injunction, refrain from issuing an order closing the real property or restraining the removal or interference with the personal property. If a preliminary injunction has already been issued, the court shall discharge the order and deliver the property to the owners.

Sec. 16. The owner of the personal property that has been restrained or is to be restrained under this chapter may appear after the filing of the complaint and before the hearing on the application for a permanent injunction and petition the court to release the personal property. If the court is satisfied that the owner:

(1) has acted in good faith; and

(2) did not know and, with reasonable care and diligence, could not have known that the personal property was used as an indecent nuisance;

the court shall, at the time of the hearing on the application for the preliminary injunction, refrain from issuing any order restraining the removal or interference with the personal property. If the preliminary injunction has been issued, the court shall discharge the order and deliver the property to the owner.

Sec. 17. The release of any real or personal property under section 15 or 16 of this chapter does not release the property from any judgment, lien, penalty, or liability to which it is subject.

Sec. 18. An indecent nuisance action under this chapter shall be set down for trial without delay and takes precedence over all other cases except crimes, election contests, or injunctions.

Sec. 19. In an indecent nuisance action under this chapter, evidence of the general reputation of the place is:

(1) admissible to prove the existence of the indecent nuisance; and

(2) presumptive evidence that a person who:

(A) owned;

(B) was in control of; or

(C) was in charge of;

the indecent nuisance knew the indecent nuisance existed and used the place for an act constituting an indecent nuisance.

Sec. 20. (a) This section applies to an indecent nuisance complaint under this chapter filed by a private person.

C o p y

(b) The court shall not voluntarily dismiss the complaint unless:

(1) the complainant and the complainant's attorney file a sworn statement setting forth the reason why the action should be dismissed; and

(2) the dismissal is approved in writing or in open court by the prosecuting attorney of the circuit in which the alleged indecent nuisance is located.

(c) If the judge believes that the action should not be dismissed, the judge may direct the prosecuting attorney to prosecute the action to judgment at the expense of the county.

(d) If:

(1) the action is brought by a private person;

(2) the court finds that there were no reasonable grounds or probable cause for bringing said action; and

(3) the case is dismissed either:

(A) for the reason described in subdivision (2) before trial; or

(B) for want of prosecution;

the costs may be taxed to the person who brought the case.

Sec. 21. If at the permanent injunction hearing the plaintiff proves by a preponderance of the evidence that the indecent nuisance exists as alleged in the complaint, the court shall enter a judgment that perpetually enjoins:

(1) the defendant and any other person from further maintaining the indecent nuisance at the place described in the complaint; and

(2) the defendant from maintaining an indecent nuisance elsewhere.

Sec. 22. (a) If the existence of an indecent nuisance is admitted or established as provided in section 21 of this chapter, the court shall enter an order of abatement as a part of the judgment in the case. The order of abatement must:

(1) direct the removal of all personal property and contents that:

(A) are located at the place described in the complaint;

(B) are used in conducting the indecent nuisance; and

(C) have not already been released under authority of the court as provided in sections 15 and 16 of this chapter;

(2) direct the sale of personal property that belongs to the defendants who were notified or appeared at the hearing, in the manner provided for the sale of chattels under execution; and

C o p y

(3) require one (1) of the following:

(A) The renewal for one (1) year of any bond furnished by the owner of the real property under section 15(a)(2) of this chapter.

(B) If a bond was not furnished, continue for one (1) year any closing order issued under section 12(b)(2) of this chapter at the time of granting the preliminary injunction.

(C) If a closing order was not issued when the preliminary injunction was granted, direct the effectual closing of the place against its use for any purpose for one (1) year, unless sooner released.

(b) The owner of a place that has been closed and not released under bond may appear and obtain a release in the manner and upon fulfilling the requirements provided in sections 15 and 16 of this chapter.

(c) The release of property under this section does not release the property from any judgment, lien, penalty, or liability to which the property may be subject.

(d) Owners of unsold personal property and contents seized under subsection (a) may:

(1) appear and claim the property within ten (10) days after an order of abatement is made; and

(2) prove to the satisfaction of the court:

(A) that the owner is innocent of any knowledge of the use of the property; and

(B) that with reasonable care and diligence the owner could not have known of the use of the property.

(e) If an owner meets the requirements set forth in subsection (d), the unsold personal property and contents shall be delivered to the owner. Otherwise, the unsold personal property and contents shall be sold as provided in this section.

(f) The officer who removes and sells the personal property and contents under subsection (e) may charge and receive the same fees as the officer would receive for levying upon and selling similar property on execution.

(g) If an order of abatement requires the closing of a place under subsection (a)(3)(C), the court shall allow a reasonable sum to be paid for the cost of closing the place and keeping it closed.

Sec. 23. In case of:

(1) the violation of any injunction or closing order granted under this chapter;

(2) the violation of a restraining order issued under this

C o p y

chapter; or

(3) the commission of any contempt of court in proceedings under this chapter;

the court may summarily try and punish the offender. The trial may be upon affidavits or either party may demand the production and oral examination of the witnesses.

Sec. 24. (a) All money collected under this chapter shall be paid to the county treasurer.

(b) The proceeds of the sale of the personal property under section 22 of this chapter, or as much of the proceeds as necessary, shall be applied in payment of the costs of the action and abatement, including the complainant's costs.

Sec. 25. (a) This section applies to a tenant or occupant of a building or tenement, under a lawful title, who uses the place for acts that create an indecent nuisance.

(b) The owner of a place described in subsection (a) may void the lease or other title under which the tenant or occupant holds. The use of the place to create an indecent nuisance, without any act of the owner of the place, causes the right of possession to revert and vest in the owner. Without process of law, the owner may make immediate entry upon the premises.

Chapter 8. Actions for Drug Nuisances

Sec. 1. As used in this chapter, "nuisance" means:

(1) the use of a property to commit an act constituting an offense under IC 35-48-4; or

(2) an attempt to commit or a conspiracy to commit an act described in subdivision (1).

Sec. 2. (a) As used in this chapter, "property" means a house, a building, a mobile home, or an apartment that is leased for residential or commercial purposes.

(b) The term includes:

(1) an entire building or complex of buildings; or

(2) a mobile home park;

and all real property of any nature appurtenant to and used in connection with the house, building, mobile home, or apartment, including all individual rental units and common areas.

(c) The term does not include a hotel, motel, or other guest house, part of which is rented to a transient guest.

Sec. 3. (a) As used in this chapter, "tenant" means a person who leases or resides in a property.

(b) The term does not include a person who:

(1) owns a mobile home;

C o p y

(2) leases or rents a site in a mobile home park for residential use; and

(3) resides in a mobile home park.

Sec. 4. An action to abate a nuisance under this chapter may be initiated by any of the following:

(1) The prosecuting attorney of the circuit where the nuisance is located.

(2) The corporation counsel or city attorney of a city in which a nuisance is located.

(3) An attorney representing a county in which a nuisance is located.

(4) The property owner.

Sec. 5. (a) A person initiating an action under this chapter to abate a nuisance existing on a property shall, at least forty-five (45) days before filing the action, provide notice to:

(1) each tenant of the property; and

(2) the owner of record;

that a nuisance exists on the property.

(b) The notice required under this section must specify the following:

(1) The date and time the nuisance was first discovered.

(2) The location on the property where the nuisance is allegedly occurring.

(c) The notice must be:

(1) hand delivered; or

(2) sent by certified mail;

to each tenant and the owner of record.

(d) A person initiating an action to abate a nuisance under this chapter shall:

(1) when notice is provided under this section, produce all evidence in the person's possession or control of the existence of the nuisance; and

(2) if requested by the owner, assist the owner in the production of witness and physical evidence.

Sec. 6. If the owner of record of a property that is the subject of an action under this chapter initiates or joins in the action under this chapter, the requirement under section 5 of this chapter to provide notice at least forty-five (45) days before filing does not apply to the action.

Sec. 7. (a) Notice of a complaint initiating an action under this chapter must be made as provided in the Indiana Rules of Trial Procedure.

C o p y

(b) Except in an action under this chapter in which the owner of record of the property that is the subject of the action initiates or joins the action as a party, the person who initiates an action under this chapter, not later than forty-eight (48) hours after filing a complaint under this chapter, shall post a copy of the complaint in a conspicuous place on the property alleged by the complaint to be a nuisance.

Sec. 8. (a) If the defendant has not been personally served with process despite the exercise of due diligence, the person initiating an action under this chapter, not more than twenty (20) days after the filing of a complaint and the filing of an affidavit that personal service on the defendant cannot be had after due diligence, may cause a copy of the complaint to be mailed to the defendant by certified mail, restricted delivery, return receipt to the clerk of court requested. Service is considered completed when the following are filed with the court:

(1) Proof of the mailing.

(2) An affidavit that a copy of the complaint has been posted on the property alleged to be a nuisance.

(b) This subsection does not apply to transient guests of a hotel, motel, or other guest house. All tenants or residents of a property that is used in whole or in part as a business, home, residence, or dwelling who may be affected by an order issued under this chapter must be:

(1) provided reasonable notice as ordered by the court having jurisdiction over the nuisance action; and

(2) afforded an opportunity to be heard at all proceedings in the action.

(c) Notice of lis pendens shall be filed concurrently with the initiation of an action under this chapter.

Sec. 9. (a) Except as otherwise provided under rules adopted by the Indiana supreme court, upon the filing of a complaint initiating an action under this chapter, the court shall schedule a hearing not later than twenty (20) days after the filing date.

(b) Service of process must be made upon the owner of the property that is alleged in the notice filed under section 5 of this chapter to be a nuisance at least five (5) days before the hearing. If service cannot be completed in time to give the owner the minimum notice required by this subsection, the court may set a new hearing date.

Sec. 10. The court may issue an injunction or order other equitable relief under this chapter regardless of whether an

C o p y

adequate remedy exists at law.

Sec. 11. Notwithstanding any other provision of law, and in addition to or as a component of a remedy ordered under section 10 of this chapter, the court, after a hearing, may order a tenant that created a nuisance on the property leased by the tenant to vacate the property within seventy-two (72) hours after the issuance of the order.

Sec. 12. (a) The court, after a hearing under this chapter, may grant a judgment of restitution or the possession of the property to the owner if:

(1) the owner and tenant are parties to the action; and

(2) the tenant has failed to obey an order issued under section 10 or 11 of this chapter.

(b) If the court orders the owner to have possession of the property, the court shall require the sheriff to execute the order of possession not later than five (5) days after the order is issued.

(c) If the owner is awarded possession of the property, the owner may seek an order from the court allowing removal of a tenant's personal property under IC 32-31-4.

Sec. 13. In an action under this chapter, the court may order the owner of the property to submit for court approval a plan for correction to ensure, to the extent reasonably possible, that the property will not again be used for a nuisance if the owner:

(1) is a party to the action; and

(2) knew of the existence of the nuisance.

Sec. 14. Except as provided in section 13 of this chapter, the court may order appropriate relief under this chapter without proof that a defendant knew of the existence of the nuisance.

Sec. 15. In any action brought under this chapter:

(1) evidence of the general reputation of the property is admissible to corroborate testimony based on personal knowledge or observation, or evidence seized during the execution of a search and seizure warrant, but is not sufficient to establish the existence of a nuisance under this chapter; and

(2) evidence that the nuisance had been discontinued at the time of the filing of the complaint or at the time of the hearing does not bar the imposition of appropriate relief by the court under sections 10 through 14 of this chapter.

Chapter 9. Actions Against Cotenants

Sec. 1. A claimant who is a joint tenant, tenant in common, or tenant in coparcenary may maintain an action against the claimant's cotenant or coparcener, or the cotenant's or

C o p y

coparcener's personal representatives, for receiving more than the cotenant's or coparcener's just proportion of the rents, profits, or other in kind payments.

Chapter 10. Mortgage Foreclosure Actions

Sec. 1. As used in this chapter, "auctioneer" means an auctioneer licensed under IC 25-6.1.

Sec. 2. For purposes of section 9 of this chapter, the sale of a property through the services of an auctioneer is "economically feasible" if the court determines that:

(1) a reasonable probability exists that, with the use of the services of an auctioneer, a valid and enforceable bid will be made at a foreclosure for a sale price equal to or greater than the amount of the judgment and the costs and expenses necessary to its satisfaction, including the costs of the auctioneer; and

(2) the reasonable probability would not exist without the use of an auctioneer.

Sec. 3. (a) If a mortgagor defaults in the performance of any condition contained in a mortgage, the mortgagee or the mortgagee's assigns may proceed in the circuit court of the county where the real estate is located to foreclose the equity of redemption contained in the mortgage.

(b) If the real estate is located in more than one (1) county, the circuit court of any county in which the real estate is located has jurisdiction for an action for the foreclosure of the equity of redemption contained in the mortgage.

Sec. 4. If there is not an express agreement in the mortgage or a separate instrument for the payment of the sum secured by the mortgage, the remedy of the mortgagee is confined to the property mortgaged.

Sec. 5. In rendering judgment of foreclosure, the courts shall:

(1) give personal judgment against any party to the suit liable upon any agreement for the payment of any sum of money secured by the mortgage; and

(2) order the mortgaged premises, or as much of the mortgaged premises as may be necessary to satisfy the mortgage and court costs, to be sold first before the sale of other property of the defendant.

The judgment is satisfied by the payment of the mortgage debt, with interest and costs, at any time before sale.

Sec. 6. Upon:

(1) the foreclosure of a recorded mortgage in a court of any

C o p y

county having jurisdiction in Indiana; and

(2) the payment and satisfaction of the judgment as may be rendered in the foreclosure proceeding;

the prevailing party shall immediately after satisfaction of the judgment record the satisfaction of the mortgage on the records of the recorder's office of the county where the property is located. The record in foreclosure and satisfaction must show that the whole debt, secured by the mortgage, has been paid. The recorder must be paid a fee of not more than the amount specified in IC 36-2-7-10(b)(1) and IC 36-2-7-10(b)(2) in each case of foreclosure requiring satisfaction.

Sec. 7. If there is an express written agreement for the payment of the sum of money that is secured by a mortgage or a separate instrument, the court shall direct in the order of sale that the balance due on the mortgage and costs that may remain unsatisfied after the sale of the mortgaged premises be levied on any property of the mortgage-debtor.

Sec. 8. (a) The copy of the court's order of sale and judgment shall be issued and certified by the clerk under the seal of the court to the sheriff.

(b) After receiving the order under subsection (a), the sheriff shall proceed to sell the mortgaged premises, or as much of the mortgaged premises as is necessary to satisfy the judgment, interest, and costs. If any part of the judgment, interest, and costs remain unsatisfied after the sale of the mortgaged premises, the sheriff shall proceed to sell the remaining property of the defendant. If the mortgaged property is located in more than one (1) county, a common description of the property, the sale of the property, and the location of the sale must be advertised in each county where the property is located.

Sec. 9. (a) A sheriff shall sell property on foreclosure in a manner that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer and sale.

(b) Upon prior petition of the debtor or a creditor involved in the foreclosure proceedings, the court in its order of foreclosure shall order the property sold by the sheriff through the services of an auctioneer if:

(1) the court determines that a sale is economically feasible; or

(2) all the creditors in the proceedings agree to both that method of sale and the compensation to be paid the auctioneer.

C o p y

(c) An auctioneer engaged by a sheriff under this section shall conduct the auctioneer's activities as appropriate to bring the highest bid for the property on foreclosure. The advertising conducted by the auctioneer is in addition to any other notice required by law.

(d) The auctioneer's fee must be a reasonable amount stated in the court's order. However, if the sale by use of an auctioneer has not been agreed to by the creditors in the proceedings and the sale price is less than the amount of the judgment and the costs and expenses necessary to the satisfaction of the judgment, the auctioneer is entitled only to the auctioneer's advertising expenses plus one hundred dollars ($100). The amount due to the auctioneer on account of the auctioneer's expenses and fee, if any, must be paid as a cost of the sale from the proceeds before the payment of any other payment.

Sec. 10. A plaintiff may not:

(1) proceed to foreclose the mortgagee's mortgage while the plaintiff is prosecuting any other action for the same debt or matter that is secured by the mortgage or while the plaintiff is seeking to obtain execution of any judgment in any other action; or

(2) prosecute any other action for the same matter while the plaintiff is foreclosing the mortgagee's mortgage or prosecuting a judgment of foreclosure.

Sec. 11. (a) If:

(1) a complaint is filed for the foreclosure of a mortgage;

(2) any interest or installment of the principal is due, but no other installments are due; and

(3) the defendant pays the court the principal and interest due, with costs, at any time before final judgment;

the complaint must be dismissed.

(b) If the defendant pays the court the principal and interest due after the final judgment, the proceedings on the final judgment must be stayed. However, the stay may be removed upon a subsequent default in the payment of any installment of the principal or interest after the payment is due.

(c) In the final judgment, the court shall direct at what time and upon what default any subsequent execution shall issue.

Sec. 12. (a) In cases under this chapter, the court shall ascertain whether the property can be sold in parcels. If the property can be sold in parcels without injury to the interest of the parties, the court shall direct that only as much of the premises be sold as will

C o p y

be sufficient to pay the amount due on the mortgage, with costs, and the judgment shall remain and be enforced upon any subsequent default, unless the amount due is paid before execution of the judgment is completed.

(b) If the mortgaged premises cannot be sold in parcels, the court shall order the whole mortgaged premises to be sold.

Sec. 13. If an execution is issued on a judgment recovered for a debt secured by mortgage of real property, the plaintiff shall endorse on the execution a brief description of the mortgaged premises. However, the equity of redemption may not be sold on the execution of judgment.

Sec. 14. The proceeds of a sale described in IC 32-29-7 or section 8 or 12(b) of this chapter must be applied in the following order:

(1) Expenses of the offer and sale, including expenses incurred under IC 32-29-7-4 or section 9 of this chapter (or IC 34-1-53-6.5 or IC 32-15-6-6.5 before their repeal).

(2) The amount of any property taxes on the property sold:

(A) that are due and owing; and

(B) for which the due date has passed as of the date of the sheriff's sale.

The sheriff shall transfer the amounts collected under this subdivision to the county treasurer not more than ten (10) days after the date of the sheriff's sale.

(3) Any amount of redemption where a certificate of sale is outstanding.

(4) The payment of the principal due, interest, and costs not described in subdivision (1).

(5) The residue secured by the mortgage and not due.

(6) If the residue referred to in subdivision (5) does not bear interest, a deduction must be made by discounting the legal interest.

In all cases in which the proceeds of sale exceed the amounts described in subdivisions (1) through (6), the surplus must be paid to the clerk of the court to be transferred, as the court directs, to the mortgage debtor, mortgage debtor's heirs, or other persons assigned by the mortgage debtor.

Chapter 11. Lis Pendens

Sec. 1. Each clerk of the circuit court shall keep a book in the office of the clerk called the "lis pendens record". The lis pendens record is a public record.

Sec. 2. (a) This section applies to a suit commenced upon a bond payable to the state in any of the courts of Indiana or in a district

C o p y

court of the United States sitting in Indiana.

(b) The plaintiff in the case shall file with the clerk of the circuit court a written notice containing:

(1) the title of the court; and

(2) the names of all parties to the suit and a statement that the suit is upon an official bond.

Sec. 3. (a) This section applies to a person who commences a suit:

(1) in any court of Indiana or in a district court of the United States sitting in Indiana;

(2) by complaint as plaintiff or by cross-complaint as defendant; and

(3) to enforce any lien upon, right to, or interest in any real estate upon any claim not founded upon:

(A) an instrument executed by the party having the legal title to the real estate, as appears from the proper records of the county, and recorded as required by law; or

(B) a judgment of record in the county in which the real estate is located, against the party having the legal title to the real estate, as appears from the proper records.

(b) The person shall file, with the clerk of the circuit court in each county where the real estate sought to be affected is located, a written notice containing:

(1) the title of the court;

(2) the names of all the parties to the suit;

(3) a description of the real estate to be affected; and

(4) the nature of the lien, right, or interest sought to be enforced against the real estate.

Sec. 4. The clerk shall:

(1) record a notice filed under section 2 or 3 of this chapter in the lis pendens record; and

(2) note upon the record the day and hour when the notice was filed and recorded.

Sec. 5. (a) This section applies when a sheriff or coroner of a county in Indiana:

(1) seizes upon real estate or an interest in real estate by virtue of a writ of attachment; or

(2) levies upon real estate or an interest in real estate by virtue of an execution issued to the sheriff or coroner from any court other than the court of the county in which the sheriff or coroner resides.

(b) At the time of the seizure or levy, the sheriff or coroner shall

C o p y

file with the clerk of the circuit court of the county a written notice setting forth:

(1) the names of the parties to the proceedings upon which the writ of attachment or execution is founded; and

(2) a description of the land seized or levied upon.

The notice shall be recorded, as provided for in section 4 of this chapter.

(c) The sheriff or coroner shall state, in the return to the attachment or execution, that notice has been filed. The sheriff or coroner is allowed a fee of fifty cents ($0.50) to be taxed as costs for making and filing the notice. However, the sheriff or coroner is not required to file the notice until the attachment or execution plaintiff provides the money to pay the clerk for filing and recording the notice.

Sec. 6. Upon filing and recording the notices described in this chapter, the clerk shall index the notices by the names of each party whose interest in the real estate might be affected by the suit, attachment, or execution. The clerk shall maintain entries for each notice listing:

(1) the plaintiff versus the names of all the defendants; and

(2) each defendant whose real estate is sought to be affected at the suit of the plaintiff.

Sec. 7. Upon the final determination of any suit brought:

(1) for the purposes described in section 2 or 3 of this chapter; and

(2) adversely to the party seeking to enforce a lien upon, right to, or interest in the real estate;

the court rendering the judgment shall order the proper clerk to enter in the lis pendens record a satisfaction of the lien, right, or interest sought to be enforced against the real estate. When the entry is made, the real estate is forever discharged from the lien, right, or interest.

Sec. 8. (a) This section applies when:

(1) an attachment is dismissed or the judgment rendered on it is satisfied; or

(2) the execution is satisfied without a sale of the lands seized or levied upon, or upon a redemption of the real estate within the time allowed by law after a sale of the real estate upon execution.

(b) The clerk of the court that issued the attachment or execution shall make a certificate of the dismissal or satisfaction and:

C o p y

(1) enter the certificate upon the lis pendens record, if the appropriate record is kept in that clerk's office; or

(2) forward the certificate to the county in which the real estate is located, to be recorded in the lis pendens record of that county.

(c) When the certificate is entered or recorded, the real estate is discharged from the lien of attachment or execution.

Sec. 9. (a) This section applies to the following:

(1) Suits described in section 2 or 3 of this chapter.

(2) The seizure of real estate under attachments and the levy of real estate under execution in the cases mentioned in section 5 of this chapter.

(b) Actions referred to in subsection (a) do not:

(1) operate as constructive notice of the pendency of the suit or of the seizure of or levy upon the real estate; or

(2) have any force or effect as against bona fide purchasers or encumbrancers of the real estate;

until the notices required by this section are filed with the proper clerk.

Sec. 10. (a) This section applies to orders granted by any court or judge in any cause or proceeding, whether upon a hearing or ex parte, that affect the disposition of real estate.

(b) Orders described in subsection (a) may be recorded in the lis pendens record kept in the office of the clerk of the county in which the real estate affected is located.

(c) An order recorded under subsection (b) shall be notice of the matters set forth in the order to all persons that are or may become interested in the real estate, and the provisions of the order take effect upon the real estate against any subsequent disposition of the real estate.

Chapter 12. Judgments in Mortgage and Lien Actions

Sec. 1. It is not necessary in any action upon a mortgage or lien to give time for:

(1) the payment of money; or

(2) performing any other act.

Final judgment may be given in the first instance.

Sec. 2. In the foreclosure of a mortgage, the sale of the mortgaged property shall be ordered in all cases.

Chapter 13. Purchase of Property Subject to Judgment

Sec. 1. If, upon the sale of real or personal property of a debtor, the title of the purchaser is invalid as to all or any part of the property by reason of any defect in the proceedings or want of title,

C o p y

the purchaser may be subrogated to the rights of the creditor against the debtor, to the extent of the money paid and applied to the debtor's benefit.

Sec. 2. If the judgment is entered satisfied, in whole or in part, by reason of a sale referred to in section 1 of this chapter, the purchaser, upon notice to the parties to the proceeding and upon motion, may have the satisfaction of the judgment vacated in whole or in part.

Sec. 3. A purchaser of property referred to in section 1 of this chapter, if the proceedings are defective or the description of the property sold is imperfect, also has a lien to the same extent on the property sold as against all persons except bona fide purchasers without notice.

Sec. 4. This chapter may not be construed to require the creditor to refund the purchase money by reason of the invalidity of any sale.

Chapter 14. Validation of Certain Judgments Relating to Land Titles

Sec. 1. Unless requested, a clerk is not required to make a complete record of the proceedings in actions to quiet title. A record of the judgment in such cases, when properly recorded in the office of the county recorder, is sufficient.

Chapter 15. Statute of Limitations

Sec. 1. Unless otherwise provided in this title or another law, a cause of action concerning real property must be brought within the time specified in IC 34-11.

SECTION 16. IC 32-31 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

ARTICLE 31. LANDLORD-TENANT RELATIONS

Chapter 1. General Provisions

Sec. 1. (a) A tenancy at will may be determined by a one (1) month notice in writing, delivered to the tenant.

(b) A tenancy at will cannot arise or be created without an express contract.

Sec. 2. A general tenancy in which the premises are occupied by the express or constructive consent of the landlord is considered to be a tenancy from month to month. However, this section does not apply to land used for agricultural purposes.

Sec. 3. A tenancy from year to year may be determined by a notice given to the tenant not less than three (3) months before the expiration of the year.

C o p y

Sec. 4. (a) This section applies to a tenancy of not more than three (3) months which, by express or implied agreement of the parties, extends from one (1) period to another.

(b) Notice to the tenant equal to the interval between the periods is sufficient to determine a tenancy described in subsection (a).

Sec. 5. The following form of notice may be used to terminate a tenancy from year to year:

(insert date here)

To (insert name of tenant here):

You are notified to vacate at the expiration of the current year of tenancy the following property: (insert description of property here).

(insert name of landlord here)

Sec. 6. If a tenant refuses or neglects to pay rent when due, a landlord may terminate the lease with not less than ten (10) days notice to the tenant unless:

(1) the parties otherwise agreed; or

(2) the tenant pays the rent in full before the notice period expires.

Sec. 7. The following form of notice may be used when a tenant fails or refuses to pay rent:

(insert date here)

To (insert name of tenant here):

You are notified to vacate the following property not more than ten (10) days after you receive this notice unless you pay the rent due on the property within ten (10) days: (insert description of property here).

(insert name of landlord here)

Sec. 8. Notice is not required to terminate a lease in the following situations:

(1) The landlord agrees to rent the premises to the tenant for a specified period of time.

(2) The time for the determination of the tenancy is specified in the contract.

(3) A tenant at will commits waste.

(4) The tenant is a tenant at sufferance.

(5) The express terms of the contract require the tenant to pay the rent in advance, and the tenant refuses or neglects to pay the rent in advance.

(6) The landlord-tenant relationship does not exist.

Sec. 9. (a) Notice required under sections 1 through 7 of this chapter may be served on the tenant.

C o p y

(b) If the tenant cannot be found, notice may be served on a person residing at the premises. The person serving the notice must explain the contents of the notice to the person being served.

(c) If a person described in subsection (b) is not found on the premises, notice may be served by affixing a copy of the notice to a conspicuous part of the premises.

Sec. 10. A conveyance by a landlord of real estate or of any interest in the real estate is valid without the attornment of the tenant. If the tenant pays rent to the landlord before the tenant receives notice of the conveyance, the rent paid to the landlord is good against the grantee.

Sec. 11. The attornment of a tenant to a stranger is void and does not affect the possession of the landlord unless:

(1) the landlord consents to the attornment; or

(2) the attornment is made under a judgment at law or the order or decree of a court.

Sec. 12. A sublessee has the same remedy under the original lease against the chief landlord as the sublessee would have had against the immediate lessor.

Sec. 13. An alienee of a lessor or lessee of land has the same legal remedies in relation to the land as the lessor or lessee.

Sec. 14. Rents from lands granted for life or lives may be recovered as other rents.

Sec. 15. A person entitled to rents dependent on the life of another person may recover arrears unpaid at the death of the other person.

Sec. 16. An executor or administrator of the estate of a decedent, whether a testator or intestate:

(1) has the same remedies to recover rents; and

(2) is subject to the same liabilities to pay rents;

as the decedent.

Sec. 17. An occupant of land without special contract is liable for the rent to any person entitled to receive the rent.

Sec. 18. If a life tenant who has demised any lands dies on or after the day on which rent is due and payable, the executor or administrator of the life tenant's estate may recover from the under tenant the whole rent due. If the life tenant dies before the day on which rent is due:

(1) the executor or administrator of the life tenant's estate may recover the proportion of rent that accrued before; and

(2) the remainderman may recover the the proportion of rent that accrued after;

C o p y

the life tenant's death.

Sec. 19. (a) In a case where a tenant agrees under contract to pay as rent:

(1) a part of the crop raised on the leased premises;

(2) rent in kind; or

(3) a cash rent;

the landlord may have a lien on the crop raised under the contract for payment of the rent. If the tenant refuses or neglects to pay or deliver to the landlord the rent when it is due, the landlord may enforce the lien by selling the crop.

(b) A landlord who desires to acquire a lien on a crop raised under a contract on leased premises must file a financing statement under IC 26-1-9.1-501 at least thirty (30) days before the crop matures and during the year in which the crop is grown. The financing statement must:

(1) give notice of the landlord's intention to hold a lien upon the crop for the amount of rent due;

(2) specifically set forth the amount claimed; and

(3) describe the lands on which the crop is being grown with sufficient precision to identify the lands.

(c) A lien created under this section relates to the time of filing and has priority over all liens created thereafter. However, a tenant may, after giving written notice to the landlord or the landlord's agent, remove the tenant's portion of the crop from the leased premises and dispose of the tenant's portion of the crop when the rent is to be paid in part of the crop raised. If the tenant does not give written notice to the landlord, the tenant may remove not more than one-half (1/2) of the crop growing or matured.

Sec. 20. (a) This section does not apply to privately owned real property for which government funds or benefits have been allocated from the United States government, the state, or a political subdivision for the express purpose of providing reduced rents to low or moderate income tenants.

(b) Regulation of rental rates for privately owned real property must be authorized by an act of the general assembly.

Chapter 2. Recording Leases Longer Than Three Years

Sec. 1. Not more than forty-five (45) days after its execution, a lease of real estate for a period longer than three (3) years shall be recorded in the Miscellaneous Record in the recorder's office of the county in which the real estate is located.

Sec. 2. If a lease for a period longer than three (3) years is not recorded within forty-five (45) days after its execution, the lease is

C o p y

void against any subsequent purchaser, lessee, or mortgagee who acquires the real estate in good faith and for valuable consideration.

Chapter 3. Security Deposits

Sec. 1. (a) This chapter applies to rental agreements for dwelling units located in Indiana.

(b) This chapter does not apply to any of the following arrangements unless the arrangement was created to avoid application of this chapter:

(1) Residence at a rental unit owned or operated by an institution that is directly related to detention or the provision of medical, maternity home care, education, counseling, religious service, geriatric service, or a similar service.

(2) Occupancy under a contract of sale of a rental unit or the property of which the rental unit is a part if the occupant is the purchaser or a person who succeeds to the purchaser's interest.

(3) Occupancy by a member of a fraternal or social organization in the part of a structure operated for the benefit of the organization.

(4) Transient occupancy in a hotel, motel, or other lodging.

(5) Occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in or about the premises.

(6) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative.

(7) Occupancy under a rental agreement covering property used by the occupant primarily for agricultural purposes.

Sec. 2. As used in this chapter, "cooperative housing association" means a consumer cooperative that provides dwelling units to its members.

Sec. 3. As used in this chapter, "landlord" means:

(1) the owner, lessor, or sublessor of a rental unit or the property of which the unit is a part; or

(2) a person authorized to exercise any aspect of the management of the premises, including a person who directly or indirectly:

(A) acts as a rental agent; or

(B) receives rent or any part of the rent other than as a bona fide purchaser.

Sec. 4. (a) As used in this chapter, "owner" means one (1) or more persons in whom is vested all or part of the legal title to

C o p y

property.

(b) The term includes a mortgagee or contract purchaser in possession.

Sec. 5. As used in this chapter, "person" means an individual, a corporation, an association, a partnership, a governmental entity, a trust, an estate, or any other legal or commercial entity.

Sec. 6. As used in this chapter, "rent" includes all payments made to a landlord under a rental agreement except a security deposit, however denominated.

Sec. 7. As used in this chapter, "rental agreement" means an agreement together with any modifications, embodying the terms and conditions concerning the use and occupancy of a rental unit.

Sec. 8. As used in this chapter, "rental unit" means:

(1) a structure, or the part of a structure, that is used as a home, residence, or sleeping unit by:

(A) one (1) individual who maintains a household; or

(B) two (2) or more individuals who maintain a common household; or

(2) any grounds, facilities, or area promised for the use of a residential tenant, including the following:

(A) An apartment unit.

(B) A boarding house.

(C) A rooming house.

(D) A mobile home space.

(E) A single or two (2) family dwelling.

Sec. 9. (a) As used in this chapter, "security deposit" means a deposit paid by a tenant to the landlord or the landlord's agent to be held for all or a part of the term of the rental agreement to secure performance of any obligation of the tenant under the rental agreement.

(b) The term includes:

(1) a required prepayment of rent other than the first full rental payment period of the lease agreement;

(2) a sum required to be paid as rent in any rental period in excess of the average rent for the term; and

(3) any other amount of money or property returnable to the tenant on condition of return of the rental unit by the tenant in a condition as required by the rental agreement.

(c) The term does not include the following:

(1) An amount paid for an option to purchase under a lease with option to purchase, unless it is shown that the intent was to evade this chapter.

C o p y

(2) An amount paid as a subscription for or purchase of a membership in a cooperative housing association incorporated under Indiana law.

Sec. 10. As used in this chapter, "tenant" means an individual who occupies a rental unit:

(1) for residential purposes;

(2) with the landlord's consent; and

(3) for consideration that is agreed upon by both parties.

Sec. 11. (a) The following courts have original and concurrent jurisdiction in cases arising under this chapter:

(1) A circuit court.

(2) A superior court.

(3) A county court.

(4) A municipal court.

(5) A small claims court.

(b) A case arising under this chapter may be filed on the small claims docket of a court that has jurisdiction.

Sec. 12. (a) Upon termination of a rental agreement, a landlord shall return to the tenant the security deposit minus any amount applied to:

(1) the payment of accrued rent;

(2) the amount of damages that the landlord has suffered or will reasonably suffer by reason of the tenant's noncompliance with law or the rental agreement; and

(3) unpaid utility or sewer charges that the tenant is obligated to pay under the rental agreement;

all as itemized by the landlord with the amount due in a written notice that is delivered to the tenant not more than forty-five (45) days after termination of the rental agreement and delivery of possession. The landlord is not liable under this chapter until the tenant supplies the landlord in writing with a mailing address to which to deliver the notice and amount prescribed by this subsection. Unless otherwise agreed, a tenant is not entitled to apply a security deposit to rent.

(b) If a landlord fails to comply with subsection (a), a tenant may recover all of the security deposit due the tenant and reasonable attorney's fees.

(c) This section does not preclude the landlord or tenant from recovering other damages to which either is entitled.

(d) The owner of the dwelling unit at the time of the termination of the rental agreement is bound by this section.

Sec. 13. A security deposit may be used only for the following

copy

purposes:

(1) To reimburse the landlord for actual damages to the rental unit or any ancillary facility that are not the result of ordinary wear and tear.

(2) To pay the landlord for:

(A) all rent in arrearage under the rental agreement; and

(B) rent due for premature termination of the rental agreement by the tenant.

(3) To pay for the last payment period of a residential rental agreement if a written agreement between the landlord and the tenant stipulates that the security deposit will serve as the last payment of rent due.

(4) To reimburse the landlord for utility or sewer charges paid by the landlord that are:

(A) the obligation of the tenant under the rental agreement; and

(B) unpaid by the tenant.

Sec. 14. Not more than forty-five (45) days after the termination of occupancy, a landlord shall mail to a tenant an itemized list of damages claimed for which the security deposit may be used under section 13 of this chapter. The list must set forth:

(1) the estimated cost of repair for each damaged item; and

(2) the amounts and lease on which the landlord intends to assess the tenant.

The landlord shall include with the list a check or money order for the difference between the damages claimed and the amount of the security deposit held by the landlord.

Sec. 15. Failure by a landlord to provide notice of damages under section 14 of this chapter constitutes agreement by the landlord that no damages are due, and the landlord must remit to the tenant immediately the full security deposit.

Sec. 16. A landlord who fails to comply with sections 14 and 15 of this chapter is liable to the tenant in an amount equal to the part of the deposit withheld by the landlord plus reasonable attorney's fees and court costs.

Sec. 17. A waiver of this chapter by a landlord or tenant is void.

Sec. 18. (a) A landlord or a person authorized to enter into a rental agreement on behalf of the landlord shall disclose and furnish to the tenant in writing at or before the commencement of the rental agreement the names and addresses of the following:

(1) A person residing in Indiana who is authorized to manage the dwelling unit.

C o p y

(2) A person residing in Indiana who is reasonably accessible to the tenant and who is authorized to act as agent for the owner for purposes of:

(A) service of process; and

(B) receiving and receipting for notices and demands.

A person who is identified as being authorized to manage under subdivision (1) may also be identified as the person authorized to act as agent under subdivision (2).

(b) This section is enforceable against any successor landlord, owner, or manager.

(c) A person who fails to comply with subsection (a) becomes an agent of each person who is a landlord for purposes of:

(1) service of process and receiving and receipting for notices and demands; and

(2) performing the obligations of the landlord under law or the rental agreement.

(d) If the information required by subsection (a) is not disclosed at the beginning of the rental agreement, the tenant shall be allowed any expenses reasonably incurred to discover the names and addresses required to be furnished.

Sec. 19. (a) Unless otherwise agreed, if a landlord conveys, in a good faith sale to a bona fide purchaser, property that includes a dwelling unit subject to a rental agreement, the landlord is relieved of liability under law or the rental agreement as to events occurring after written notice to the tenant of the conveyance. However, for one (1) year after giving notice of the conveyance, the landlord remains liable to the tenant for the security deposit to which the tenant is entitled under section 14 of this chapter unless:

(1) the purchaser acknowledges that the purchaser has assumed the liability of the seller by giving notice to the tenant; and

(2) upon conveyance the seller transfers the security deposit to the purchaser.

(b) Unless otherwise agreed, a manager of a dwelling unit is relieved of any liability the manager might have under law or the rental agreement as to events occurring after written notice to the tenant of the termination of the manager's management.

Chapter 4. Moving and Storage of Tenant's Property

Sec. 1. As used in this chapter, "exempt property" means personal property that is any of the following:

(1) Medically necessary for an individual.

(2) Used by a tenant for the tenant's trade or business.

C o p y

(3) Any of the following, as necessary for the tenant or a member of the tenant's household:

(A) A week's supply of seasonably necessary clothing.

(B) Blankets.

(C) Items necessary for the care and schooling of a minor child.

Sec. 2. (a) If a landlord is awarded possession of a dwelling unit by a court under IC 32-30-2, the landlord may seek an order from the court allowing removal of a tenant's personal property.

(b) If the tenant fails to remove the tenant's personal property before the date specified in the court's order issued under subsection (a), the landlord may remove the tenant's personal property in accordance with the order and deliver the personal property to a warehouseman under section 3 of this chapter.

Sec. 3. (a) If a tenant has failed to remove the tenant's personal property under section 2 of this chapter, a landlord may deliver the personal property to a warehouseman if notice of both of the following has been personally served on the tenant at the last known address of the tenant:

(1) An order for removal of personal property issued under section 2 of this chapter.

(2) The identity and location of the warehouseman.

(b) At the demand of the owner of the exempt property, the warehouseman shall release the exempt property to the owner without requiring payment from the owner at the time of delivery.

(c) A waiver of the provisions of section 1 of this chapter or subsection (b) by contract or otherwise is void.

Sec. 4. (a) A warehouseman that receives property under this chapter holds a lien on all of that property that is not exempt property to the extent of the expenses for any of the following incurred by the warehouseman with respect to all of the property, whether exempt or not exempt:

(1) Storage.

(2) Transportation.

(3) Insurance.

(4) Labor.

(5) Present or future charges related to the property.

(6) Expenses necessary for preservation of the property.

(7) Expenses reasonably incurred in the lawful sale of the property.

(b) A tenant may claim the tenant's property at any time until the sale of the property under section 5 of this chapter by paying

C o p y

the warehouseman the expenses described in this section.

Sec. 5. If a tenant does not claim the tenant's property within ninety (90) days after receiving notice under section 3 of this chapter, a warehouseman may sell the property received under this chapter under IC 26-1-7-210(2).

Chapter 5. Rental Agreements; Right of Access

Sec. 1. (a) This chapter applies only to a rental agreement entered into or renewed after June 30, 1999.

(b) This chapter applies to a landlord or tenant only if the rental agreement was entered into or renewed after June 30, 1999.

(c) A waiver of this chapter by a landlord or tenant, including a former tenant, by contract or otherwise, is void.

Sec. 2. Except as otherwise provided in this chapter, the definitions in IC 32-31-3 apply throughout this chapter.

Sec. 3. (a) As used in this chapter, "dwelling unit" means a structure or part of a structure that is used as a home, residence, or sleeping unit.

(b) The term includes the following:

(1) An apartment unit.

(2) A boarding house unit.

(3) A rooming house unit.

(4) A manufactured home (as defined in IC 22-12-1-16) or mobile structure (as defined in IC 22-12-1-17) and the space occupied by the manufactured home or mobile structure.

(5) A single or two (2) family dwelling.

Sec. 4. Unless otherwise provided by a written rental agreement between a landlord and tenant, a landlord shall give the tenant at least thirty (30) days written notice before modifying the rental agreement.

Sec. 5. (a) Except as provided in IC 16-41-27-29, IC 32-31-3, or IC 32-31-4, a landlord may not:

(1) take possession of;

(2) remove from a tenant's dwelling unit;

(3) deny a tenant access to; or

(4) dispose of;

a tenant's personal property in order to enforce an obligation of the tenant to the landlord under a rental agreement.

(b) The landlord and tenant may agree in a writing separate from the rental agreement that the landlord may hold property voluntarily tendered by the tenant as security in exchange for forbearance from an action to evict.

Sec. 6. (a) This section does not apply if the dwelling unit has

C o p y

been abandoned.

(b) For purposes of this section, a dwelling unit is considered abandoned if:

(1) the tenants have failed to:

(A) pay; or

(B) offer to pay;

rent due under the rental agreement; and

(2) the circumstances are such that a reasonable person would conclude that the tenants have surrendered possession of the dwelling unit.

An oral or written rental agreement may not define abandonment differently than is provided by this subsection.

(c) Except as authorized by judicial order, a landlord may not deny or interfere with a tenant's access to or possession of the tenant's dwelling unit by commission of any act, including the following:

(1) Changing the locks or adding a device to exclude the tenant from the dwelling unit.

(2) Removing the doors, windows, fixtures, or appliances from the dwelling unit.

(3) Interrupting, reducing, shutting off, or causing termination of any of the following to a tenant:

(A) Electricity.

(B) Gas.

(C) Water.

(D) Other essential services.

However, the landlord may interrupt, shut off, or terminate service as the result of an emergency, good faith repairs, or necessary construction. This subdivision does not require a landlord to pay for services described in this subdivision if the landlord has not agreed, by an oral or written rental agreement, to do so.

(d) A tenant may not interrupt, reduce, shut off, or cause termination of:

(1) electricity;

(2) gas;

(3) water; or

(4) other essential services;

to the dwelling unit if the interruption, reduction, shutting off, or termination of the service will result in serious damage to the rental unit.

Chapter 6. Emergency Possessory Orders

C o p y

Sec. 1. The definitions in IC 32-31-3 and IC 32-31-5 apply throughout this chapter.

Sec. 2. The small claims docket of a court has jurisdiction to grant an emergency possessory order under this chapter.

Sec. 3. The following may file a petition for an emergency possessory order under this chapter:

(1) A tenant, if the landlord has violated IC 32-31-5-6.

(2) A landlord, if the tenant has committed or threatens to commit waste to the rental unit.

Sec. 4. A petition for an order under this chapter must:

(1) include an allegation specifying:

(A) the violation, act, or omission caused or threatened by a landlord or tenant; and

(B) The nature of the specific immediate and serious:

(i) injury;

(ii) loss; or

(iii) damage;

that the landlord or tenant has suffered or will suffer if the violation, act, or omission is not enjoined; and

(2) be sworn to by the petitioner.

Sec. 5. If a tenant or a landlord petitions the court to issue an order under this chapter, the court shall immediately do the following:

(1) Review the petition.

(2) Schedule an emergency hearing for not later than three (3) business days after the petition is filed.

Sec. 6. (a) At the emergency hearing, if the court finds:

(1) probable cause to believe that the landlord has violated or threatened to violate IC 32-31-5-6; and

(2) that the tenant will suffer immediate and serious injury, loss, or damage;

the court shall issue an emergency order under subsection (b).

(b) If the court makes a finding under subsection (a), the court shall order the landlord to do either or both of the following:

(1) Return possession of the dwelling unit to the tenant if the tenant has been deprived of possession of the dwelling unit.

(2) Refrain from violating IC 32-31-5-6.

(c) The court may make other orders that the court considers just under the circumstances, including setting a subsequent hearing at the request of a party to adjudicate related claims between the parties.

Sec. 7. (a) As used in this section, "waste" does not include

C o p y

failure to pay rent.

(b) At the emergency hearing, if the court finds:

(1) probable cause to believe that the tenant has committed or threatens to commit waste to the rental unit; and

(2) that the landlord has suffered or will suffer immediate and serious:

(A) injury;

(B) loss; or

(C) damage;

the court shall issue an order under subsection (c).

(c) If the court makes a finding under subsection (b), the court shall order the tenant to do either or both of the following:

(1) Return possession of the dwelling unit to the landlord.

(2) Refrain from committing waste to the dwelling unit.

(d) The court may make other orders that the court considers just under the circumstances, including setting a subsequent hearing at the request of a party to adjudicate related claims between the parties.

Sec. 8. (a) If a petition is filed under this chapter, the clerk shall issue to the respondent a summons to appear at a hearing. The summons must:

(1) give notice of the date, time, and place of the hearing; and

(2) inform the respondent that the respondent must appear before the court to answer the petition.

(b) The clerk shall serve the respondent with the summons to appear in accordance with Rule 4.1 of the Rules of Trial Procedure.

(c) The court shall not grant a continuance of the emergency hearing except upon clear and convincing evidence that manifest injustice would result if a continuance were not granted.

Sec. 9. If the court sets a subsequent hearing under section 6(c) or 7(d) of this chapter, the court may do the following at the subsequent hearing:

(1) Determine damages.

(2) Order return of a tenant's withheld property.

(3) Make other orders the court considers just under the circumstances.

Sec. 10. The adjudication of an emergency possessory claim under section 6(b) or 7(c) of this chapter does not bar a subsequent claim a party may have against the other party arising out of the landlord and tenant relationship unless that claim has been adjudicated under section 9 of this chapter.

C o p y

SECTION 17. IC 32-32 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

ARTICLE 32. Time Shares and Camping Clubs

Chapter 1. Application

Sec. 1. This article does not apply to the following:

(1) The sale of not more than twelve (12) time shares or camping club memberships in a time share project or camping site project, unless the developer offers to sell time shares or camping club memberships in other projects in the same subdivision and the total number of the shares offered for sale exceeds twenty-six (26) in a period of twelve (12) months.

(2) The sale or transfer of a time share or camping club membership by an owner who is not the developer, unless the time share or camping club membership is sold in the ordinary course of business of that owner.

(3) Any transfer of a time share or camping club membership by deed instead of foreclosure or as a result of foreclosure of the time share or camping club membership.

(4) A gratuitous transfer of a time share or camping site.

(5) A transfer of a time share or camping club membership by devise or descent or a transfer to an inter vivos trust, unless the method of disposition is adopted for the purpose of evading this chapter.

Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Camping club" means any enterprise, other than one that is tax exempt under Section 501 of the Internal Revenue Code, that has as its primary purpose camping or outdoor recreation that involves or will involve camping sites.

Sec. 3. "Camping club member" means any person, other than the developer or lender, who purchases a camping club membership.

Sec. 4. (a) "Camping club membership" means an agreement evidencing a purchaser's title to, interest in, or right or license to use for more than thirty (30) days the camping or outdoor recreation facilities of a camping club.

(b) The term does not include an agreement of a camping or outdoor recreation facility that expires within three hundred sixty-five (365) days after the execution date of the agreement.

C o p y

Sec. 5. "Camping site" means a space that:

(1) is designed and promoted for the purpose of locating a trailer, tent, tent trailer, pickup camper, or other similar device used for land based portable housing; and

(2) is the subject of a camping club membership.

Sec. 6. "Developer" means any person who engages in the business of creating or selling its own time shares or camping club memberships.

Sec. 7. "Director" refers to the director of the division appointed under IC 4-6-9-2.

Sec. 8. "Division" refers to the consumer protection division of the office of the attorney general created by IC 4-6-9-1.

Sec. 9. "Exchange company" means any person owning or operating an exchange program.

Sec. 10. (a) "Exchange program" means any arrangement allowing owners to exchange occupancy rights with persons owning other time shares or camping club memberships.

(b) The term does not include an arrangement in which all of the occupancy rights that may be exchanged are in the same time share property or camping site.

Sec. 11. "Offer" means any advertised inducement, solicitation, or attempt to encourage any person to acquire a time share or camping club membership other than as security for an obligation.

Sec. 12. "Participant" means any person who, by means of a verbal or written purchase, exchange, or leasing agreement, acquires a right to occupy a time share unit from a developer, purchaser, exchange company, rental or management company, or any other person or organization.

Sec. 13. "Person" means a natural person, a corporation, a government, a governmental subdivision or agency, a business trust, an estate, a trust, a partnership, an association, a joint venture, or another legal or commercial entity.

Sec. 14. "Project" means the real property, which must contain more than one (1) unit, in which time shares or camping sites are created by a single instrument or set of instruments.

Sec. 15. "Project manager" means any person:

(1) who coordinates the sale of time shares or camping club memberships; and

(2) to whom sales agents and representatives are responsible.

Sec. 16. "Purchaser" means any person, other than the developer or lender, who purchases a time share or camping club membership.

C o p y

Sec. 17. (a) "Representative" means a person who is not a seller and who, on behalf of a developer, induces other persons to attend a sales presentation.

(b) The term does not include a person who only performs clerical tasks, arranges appointments set up by others, or prepares or distributes promotional materials.

Sec. 18. "Seller" means a developer or any other person or agent or employee of a developer who offers time shares or camping club memberships to the public.

Sec. 19. "Substantially completed" means that:

(1) all roadways, utilities, amenities, furnishings, appliances, structural components, and mechanical systems of buildings and premises are completed and provided as represented in the time share instrument or agreement or camping club membership agreement; and

(2) the premises are ready for occupancy and the proper governmental authority has caused to be issued a certificate of occupancy, if a certificate of occupancy is required.

Sec. 20. "Time share" means the right to use and occupy a unit on a periodic basis according to an arrangement allocating this right among various time share participants.

Sec. 21. "Time share instrument" means any document creating or regulating time shares, excluding any law, ordinance, or governmental regulation.

Sec. 22. "Time share participant" has the meaning set forth in section 12 of this chapter.

Sec. 23. "Unit" means each portion of a time share project or each camping site that is designated for separate use.

Chapter 3. Time Shares and Camping Clubs

Sec. 1. (a) Before a developer may offer to sell any time shares or camping club memberships in this state, the developer must register with the division under this section.

(b) A person who applies for registration under this section shall submit an application in the manner provided by the division and shall disclose the following information under oath:

(1) The names and addresses of all officers, project managers, marketing agencies, advertising agencies, and exchange companies who are actively involved in soliciting or selling time share units or camping club memberships.

(2) The name and address of each person who owns an interest of ten percent (10%) or more in the registrant, except for reporting companies under the Securities Exchange Act of

C o p y

1934.

(3) A copy of the document in which the time share project or camping club project is created.

(4) A preliminary title report for the time share project or camping club project and copies of the documents listed as exceptions in the report showing any encumbrances.

(5) Copies of and instructions for escrow agreements, deeds, and sales contracts.

(6) Documents that show the current assessments for property taxes on the time share project or camping club project.

(7) A copy of bylaws or similar instrument that creates any community ownership relationship.

(8) Copies of all documents that will be given to a participant who is interested in participating in a program for the exchange of occupancy rights among time share participants or camping club members, and copies of the documents that show acceptance of the time share or camping club membership in the program.

(c) A developer who knowingly or intentionally offers to sell any time shares or camping club memberships in this state before registering with the division under this section commits a Class D felony.

Sec. 2. Any amendment by the developer of the provisions of the document that created the time share or camping club membership, or of the articles of incorporation, trust, or bylaws, must be filed with the division.

Sec. 3. (a) A time share or camping site developer who applies for registration under section 1 of this chapter shall pay a one (1) time registration fee of two hundred fifty dollars ($250).

(b) Each July 1 after a developer applies for registration under section 1 of this chapter, the developer shall file an update to the registration. The developer shall pay an additional fifty dollars ($50) for each yearly refiling under this subsection.

(c) The fees collected under this section shall be used, in addition to funds appropriated by the general assembly, for the administration and enforcement of this chapter.

Sec. 4. All registration statements and information required to be filed under this chapter with the division are subject to IC 5-14-3.

Sec. 5. A time share project and camping club project must be created by a time share instrument or camping club membership agreement. The membership agreement must include the following

C o p y

provisions:

(1) A legal description of the time share project or camping club project that transfers an interest in real property.

(2) The name and location of the time share project or camping club project.

(3) A system of identification of the time periods assigned to time shares by letter, name, number, or any combination of letters, names, or numbers.

(4) Provisions for assessment of the expenses of the time share project or camping club project and an allocation of those expenses among the time share participants or camping club members.

(5) A procedure to add units to the time share project or camping club project.

(6) Provisions for maintenance of the time share units or camp sites.

(7) Provisions for management of the time share project or camping club project.

(8) A procedure to amend the time share instrument or the camping club membership agreement.

(9) A description of the rights of the purchaser relating to the occupancy of the time share unit or camping site.

Sec. 6. A transfer of an interest in a time share unit or camping club membership shall be by written contract that includes or incorporates by reference the following provisions:

(1) A legal description of the time share unit or camping site that transfers an interest in real property.

(2) The name and location of the time share unit or camping site.

(3) A system of identification of the time periods assigned to time shares by letter, name, number, or any combination of letters, names, or numbers.

(4) Provisions for assessment of the expenses of the time share project or camping club project and an allocation of those expenses among the time share participants or camping club members.

(5) Provisions for maintenance of the time share units or camping sites.

(6) Provisions for management of the time share project or camping club project.

(7) A description of the rights of the time share participant or camping club member relating to the occupancy of the time

C o p y

share unit or camping site.

Sec. 7. (a) A purchaser has the right to cancel a camping club membership or time share purchase within seventy-two (72) hours after the execution of the sales contract, excluding Sundays and legal holidays as set forth in IC 1-1-9-1. The right of cancellation shall be set forth conspicuously in boldface type on the first page of any time share instrument or camping club membership agreement and immediately above the signature of the purchaser on any sales contract. In each case, the cancellation clause must include an explanation of the conditions and manner of exercise of the cancellation right. The right of cancellation may not be waivable by any purchaser. The developer shall furnish to each purchaser a form, as prescribed by the agency, for the exercise of the right.

(b) To cancel a camping club membership or time share purchase, a consumer must give notice of cancellation by mail or telegraphic communication or as otherwise allowed by this subsection. The notice is effective on the date postmarked or when transmitted from the place of origin. Any written notice of cancellation delivered other than by mail or telegraph is effective at the time of delivery at the place of business of the developer or escrow agent designated in the form of notice of cancellation.

Sec. 8. The attorney general may require:

(1) that a developer file a performance bond with the division; or

(2) that all or part of the money collected from the consumer as part of a purchase of a time share instrument or camping club membership, including closing costs and exchange company membership fees, be placed and held in escrow until the particular time share unit or camping site to which the time share or camping club membership relates is substantially completed and ready for occupancy.

Sec. 9. If a time share unit or camping site is not available for a period to which the owner is entitled by schedule or by confirmed reservation and the developer is responsible for the unavailability of the unit or site, the participant is entitled at the participant's election to be provided:

(1) a comparable unit or site for the period; or

(2) monetary compensation for the loss of use of the time share unit or camping site.

Sec. 10. (a) If the interest of the developer in a project is a leasehold interest, the lease, unless otherwise determined by the

C o p y

division, must provide that:

(1) the lessee must give the association notice of termination of the lease for any default by the lessor; and

(2) the lessor, upon the bankruptcy of the lessee, shall enter into a new lease with the association upon the same terms and conditions as were contained in the lease with the developer.

(b) The division may require the developer to execute a bond or other type of security for the payment of the lease obligation.

Sec. 11. An action for partition of a time share unit or camping site may not be maintained except as provided in the time share instrument. If a time share or camping site is owned by two (2) or more persons, an action may be brought for the judicial sale of the time share or camping site. A provision in a time share instrument for the waiver or subordination of the right of partition or any other right characteristic of a tenancy in common is valid.

Sec. 12. (a) A developer, or exchange company if the exchange company is dealing directly with the participants or camping club members, that offers a program for the exchange of occupancy rights among time share participants or camping club members or with the purchasers or members in other time share or camping club projects, or both, shall give in writing to the camping club members or time share participants the following information:

(1) The name and address of the exchange company offering the exchange program.

(2) A statement indicating whether the exchange company or any of its officers or directors has any legal or beneficial interest in any interest of the developer or managing agent in any plan to sell time shares or camping club memberships included in the program and, if so, the name, location, and nature of the interest.

(3) A statement that the time share participant's or camping club member's contract with the exchange company is a contract separate and distinct from the contract to purchase the time share or camping club membership, unless the exchange company and the developer or an affiliate of the developer are the same.

(4) A statement indicating whether the participant's or member's participation in the exchange project is dependent upon the continued inclusion of the plan to sell time shares or camping club memberships in the program.

(5) A statement indicating whether the purchaser's or member's membership or participation in the exchange

C o p y

program is voluntary or mandatory.

(6) A complete and accurate description of the following:

(A) The terms and conditions of the purchaser's contractual relationship with the company and the procedure by which changes in the contractual relationship and may be made.

(B) The procedure to qualify for and make exchanges.

(C) All limitations, restrictions, and priorities of the program, including limitations on exchanges based on the seasons of the year, the size of units, or levels of occupancy. The written description of the limitations, restrictions, and priorities given under this clause must be printed in boldface type and, if the limitations, restrictions, and priorities are not uniformly applied by the program, must include a clear description of the manner in which they are applied.

(7) A statement, which must be printed on all promotional brochures, pamphlets, advertisements, and other materials disseminated by the exchange company that indicate the percentage of confirmed exchanges, to the effect that:

(A) the percentage of confirmed exchanges is a summary of the requests for exchanges received by the exchange company in the most recent annual reporting period; and

(B) the percentage does not indicate the probability of a purchaser or members being confirmed to any specific choice since availability at individual locations may vary.

(8) A statement indicating whether exchanges are arranged on the basis of available space and whether there are any guarantees of fulfilling specific requests for exchanges.

(9) A statement indicating whether and under what circumstances a participant or member, in dealing with the exchange company, may lose the right to use and occupy a time share unit or camping site in any properly applied for exchange without being provided with substitute accommodations by the company.

(10) A statement of the fees to be paid by participants or members in the program, including a statement indicating whether any fees may be changed by the exchange company, and if so, the circumstances under which those changes may be made.

(11) The name and address of the site of each time share or camping club project included in the program.

C o p y

(b) The information required by subsection (a) must be delivered to the camping club member or time share participant before the execution of:

(1) any contract between the camping club member or time share participant and the exchange company; or

(2) the contract to purchase the time share or camping club membership.

(c) Upon receipt of the information required by subsection (a), the camping club member or time share participant shall certify in writing that the member or participant has received the information from the developer.

(d) Except as otherwise provided in this section, the information required by subsection (a) must be accurate as of thirty (30) days before the date on which the information is delivered to the participant or member.

Sec. 13. (a) The division may receive, investigate, and prosecute complaints concerning persons subject to this chapter.

(b) The director may subpoena witnesses and send for and compel the production of books, records, papers, and documents of time share or camping club developers who are subject to registration under this chapter for the furtherance of any investigation under this chapter. The circuit or superior court located in the county where the subpoena is to be issued shall enforce any subpoena by the attorney general. In addition, the attorney general may issue a civil investigative demand as provided by IC 4-6-3.

Sec. 14. A person who violates this chapter commits a deceptive act and is subject to the penalties and remedies provided in IC 24-5-0.5. Any action by the attorney general for violations of this chapter may be brought in the circuit or superior court of Marion County.

Sec. 15. In the administration of this chapter, the attorney general may execute an assurance of voluntary compliance with a time share developer in existence on September 1, 1985, in the same manner as provided in IC 24-5-0.5-7(a), except that no filing with the court is required in order for the assurance to be effective under this chapter.

SECTION 18. IC 32-33 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

ARTICLE 33. LIENS ON REAL PROPERTY

Chapter 1. Blacksmith's Liens

C o p y

Sec. 1. (a) A person who, at the request of an owner or an owner's authorized agent:

(1) shoes or causes to be shod by the person's employees a horse, a mule, an ox, or other animal; or

(2) repairs or causes to be repaired by the person's employees, a vehicle;

has a lien upon the animal shod or vehicle repaired for the person's reasonable charge for shoeing the animal or repairing the vehicle.

(b) A lien conferred by this chapter takes the precedence of all other liens or claims upon the animal shod or the vehicle repaired that are not duly recorded before the recording of a claim for the lien conferred by this chapter. However, a lien may not attach to the animal shod or the vehicle repaired if the property has changed ownership before the filing of the lien.

Sec. 2. A claim for a lien under this chapter must be filed within sixty (60) days after the shoeing of a horse, a mule, an ox or other animal, or the repairing of a vehicle. The claim must be filed with the recorder of the county in which the owner of the animal or vehicle resides. A claim for a lien under this chapter must be in writing, setting forth the person's intention to claim a lien upon the animal or vehicle for the charges for shoeing or repairing. However, this lien must be recorded in the miscellaneous record book in the recorder's office of the county. The recorder shall charge a fee in accordance with IC 36-2-7-10 for recording the lien.

Sec. 3. A claim for lien under this chapter must:

(1) state the name and residence of the person claiming the lien;

(2) the name of the owner of the animal or vehicle sought to be charged with the lien;

(3) a description sufficient for identification of the animal or vehicle upon which the lien is claimed; and

(4) the amount due the claimant, as near as may be, over and above all legal set-offs.

A claim for lien filed with the recorder of the county under section 2 of this chapter expires and becomes void and of no effect if suit is not brought to foreclose the lien within three (3) months after filing the claim under section 2 of this chapter.

Sec. 4. A lien under this chapter may be foreclosed in any circuit or superior court in the county in which the lien is recorded under section 2 of this chapter.

Sec. 5. If the plaintiff recovers on a claim and a lien is foreclosed under this chapter, the plaintiff shall recover and the court may

C o p y

allow a reasonable fee for plaintiff's attorney for bringing and prosecuting the cause of action, all of which shall be recovered from the defendant, and the property in controversy may be sold as in case of sales in foreclosure of chattel mortgages.

Chapter 2. Boats and Other Watercraft Liens

Sec. 1. All boats, vessels, and watercraft of every description found in the waters of Indiana, including wharf boats and floating warehouses that are used for storing, receiving, and forwarding freights and that may be removed from place to place at the pleasure of the owner or owners of the watercraft, are liable for the following:

(1) A debt contracted within Indiana by the master, owner, agent, clerk, or consignee of the watercraft:

(A) on account of supplies furnished for use of the master, owner, agent, clerk, or consignee;

(B) on account of work done or service rendered for the master, owner, agent, clerk, or consignee by boatmen, mariners, laborers, or other persons; or

(C) on account of work done or materials furnished in building, repairing, fitting out, furnishing, or equipping the boat, vessel, wharf boat, floating warehouse, or watercraft.

(2) All demands or damages arising out of:

(A) a contract of affreightment made either within or outside Indiana;

(B) a willful or negligent act of the master, owner, or agent of the master or owner done in connection with the business of the boat, vessel, wharf boat, floating warehouse, or other watercraft either within or outside Indiana; or

(C) a contract relative to the transportation of persons or property entered into by the master, owner, agent, clerk, or consignee either within or outside Indiana.

(3) An injury to a person or property by the boat, vessel, wharf-boat, floating warehouse, or other watercraft, or by the owners, officers, or crew, done in connection with the business of the boat, vessel, wharf boat, floating warehouse, or other watercraft either within or without outside Indiana.

Sec. 2. A claim growing out of a cause set forth in section 1 of this chapter, whether arising out of contracts made or broken within or outside Indiana, or wrongs or injuries done or committed within or outside Indiana, is a lien upon the boat, vessel, or other watercraft, and upon the apparel, tackle, or furniture and

C o p y

appendages, including barges and lighters, that belong to the owners of the boat, vessel, or other watercraft and are used with the boat, vessel, or other watercraft at the time the action is commenced.

Sec. 3. A lien provided for in section 2 of this chapter takes preference of any claims against the boat itself or all or any of its owners, masters, or consignees growing out of any other cause than those set forth in section 1 of this chapter and, as between themselves, mariners' and boatmens' wages shall be first preferred.

Sec. 4. (a) Any person aggrieved by a cause set forth in section 1 of this chapter may have an action against the boat, vessel, or other watercraft in the county where the boat, vessel, or other watercraft may be found, or against the owners of the boat, vessel, or other watercraft, to enforce a lien provided for in section 2 of this chapter.

(b) If the complaint in the action shows:

(1) the particulars of the demand;

(2) the amount due; and

(3) a demand made upon the owner, master, clerk, or consignee and refusal of payment, and verified by the affidavit of the plaintiff or other person in the plaintiff's behalf;

an order of attachment shall be issued by the clerk against the boat, vessel, or other watercraft and the tackle and furniture of the boat, vessel, or other watercraft. The order of attachment must be directed, executed, and returned as an order of attachment in other cases.

Sec. 5. In all actions contemplated in section 4 of this chapter, all or any of the persons having demands described in section 4 of this chapter may join in a complaint against the boat, vessel, or other watercraft either at the commencement of the action or at any time afterwards, before judgment, upon filing the requisite complaint and affidavit.

Sec. 6. In an action under this chapter, proceedings shall be had and judgment rendered and enforced by execution or other proper means.

Sec. 7. (a) If the defendant master, owner, or consignee, before final judgment, gives a written undertaking payable to the plaintiff, with surety to be approved by the clerk or sheriff, to the effect that the defendant will perform the judgment of the court, the attachment shall be discharged and restitution made of the boat, vessel, or other watercraft.

C o p y

(b) A person who executes a written undertaking under subsection (a) shall, by order of the court, be made a defendant in the action instead of the boat, vessel, or other watercraft, and the action shall proceed to final judgment as in ordinary actions in personam. If a recovery is had by any of the plaintiffs, judgment shall be rendered against all defendants for the sum recovered.

Sec. 8. In cases arising under section 1 of this chapter, the summons may be served upon:

(1) the officer or consignee making the contract;

(2) if the officer or consignee cannot be found, upon the clerk;

(3) if neither the officer, the consignee, nor the clerk can be found, upon any other officer of the boat, vessel, or watercraft, or any person having charge of the boat, vessel, or watercraft; or

(4) if the summons cannot be served under subdivision 1, 2, or 3, by affixing a copy of the summons in some conspicuous place in the boat, vessel, or watercraft.

Chapter 3. Cleaning Lien for Services on and Storage of Clothing and Household Goods

Sec. 1. (a) A person doing any cleaning, glazing, washing, alteration, repair, or furnishing any materials or supplies for or upon any garment, clothing, wearing apparel, or household goods has a lien on the item for the reasonable value of the unpaid work, labor or material, and supplies used. The lien may be foreclosed in the manner provided by this chapter if at the time of receiving the clothing, garment, wearing apparel, or household goods a written receipt is given to the person or customer leaving the item.

(b) Any garment, clothing, wearing apparel, or household goods remaining in the possession of a person, firm, partnership, limited liability company, or corporation;

(1) on which cleaning, pressing, glazing, or washing has been done; or

(2) upon which alterations or repairs have been made, or on which materials or supplies have been used or furnished;

for a period of at least ninety (90) days after the cleaning, pressing, glazing, or washing has been done, the alterations or repairs have been made, or the materials or supplies have been used or furnished may be sold to pay the reasonable or agreed charges and the costs of notifying the owner or owners. However, the person, firm, partnership, limited liability company, or corporation to whom the charges are payable and owing must first notify the owner or owners of the time and place of the sale.

C o p y

(c) Property that is to be placed in storage after any of the services or labors referred to in subsection (a) or (b) is not affected by this section.

Sec. 2. (a) This section does not apply to persons, firms, partnerships, limited liability companies, or corporations operating as warehouses or warehousemen.

(b) All garments, clothing, wearing apparel, or household goods:

(1) that are placed in storage; or

(2) on which any of the services or labors mentioned in section 1 of this chapter have been performed and that have then been placed in storage by agreement;

and that remain in the possession of a person, firm, partnership, limited liability company, or corporation without the reasonable or agreed charges having been paid for a period of ninety (90) days may be sold to pay the charges if the person, firm, partnership, limited liability company, or corporation to whom the charges are payable first notifies the owner or owners of the items placed in storage of the time and place of sale.

Sec. 3. The mailing of a letter that has a return address, that is addressed to the owner at the owner's address given at the time of delivery of the article to a person, firm, partnership, limited liability company, or corporation to render any of the services or labors set forth in section 1 of this chapter, and that states the time and place of sale constitutes notice for the purposes of section 2 of this chapter. The notice must be given at least thirty (30) days before the date of sale. The cost of posting or mailing letters under this section shall be added to the charges.

Sec. 4. The person, firm, partnership, limited liability company, or corporation to whom the charges are payable shall:

(1) from the proceeds of sale, deduct the charges due plus the costs of notifying the owner;

(2) hold the over-plus, if any, subject to the order of the owner;

(3) immediately after the sale mail to the owner at the owner's address, if known, a notice of the sale and the amount of over-plus, if any, due the owner; and

(4) at any time within twelve (12) months after the sale, upon demand by the owner, pay to the owner the sums or over-plus.

Sec. 5. All persons, firms, partnerships, limited liability companies, or corporations taking advantage of this chapter must keep posted in a prominent place in their receiving office at all times two (2) notices that must read as follows:

C o p y

"All articles cleaned, pressed, glazed, laundered, washed, altered, or repaired and not called for in ninety (90) days shall be sold to pay charges," and "If any articles are stored by agreement and the charges are not paid for ninety (90) days, the articles shall be sold to pay charges."

Chapter 4. Hospital Liens

Sec. 1. A person, a firm, a partnership, an association, a limited liability company, or a corporation maintaining a hospital in Indiana or a hospital owned, maintained, or operated by the state or a political subdivision of the state is entitled to hold a lien for the reasonable value of its services or expenses on any judgment for personal injuries rendered in favor of any person, except a person covered by:

(1) the provisions of IC 22-3-2 through IC 22-3-6;

(2) the federal worker's compensation laws; or

(3) the federal liability act;

who is admitted to the hospital and receives treatment, care, and maintenance on account of personal injuries received as a result of the negligence of any person or corporation. In order to claim the lien, the hospital must at the time or after the judgment is rendered, enter, in writing, upon the judgment docket where the judgment is recorded, the hospital's intention to hold a lien upon the judgment, together with the amount claimed.

Sec. 2. The lien provided for in section 1 of this chapter is junior and inferior to all claims for attorney's fees, court costs, and all other expenses contracted for or incurred in the recovery of claims or damages for personal injuries as described in this chapter.

Sec. 3. (a) A person, a firm, a partnership, an association, a limited liability company, or a corporation maintaining a hospital in Indiana or a hospital owned, maintained, or operated by the state or a political subdivision has a lien for all reasonable and necessary charges for hospital care, treatment, and maintenance of a patient (including emergency ambulance services provided by the hospital) upon any cause of action, suit, or claim accruing to the patient, or in the case of the patient's death, the patient's legal representative, because of the illness or injuries that:

(1) gave rise to the cause of action, suit, or claim; and

(2) necessitated the hospital care, treatment, and maintenance.

(b) The lien provided for in subsection (a):

(1) except as provided in subsection (c), applies to any amount obtained or recovered by the patient by settlement or

C o p y

compromise rendered or entered into by the patient or by the patient's legal representative;

(2) is subject and subordinate to any attorney's lien upon the claim or cause of action;

(3) is not applicable to accidents or injuries within the purview of:

(A) IC 22-3;

(B) 5 U.S.C. 8101 et seq.; or

(C) 45 U.S.C. 51 et seq.;

(4) is not assignable; and

(5) must first be reduced by the amount of any medical insurance proceeds paid to the hospital on behalf of the patient after the hospital has made all reasonable efforts to pursue the insurance claims in cooperation with the patient.

(c) If a settlement or compromise that is subject to subsection (b)(1) is for an amount that would permit the patient to receive less than twenty percent (20%) of the full amount of the settlement or compromise if all the liens created under this chapter were paid in full, the liens must be reduced on a pro rata basis to the extent that will permit the patient to receive twenty percent (20%) of the full amount.

Sec. 4. (a) To perfect the lien provided for in section 3 of this chapter, the hospital must file for record in the office of the recorder of the county in which the hospital is located, within one hundred eighty (180) days after the person is discharged, a verified statement in writing stating:

(1) the name and address of the patient as it appears on the records of the hospital;

(2) the name and address of the operator of the hospital;

(3) the dates of the patient's admission to and discharge from the hospital;

(4) the amount claimed to be due for the hospital care; and

(5) to the best of the hospital's knowledge, the names and addresses of anyone claimed by the patient or the patient's legal representative to be liable for damages arising from the patient's illness or injury.

(b) Within ten (10) days after filing the statement, the hospital shall send a copy by registered mail, postage prepaid:

(1) to each person claimed to be liable because of the illness or injury at the address given in the statement;

(2) to the attorney representing the patient if the name of the attorney is known or with reasonable diligence could be

C o p y

discovered by the hospital; and

(3) to the department of insurance as notice to insurance companies doing business in Indiana.

(c) The filing of a claim under subsections (a) and (b) is notice to any person, firm, limited liability company, or corporation that may be liable because of the illness or injury if the person, firm, limited liability company, or corporation:

(1) receives notice under subsection (b);

(2) resides or has offices in a county where the lien was perfected or in a county where the lien was filed in the recorder's office as notice under this subsection; or

(3) is an insurance company authorized to do business in Indiana under IC 27-1-3-20.

(d) The filing of a verified statement under subsection (a) constitutes filing of a lien under section 1 of this chapter if the statement is filed before the issuance of the judgment.

(e) A person desiring to contest a lien or the reasonableness of the charges claimed by the hospital may do so by filing a motion to quash or reduce the claim in the circuit court in which the lien was perfected, making all other parties of interest respondents.

Sec. 5. (a) The recorder of the county shall endorse on the statement filed under section 4(a) of this chapter the date and hour of filing.

(b) The recorder shall charge a fee for filing the claim in accordance with the fee schedule established in IC 36-2-7-10.

(c) The department of insurance shall adopt rules under IC 4-22-2 to:

(1) provide for the filing of lien notices mailed to the department by hospitals under section 4(b)(3) of this chapter;

(2) provide insurance companies with reasonable and timely access to the information contained in the lien notices filed with the department under section 4(b)(3) of this chapter; and

(3) provide a system for filing and for cross-referencing lien releases mailed under section 7 of this chapter with lien notices filed under section 4(b)(3) of this chapter.

Sec. 6. (a) A lien perfected under section 4 of this chapter is valid unless the lienholder executes a release of the lien under section 7 of this chapter.

(b) The release or settlement of a claim with a patient by a person claimed to be liable for the damages incurred by the patient:

(1) after a lien has been perfected under section 4 of this

C o p y

chapter; and

(2) without obtaining a release of the lien;

entitles the lienholder to damages for the reasonable cost of the hospital care, treatment, and maintenance.

(c) Satisfaction of a judgment rendered in favor of the lienholder under subsection (b) is satisfaction of the lien.

(d) An action by the lienholder must be brought in the court having jurisdiction of the amount of the lienholder's claim and may be brought and maintained in the county of residence of the lienholder.

Sec. 7. (a) To release a lien perfected under section 4 of this chapter, the operator of the hospital to whom the lien has been paid must file with each recorder in whose office the notice of the hospital lien was filed an executed certificate:

(1) stating that the claim filed by the hospital for treatment, care, and maintenance has been paid or discharged; and

(2) authorizing the recorder to release the lien.

The hospital shall bear the expense of obtaining a release.

(b) Upon receipt of the certificate, the recorder shall enter in the margin of the record of the lien and the entry book a memorandum of the filing and the date the certificate was filed. This entry constitutes a release of lien for which the recorder shall receive the fee prescribed in IC 36-2-7-10.

(c) If the amount of a lien has been satisfied or paid and subsequently a demand for a release of the lien is made, the lienholder is liable to the person, firm, limited liability company, or corporation against whose interest the lien has been filed for ten dollars ($10) for each day that the lien remains in effect after the fifteenth day after the demand for a release of the lien was made.

(d) The operator of the releasing hospital shall mail a copy of the release of lien certificate required under subsection (a) to the department of insurance within ten (10) days after the certificate was filed with the recorder.

Sec. 8. This chapter does not give any hospital a right:

(1) of action to determine liability; or

(2) to approve a compromise or settlement;

for injuries sustained by any person covered by this chapter.

Chapter 5. Ambulance Liens

Sec. 1. As used in this chapter, "emergency ambulance services" has the meaning set forth in IC 16-18-2-107.

Sec. 2. As used in this chapter, "provider" means a provider of emergency ambulance services other than a hospital.

C o p y

Sec. 3. (a) A provider has a lien for all reasonable and necessary charges for the provision of emergency ambulance services to a patient upon any cause of action, suit, or claim accruing to the patient, or in the case of the patient's death, the patient's legal representative, because of the illness or injuries that:

(1) gave rise to the cause of action, suit, or claim; and

(2) necessitated the provision of emergency ambulance services.

(b) The lien:

(1) applies to any amount obtained or recovered by the patient by settlement or compromise rendered or entered into by the patient or by the patient's legal representative;

(2) is subject and subordinate to any attorney's lien upon the claim or cause of action; and

(3) is not applicable to accidents or injuries within the purview of:

(A) IC 22-3;

(B) 5 U.S.C. 8101 et seq.; or

(C) 45 U.S.C. 51 et seq.

Sec. 4. (a) To perfect a lien under this chapter, the provider must file in the office of the recorder of the county, within sixty (60) days after the provision of services, a verified statement in writing that includes the following:

(1) The name and address of the patient.

(2) The name and address of the provider.

(3) The date services were provided.

(4) The amount claimed to be due.

(5) To the best of the provider's knowledge, the names and addresses of anyone claimed by the patient or by the patient's legal representative to be liable for damages arising from the illness or injury.

(b) Within ten (10) days after filing the statement, the provider shall send a copy by registered mail, postage prepaid:

(1) to each person claimed to be liable because of the illness or injury at the address given in the statement; and

(2) to the attorney representing the patient if the name of the attorney is known or with reasonable diligence could be discovered by the provider.

(c) The filing of a claim under subsection (a) is notice to any person, firm, limited liability company, or corporation that may be liable because of the illness or injury, if the person, firm, limited liability company, or corporation:

C o p y

(1) receives notice under subsection (b); or

(2) resides or has offices in a county where the lien was perfected or in a county where the lien was filed in the recorder's office as notice under this subsection.

(d) A person desiring to contest a lien or the reasonableness of the charges claimed by the provider may do so by filing a motion to quash or reduce the claim in the circuit court in which the lien was perfected, making all other parties of interest respondents.

Sec. 5. (a) The recorder shall endorse on the statement filed under section 4 of this chapter the date and hour of filing.

(b) The recorder shall charge a fee for filing the statement in accordance with the fee schedule established in IC 36-2-7-10.

Sec. 6. (a) A lien perfected under section 4 of this chapter is valid unless the lienholder executes a release of the lien under section 7 of this chapter.

(b) The release or settlement of a claim with a patient by a person claimed to be liable for the damages incurred by the patient:

(1) after a lien has been perfected under section 4 of this chapter; and

(2) without obtaining a release of the lien;

entitles the lienholder to damages for the reasonable cost of the services provided.

(c) Satisfaction of a judgment rendered in favor of the lienholder under subsection (b) is satisfaction of the lien.

(d) An action by the lienholder shall be brought in the court having jurisdiction of the amount of the lienholder's claim and may be brought and maintained in the county of residence of the lienholder.

Sec. 7. (a) To release a lien perfected under section 4 of this chapter, the provider to whom the lien has been paid must file with the recorder in whose office the notice of the lien was filed an executed certificate:

(1) stating that the claim filed by the provider for the provision of emergency ambulance services has been paid or discharged; and

(2) authorizing the recorder to release the lien.

The provider shall bear the expense of obtaining a release.

(b) Upon receipt of the certificate, the recorder shall enter in the margin of the record of the lien and the entry book a memorandum of the filing and the date the certificate was filed. This entry constitutes a release of lien for which the recorder shall receive the

C o p y

fee prescribed in IC 36-2-7-10.

(c) If the amount of a lien has been satisfied or paid and subsequently a demand for a release of the lien is made, the lienholder is liable to the person, firm, limited liability company, or corporation against whose interest the lien has been filed for ten dollars ($10) for each day that the lien remains in effect after the fifteenth day after the demand for a release of the lien was made.

Sec. 8. This chapter does not give any provider a right:

(1) of action to determine liability; or

(2) to approve a compromise or settlement;

for injuries sustained by any person covered by this chapter.

Chapter 6. Innkeeper's Liens

Sec. 1. (a) The owner or keeper of any hotel, inn, boardinghouse, eating facility, lodging house, or restaurant has a lien upon any trunk, valise or baggage, or other article of value brought into the hotel, inn, boardinghouse, eating facility, lodging house, or restaurant by a person for any and all proper charges due from the person for food, lodging, entertainment, or other accommodation.

(b) The owner or keeper referred to in subsection (a) may detain the trunk, valise or baggage, or other articles of value until the amount of the charge is fully paid. If the charges are not paid within sixty (60) days after the charges accrued, the owner or keeper may sell the trunk, valise or baggage, or other article of value at public auction after giving ten (10) days notice of the time and place of the sale by publication of notice in a newspaper of general circulation in the county in which the hotel, inn, boardinghouse, eating facility, lodging house, or restaurant is situated. In addition, the owner or keeper must at least ten (10) days before the sale mail a copy of the notice addressed to the person at:

(1) the person's post office address if known to the owner or keeper; or

(2) the address registered by the person with the owner or keeper if the owner or keeper is required to keep a register under IC 16-41-29.

(c) After satisfying the lien out of the proceeds of a sale under this section together with any costs that may have been incurred in enforcing the lien, the residue of the proceeds of the sale, if any, must be paid on demand by the owner or keeper to the person not more than six (6) months after the sale. If the residue is not demanded within six (6) months after the date of the sale, the residue or remainder shall be deposited by the owner or keeper

C o p y

with the county treasurer of the county in which the hotel, inn, boardinghouse, eating facility, lodging house, or restaurant is situated, together with a statement of:

(1) the owner's or keeper's claim;

(2) the amount of costs incurred in enforcing the lien;

(3) a copy of the published notice; and

(4) the amount received from the sale of the trunk, valise or baggage, or other article of value sold at the sale.

(d) The residue deposited under subsection (c) shall be accredited to the general revenue funds of the county by the county treasurer subject to the right of the person or the person's representatives to reclaim the residue at any time within three (3) years after the date of the deposit with the county treasurer.

(e) A sale under this section is a bar to any action against the owner or keeper for the recovery of the trunk, valise or baggage, or other article of value or of the value of the trunk, valise or baggage, or other article of value, or for any damage growing out of the failure of the person to receive the trunk, valise or baggage, or other article of value.

(f) However, if the proceeds of a sale after deducting any costs that may have been incurred in enforcing the lien are not sufficient to discharge the owner's or keeper's charges, the balance remains due and owing, and the owner or keeper may commence an action at law against the person for any balance due.

Chapter 7. Liability of Hotels for Loss of Property of Guests

Sec. 1. As used in this chapter, "guest" includes a transient guest, permanent guest, tenant, lodger, or boarder.

Sec. 2. If:

(1) the proprietor or manager of a hotel, an apartment hotel, or an inn provides a safe in a convenient place for the safekeeping of any money, jewels, ornaments, furs, bank notes, bonds, negotiable security, or other valuable papers, precious stones, railroad tickets, articles of silver or gold, or other valuable property of small compass belonging to or brought in by the guests of the hotel, apartment hotel, or inn;

(2) the proprietor or manager notifies the guests by posting in a public and conspicuous place and manner at the place of registration of the hotel, apartment hotel, or inn or in each guest room a notice stating that a safe place is provided in which the articles may be deposited; and

(3) the guest neglects or fails to deliver the guest's property to the person in charge of the office for deposit in the safe;

C o p y

the hotel, apartment hotel, or inn and proprietor or manager are not liable for any loss of or damage to the property sustained by the guest or other owner of the property, whether the loss or damage is occasioned by the neglect of the proprietor or manager or of the proprietor's or manager's agents or otherwise.

(b) If a guest delivers property to the person in charge of the office for deposit in a safe, the hotel, apartment hotel, or inn and its manager or proprietor are not liable for the loss or damage of the property sustained by the guest or other owner of the property in any amount exceeding six hundred dollars ($600), whether the loss or damage is occasioned by the negligence of the proprietor or manager or by the proprietor's or manager's agents or otherwise, notwithstanding that the property may be of greater value, unless the proprietor or manager has entered into a special agreement in writing agreeing to assume additional liability.

Sec. 3. Except as provided in section 2 of this chapter, the hotel, apartment hotel, or inn and its proprietor or manager are not liable for the loss of or damage to personal property, other than merchandise samples or merchandise for sale, brought into the hotel, apartment hotel, or inn by any guest, exceeding two hundred dollars ($200) in value, whether the loss or damage is occasioned by the negligence of the proprietor or manager or the proprietor's or manager's agents or otherwise, unless the manager or proprietor has contracted in writing to assume greater liability. This limitation of liability also applies with respect to the liability for the safekeeping of any luggage or other personal property left in any hotel, apartment hotel, or inn to be checked in any checkroom operated by the hotel, apartment hotel, or inn, whether the luggage or other personal property is brought in by and belongs to a guest or belongs to a person who is not a guest.

Sec. 4. A hotel, an apartment hotel, or an inn and its proprietor or manager are not liable for the loss of or damage to any merchandise samples or merchandise for sale, whether the loss or damage is occasioned by the negligence of the proprietor or manager or the proprietor's or manager's agents or otherwise, unless:

(1) the guest or other owner has given prior written notice of having brought the merchandise into the hotel and of the value of the merchandise; and

(2) the receipt of the notice has been acknowledged in writing by the proprietor, manager, or other agent.

However, the liability of the hotel, apartment hotel, inn, or the

C o p y

proprietor or manager may not exceed four hundred dollars ($400) unless the manager or proprietor of the hotel, apartment hotel, or inn has contracted in writing to assume a greater liability.

Sec. 5. In case of loss or damage to any property left by a guest after the guest has departed from any hotel, apartment hotel, or inn and ceased to be a guest, the liability of the proprietor is that of "gratuitous bailee" and may not exceed one hundred dollars ($100).

Sec. 6. In case of loss of or damage to any property while in transit to or from any hotel, apartment hotel, or inn on behalf of a guest, the liability of the proprietor is limited to two hundred dollars ($200), whether the loss or damage is occasioned by the negligence of the proprietor or the proprietor's agents or otherwise, unless:

(1) the guest has given prior written notice of the value of the property; and

(2) the receipt of the notice has been acknowledged in writing by the proprietor, manager, or other agent.

However, the liability of the hotel, apartment hotel, or inn may not exceed four hundred dollars ($400), unless the proprietor has contracted in writing to assume a greater liability.

Chapter 8. Livestock Care and Feeding Liens

Sec. 1. The keeper of a livery stable or a person engaged in feeding horses, cattle, hogs, and other livestock:

(1) has a lien upon the livestock for the feed and care bestowed by the keeper upon the livestock; and

(2) has the same rights and remedies as are provided for those persons having, before July 24, 1853, by law, a lien under IC 32-33-9.

Chapter 9. Mechanic's and Tradesman's Liens

Sec. 1. If a person entrusts to a mechanic or tradesman materials to construct, alter, or repair an article of value, the mechanic or tradesman, if the construction, alteration, or repair is completed and not taken away and the mechanic's or tradesman's fair and reasonable charges not paid, may, after sixty (60) days after the charges became due:

(1) sell the article of value; or

(2) if the article of value is susceptible of division, without injury, may sell as much of the article of value as is necessary to pay the charges.

Sec. 2. Before a sale under section 1 of this chapter, the mechanic or tradesman must give notice of the amount due and the

C o p y

time and place of the sale by mailing a certified or registered letter, return receipt requested, to the last known address of the entrusting person or owner at least thirty (30) days before the date of the sale.

Sec. 3. (a) The proceeds of a sale that takes place under section 1 of this chapter, after payment of charges for construction or repair and for giving notice by registered or certified mail, shall be:

(1) returned to the entrusting person or owner if the identity and mailing address of the entrusting person or owner are known; or

(2) deposited with the treasurer of the county in which the construction or repair work was performed.

(b) If the entrusting person or owner does not:

(1) claim the article within the thirty (30) days before the date of the sale;

(2) pay for the construction, alteration, or repair; and

(3) provide reimbursement for the expenses of notification;

the mechanic or tradesman may proceed with the sale according to the terms of the notice.

Sec. 4. Except as provided in section 5 of this chapter, this chapter applies to all cases of personal property on which the bailee or keeper has, by law, a lien for any feed or care by the bailee or keeper provided on the property. However, in cases where the person liable dies before the expiration of sixty (60) days after the charges accrued, the sale may not be made until at least sixty (60) days after the date of the person's death.

Sec. 5. For personal property described in section 4 of this chapter, if the property bailed or kept is:

(1) horses;

(2) cattle;

(3) hogs;

(4) other livestock; or

(5) other property covered in this chapter that is of a perishable nature and will be greatly injured by delay;

the person to whom the charges may be due may, after the expiration of thirty (30) days after the charges become due, proceed to dispose of as much of the property as may be necessary, as provided in this chapter.

Sec. 6. Additional compensation for keeping and taking care of property referred to in section 5 of this chapter, if necessarily incurred, may be taken from the proceeds of sale under section 5

C o p y

of this chapter as part of the charges.

Sec. 7. A forwarding and commission merchant having a lien upon goods that may have remained in store for at least one (1) year may proceed to advertise and sell at public auction as much of the goods as may be necessary to pay the amount of the lien and expenses, according to the provisions of this chapter.

Sec. 8. All mechanics, tradesmen, or bailees taking advantage of this chapter, at the time of the entrusting, must issue a receipt to the person entrusting the article to them. The receipt must conspicuously state, "All articles left on the premises after work is completed may be sold for charges.".

Chapter 10. Motor Vehicles Lien for Repair, Storage, Service, and Supplies for Certain Motor Vehicles and Equipment

Sec. 1. As used in this chapter, "construction machinery and equipment" includes all classes and types of machinery and equipment used in road construction, road maintenance, earth moving, and building construction work.

Sec. 2. As used in this chapter, "farm machinery" means all types of tractors, implements, and machinery used in the operation and maintenance of farms.

Sec. 3. (a) As used in this chapter, "motor vehicle" means every vehicle and device in, upon, or by which persons or property is, or may be, moved, transported, or drawn upon public highways.

(b) The term includes:

(1) self-propelled vehicles; and

(2) vehicles and devices drawn or propelled by other vehicles, devices, trucks, and tractors.

Sec. 4. As used in this chapter, "person" includes a natural person, a firm, a copartnership, an association, a limited liability company, and a corporation.

Sec. 5. A person engaged in:

(1) repairing, storing, servicing, or furnishing supplies or accessories for motor vehicles, airplanes, construction machinery and equipment, and farm machinery; or

(2) maintaining a motor vehicle garage, an airport or repair shop for airplanes, or a repair shop or servicing facilities for construction machinery and equipment and farm machinery;

has a lien on any motor vehicle or airplane or any unit of construction machinery and equipment or farm machinery stored, repaired, serviced, or maintained for the person's reasonable charges for the repair work, storage, or service, including reasonable charges for labor, for the use of tools, machinery, and

C o p y

equipment, and for all accessories, materials, gasoline, oils, lubricants, and other supplies furnished in connection with the repair, storage, servicing, or maintenance of the motor vehicle, airplane, unit of construction machinery and equipment, or farm machinery.

Sec. 6. (a) A person seeking to acquire a lien upon a motor vehicle, an airplane, a unit of construction machinery and equipment, or farm machinery, whether the claim to be secured by the lien is then due or not, must file in the recorder's office of the county where:

(1) the repair, service, or maintenance work was performed; or

(2) the storage, supplies, or accessories were furnished;

a notice in writing of the intention to hold the lien upon the motor vehicle, airplane, unit of construction machinery and equipment, or farm machinery for the amount of the person's claim.

(b) A notice filed under subsection (a) must specifically state the amount claimed and give a substantial description of the motor vehicle, airplane, unit of construction machinery and equipment, or farm machinery upon which the lien is asserted.

(c) Any description in a notice of intention to hold a lien filed under subsection (a) is sufficient if by the description the motor vehicle, airplane, unit of construction machinery and equipment, or farm machinery can be identified.

(d) A notice under subsection (a) must be filed in the recorder's office not later than sixty (60) days after the performance of the work or the furnishing of the storage, supplies, accessories, or materials.

Sec. 7. (a) The recorder of the county where a notice of intention to hold a lien is filed under section 6 of this chapter shall record the lien in the manner provided by law for the recording of mechanic's liens.

(b) The recorder shall receive a fee in accordance with IC 36-2-7-10 for the recording.

Sec. 8. (a) A lien provided for in this chapter may be foreclosed, as equitable liens are foreclosed, in the circuit or superior court of the county where the motor vehicle, airplane, unit of construction machinery and equipment, or farm machinery is located.

(b) The complaint for foreclosure of a lien under subsection (a) must be filed not later than one (1) year after the notice of intention to hold the lien is recorded.

Sec. 9. In a suit brought for the enforcement of a lien under

C o p y

section 8 of this chapter in which the plaintiff recovers judgment in any sum, the plaintiff may also recover reasonable attorney's fees as a part of the judgment in the action.

Sec. 10. This chapter may not be construed to repeal, modify, or amend IC 9-22-5-14 or IC 9-22-5-15.

Chapter 11. Transfer, Moving, and Storage Liens

Sec. 1. A transferman, a drayman, or any other person, firm, limited liability company, or corporation that is engaged in:

(1) packing for shipment or storage; or

(2) transferring, hauling, or conveying from place to place;

goods, merchandise, machines, machinery or other articles of value is entitled to a lien under this chapter for money paid for freight, storage or demurrage charges on the goods, merchandise, machines, machinery or other articles of value or for erecting machines, machinery, stacks or other equipment. The lien is imposed upon the goods, merchandise, machines, machinery, or other articles of value that are packed, hauled, transferred, conveyed, or erected, for charges for the hauling, packing, transferring, conveying, or erecting or for money paid for freight, storage, or demurrage on the goods, merchandise, machines, machinery, or other articles of value.

Sec. 2. (a) A transferman, drayman, or any other person, firm, limited liability company, or corporation that is engaged in:

(1) packing for shipment or storage; or

(2) transferring, hauling, or conveying from place to place;

goods, merchandise, machinery, machines, or other articles of value and that wishes to acquire a lien on any of this property for money paid for freight, storage, or demurrage charges or for erecting machines, machinery, stacks, or other equipment, whether the claim is due or not, may, at any time within sixty (60) days after performing the labor or the payment of money described in section 1 of this chapter, file in the recorder's office of the county a notice of intention to hold a lien upon the property for the amount of the claim.

(b) The notice filed under subsection (a) must state the amount claimed and provide a substantial description of the property. The description of the property in a notice filed under subsection (a) must be sufficient to identify the property.

(c) The party ordering the work done or charges paid or advanced, shall, for the purpose of enforcing this lien, be considered prima facie the agent of all persons having or claiming any interest in the work done or charges paid or advanced but not

C o p y

a matter of record, if the person has knowledge of the performance of the services or the making of the expenditures.

(d) The lienor may keep possession of the goods during the pendency of the lien or an action on the lien unless otherwise ordered by the court.

Sec. 3. (a) The recorder shall record the notice of intention to hold a lien filed under section 2(a) of this chapter, when presented, in the miscellaneous record book. The recorder shall receive fees in accordance with IC 36-2-7-10.

(b) All liens created in this manner:

(1) relate to the date the labor was begun or money advanced; and

(2) have priority over all liens suffered or created after that date.

Sec. 4. (a) A person that has a lien under this chapter may enforce the lien by filing the person's complaint in the circuit or superior court of the county in which the lien is filed, at any time within one (1) year after the notice is received for record under section 2(a) of this chapter by the recorder of the county.

(b) If the lien is not enforced within the time prescribed by this section, the lien is void. If the lien is enforced as provided in this chapter, the court rendering judgment shall order the sale to be made, and the officers making the sale shall sell the property without relief whatever from valuation or appraisement laws.

Sec. 5. (a) In all suits brought for the enforcement of a lien under the provisions of this chapter, if the plaintiff or lienholder recovers a judgment in any sum, the plaintiff or lienholder may recover reasonable attorney's fees.

(b) Attorney's fees awarded under subsection (a) shall be entered by the court as a part of the judgment in the suit for the enforcement of the lien.

Sec. 6. (a) In addition to the lien provided for in section 1 of this chapter, a person, firm, limited liability company, or corporation that ships, transfers, hauls, or conveys goods, merchandise, machines, machinery, or other articles of value for another person is entitled to a lien:

(1) upon goods, merchandise, machines, machinery, or other articles of value:

(A) shipped;

(B) transferred;

(C) hauled; or

(D) conveyed;

C o p y

for the other person; and

(2) to cover charges that the other person owes the person, firm, limited liability company, or corporation for goods, merchandise, machines, machinery, or other articles of value previously:

(A) shipped;

(B) transferred;

(C) hauled; or

(D) conveyed;

by the person, firm, limited liability company, or corporation for the other person.

(b) To obtain a lien under this section, a person, firm, limited liability company, or corporation must do the following:

(1) Notify the other person in writing that if the other person fails to pay the person, firm, limited liability company, or corporation for shipping, transferring, hauling, or conveying goods, merchandise, machines, machinery, or other articles of value, the person, firm, limited liability company, or corporation may obtain a lien upon goods, merchandise, machines, machinery, or other articles of value subsequently:

(A) shipped;

(B) transferred;

(C) hauled; or

(D) conveyed;

by the person, firm, limited liability company, or corporation for the other person.

(2) File an intention to hold a lien with a county recorder as provided in section 2 of this chapter.

(c) A sale of property subject to a lien acquired under this section may not take place under section 4 of this chapter:

(1) for at least thirty-five (35) days after the date the person, firm, limited liability company, or corporation that has obtained the lien takes possession of the property; and

(2) unless the person, firm, limited liability company, or corporation that has obtained the lien notifies:

(A) the person that had the property shipped, transferred, hauled, or conveyed;

(B) the consignee of the property; and

(C) a secured party that has a perfected security interest in the property;

of the date, time, and location of the sale at least ten (10) days before the date the sale occurs.

C o p y

(d) A sale of property subject to a lien acquired under this section may not be concluded if the largest amount bid for the property is not at least equal to the total amount of all outstanding obligations secured by perfected security interests in the property. The proceeds of the sale of property subject to a lien under this section shall be applied as follows:

(1) First, to a secured party that has a perfected security interest in the property in an amount equal to the amount of the perfected security interest.

(2) Second, to the discharge of the lien acquired under this section.

(3) Third, to the legal owner of the property.

If the highest bid for the property does not at least equal the total amount of all outstanding obligations secured by a perfected security interest in the property, the person, firm, limited liability company, or corporation that obtained the lien on the property under this section shall release the property to the legal owner of the property if the legal owner pays the person, firm, limited liability company, or corporation the amount due for shipping, transferring, hauling, or conveying the property that does not include an amount charged for property that the person, firm, limited liability company, or corporation previously shipped, transferred, hauled, or conveyed.

(e) A person, firm, limited liability company, or corporation that obtains a lien under this section:

(1) is liable to a secured party that has a security interest in property covered by the lien:

(A) if the person, firm, limited liability company, or corporation violates this section; and

(B) for damages and expenses, including reasonable attorney's fees, incurred by the secured party in enforcing the secured party's rights; and

(2) is not liable to a consignee of property for damages that the consignee incurs because the person, firm, limited liability company, or corporation obtained a lien on the property under this section.

(f) A perfected security interest in property has priority over a lien obtained under this section.

(g) A lien may not be acquired under this section upon perishable goods.

Sec. 7. This chapter may not be construed as repealing any other law in force on May 31, 1921, concerning liens or the foreclosure

C o p y

of liens. This chapter is intended to be supplemental to all laws in force on May 31, 1921, concerning liens and the foreclosure of liens.

Chapter 12. Mechanized Agricultural Services Lien

Sec. 1. (a) The owner or operator of a machine or tool used in threshing or hulling grain or seeds or in the plowing, disking, or cultivating of land for the production of crops or in the combining, picking, or baling of crops has a lien upon the grain or seed threshed or hulled with the machine or upon the crops produced or prepared for market or storage by the plowing, disking, cultivating, combining, baling, or picking to secure payment to the owner or operator of the machine or tool by the owner of the crops produced or partially produced by the service, as may be agreed upon.

(b) If the charges for the services referred to in subsection (a) are not agreed upon, the amount of the lien must equal charges that are reasonable for the work.

(c) The owner or operator of the machine must file in the proper place specified in IC 26-1-9.1-501 a financing statement giving notice of the lien. The notice must designate the following:

(1) The name of the person for whom the work was done.

(2) The amount due for the service.

(3) The particular crops covered by the lien.

(4) The place where the crops are located.

(5) The date on which the work was done.

(d) The notice required in subsection (c) must be filed not later than:

(1) thirty (30) days after the completion of the work, if the work was plowing, disking, or cultivating; and

(2) ten (10) days after the completion of the work if the work was combining, baling, or picking.

(e) If the party for whom the work was done desires to sell or deliver the crops, the party must notify the consignee or purchaser that the account for service of the machine has not been paid, and the lien given on the crops shifts from the crops to the purchase price of the crops in the hands of the purchaser or consignee specified.

(f) If the crops are sold or consigned with the consent and knowledge of the party entitled to a lien on the crops, the lien does not attach to the crops or to the purchase price of the crops unless:

(1) the party entitled to the lien personally notifies the purchaser of the lien; and

C o p y

(2) the sale is made within the ten (10) day period immediately following the date of the performance of the work.

This lien may be enforced as other liens are enforced.

Sec. 2. A lien provided for in this chapter does not attach to crops in the hands of an innocent purchaser or dealer in the usual course of trade unless all of the notices provided for in section 1 of this chapter have been given.

Chapter 13. Watchmaker and Jeweler Liens

Sec. 1. A person, firm, limited liability company, or corporation engaged in performing work upon any watch, clock, or jewelry for a price has a lien upon the watch, clock, or jewelry upon which the person, firm, limited liability company, or corporation performs the work for the amount of any account that may be due for the work.

Sec. 2. (a) A lien provided for in section 1 of this chapter includes the value or agreed price, if any, of all materials furnished by the bailees for hire in connection with the work, whether added to the article or otherwise.

(b) If the account remains unpaid for one hundred twenty (120) days after completing the work, the bailees for hire may give written notice to the owner, specifying the amount due and informing the owner that:

(1) the payment of the amount within thirty (30) days will entitle the owner to redeem the property;

(2) if the property is not redeemed within the thirty (30) day period, the bailee for hire may give a second and similar notice; and

(3) if the owner does not redeem the property not later than fifteen (15) days after the second notice is given, the bailee for hire may sell the article at a bona fide public or private sale to satisfy the account.

(c) The proceeds of a sale under subsection (b), after paying the expenses of the sale, shall be applied in liquidation of the indebtedness secured by the lien and the balance, if any, shall be paid over to the owner.

(d) The notice under subsection (b) may:

(1) be served by mail directed to the owner's last known address; or

(2) be posted in two (2) public places in the town or city where the property is located, if the owner or the owner's address is not known. The notice must be written or printed.

Sec. 3. This chapter does not preclude the remedy of enforcing

C o p y

the lien by any other action provided by law.

Chapter 14. Warehouseman's Lien

Sec. 1. (a) All persons, firms, limited liability companies, and corporations engaged in the business of storing, warehousing, and forwarding goods, wares, and merchandise have a lien upon all goods, wares, and merchandise left with them for storage, warehousing, or forwarding, to the extent of the:

(1) value of the services of storage, warehousing, or forwarding;

(2) fair and reasonable charges for transporting the goods, wares, and merchandise to the place of storage, warehousing, or forwarding; and

(3) fair and reasonable charges for packing, crating, and otherwise placing the goods, wares, and merchandise in condition to be stored, warehoused, or forwarded.

(b) However, the goods subject to a lien under this section must remain in the possession of the person, firm, limited liability company, or corporation engaged in the business.

Sec. 2. (a) If goods, wares, or merchandise have remained in the possession of a person, firm, limited liability company, or corporation described in section 1 of this chapter for a period of at least six (6) months without the payment of the charges due, the goods, wares, or merchandise, or as much of the goods, wares, or merchandise as is necessary, may be sold at public auction to pay the amount of the lien and the expenses of the sale.

(b) Before a sale under subsection (a), the person, firm, limited liability company, or corporation described in section 1 of this chapter must give public notice of the time and place of the sale by advertisements set up for a period of ten (10) days in three (3) public places in the city or township in which the goods, wares, or merchandise are located. One (1) of the advertisements must be:

(1) displayed in a conspicuous part of the place of business of the person, firm, limited liability company, or corporation; or

(2) if the value of the article or articles is at least ten dollars ($10), published for three (3) weeks successively in a newspaper published in the county or city in which the goods are located.

(c) The notice given under subsection (b) must:

(1) state the time, place, and date of sale;

(2) give a general description of the goods to be sold; and

(3) state the name of the person to whom a receipt for the goods was issued.

C o p y

Sec. 3. The proceeds of a sale under section 2 of this chapter, after payment of all lien charges, together with the expenses of notice and sale, shall, if the owner is absent from the sale, be deposited with the county treasurer of the county in which the sale occurred. A receipt shall be issued for the proceeds. The proceeds are subject to the order of the person legally entitled to the proceeds.

Chapter 15. Electronic Home Entertainment Equipment Lien

Sec. 1. A person who engages in the business of altering or repairing electronic home entertainment equipment has a lien on that equipment to the extent of the reasonable value of labor performed and materials used for which the person has not been paid.

Sec. 2. If the lienholder has not been paid within sixty (60) days after payment becomes overdue, the lienholder may sell the equipment at auction if:

(1) the equipment is still in the lienholder's possession; and

(2) the lienholder complies with section 3 of this chapter.

Sec. 3. (a) Before a lienholder may sell the equipment, the lienholder must, by certified mail, return receipt requested, notify the owner and any person whose security interest is perfected by filing concerning the following:

(1) The lienholder's intention to sell the equipment thirty (30) days after the owner's receipt of the notice.

(2) A description of the equipment to be sold.

(3) The time and place of the sale.

(4) An itemized statement describing the value of labor and materials provided and for which the lienholder has not been paid.

(b) If upon receipt of the notice the owner informs the lienholder in writing of the owner's objections regarding the quality of the workmanship or an alleged overcharge, the lienholder must foreclose by judicial proceeding.

(c) If there is no return of the receipt or if the postal service returns the notice as being nondeliverable, the lienholder shall publish notice of the lienholder's intention to sell the equipment in a newspaper of general circulation in the place where the equipment is being held for sale by the lienholder. The notice must include a description of the equipment and name of its owner.

Sec. 4. If the sale is for a sum greater than the amount of the lien, any excess shall be paid to the owner and any prior lienholder.

Chapter 16. Liens on Dies, Molds, Forms, and Patterns

C o p y

Sec. 1. As used in this chapter, "customer" means any individual or entity who contracts with or causes a fabricator to use a die, mold, form, jig, or pattern to manufacture, assemble, or otherwise make a product.

Sec. 2. As used in this chapter, "fabricator" means any individual or entity, including a tool or die maker, who:

(1) manufactures or causes to be manufactured, assembles, or improves a die, mold, form, jig, or pattern for a customer; or

(2) uses or contracts to use a die, mold, form, jig, or pattern to manufacture, assemble, or otherwise make a product for a customer.

Sec. 3. (a) A fabricator has a lien, dependent on possession, on any die, mold, form, jig, or pattern in the fabricator's possession belonging to the customer for the amount due the fabricator from the customer for fabrication work performed with the die, mold, form, jig, or pattern.

(b) A fabricator may retain possession of the die, mold, form, jig, or pattern until the amount due is paid.

Sec. 4. (a) Before enforcing a lien under this chapter, notice in writing must be given to the customer, whether delivered personally or sent by certified mail to the last known address of the customer.

(b) The notice required under subsection (a) must:

(1) state that a lien is claimed for the damages set forth or attached for the amount due for fabrication work or for making or improving the die, mold, form, jig, or pattern; and

(2) include a demand for payment.

Sec. 5. If the lienholder has not been paid the amount due within sixty (60) days after the notice provided for in section 4 of this chapter, the lienholder may sell the die, mold, form, jig, or pattern at auction if:

(1) the die, mold, form, jig, or pattern is still in the lienholder's possession; and

(2) the lienholder complies with section 6 of this chapter.

Sec. 6. (a) Before a lienholder may sell the die, mold, form, jig, or pattern, the lienholder must, in writing, by certified mail, return receipt requested, notify the customer and any person whose security interest is perfected by filing of the following:

(1) The lienholder's intention to sell the die, mold, form, jig, or pattern thirty (30) days after the customer's receipt of the notice.

(2) A description of the die, mold, form, jig, or pattern to be

C o p y

sold.

(3) The time and place of the sale.

(4) An itemized statement for the amount due.

(b) If upon receipt of this notice the customer informs the lienholder in writing of the customer's objections regarding the amount due, the lienholder may file a complaint to foreclose the lien.

(c) If there is no return of the receipt of mailing, or if the postal service returns the notice as being nondeliverable, the lienholder must publish notice of the lienholder's intention to sell the die, mold, form, jig, or pattern in a newspaper of general circulation in the county where the die, mold, form, jig, or pattern is being held for sale by the lienholder. The notice must include a description of the die, mold, form, jig, or pattern and the name of the customer.

Sec. 7. If the sale is for a sum greater than the amount of the lien plus all reasonable expenses of the sale, any excess shall be paid to the customer and any prior lienholder.

Sec. 8. A sale may not be made under this chapter if the sale would be in violation of any right of a customer under federal patent or copyright law.

Sec. 9. This chapter does not bar a customer from bringing action for replevin under IC 32-35-2.

Chapter 17. Corporate Employee's Liens

Sec. 1. Unless otherwise provided in this article, corporate employee liens on personal property of a corporation for all work and labor done and performed by the employees of a corporation are governed by IC 32-28-12.

Chapter 18. Common Law Liens

Sec. 1. The procedures for filing and releasing common law liens on personal property are governed by IC 32-28-13.

Chapter 19. Duty to Satisfy Record

Sec. 1. Unless otherwise provided in this article, if the debt or obligation, including interest on the debt or obligation, that a lien on personal property secures has been fully paid, lawfully tendered, and discharged, the owner, holder, or custodian of the mortgage shall:

(A) release;

(B) discharge; and

(C) satisfy of record;

the mortgage as provided in IC 32-28-1.

SECTION 19. IC 32-34 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,

C o p y

2002]:

ARTICLE 34. LOST OR UNCLAIMED PERSONAL PROPERTY

Chapter 1. Unclaimed Property Act

Sec. 1. (a) This chapter does not apply to any property held, due, and owing in a foreign country and arising out of a foreign transaction.

(b) This chapter does not apply to:

(1) stocks;
(2) dividends;
(3) capital credits;
(4) patronage refunds;
(5) utility deposits;
(6) membership fees;
(7) account balances; or
(8) book equities;

for which the owner cannot be found and that are the result of distributable savings of a rural electric membership corporation formed under IC 8-1-13, a rural telephone cooperative corporation formed under IC 8-1-17, or an agricultural cooperative association formed under IC 15-7-1.

(c) This chapter does not apply to unclaimed overpayments of utility bills that become the property of a municipality under IC 36-9-23-28.5.

(d) This chapter does not apply to deposits required by a municipally owned utility (as defined in IC 8-1-2-1).

(e) This chapter does not apply to a business to business credit memorandum or a credit balance resulting from a business to business credit memorandum.

Sec. 2. This chapter may be cited as the "unclaimed property act".

Sec. 3. As used in this chapter, "administrator" means the administrator of the unclaimed property law of another state.

Sec. 4. As used in this chapter, "apparent owner" means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

Sec. 5. As used in this chapter, "business association" means the following:

(1) A corporation.
(2) A limited liability company.
(3) A joint stock company.
(4) An investment company.

C o p y

(5) A partnership.
(6) A business trust.
(7) A trust company.
(8) A savings association.
(9) A savings bank.
(10) An industrial bank.
(11) A land bank.
(12) A safe deposit company.
(13) A safekeeping depository.
(14) A bank.
(15) A banking organization.
(16) A financial organization.
(17) An insurance company.
(18) A mutual fund.
(19) A credit union.
(20) A utility.
(21) A for profit or nonprofit business association consisting of two (2) or more individuals.

Sec. 6. As used in this chapter, "domicile" means the following:
(1) The state of incorporation of a corporation.
(2) The state of the principal place of business of a holder other than a corporation.

Sec. 7. As used in this chapter, "financial institution" means a depository financial institution that is organized or reorganized under Indiana law, the law of another state, or United States law. The term includes any of the following:
(1) A commercial bank.
(2) A trust company.
(3) A savings bank.
(4) A savings association.
(5) A credit union.
(6) An industrial loan and investment company.
(7) Any other entity that has powers similar to the powers of an entity described in subdivisions (1) through (6).

Sec. 8. As used in this chapter, "holder" means a person obligated to deliver or pay to the owner property that is subject to this chapter.

Sec. 9. As used in this chapter, "insurance company" means an association, a corporation, or a fraternal or mutual benefit organization, whether or not for profit, that is engaged in the business of providing insurance, including the following:
(1) Accident insurance.

C o p y

(2) Burial insurance.
(3) Casualty insurance.
(4) Credit life insurance.
(5) Contract performance insurance.
(6) Dental insurance.
(7) Fidelity insurance.
(8) Fire insurance.
(9) Health insurance.
(10) Hospitalization insurance.
(11) Illness insurance.
(12) Life insurance (including endowments and annuities).
(13) Malpractice insurance.
(14) Marine insurance.
(15) Mortgage insurance.
(16) Surety insurance.
(17) Wage protection insurance.

Sec. 10. (a) As used in sections 26, 32, and 43 of this chapter, "last known address" means a description of the location of the apparent owner's residence or business sufficient for the purpose of the delivery of mail or the receipt of a communication by other means known to the holder.

(b) As used in sections 21 and 37 of this chapter, "last known address" means a description indicating that the apparent owner was located within Indiana, regardless of whether the description is sufficient to direct the delivery of mail.

Sec. 11. As used in this chapter, "mineral" means any of the following:

(1) Gas.
(2) Oil.
(3) Coal.
(4) Other gaseous, liquid, and solid hydrocarbons.
(5) Shale.
(6) Oil shale.
(7) Cement material.
(8) Sand and gravel.
(9) Road material.
(10) Building stone.
(11) Chemical substance.
(12) Gemstone.
(13) Metallic, fissionable, and nonfissionable ores.
(14) Colloidal and other clay.
(15) Steam and other geothermal resource.

C o p y

(16) Any other substance defined as a mineral under Indiana law.

Sec. 12. As used in this chapter, "mineral proceeds" means proceeds currently payable and unclaimed and, upon the abandonment of those proceeds, all proceeds that would have become payable, including the following:

(1) Obligations to pay resulting from the extraction, production, or sale of minerals, including the following:

(A) Net revenue interests.

(B) Royalties.

(C) Overriding royalties.

(D) Extraction and production payments.

(E) Joint operating agreements.

(F) Pooling arrangements.

(2) Obligations for the acquisition and retention of a mineral lease, including the following:

(A) Bonuses.

(B) Delay rentals.

(C) Shut-in royalties.

(D) Minimum royalties.

Sec. 13. (a) As used in this chapter, "money order" includes an express money order and a personal money order on which the remitter is the purchaser.

(b) The term does not include the following:

(1) A bank money order on which the remitter is the purchaser.

(2) A bank money order or any other instrument sold by a banking or financial institution if the seller has obtained the name and address of the payee.

Sec. 14. (a) As used in this chapter, "owner" means:

(1) a person who has a legal or an equitable interest in property subject to this chapter; or

(2) the person's legal representative.

(b) The term includes the following:

(1) A depositor in the case of property that is a deposit.

(2) A beneficiary in the case of property that is a trust other than a deposit in trust.

(3) A creditor, claimant, or payee in the case of other property.

Sec. 15. As used in this chapter, "person" means an individual, a corporation, a business trust, an estate, a trust, a partnership, an association, a joint venture, a government, a governmental

C o p y

subdivision, agency, or instrumentality, a public corporation, a joint or common owner, or any other legal or commercial entity.

Sec. 16. (a) As used in section 47 of this chapter, "political subdivision" includes any Indiana municipality, county, civil township, civil incorporated city or town, public school corporation, university or college supported in part by state funds, or any other territorial subdivision of the state recognized or designated in any law, including the following:

(1) Judicial circuits.

(2) A public utility entity not privately owned.

(3) A special taxing district or entity.

(4) A public improvement district authority or entity authorized to levy taxes or assessments.

(b) The term does not include any retirement system supported entirely or in part by the state.

Sec. 17. (a) This section does not apply to section 24 of this chapter.

(b) As used in this chapter, "property" means an interest in intangible personal property, except an unliquidated claim, and all income or increment derived from the interest, including an interest that is referred to as or evidenced by:

(1) money, a check, a draft, a deposit, an interest, or a dividend;

(2) a credit balance, a customer overpayment, a gift certificate, a security deposit, a refund, a credit memorandum, an unpaid wage, an unused airline ticket, mineral proceeds, or an unidentified remittance;

(3) stock and other ownership interest in a business association;

(4) a bond, debenture, note, or other evidence of indebtedness;

(5) money deposited to redeem stocks, bonds, coupons, and other securities or to make distributions;

(6) an amount due and payable under the terms of an insurance policy; and

(7) an amount distributable from a trust or custodial fund established under a plan to provide:

(A) health;

(B) welfare;

(C) pension;

(D) vacation;

(E) severance;

(F) retirement;

C o p y

(G) death;
(H) stock purchase;
(I) profit sharing;
(J) employee savings;
(K) supplemental unemployment insurance; or
(L) similar;
benefits.

(c) The term does not include transactions between business entities and:

(1) a motor carrier (as defined in IC 8-2.1-17-10); or
(2) a carrier (as defined in 49 U.S.C. 13102(3)).

Sec. 18. As used in this chapter, "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

Sec. 19. As used in this chapter, "utility" means a person that owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications or for the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

Sec. 20. (a) For purposes of this section, an indication of interest in the property by the owner:

(1) does not include a communication with an owner by an agent of the holder who has not identified in writing the property to the owner; and
(2) includes the following:
(A) With respect to an account or underlying shares of stock or other interest in a business association or financial organization:
(i) the cashing of a dividend check or other instrument of payment received; or
(ii) evidence that the distribution has been received if the distribution was made by electronic or similar means.
(B) A deposit to or withdrawal from a bank account.
(C) The payment of a premium with respect to a property interest in an insurance policy.
(D) The mailing of any correspondence in writing from a financial institution to the owner, including:
(i) a statement;
(ii) a report of interest paid or credited; or
(iii) any other written advice;
relating to a demand, savings, or matured time deposit

C o p y

account, including a deposit account that is automatically renewable, or any other account or other property the owner has with the financial institution if the correspondence is not returned to the financial institution for nondelivery.

(E) Any activity by the owner that concerns:

(i) another demand, savings, or matured time deposit account or other account that the owner has with a financial institution, including any activity by the owner that results in an increase or decrease in the amount of any other account; or

(ii) any other relationship with the financial institution, including the payment of any amounts due on a loan;

if the mailing address for the owner contained in the financial institution's books and records is the same for both an inactive account and for a related account.

(b) The application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent the policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy otherwise has become entitled to the proceeds before the depletion of the cash surrender value of the policy by the application of those provisions.

(c) Property that is held, issued, or owed in the ordinary course of a holder's business is presumed abandoned if the owner or apparent owner has not communicated in writing with the holder concerning the property or has not otherwise given an indication of interest in the property during the following times:

(1) For traveler's checks, fifteen (15) years after issuance.

(2) For money orders, seven (7) years after issuance.

(3) For consumer credits, three (3) years after the credit becomes payable.

(4) For gift certificates, three (3) years after December 31 of the year in which the gift certificate was sold. If the gift certificate is redeemable in merchandise only, the amount abandoned is considered to be sixty percent (60%) of the certificate's face value.

(5) For amounts owed by an insurer on a life or an endowment insurance policy or an annuity contract:

(A) if the policy or contract has matured or terminated, three (3) years after the obligation to pay arose; or

(B) if the policy or contract is payable upon proof of death, three (3) years after the insured has attained, or would

C o p y

have attained if living, the limiting age under the mortality table on which the reserve is based.

(6) For property distributable by a business association in a course of dissolution, one (1) year after the property becomes distributable.

(7) For property or proceeds held by a court or a court clerk, other than property or proceeds related to child support, five (5) years after the property or proceeds become distributable. The property or proceeds must be treated as unclaimed property under IC 32-34-3. For property or proceeds related to child support held by a court or a court clerk, ten (10) years after the property or proceeds become distributable.

(8) For property held by a state or other government, governmental subdivision or agency, or public corporation or other public authority, one (1) year after the property becomes distributable.

(9) For compensation for personal services, one (1) year after the compensation becomes payable.

(10) For deposits and refunds held for subscribers by utilities, one (1) year after the deposits or refunds became payable.

(11) For stock or other interest in a business association, five (5) years after the earlier of:

(A) the date of the last dividend, stock split, or other distribution unclaimed by the apparent owner; or

(B) the date of the second mailing of a statement of account or other notification or communication that was:

(i) returned as undeliverable; or

(ii) made after the holder discontinued mailings to the apparent owner.

(12) For property in an individual retirement account or another account or plan that is qualified for tax deferral under the Internal Revenue Code, three (3) years after the earliest of:

(A) the actual date of the distribution or attempted distribution;

(B) the distribution date as stated in the plan or trust agreement governing the plan; or

(C) the date specified in the Internal Revenue Code by which distribution must begin in order to avoid a tax penalty.

(13) For a demand, savings, or matured time deposit, including a deposit that is automatically renewable, five (5)

C o p y

years after maturity or five (5) years after the date of the last indication by the owner of interest in the property, whichever is earlier. Property that is automatically renewable is considered matured for purposes of this section upon the expiration of its initial period, unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder.

(14) For all other property, the earlier of five (5) years after:

(A) the owner's right to demand the property; or

(B) the obligation to pay or distribute the property;

arose.

(d) Property is payable or distributed for purposes of this chapter notwithstanding the owner's failure to make demand or present an instrument or a document otherwise required to receive payment.

Sec. 21. Except as provided in another state statute, property located in Indiana or another state is subject to the custody of this state as unclaimed property if the property is presumed abandoned and if:

(1) the last known address of the apparent owner, as shown on the records of the holder, is in Indiana;

(2) the records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in Indiana;

(3) the records of the holder do not reflect the last known address of the apparent owner and it is established that:

(A) the last known address of the person entitled to the property is in Indiana; or

(B) the holder is a domiciliary or a government or governmental subdivision or agency of this state and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) the last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property and the holder is a domiciliary or a government or governmental subdivision or agency of this state;

(5) the last known address of the apparent owner, as shown on the records of the holder, is in a foreign country and the

C o p y

holder is a domiciliary or a government or governmental subdivision or agency of this state;

(6) the transaction out of which the property arose occurred in Indiana, the holder is a domiciliary of a state that does not provide for the escheat or custodial taking of the property, and the last known address of the apparent owner or other person entitled to the property is:

(A) unknown; or

(B) in a state that does not provide for the escheat or custodial taking of the property; or

(7) the property is a traveler's check or money order:

(A) purchased in Indiana; or

(B) for which the issuer of the traveler's check or money order has its principal place of business in Indiana and the issuer's records:

(i) do not show the state in which the instrument was purchased; or

(ii) show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property.

Sec. 22. (a) A holder may not deduct a charge from property that is presumed abandoned if the charge is imposed because the owner failed to claim the property within a specified time unless:

(1) there is a valid and enforceable written contract between the holder and the owner that allows the holder to impose the charge; and

(2) the holder regularly imposes the charge, and the charge is not regularly reversed or otherwise canceled.

(b) If a holder described in this section is a financial institution, the dormancy charges of the department of financial institutions apply.

Sec. 23. (a) A record that a check, draft, or similar instrument was issued is prima facie evidence of an obligation.

(b) If the attorney general claims property from a holder who is also the issuer, the attorney general's burden of proof as to the existence and amount of the property and the abandonment of the property is satisfied by showing the following:

(1) That the instrument was issued.

(2) That the required period of time of abandonment has passed.

(c) For purposes of this section, the defenses of:

(1) payment;

C o p y

(2) satisfaction;
(3) discharge; and
(4) want of consideration;
are affirmative defenses that must be established by the holder.

Sec. 24. If:
(1) tangible or intangible property that is held in a safe deposit box or any other safekeeping depository in Indiana in the ordinary course of the holder's business; or
(2) the proceeds resulting from the sale of the property described in subdivision (1) as authorized by other law;
remain unclaimed by the owner for more than five (5) years after expiration of the lease or rental period on the box or other depository, the property or proceeds are presumed abandoned.

Sec. 25. Any:
(1) business association;
(2) banking organization; or
(3) financial institution;
that is organized under Indiana law or created in Indiana and that undergoes voluntary dissolution shall file a notice of the voluntary dissolution with the attorney general not later than ten (10) days after the adoption by the members or shareholders of the resolution to dissolve.

Sec. 26. (a) A holder of property that is presumed abandoned and that is subject to custody as unclaimed property under this chapter shall report in writing to the attorney general concerning the property. Items of value of less than fifty dollars ($50) may be reported by the holder in the aggregate.

(b) For each item with a value of at least fifty dollars ($50), the report required under subsection (a) must be verified and must include the following:
(1) Except with respect to traveler's checks and money orders, the apparent owner's:
(A) name, if known;
(B) last known address, if any; and
(C) Social Security number or taxpayer identification number, if readily ascertainable.
(2) In the case of the contents of a safe deposit box or other safekeeping depository of tangible property:
(A) a description of the property;
(B) the place where the property is held and may be inspected by the attorney general; and
(C) any amount that is owed to the holder.

C o p y

(3) The date:

(A) the property became payable, demandable, or returnable; and

(B) of the last transaction with the apparent owner with respect to the property.

(4) Other information that the attorney general requires by rules adopted under IC 4-22-2 as necessary for the administration of this chapter.

(c) If:

(1) a holder of property that is presumed abandoned and that is subject to custody as unclaimed property is a successor to another person who previously held the property for the apparent owner; or

(2) the holder has changed its name while holding the property;

the holder shall file with the report required by subsection (a) the former names of the holder, if any, and the known name and address of any previous holder of the property.

(d) The report required by subsection (a) must be filed as follows:

(1) The report of a life insurance company must be filed before May 1 of each year for the calendar year preceding the year in which the report is filed.

(2) All other holders must file the report before November 1 of each year to cover the year preceding July 1 of the year in which the report is filed.

(e) The holder of property that is presumed abandoned and that is subject to custody as unclaimed property under this chapter shall, not more than one hundred twenty (120) days or less than sixty (60) days before filing the report required by subsection (a), send written notice to the apparent owner of the property stating that the holder is in possession of property subject to this chapter if:

(1) the holder has a record of an address for the apparent owner that the holder's records do not show as inaccurate;

(2) the claim of the apparent owner is not barred by the statute of limitations; and

(3) the value of the property is at least fifty dollars ($50).

(f) Before the date of filing the report required by subsection (a), the holder may request the attorney general to extend the time for filing the report. The attorney general may grant the extension upon a showing of good cause. The holder, upon receipt of the

C o p y

extension, may make an interim payment on the amount the holder estimates will ultimately be due. The making of an interim payment under this subsection suspends the accrual of interest on the amount.

(g) The holder shall file with the report an affidavit stating that the holder has complied with this section.

Sec. 27. (a) Except as provided in subsections (b) and (c), on the date a report is filed under section 26 of this chapter, the holder shall pay or deliver to the attorney general the property that is described in the report as unclaimed.

(b) In the case of an automatically renewable deposit, if at the time of delivery under subsection (a) a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery is extended until the earliest date upon which a penalty or forfeiture would not result.

(c) Tangible property held in a safe deposit box or other safekeeping depository may not be delivered to the attorney general until one hundred twenty (120) days after the date the report describing the property under section 26 of this chapter is filed.

(d) If the property reported to the attorney general is a security or security entitlement under IC 26-1-8.1, the attorney general may make an endorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with IC 26-1-8.1.

(e) If the holder of property reported to the attorney general is the issuer of a certificated security, the attorney general has the right to obtain a replacement certificate under IC 26-1-8.1-405, and an indemnity bond is not required.

(f) An issuer, the holder, and any transfer agent or other person acting under the instructions of and on behalf of the issuer in accordance with this section are not liable to the apparent owner and must be indemnified against the claims of any person in accordance with section 29 of this chapter.

Sec. 28. (a) Except as provided in subsection (e), the attorney general shall publish a notice not later than November 30 of the year immediately following the year in which unclaimed property has been paid or delivered to the attorney general.

(b) Except as provided in subsection (c), the notice required by subsection (a) must be published at least once each week for two (2)

C o p y

successive weeks in a newspaper of general circulation published in the county in Indiana of the last known address of any person named in the notice.

(c) If the holder:

(1) does not report an address for the apparent owner; or

(2) reports an address outside Indiana;

the notice must be published in the county in which the holder has its principal place of business within Indiana or any other county that the attorney general may reasonably select.

(d) The advertised notice required by this section must be in a form that, in the judgment of the attorney general, will attract the attention of the apparent owner of the unclaimed property and must contain the following information:

(1) The name of each person appearing to be an owner of property that is presumed abandoned, as set forth in the report filed by the holder.

(2) The last known address or location of each person appearing to be an owner of property that is presumed abandoned, if an address or a location is set forth in the report filed by the holder.

(3) A statement explaining that the property of the owner is presumed to be abandoned and has been taken into the protective custody of the attorney general.

(4) A statement that information about the abandoned property and its return to the owner is available, upon request, from the attorney general, to a person having a legal or beneficial interest in the property.

(e) The attorney general is not required to publish the following in the notice:

(1) Any item with a value of less than fifty dollars ($50).

(2) Information concerning a traveler's check, money order, or any similar instrument.

Sec. 29. (a) For purposes of this section, payment or delivery is made in good faith if:

(1) payment or delivery was made in a reasonable attempt to comply with this chapter;

(2) the holder was not a fiduciary in breach of trust with respect to the property and had a reasonable basis for believing, based on the facts known at the time, that the property was abandoned; and

(3) there is not a showing that the records under which the delivery was made did not meet reasonable commercial

C o p y

standards of practice in the industry.

(b) Upon the payment or delivery of property to the attorney general, the state assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the attorney general in good faith is relieved of all liability with respect to the property after the payment and delivery.

(c) A holder who has paid money to the attorney general under this chapter may later make payment to a person who, in the opinion of the holder, appears to be entitled to the payment. The attorney general shall promptly reimburse the holder for the payment without imposing a fee or other charge if the holder files proof of payment and proof that the payee was entitled to the payment. If any reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that:

(1) the instrument was duly presented; and

(2) the payment was made to a person who appeared to be entitled to the payment.

The holder must be reimbursed for the payment made even if the payment was made to a person whose claim was barred under section 41 of this chapter.

(d) A holder who has delivered property, including a certificate of any interest in a business association, but not including money, to the attorney general under this chapter may reclaim the property without paying a fee or other charge if the property is still in the possession of the attorney general, upon filing proof that the apparent owner has claimed the property from the holder.

(e) The attorney general may accept the holder's affidavit as sufficient proof of the holder's right to recover the money and the property under this section.

(f) If the holder pays or delivers property to the attorney general in good faith and later:

(1) another person claims the property from the holder; or

(2) another state claims the money or property under that state's laws relating to escheat or abandoned or unclaimed property;

the attorney general, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim.

(g) Property removed from a safe deposit box or other safekeeping depository is received by the attorney general subject

C o p y

to the holder's right to be reimbursed for the cost of the opening and reasonable expenses incurred in determining the current addresses of any owners for whom the last previous address contained in the holder's records appears to be inaccurate. The property is subject to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The attorney general shall reimburse or pay the holder out of the proceeds remaining after deducting the attorney general's cost of selling the property.

Sec. 30. (a) If property, other than money, is paid or delivered to the attorney general under this chapter, the owner is entitled to receive from the attorney general any dividends, interest, or other increments realized or accruing on the property at or before delivery to the attorney general.

(b) The owner is not entitled to receive dividends, interest, or other increments accruing after delivery of the property to the attorney general under this chapter unless the property was paid or delivered under section 39(b) of this chapter.

Sec. 31. (a) Except as provided in subsections (b) and (c), the attorney general, not later than three (3) years after the receipt of abandoned property, shall sell the property to the highest bidder at a public sale in a city in Indiana that, in the judgment of the attorney general, affords the most favorable market for the property. The attorney general may decline the highest bid and reoffer the property for sale if, in the judgment of the attorney general, the bid is insufficient. If, in the judgment of the attorney general, the probable cost of the sale exceeds the value of the property, the attorney general is not required to offer the property for sale. A sale held under this section must be preceded, at least three (3) weeks before the sale, by one (1) publication of notice in a newspaper of general circulation published in the county in which the property is to be sold.

(b) If the property is of a type that is customarily sold on a recognized market or that is subject to widely distributed standard price quotations, and if, in the opinion of the attorney general, the probable cost of a public sale to the highest bidder would:

(1) exceed the value of the property; or

(2) result in a net loss;

the attorney general may sell the property privately, without notice by publication, at or above the prevailing price for the property at the time of the sale.

(c) Securities shall be sold as soon as reasonably possible

C o p y

following receipt. If a valid claim is made for any securities in the possession of the attorney general, the attorney general may:

(1) transfer the securities to the claimant; or

(2) pay the claimant the value of the securities as of the date the securities were delivered to the attorney general.

Notice of the sale of securities is not required. Securities listed on an established stock exchange must be sold at prices prevailing at the time of the sale on the stock exchange. Other securities may be sold over the counter at prices prevailing at the time of sale or by any other method the attorney general considers reasonable.

(d) A purchaser of property at a sale conducted by the attorney general under this chapter takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The attorney general shall execute all documents necessary to complete the transfer of ownership.

(e) A person does not have a claim against the attorney general for any appreciation of property after the property is delivered to the attorney general, except in a case of intentional misconduct or malfeasance by the attorney general.

Sec. 32. (a) The property custody fund is established. Any money received by the attorney general under section 39(b) of this chapter shall be delivered to the treasurer of state for deposit in the property custody fund. Subject to any claim of the owner allowed by the attorney general under this chapter, the money shall be held in the property custody fund for safekeeping until the date the money is presumed abandoned under sections 20 and 24 of this chapter and transferred to the abandoned property fund established by section 33 of this chapter in accordance with this section.

(b) The attorney general shall specify in the notice required by section 28 of this chapter the latest date the apparent owner may claim the property from the property custody fund. Notice must also be mailed to each person having a last known address listed in the report to the attorney general filed under section 26 of this chapter.

(c) Except as provided in subsection (d), not later than twenty-five (25) days after the date specified in the notice published under subsection (b), the treasurer of state, upon order of the attorney general, shall transfer the principal of the property to which the notice relates from property custody fund to the abandoned property fund.

(d) The attorney general may allow a claim of the apparent

C o p y

owner before the principal of the property in the property custody fund is transferred to the abandoned property fund under subsection (c). After the elapse of the twenty-five (25) days referred to in subsection (c), the funds are considered abandoned property instead of property received under section 39(b) of this chapter for purposes of this chapter.

Sec. 33. (a) The abandoned property fund is established. Except as provided in subsection (b) and section 32 of this chapter, money received by the attorney general under this chapter, including the proceeds from the sale of abandoned property under section 31 of this chapter, shall be transferred by the attorney general to the treasurer of state for deposit in the abandoned property fund.

(b) Money received under this chapter that was originally drawn from a fund under the control of a local unit of government shall be transferred to the fund from which the money was originally drawn.

Sec. 34. (a) Except as provided in section 42(d) of this chapter, the treasurer of state shall, on order of the attorney general, pay the necessary costs of the following:

(1) Selling abandoned property.

(2) Mailing notices.

(3) Making publications required by this chapter.

(4) Paying other operating expenses and administrative expenses, including:

(A) salaries and wages reasonably incurred by the attorney general in the administration and enforcement of this chapter; and

(B) costs incurred in examining records of the holders of property and in collecting the property from the holders.

(b) If the balance of the principal of the abandoned property fund established by section 33 of this chapter exceeds five hundred thousand dollars ($500,000), the treasurer of state may, and at least once each fiscal year shall, transfer to the common school fund of the state the balance of the principal of the abandoned property fund that exceeds five hundred thousand dollars ($500,000).

(c) If a claim is allowed or a refund is ordered under this chapter that is more than five hundred thousand dollars ($500,000), the treasurer of state shall transfer from the state general fund sufficient money to make prompt payment of the claim. There is annually appropriated to the treasurer of state from the state general fund the amount of money sufficient to implement this subsection.

C o p y

(d) Before making a deposit into the abandoned property fund, the attorney general shall record the following:

(1) The name and last known address of each person appearing from the holder's reports to be entitled to the abandoned property.

(2) The name and last known address of each insured person or annuitant.

(3) The number, the name of the corporation, and the amount due concerning any policy or contract listed in the report of a life insurance company.

(e) Except as provided in subsection (f), earnings on the property custody fund and the abandoned property fund shall be credited to each fund.

(f) On July 1 of each year, the interest balance in the property custody fund established by section 32 of this chapter and the interest balance in the abandoned property fund shall be transferred to the state general fund.

Sec. 35. (a) The treasurer of state shall keep safely the money in the property custody fund established by section 32 of this chapter and the abandoned property fund established by section 33 of this chapter. The money may not be transferred or assigned except as specifically authorized and directed in this chapter. At any time, upon certification of the attorney general and the treasurer of state that there is cash on deposit in either fund in excess of the cash requirements of the fund anticipated for the next succeeding semiannual fiscal period, the state board of finance may authorize the treasurer of state to invest and reinvest the money as authorized for other funds of the state by IC 5-13, including the purchase of certificates of deposit. However, an investment may not be made in a certificate of deposit with a maturity or redemption date that is more than six (6) months after the date of purchase, subscription, or deposit. Any interest or other accretions derived from investments made under this subsection become a part of the fund from which the money was invested.

(b) A sufficient amount of money from the abandoned property fund is appropriated to the treasurer of state to pay claims, costs, and expenses ordered paid from the abandoned property fund under this chapter.

(c) A sufficient amount of money from the property custody fund is annually appropriated to the treasurer of state to pay claims ordered paid from the property custody fund under this chapter.

C o p y

Sec. 36. (a) A person, except another state, claiming an interest in property paid or delivered to the attorney general may file a claim on a form prescribed by the attorney general and verified by the claimant.

(b) Not later than ninety (90) days after a claim is filed under subsection (a), the attorney general shall:

(1) consider the claim; and

(2) give written notice to the claimant that the claim is granted or that the claim is denied in whole or in part.

(c) Not later than thirty (30) days after a claim is allowed, the attorney general shall pay over or deliver to the claimant the property, or the net proceeds of the sale of property if the property has been sold by the attorney general, together with any additional amount to which the claimant may be entitled under section 30 of this chapter.

(d) A holder who pays the owner for property that has been delivered to the state and that, if claimed from the attorney general by the owner, would be subject to an increment under section 30 of this chapter shall recover the amount of the increment from the attorney general.

(e) A person may file a claim under subsection (a) at any time within twenty-five (25) years after the date on which the property was first presumed abandoned under this chapter, notwithstanding the expiration of any other time specified by statute, contract, or court order during which an action or a proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property.

Sec. 37. (a) At any time within twenty-five (25) years after the date on which the property was presumed abandoned under this chapter, notwithstanding the expiration of any other time specified by statute, contract, or court order during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, another state may recover the property if any of the following subdivisions apply:

(1) All of the following apply:

(A) The property was delivered to the custody of this state because the records of the holder did not reflect the last known address of the apparent owner when the property was presumed abandoned under this chapter.

(B) The other state establishes that the last known address of the apparent owner or other person entitled to the property was in that state.

C o p y

(C) Under the laws of that state the property escheated to or was subject to a claim of abandonment by that state.

(2) The property was paid or delivered to the custody of this state because the laws of the other state did not provide for the escheat or custodial taking of the property, and under the laws of that state subsequently enacted, the property has escheated to or become subject to a claim of abandonment by that state.

(3) All of the following apply:

(A) The records of the holder did not accurately identify the owner of the property.

(B) The last known address of the owner is in the other state.

(C) Under the laws of the other state, the property escheated to or was subject to a claim of abandonment by that state.

(4) The property was subject to custody by this state under section 21(7) of this chapter and, under the laws of the state of domicile of the holder, the property has escheated to or become subject to a claim of abandonment by that state.

(5) All of the following apply:

(A) The property is a sum payable on a traveler's check, money order, or similar instrument that was delivered into the custody of this state under section 21(7) of this chapter.

(B) The instrument was purchased in the other state.

(C) Under the laws of the other state, the property escheated to or is subject to a claim of abandonment by that state.

(b) A claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the attorney general. The attorney general shall consider the claim and give written notice not more than ninety (90) days after the presentation of the claim to the other state that the claim is granted or denied in whole or in part. The attorney general shall allow the claim upon a determination that the other state is entitled to the abandoned property under subsection (a).

(c) The attorney general shall require another state, before recovering property under this section, to agree to indemnify this state and its officers and employees against any liability on a claim for the property.

Sec. 38. A person who, under this chapter:

(1) has been aggrieved by a decision of the attorney general;

C o p y

or

(2) has filed a claim that has not been acted upon within ninety (90) days after its filing;

may maintain an original action to establish the claim in a court with jurisdiction and name the attorney general as a defendant.

Sec. 39. (a) The attorney general may decline to receive property reported under this chapter if the attorney general considers the property to have a value less than the expenses of the notice and the sale of the property.

(b) A holder, with the written consent of the attorney general and upon conditions and terms prescribed by the attorney general, may report and deliver property before the property is presumed abandoned. Property delivered to the attorney general under this subsection must be held in the property custody fund established under section 32 of this chapter, and the property is not presumed abandoned until the property otherwise would be presumed abandoned under this chapter.

Sec. 40. (a) If the attorney general determines after an investigation that property delivered under this chapter does not have any substantial commercial value, the attorney general may destroy or otherwise dispose of the property at any time.

(b) An action or a proceeding may not be maintained against the state, an officer of the state, or the holder for or on account of any acts taken by the attorney general under this section, except for acts constituting intentional misconduct or malfeasance.

Sec. 41. (a) The expiration of any time specified by contract, statute, or court order, during which:

(1) a claim for money or property can be made; or

(2) an action or a proceeding may be commenced or enforced to obtain payment of a claim for money or to recover property;

does not preclude the money or property from being presumed abandoned or affect any duty to file a report or to pay or deliver abandoned property to the attorney general as required by this chapter.

(b) An action or a proceeding may not be commenced by the attorney general to enforce the provisions of this chapter more than ten (10) years after the holder:

(1) specifically reported the property to the attorney general; or

(2) gave express notice to the attorney general of a dispute regarding the property.

C o p y

In the absence of a report, the period of limitations is tolled. The period of limitations is also tolled by the filing of a false or fraudulent report.

Sec. 42. (a) The attorney general may require a person who has not filed a report, or a person who the attorney general believes has filed an inaccurate, an incomplete, or a false report, to file a verified report in a form prescribed by the attorney general stating the following:

(1) Whether the person is holding any unclaimed property reportable or deliverable under this chapter.

(2) Describing any property not previously reported or as to which the attorney general has made inquiry.

(3) Specifically identifying and stating the amounts of property that may be in issue.

(b) The attorney general, at reasonable times and upon reasonable notice, may examine the records of a person to determine whether the person has complied with this chapter. The attorney general may conduct the examination even if the person believes the person is not in possession of any property reportable or deliverable under this chapter. When making an examination under this chapter, the attorney general may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners.

(c) The attorney general may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association that is the holder of property presumed abandoned if the attorney general has given the notice required by subsection (b) to both the business association and the agent at least ninety (90) days before the examination.

(d) If an examination of the records of a person under subsection (b) results in the disclosure of property reportable and deliverable under this chapter, the attorney general may assess the cost of the examination against the holder at the rate of two hundred dollars ($200) a day for each examiner. The cost of an examination of the records of an agent of a business association under subsection (c) may be imposed only against the business association.

(e) If a holder fails to maintain the records required under section 43 of this chapter and the available records of the holder are insufficient to permit the preparation of a report, the attorney general may require the holder to report and pay an amount that may reasonably be estimated from any available records of the

C o p y

holder or on the basis of any other reasonable estimating technique that the attorney general may select.

Sec. 43. (a) Except as provided in subsection (b) and subject to any rules adopted by the attorney general under IC 4-22-2, a holder required to file a report under section 26 of this chapter for any property for which the holder has the last known address of the owner shall maintain a record of the information required to be in the report for at least ten (10) years after the property becomes reportable.

(b) A business association that sells in Indiana traveler's checks, money orders, or other similar written instruments, other than third party bank checks on which the business association is directly liable, or that provides those instruments to others for sale in Indiana, shall maintain a record of outstanding instruments indicating the state and date of issue for at least three (3) years after the date the property is reportable.

Sec. 44. (a) The attorney general may enter into an agreement with other states to exchange information relating to unclaimed property or the possible existence of unclaimed property. The agreements may permit other states, or a person acting on behalf of a state, to examine records as authorized in section 42 of this chapter. The attorney general may, by rule, require the reporting of information needed to enable compliance with any agreements made under this section and prescribe the form.

(b) The attorney general may join with other states to seek enforcement of this chapter against a person who is or may be holding property reportable under this chapter.

(c) At the request of another state, the attorney general may commence an action on behalf of the administrator of the other state to enforce in Indiana the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the attorney general in maintaining the action.

(d) The attorney general may request that the attorney general of another state or any other attorney commence an action in that state on behalf of the attorney general. The attorney general may retain another attorney to commence an action in Indiana on behalf of the attorney general. This state shall pay all expenses, including attorney's fees, in maintaining an action under this subsection. With the attorney general's approval, the expenses and attorney's fees may be paid from money received under this

C o p y

chapter. The attorney general may agree to pay the person bringing the action attorney's fees based in whole or in part on a percentage of the value of any property recovered in the action. Expenses or attorney's fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under this chapter.

(e) Any documents and working papers obtained or compiled by the attorney general or the attorney general's agents, employees, or designated representatives in the course of conducting an audit under section 42 of this chapter are confidential and are not public records except:

(1) when used by the attorney general to maintain an action to collect unclaimed property or otherwise enforce this chapter;

(2) when used in joint audits conducted with or under agreements with other states, the federal government, or other governmental entities; or

(3) under subpoena or court order.

The documents and working papers may be disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this subsection if the other state is bound to keep the documents and papers confidential.

(f) The attorney general's final completed audit reports are public records, available for inspection and copying under IC 5-14-3. A final report may not contain confidential documentation or working papers unless an exception under subsection (e) applies.

Sec. 45. (a) A holder that fails to pay or deliver the property within the time required by this chapter shall pay to the attorney general interest for the time the holder is delinquent. Interest shall accrue under this subsection at the following rates:

(1) The annual interest rate for a period of one (1) year or less after the time required by this chapter for payment or delivery of the property is:

(A) the one (1) year Treasury Bill rate published in the *Wall Street Journal* or its successor on the third Tuesday of the month in which the remittance was due; plus

(B) one (1) percentage point.

(2) The interest rate for each year after the initial year to which subdivision (1) applies is:

(A) the one (1) year Treasury Bill rate published in the *Wall Street Journal* or its successor on the third Tuesday of

C o p y

the month immediately preceding the anniversary; plus

(B) one (1) percentage point.

As used in this subdivision, "anniversary" means the anniversary of the date on which the property was originally due to be paid or delivered under this chapter.

(b) A holder who fails to render any report or perform other duties required under this chapter shall pay a civil penalty of one hundred dollars ($100) for each day for the first fifteen (15) days that the report is withheld or the duty not performed. After the first fifteen (15) days, the holder shall pay a civil penalty of the greater of:

(1) one hundred dollars ($100) a day for each additional day, not to exceed five thousand dollars ($5,000); or

(2) ten percent (10%) of the value of the property at issue, not to exceed five thousand dollars ($5,000).

Upon a showing by the holder of good cause sufficient in the discretion of the attorney general to excuse the failure, the attorney general may waive the penalty in whole or in part.

(c) A holder who knowingly or intentionally fails to pay or deliver property to the attorney general as required under this chapter shall pay an additional civil penalty equal to ten percent (10%) of the value of the property that must be paid or delivered under this chapter. If the attorney general believes it is in the best interest for the administration of this chapter, the attorney general may waive the penalty in whole or in part.

(d) A holder who willfully refuses, after written demand by the attorney general, to pay or deliver property to the attorney general as required under this chapter commits a Class B misdemeanor.

Sec. 46. (a) This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or to contest the attorney general's denial of a claim. An agreement by an owner that:

(1) has the primary purpose of paying compensation to locate, deliver, recover, or assist in the recovery of property presumed abandoned under this chapter; and

(2) is entered into not earlier than the date the property was presumed abandoned and not later than twenty-four (24) months after the date the property is paid or delivered to the attorney general;

is void and unenforceable.

(b) An agreement by an owner that has the primary purpose of locating, delivering, recovering, or assisting in the recovery of

C o p y

property is valid only if:

(1) the fee or compensation agreed upon is not more than ten percent (10%) of the amount collected, unless the amount collected is fifty dollars ($50) or less;

(2) the agreement is in writing;

(3) the agreement is signed by the apparent owner;

(4) the agreement clearly sets forth:

(A) the nature and value of the property; and

(B) the value of the apparent owner's share after the fee or compensation has been deducted; and

(5) the agreement contains the provision set forth in subsection (d).

(c) This section does not prevent an owner from asserting at any time that an agreement to locate property is otherwise invalid.

(d) This subsection applies to a person who locates, delivers, recovers, or assists in the recovery of property reported under this chapter for a fee or compensation. An advertisement, a written communication, or an agreement concerning the location, delivery, recovery, or assistance in the recovery of property reported under this chapter must contain a provision stating that, by law, any contract provision requiring the payment of a fee for finding property held by the attorney general for less than twenty-four (24) months is void, and that fees are limited to not more than ten percent (10%) of the amount collected unless the amount collected is fifty dollars ($50) or less.

(e) Subsections (b)(4) and (d) do not apply to attorney's fees.

(f) If an agreement covered by this section:

(1) applies to mineral proceeds; and

(2) contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned;

the provision is void and unenforceable.

(g) An agreement covered by this section that provides for compensation that is unconscionable is unenforceable except by the owner. An owner who has agreed to pay compensation that is unconscionable, or the attorney general on behalf of the owner, may maintain an action to reduce the compensation to a conscionable amount. The court may award reasonable attorney's fees to an owner who prevails in the action.

Sec. 47. All officers, agencies, boards, bureaus, commissions, divisions, and departments of the state, including any body politic and corporate created by the state for public purposes, and every

C o p y

political subdivision of the state shall do the following:

(1) Cooperate with the attorney general upon the attorney general's request to further the purposes of this chapter.

(2) Make their records available to the attorney general for the purposes of discovering property that is presumed to be abandoned under this chapter.

(3) Compile from their records, upon the attorney general's request, reports that would aid the attorney general in identifying the holders of property presumed to be abandoned under this chapter and in discovering property that is presumed to be abandoned.

Sec. 48. The attorney general may employ the services of any independent consultants and other persons possessing specialized skills or knowledge that the attorney general considers necessary or appropriate for the administration of this chapter, including consultants in the following areas:

(1) Upkeep.

(2) Management.

(3) Sale.

(4) Conveyance of property.

(5) Determination of any sources of unreported abandoned property.

Sec. 49. This chapter does not relieve a holder of a duty that arose before July 1, 1996, to report, pay, or deliver property. Except as provided in section 41(b) of this chapter, a holder that did not comply with the law in effect before July 1, 1996, is subject to the applicable enforcement and penalty provisions that existed and that are continued in effect for the purpose of this section.

Sec. 50. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Sec. 51. The attorney general may maintain an action in a court of competent jurisdiction to enforce this chapter.

Sec. 52. The attorney general may adopt rules under IC 4-22-2 to carry out the purposes of this chapter.

Chapter 2. Sale of Unclaimed Property in Hotels

Sec. 1. (a) After a proprietor, manager, or lessee of a hotel in Indiana holds an unclaimed article for at least three (3) months, whether or not a receipt or check for the article was given to the person who left the article, the proprietor, manager, or lessee may sell the article at a public auction, and, out of the proceeds, retain any balance due from the person leaving the article, the expenses

C o p y

of advertising the sale, and the expenses of the sale.

(b) A proprietor, manager, or lessee may not sell the article until:

(1) notice of the sale is sent to the owner by mail, if the name and address of the owner are known; and

(2) two (2) weeks after the publication of a notice of the sale is made in a newspaper published at or nearest the place where the article was left and where the sale will take place.

(c) The notice must contain a description of the article and the time and place of the sale.

(d) A proprietor, manager, or lessee shall record the amount received at the sale for each article sold and the balance, if any, remaining after the balance due and the expenses of the sale have been paid.

(e) At any time within one (1) year after the sale, a proprietor, manager, or lessee shall refund the balance referred to in subsection (d) to the owner of the article or to the owner's heirs or assigns upon presentation of satisfactory proof of ownership.

Sec. 2. If the balance is not claimed by the owner within one (1) year after the sale conducted under section 1 of this chapter, the balance must be paid to the county treasurer for the use of the school fund.

Chapter 3. Unclaimed Money in Possession of a Court Clerk

Sec. 1. As used in this chapter, "clerk" means any person performing the duties of a clerk of any court, whether designated specifically as the clerk of that court or not.

Sec. 2. (a) Except for money related to child support, the attorney general may collect all money that remains in the office of a clerk for at least five (5) years after being distributable without being claimed by the person entitled to the money.

(b) The attorney general may collect all money related to child support that remains in the office of a clerk for at least ten (10) years after being distributable without being claimed by the person entitled to the money.

(c) Clerks shall deliver the money described in subsections (a) and (b) to the attorney general upon demand, and the attorney general shall:

(1) make a record of the money collected; and

(2) turn it over to the treasurer of state.

(d) The treasurer of state shall deposit the money in the abandoned property fund established by IC 32-34-1-31.

Sec. 3. (a) Within five (5) years after a sum of money is

C o p y

deposited in the abandoned property fund in accordance with section 2(d) of this chapter, a person may make a claim to the money by filing an application in the court whose clerk originally held the sum. The claimant shall give at least ten (10) days prior notice of the proceedings on the claim to the attorney general, who may appear in the proceedings to represent the interests of the state.

(b) If the proof presented by the claimant satisfies the court that the claim is valid, the court shall order payment of the money to the claimant. If presented with a certified copy of the court's order, the attorney general shall direct the treasurer to return the sum of money to the clerk, who shall present the money to the claimant.

Sec. 4. (a) If a sum of money remains in the abandoned property fund for at least five (5) years after the date the money is deposited in the fund under section 2(d) of this chapter without any order directing the return of the money:

(1) title to the sum vests in and escheats to the state; and

(2) the sum shall be distributed as part of the common school fund.

(b) Any claimant who does not file an application with the court within five (5) years after the sum is deposited in the unclaimed funds account is barred from asserting a claim.

Sec. 5. The attorney general may bring an action against a clerk who fails to deliver a sum of money to the attorney general upon demand under section 2 of this chapter. In that action, the attorney general may recover from the clerk, individually or upon the clerk's bond, the sum demanded plus a ten percent (10%) penalty. The sum demanded plus the penalty is collectible without relief from valuation or appraisement laws.

Chapter 4. Unclaimed Property in Possession of Repossessors of Motor Vehicles or Watercraft

Sec. 1. As used in this chapter, "creditor" means the person who has lawfully repossessed a vehicle.

Sec. 2. As used in this chapter, "debtor" means the person from whom a vehicle is repossessed.

Sec. 3. As used in this chapter, "value" means the amount of money that a reasonable person would estimate a willing buyer would pay for an item of personal property.

Sec. 4. As used in this chapter, "vehicle" means a motor vehicle or a watercraft.

Sec. 5. (a) If items of personal property having an estimated aggregate value of at least ten dollars ($10) are discovered within

C o p y

a vehicle that has been lawfully repossessed, the creditor must notify the debtor as follows:

(1) The notice must be written.

(2) The notice must list each item of personal property having an estimated value greater than five dollars ($5).

(3) The notice must include the estimated aggregate value of all of the items of personal property.

(4) The notice must include a statement that if the debtor does not claim the property within thirty (30) days after the notice was sent, the personal property will become the property of the creditor with no right of redemption by the debtor.

(5) The notice must be sent by certified mail.

(b) If the debtor does not claim the items of personal property included in a notice given under subsection (a) not more than thirty (30) days after the notice was mailed, the items of personal property become the property of the creditor with no right of redemption by the debtor.

Sec. 6. If items of personal property having an aggregate value of less than ten dollars ($10) are discovered within a vehicle that has been lawfully repossessed, the items of personal property are the property of the creditor with no right of redemption by the debtor.

Chapter 5. Property Loaned to Museums

Sec. 1. As used in this chapter, "lender" means a person whose name appears on the records of a museum as the person legally entitled to, or claiming to be legally entitled to, property held by the museum.

Sec. 2. As used in this chapter, "lender's address" means the most recent address of a lender as shown on the museum's records pertaining to property on loan from the lender.

Sec. 3. As used in this chapter, "loan" means a deposit of property not accompanied by a transfer of title to the property.

Sec. 4. As used in this chapter, "museum" means an institution located in Indiana that:

(1) is operated by a person primarily for education, scientific, historic preservation, or aesthetic purposes; and

(2) owns, borrows, cares for, exhibits, studies, archives, or catalogs property.

Sec. 5. As used in this chapter, "permanent loan" means a loan of property to a museum for an indefinite period.

Sec. 6. As used in this chapter, "person" means an individual, a nonprofit corporation, a trustee or legal representative, the state,

C o p y

a political subdivision (as defined in IC 36-1-2-13), an agency of the state or a political subdivision, or a group of those persons acting in concert.

Sec. 7. As used in this chapter, "property" means a tangible object under a museum's care that has intrinsic historic, artistic, scientific, or cultural value.

Sec. 8. As used in this chapter, "undocumented property" means property in the possession of a museum for which the museum cannot determine the owner by reference to the museum's records.

Sec. 9. A notice given by a museum under this chapter must be mailed to the lender's last known address by certified mail. Proper notice is given if the museum receives proof of receipt of the notice not more than thirty (30) days after the notice was mailed.

Sec. 10. (a) A museum may give notice by publication under this chapter if the museum does not:

(1) know the identity of the lender;

(2) have an address last known for the lender; or

(3) receive proof of receipt of the notice by the person to whom the notice was sent within thirty (30) days after the notice was mailed.

(b) Notice by publication under subsection (a) must be given at least once a week for two (2) consecutive weeks in a newspaper of general circulation in:

(1) the county in which the museum is located; and

(2) the county of the lender's last known address, if the identity of the lender is known.

Sec. 11. In addition to any other information that may be required or seem appropriate, a notice given by a museum under this chapter must contain the following:

(1) The name of the lender, if known.

(2) The last known address of the lender.

(3) A brief description of the property on loan.

(4) The date of the loan, if known.

(5) The name of the museum.

(6) The name, address, and telephone number of the person or office to be contacted regarding the property.

Sec. 12. A museum may acquire title in the following manner to property that is on permanent loan to the museum or that was loaned for a specified term that has expired:

(1) The museum must give notice that the museum is terminating the loan of the property.

C o p y

(2) The notice that the loan of the property is terminated must include a statement containing substantially the following information:

"The records at (name of museum) indicate that you have property on loan to it. The museum hereby terminates the loan. If you desire to claim the property, you must contact the museum, establish your ownership of the property, and make arrangements to collect the property. If you do not contact the museum, you will be considered to have donated the property to the museum.".

(3) If the lender does not respond to the notice of termination within one (1) year after receipt of the notice by filing a notice of intent to preserve an interest in the property on loan, clear and unrestricted title is transferred to the museum three hundred sixty-five (365) days after the notice was received.

Sec. 13. A museum may acquire title to undocumented property held by the museum for at least seven (7) years as follows:

(1) The museum must give notice that the museum is asserting title to the undocumented property.

(2) The notice that the museum is asserting title to the property must include a statement containing substantially the following information:

"The records of (name of museum) fail to indicate the owner of record of certain property in its possession. The museum hereby asserts title to the following property: (general description of property). If you claim ownership or other legal interest in this property, you must contact the museum, establish ownership of the property, and make arrangements to collect the property. If you fail to do so within three (3) years, you will be considered to have waived any claim you may have had to the property.".

(3) If a lender does not respond to the notice within three (3) years by giving a written notice of intent to retain an interest in the property on loan, the museum's title to the property becomes absolute.

Sec. 14. Unless there is a written loan agreement to the contrary, a museum may apply conservation measures to property on loan to the museum without the lender's permission or formal notice:

(1) if:

(A) action is required to protect the property on loan or other property in the custody of the museum; or

(B) the property on loan is a hazard to the health and

C o p y

safety of the public or the museum staff; and

(2) if:

(A) the museum is unable to reach the lender at the lender's last known address within three (3) days before the time the museum determines action is necessary; or

(B) the lender does not respond or will not agree to the protective measures the museum recommends and does not terminate the loan and retrieve the property within three (3) days.

Sec. 15. If a museum applies conservation measures to property under section 14 of this chapter or with the agreement of the lender, unless the agreement provides otherwise, the museum:

(1) acquires a lien on the property in the amount of the costs incurred by the museum; and

(2) is not liable for injury to or loss of the property if the museum:

(A) had a reasonable belief at the time the action was taken that the action was necessary to protect the property on loan or other property in the custody of the museum, or that the property on loan was a hazard to the health and safety of the public or the museum staff; and

(B) exercised reasonable care in the choice and application of conservation measures.

Sec. 16. Property that:

(1) is found in or on property controlled by the museum;

(2) is from an unknown source; and

(3) might reasonably be assumed to have been intended as a gift to the museum;

is conclusively presumed to be a gift to the museum if ownership of the property is not claimed by a person or individual within ninety (90) days after its discovery.

Chapter 6. Transfer of Property Interests in Molds

Sec. 1. (a) This chapter does not apply where a fabricator retains title to and possession of a die, mold, form, jig, or pattern.

(b) This chapter does not grant a customer any rights, title, or interest to a die, mold, form, jig, or pattern.

Sec. 2. As used in this chapter, "customer" means an individual or entity who contracts with or causes a fabricator:

(1) to fabricate, cast, or otherwise make a die, mold, form, jig, or pattern; or

(2) to use a die, mold, form, jig, or pattern to manufacture, assemble, or otherwise make a product.

C o p y

Sec. 3. As used in this chapter, "fabricator" means an individual or entity, including a tool or die maker, who:

(1) manufactures, causes to be manufactured, assembles, or improves a die, mold, form, jig, or pattern for a customer; or

(2) uses a die, mold, form, jig, or pattern to manufacture, assemble, or otherwise make a product for a customer.

Sec. 4. As used in this chapter, "within three (3) years after the last prior use" includes any period after the last prior use of a die, mold, form, jig, or pattern, regardless of whether the period was before July 1, 1994.

Sec. 5. If a customer does not take possession of the customer's die, mold, form, jig, or pattern from a fabricator within three (3) years after the last prior use of the die, mold, form, jig, or pattern, the customer's rights, title, and interest in the customer's die, mold, form, jig, or pattern are transferred to the fabricator pursuant to the procedures of this chapter for purposes of destruction of the die, mold, form, jig, or pattern.

Sec. 6. (a) After the three (3) year period specified in section 4 of this chapter has expired, a fabricator may choose to have all rights, title, and interest in the die, mold, form, jig, or pattern transferred to the fabricator for purposes of destruction. A fabricator seeking a transfer under this subsection must send written notice by registered mail, return receipt requested, to:

(1) the customer's address as set out in any written agreement between the fabricator and the customer; and

(2) the customer's last known address;

indicating that the fabricator intends to terminate the customer's rights, title, and interest by having the rights, title, and interest transferred to the fabricator under this chapter.

(b) If a customer:

(1) does not take possession of the particular die, mold, form, jig, or pattern within ninety (90) days after the date on which the notice was sent under subsection (a); or

(2) does not make other contractual arrangements with the fabricator for taking possession or for storage of the die, mold, form, jig, or pattern;

all rights, title, and interest of the customer to the mold transfer by operation of this chapter to the fabricator for the purpose of destruction. The fabricator may then destroy the die, mold, or form.

Sec. 7. Nothing in this chapter affects:

(1) a written agreement between the fabricator and customer

C o p y

concerning possession of the die, mold, form, jig, or pattern; or

(2) any right of the customer under federal patent or copyright law or any state or federal law pertaining to unfair competition.

Chapter 7. Transfer of Property Interests in Silk Screens

Sec. 1. (a) This chapter does not apply where a silk screen maker or silk screen user retains title to and possession of a silk screen.

(b) This chapter does not grant a customer any rights or title to or interest in a silk screen.

Sec. 2. As used in this chapter, "customer" means an individual or entity that causes another individual or entity to make a silk screen or to use a silk screen to manufacture, assemble, or make a product.

Sec. 3. As used in this chapter, "silk screen maker" means an individual or entity that makes a silk screen.

Sec. 4. As used in this chapter, "silk screen user" means an individual or entity that uses a silk screen to manufacture, assemble, or make a product.

Sec. 5. If a customer does not take possession of the customer's silk screen from a silk screen maker or silk screen user within three (3) years after the silk screen's last use, the customer's rights, title, and interest in the customer's silk screen are transferred to the silk screen maker or silk screen user pursuant to the procedures of this chapter for purposes of destruction of the silk screen.

Sec. 6. (a) After the three (3) year period specified in section 5 of this chapter has expired, a silk screen maker or silk screen user may choose to have all rights, title, and interest in any silk screen transferred to the silk screen maker or silk screen user for purposes of destruction. A silk screen maker or silk screen user seeking a transfer under this subsection must send written notice by registered mail, return receipt requested, to:

(1) the customer's address as set out in any written agreement between the silk screen maker or silk screen user and the customer; and

(2) the customer's last known address;

indicating that the silk screen maker or silk screen user intends to terminate the customer's rights, title, and interest by having all the rights, title, and interest transferred to the silk screen maker or silk screen user under this chapter.

(b) If a customer:

(1) does not take possession of the particular silk screen

C o p y

within ninety (90) days after the date on which the notice was sent under subsection (a); or

(2) does not make other contractual arrangements with the silk screen maker or silk screen user for taking possession or for storage of the silk screen;

all rights, title, and interest of the customer to the silk screen transfer by operation of this chapter to the silk screen maker or silk screen user for the purpose of destruction. The silk screen maker or silk screen user may then destroy the silk screen.

Sec. 7. This chapter does not affect:

(1) a written agreement between the silk screen maker or silk screen user and the customer concerning possession of the silk screen; or

(2) any rights of the customer under federal patent or copyright law or any state or federal law pertaining to unfair competition.

Sec. 8. For silk screens in existence on June 1, 1983, the three (3) year period specified in this chapter begins on the last date that the silk screen was used, regardless of whether that date was before June 1, 1983.

Chapter 8. Finding Strays or Property Adrift

Sec. 1. A person who finds a stray horse, mule, ass, sheep, hog, cattle, or goat, or any other article of value, shall, within five (5) days after finding the animal or article, advertise the animal or article in writing in three (3) of the most public places in the township where the animal or article was found, stating the time the animal or article was found and giving a description of the animal or article.

Sec. 2. (a) If the owner does not claim the property described in section 1 of this chapter within fifteen (15) days after the date the property is found, the finder shall report the property to a court with jurisdiction in the county where the property was found.

(b) The court shall issue a warrant to three (3) householders of the neighborhood not related to the finder (unless persons not related to the finder are not available) directing any two (2) of the householders to appraise the property. The appointed householders shall appraise the property and provide in writing to the court a report containing the following information:

(1) A clear description of the property.

(2) The householders' valuation of the property.

(3) A declaration under oath that the appraisal and description were made without partiality, favor, or affection.

C o p y

Sec. 3. The finder must, at the time the householders make the report required by section 2(b) of this chapter, state under oath that the finder has no knowledge that the marks, brands, or appearance of the property have been altered by the finder or any other person since the property was lost, except for the changes stated in the householders' written report.

Sec. 4. The finder of an unclaimed stray horse, mule, or ass that is at least two (2) years of age shall take the animal to the pound of the proper county and keep the animal at the pound from 11 a.m. until 3 p.m. on the first day of each of the two (2) succeeding terms of the circuit court after finding the stray.

Sec. 5. A court receiving the property report prepared under section 2 (b) of this chapter shall, within ten (10) days, transmit to the clerk of the circuit court a copy of the description and valuation of the property, together with the proper fee. The clerk shall enter the description and appraisal in a book to be kept for that purpose.

Sec. 6. Property described in section 1 of this chapter that is greater than ten dollars ($10) in value must be advertised in a newspaper of the county, if there be one, and if not, in a paper in Indiana nearest the county where the property was found. The clerk shall forward to the printer a copy of the register that is marked on the outside, "Stray Property," together with a fee of one dollar ($1) out of which the printer shall pay postage.

Sec. 7. If the provisions of this chapter are complied with, title to:

(1) an article described in section 1 of this chapter that is not more than twelve dollars ($12) in value and that remains unclaimed or unproven by the owner within ninety (90) days after the property is found; or

(2) a stray animal described in section 1 of this chapter that is equal to or less than ten dollars ($10) in value and that remains unclaimed or unproven by the owner within one (1) year after the property is found;

vests in the finder.

Sec. 8. If:

(1) an article described in section 1 of this chapter has an appraised value greater than twelve dollars ($12) and is not claimed and proven within ninety (90) days after the day the article is found; or

(2) a stray animal other than a horse, a mule, or an ass has an appraised value greater than ten dollars ($10) and is not

C o p y

claimed and proven within six (6) months after the animal is found;

the finder shall report that information to a court with jurisdiction where the property was initially found not later than five (5) days after the expiration of the time specified in this section.

Sec. 9. (a) The court shall issue a warrant to the sheriff to sell the property at auction, giving ten (10) days notice in writing of the time and place of sale and describing the property to be sold.

(b) The sheriff shall, within five (5) days after the sale, return the order and proceeds of sale to the court, retaining one dollar ($1) for the sheriff's services.

(c) The court shall immediately pay over to the county treasurer the proceeds of sale, after deducting the proper amount to be paid to the finder, fifty cents ($0.50) for the fee of the judge of the court and, for every mile that the judge must travel in making the return, a sum for mileage equal to that sum per mile paid to state officers and employees.

(d) The court shall receive from the treasurer duplicate receipts and file one (1) receipt in the office of the clerk of the circuit court and one (1) receipt with the county auditor.

Sec. 10. (a) If a horse, a mule, or an ass that has an appraised value greater than twenty dollars ($20) remains unclaimed or unproven twelve (12) months after the date the horse, mule, or ass was found, the finder shall deliver the horse, mule, or ass to the sheriff of the proper county on the first day of the term of the circuit court after the expiration of the twelve (12) month period.

(b) The sheriff shall sell the horse, mule, or ass delivered under subsection (a) at a public sale.

(c) After retaining one dollar ($1) for the sheriff's services and paying to the finder the charges as provided by this chapter, the sheriff shall pay the proceeds of the sale to the treasurer of the county within five (5) days after the sale.

(d) The sheriff shall receive from the treasurer duplicate receipts and file one (1) receipt in the clerk's office and the other receipt with the county auditor.

Sec. 11. The county treasurer shall enter all sums paid under this chapter to the credit of the county stray fund.

Sec. 12. (a) The finder's fee is as follows:

(1) For each horse, mule or ass, one dollar ($1).

(2) For each head of neat cattle, fifty cents ($0.50).

(3) For each sheep, goat, or hog more than six (6) months old, ten cents ($0.10).

C o p y

(b) If the owner reclaims and proves the property before the property is posted, the finder is allowed half of the appropriate amount listed in subsection (a).

Sec. 13. (a) The finder of an article described in section 1 of this chapter is allowed a reasonable sum, as determined by a court with jurisdiction where the property was initially found.

(b) Either the claimant or the finder may have a jury determine what amount is just and reasonable for finding and taking care of the property.

Sec. 14. (a) If the property described in section 13 of this chapter is greater than three dollars ($3) in value, the finder of the property shall pay to the court, at the time of reporting, fifty cents ($0.50) for the judge of the court, fifty cents ($0.50) for the clerk, and one dollar ($1) for the printer where printing is required.

(b) If the value of the property described in section 13 of this chapter is less than three dollars ($3), the court may not make a return to the clerk and the fee is twenty-five cents ($0.25).

Sec. 15. (a) The clerk shall keep a register of stray animals and found articles.

(b) If several strays or articles are found by one (1) person, there may be only one (1) entry, one (1) advertisement, one (1) fee of the clerk, and one (1) fee of the judge.

Sec. 16. If found property is sold or reclaimed, the finder is allowed just and reasonable compensation for keeping the property as determined by the court with jurisdiction where the property was initially found. The finder shall:

(1) keep account of the time a stray animal is kept by the finder; and

(2) state the time to the court under oath.

Sec. 17. (a) If an animal is found under the provisions of this chapter and worked by the finder, a reasonable compensation shall be allowed for the services of the animal. The compensation shall be deducted from the cost of keeping the animal.

(b) The finder, if required, shall verify, under oath, the time the animal worked.

Sec. 18. (a) At any time before sale, the owner may have the property by proving ownership in the court where the finding was reported under this chapter and paying the charges required by this chapter.

(b) At any time up to two (2) years after the date of sale, the owner may reclaim the money paid into the treasury by proper proof before the county auditor.

C o p y

Sec. 19. (a) Except as provided in subsection (c), a person may not:

(1) take up any horse or stock under this chapter except at the person's place of residence; or

(2) drive any horse or stock out of the woods and take them up under this chapter.

(b) Except as provided in subsection (c), an animal may not be taken up under this chapter between the first day of April and the first day of November unless the animal is found in the enclosure of the person who takes up the animal.

(c) When any animal may be in the act of escaping from the owner, it may be taken up at any time, wherever found.

Sec. 20. The finder, until the finder becomes the property's owner, may not take the found property or allow the property to be taken out of the county where the property was found for longer than three (3) days at any time.

Sec. 21. (a) Fatted hogs that are found may, at the option of the finder, be killed one (1) month after posting.

(b), If fatted hogs are killed under subsection (a), the finder shall, immediately after killing the hogs, pay the hogs' appraised values, deducting costs and charges (to be liquidated as in other cases) to the county treasurer for the use of the owner.

Sec. 22. Stock hogs that are found may, at the option of the finder, be purchased by the finder, six (6) months after posting, at the hogs' appraised value, deducting the costs allowed by this chapter for finding the hogs but without an allowance for keeping the hogs.

Sec. 23. (a) Sections 1 through 22 of this chapter do not apply to property described in this section.

(b) If, upon any navigable waters within or bordering Indiana, cargo that is shipped as freight, the baggage of passengers, or a part of either of a vessel is cast adrift, afloat, or ashore by a wreck, accident, or mischance of the vessel, the cargo or part of the cargo found and secured by a person may be reclaimed by the captain, clerk, or officer navigating the vessel, the super cargo, or the owner or agent of the owner of the cargo or baggage.

(c) If the property described in this section is not claimed within seven (7) days after the property is found, the finder of the property shall advertise the property as required for articles described in section 1 of this chapter.

Sec. 24. A person who finds property described in section 23 of this chapter shall surrender the property to a claimant upon proof,

C o p y

or circumstances satisfactory to the finder, of the right of the claimant to the property, and after the payment by the claimant of reasonable compensation for services or expenses in connection with the finding and preserving of the property.

Sec. 25. If a person with possession of the property refuses to return the property to the claimant or claims unreasonable compensation for the services and expenses in the finding and preservation of the property, the claimant may have a summary proceeding before:

(1) the court where the property was reported under this chapter if the property was reported; and

(2) any court with jurisdiction where the property is located if the property was not reported to a court under this chapter;

for the recovery of the property.

Sec. 26. (a) The claimant must file before the court specified under section 25 of this chapter an affidavit of the facts attending the wreck or accident, enumerating as nearly as possible the articles or packages in the possession of the finder and the claimant's right to recover the property.

(b) The court shall summon the person who found or is in possession of the property to appear before the court at a place and at the earliest practicable time, as designated in the writ, but not more than three (3) days after the date of the writ.

Sec. 27. (a) The court shall hear and determine the matters in controversy in the most speedy manner practicable, as other proceedings are determined before the court.

(b) The court may fix the amount of compensation the claimant must pay and award a writ, or writs, for the delivery of the property to the claimant upon payment of the compensation.

Sec. 28. (a) The trial described in section 27 of this chapter is governed by the Indiana rules of trial procedure, except as to continuances.

(b) Appeals may be taken by either party upon the same terms and under the same rules as appeals in other civil cases are taken.

Sec. 29. An appraiser appraising property in accordance with section 2 of this chapter shall receive compensation for the appraisal services in the sum of fifty cents ($0.50) to be paid the same manner as other expenses involved in the finding of strays.

Chapter 9. Drifting Boats and Timber

Sec. 1. As used in this chapter, "timber" means trees, whether standing, down, or prepared for sale, sawlogs and all other logs, cross and railroad ties, boards, planks, staves and heading, and

C o p y

other trees cut or prepared for market.

Sec. 2. (a) A person who finds and secures any boats, fleets of timber, rafts, platforms, sawlogs, or other logs or trees prepared for the purpose of sale, or any cross or railroad ties, boards, planks, staves, heading, or other timber prepared for market that is the property of another and that is found adrift in the waters of Indiana without a boom or other arrangement provided by the owner to preserve the logs or timber below the point at which they are found, whether the logs or timber have a brand or not, is entitled to receive from the owner the following compensation:

(1) For each freight boat or other heavy boat, two dollars ($2) per ton for all cargo.

(2) For each jack-boat, skiff, or canoe, one dollar ($1).

(3) For each fleet of timber, fifty dollars ($50).

(4) For each raft of not less than forty (40) logs, fifteen dollars ($15).

(5) For each platform of at least ten (10) logs, four dollars ($4).

(6) For each sawlog or other log or tree prepared for sale, fifty cents ($0.50).

(7) For each cross or railroad tie, fifteen cents ($0.15).

(8) For boards or planks caught in rafts or a large body:

(A) one dollar ($1) per one thousand (1,000) board feet for a quantity twenty thousand (20,000) board feet or less; or

(B) fifty cents ($0.50) per one thousand (1,000) board feet for a quantity greater than twenty thousand (20,000) board feet.

(9) For loose and scattered boards or planks, five dollars and fifty cents ($5.50) per one thousand (1,000) board feet.

(10) For staves and heading, four dollars ($4) per one thousand (1,000) pieces that are merchantable.

(b) The compensation due under subsection (a) is payable by the owner, if required, upon the delivery to the owner of the logs or timber.

(c) The finder has a lien upon the property found for the charges provided in subsection (a).

(d) If the owner of the property fails to pay the compensation due under subsection (a) within sixty (60) days after the day the property is found, the property may be sold at the request of the person to whom the compensation is due by a constable, sheriff, or other officer of the county in which the property was found. The sale must be at the courthouse door at public auction to the highest

C o p y

bidder, upon thirty (30) days written or printed notice that gives the time and place of sale and a written or printed description of the property and any marks or brands on the property. The notice of the sale must be posted at the front door of the courthouse of the county in which the sale is to be made and at two (2) other public places in the county where the property is located. It is the duty of the constable or other officer making the sale to pay to the finder the finder's legal fees and charges after deducting the constable's or other officer's commission. The commission charged may be the same as if the constable or other officer had sold the same property under execution. If any sale money remains after payment of the charges and fees described in this section, the constable or other officer shall pay the remainder to the clerk of the circuit court in the county in which the sale occurred and obtain a receipt for the amount. If the constable or other officer fails to perform the constable's or other officer's duties under this chapter, the constable or other officer is liable on the constable's or other officer's official bond to the party aggrieved.

(e) If the owner, within one (1) year after the date of the sale, appears before the county judge of the county where the money is deposited with the clerk and establishes the owner's right to the satisfaction of the court to the money, the money must, upon the order of the county judge, be paid over to the owner by the clerk; otherwise, it shall be paid into the common school fund of Indiana.

(f), This chapter may not be construed to permit a person to recover under subsection (a) for any fleet of timber, raft or platform, sawlog, or other log or tree prepared for the purpose of sale, or any cross or railroad tie, board, plank, stave, heading, or other timber prepared for the market that is above any boom or other arrangement made by the owner to preserve the logs or timber.

Sec. 3. A person who finds a fleet, raft or platform, as described in this chapter, is entitled to reasonable compensation for keeping and caring for the property in addition to the fees set forth in section 1 of this chapter. The compensation may not exceed the following rates:

(1) For each fleet, four dollars ($4) per day.

(2) For each raft, one dollar ($1) per day.

(3) For each platform, fifty cents ($0.50) per day.

Sec. 4. If a person finds any sawlog or other log or trees prepared for sale as described in this chapter and the property remains in the person's possession more than thirty (30) days after

C o p y

the time the person found the property to the time the owner offers to pay the charges described in section 1 of this chapter, the finder is entitled to charge, in addition to the fee set forth in section 1 of this chapter, twenty-five cents ($0.25) for every sawlog or other log or tree prepared for sale that remains in the person's possession as described in this section.

Sec. 5. If the finder of any property described in this chapter:

(1) hides the property;

(2) allows the property to get aground so that the finder cannot immediately, upon the demand of the property's owner or the owner's agents, put the property afloat; or

(3) fails to put the property afloat upon demand;

the finder may not collect or receive any compensation for finding or caring for the property and, in addition to any other duties imposed by this chapter, is responsible to the owner for the value of the property as if the property were afloat.

Sec. 6. A person, firm, or corporation that deals in timber in any form is considered a timber dealer and may adopt a brand in the manner and with the effect described in this chapter.

Sec. 7. (a) A timber dealer desiring to adopt a brand may do so by the execution of a writing in the following form:

Brand - Notice is hereby given that I (or we, as the case may be) have adopted the following brand in my (or our) business as a timber dealer: (Here insert the words, letters, figures, etc., constituting the brand, or if the brand is any device other than words, letters, or figures, insert a facsimile of the brand.) Dated this ____ day of _____ A.D. _____ .

(b) The writing must be acknowledged or proved for the record in the same manner as deeds are acknowledged or proven and must be recorded in the office of the clerk of the county in which the timber dealer maintains a principal office or place of business.

(c) A copy of the writing must be posted at the timber dealer's principal place of business, at the courthouse door in the county where the timber dealer carries on business, and at the public places in the county.

Sec. 8. A brand adopted in accordance with this chapter is the exclusive trademark of the person adopting the brand, and the brand constitutes property under IC 35-41-1-23.

Sec. 9. A person who owns a brand shall cause the brand to be plainly stamped, branded, or otherwise impressed upon each piece of timber upon which the brand is placed.

Sec. 10. A contract for the sale of standing trees or standing

C o p y

timber may not be enforced by a legal action unless the contract or some memorandum of the contract is in writing and signed by the person to be charged or the person's duly authorized agent.

Sec. 11. (a) If timber is branded by the seller or by another person with the seller's consent with the brand of the purchaser or another person or corporation, the title to the timber passes at once to the person or corporation whose brand is placed on the timber.

(b) Placement of a brand on timber as described in subsection (a) does not affect the rights of the contracting parties regarding the payment of the purchase money for the timber.

Sec. 12. (a) This chapter does not affect the validity and effect of a brand or trademark adopted and recorded under the law in effect before March 11, 1901.

(b) A brand or trademark described in subsection (a) is valid for all purposes, civil and criminal, as if the brand or trademark had been adopted and recorded under this chapter.

Sec. 13. (a) If timber prepared for market is found on any of the streams of Indiana, the timber shall be held and disposed of as provided in this chapter. The finder of the timber shall receive as compensation for the finder's services only the fees provided for in section 2 of this chapter.

(b) A person who knowingly violates this section commits a Class D felony.

Chapter 10. Sale of Abandoned Watercraft

Sec. 1. As used in this chapter, "marina operator" means a person, a firm, a corporation, a limited liability company, a municipality, or another unit of government that is engaged in the business of operating a marina.

Sec. 2. A marina operator may:

(1) sell a watercraft that has been left without permission at the marina for more than six (6) months; and

(2) recover the operator's reasonable maintenance, repair, dockage, storage, and other charges if the conditions set forth in section 3 of this chapter are met.

Sec. 3. The minimum six (6) month period specified in section 2 of this chapter begins the day written notice is sent by the marina operator to the last known address of the owner of the watercraft or personally delivered to the owner of the watercraft. If the notice is mailed, the marina operator must send notice by certified mail, return receipt requested. Notice, by mail or personally delivered, must include a description of the watercraft and a conspicuous statement that the watercraft is at the marina without permission

C o p y

of the marina.

Sec. 4. To sell a watercraft and recover charges under section 2 of this chapter, a marina operator must do all of the following:

(1) Perform a search of watercraft titles for the name and address of the owner of the watercraft and the name and address of any person holding a lien or security interest on the watercraft. The search required by this subdivision must be conducted in the following order:

(A) First, in the records of the state of registration as indicated on the exterior of the watercraft.

(B) Second, in the United States Coast Guard registration records maintained by the National Vessel Documentation Center.

(C) Third, in the records of the bureau of motor vehicles.

(2) After receiving the results of the search required by subdivision (1), give notice by certified mail, return receipt requested, or in person, to the last known address of the owner of the watercraft, to any lien holder with a perfected security interest in the watercraft, and to all other persons known to claim an interest in the watercraft. The notice must include an itemized statement of the charges, a description of the watercraft, a demand for payment within a specified time not less than ten (10) days after receipt of the notice, and a conspicuous statement that unless the charges are paid within that time, the watercraft will be advertised for sale and sold by auction at a specified time and place.

(3) Advertise that the watercraft will be sold at public auction in conformity with the provisions of IC 26-1-7-210 and IC 26-1-2-328. The advertisement of sale must be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the county where the watercraft has been left without permission. The advertisement must include a description of the watercraft, the name of the person on whose account the watercraft is being held, and the time and place of the sale. The sale must take place at least fifteen (15) days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten (10) days before the sale in not less than six (6) conspicuous places in the neighborhood of the proposed sale.

(4) Conduct an auction sale, not less than thirty (30) days after the return receipt is received by the marina operator, on

C o p y

the marina property where the watercraft was left without permission.

(5) Provide a reasonable time before the sale for prospective purchasers to examine the watercraft.

(6) Sell the watercraft to the highest bidder.

(7) Immediately after the auction sale, execute an affidavit of sale in triplicate on a form prescribed by the bureau of motor vehicles stating:

(A) that the requirements of this section have been met;

(B) the length of time that the watercraft was left on the marina property without permission;

(C) the expenses incurred by the marina operator, including the expenses of the sale;

(D) the name and address of the purchaser of the watercraft at the auction sale; and

(E) the amount of the winning bid.

Sec. 5. Upon payment of the bid price by the purchaser, the marina operator shall provide the purchaser with the affidavit of sale described in this chapter.

Sec. 6. The affidavit of sale under this chapter constitutes proof of ownership and right to possession under IC 9-31-2-16.

Sec. 7. After the purchaser:

(1) presents the bureau of motor vehicles with the affidavit of sale;

(2) completes an application for title; and

(3) pays any applicable fee;

the bureau shall issue to the purchaser a certificate of title to the watercraft.

Sec. 8. If a boat is sold under this chapter for an amount of money that is greater than the charges owed to the marina operator plus all reasonable expenses of sale, the marina operator shall pay the excess in the following order:

(1) For the satisfaction of obligations held by secured parties with respect to the watercraft, in the order in which security interests in the watercraft were perfected.

(2) To the owner of the watercraft.

SECTION 20. IC 32-35 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

ARTICLE 35. CAUSES OF ACTION CONCERNING PERSONAL PROPERTY

Chapter 1. Statute of Limitations

C o p y

Sec. 1. Unless otherwise provided in this title or another law, a cause of action concerning personal property must be brought within the time periods specified in IC 34-11.

Chapter 2. Replevin

Sec. 1. If any personal goods, including tangible personal property constituting or representing choses in action, are:

(1) wrongfully taken or unlawfully detained from the owner or person claiming possession of the property; or

(2) taken on execution or attachment and claimed by any person other than the defendant;

the owner or claimant may bring an action for the possession of the property.

Sec. 2. A plaintiff may, at the time of issuing the summons, or at any time before final judgment, claim the immediate delivery of property described in section 1 of this chapter.

Sec. 3. If a plaintiff claims delivery under section 2 of this chapter, the plaintiff or someone representing the plaintiff shall file an affidavit.

Sec. 4. An affidavit filed under section 3 of this chapter must:

(1) show that the plaintiff is:

(A) the owner of the property; or

(B) lawfully entitled to the possession of the property;

(2) show that:

(A) the property was not:

(i) taken for a tax, assessment, or fine under a statute; or

(ii) seized under an execution or attachment against the property of the plaintiff; or

(B) if the property was seized under an execution or attachment, the property was exempt by statute from seizure;

(3) show that the property:

(A) has been wrongfully taken and is unlawfully detained by the defendant; or

(B) is unlawfully detained;

(4) include a particular description of the property;

(5) state the estimated value of the property; and

(6) identify the county in which the property is believed to be detained.

Sec. 5. If a plaintiff files an affidavit under section 3 of this chapter, the clerk shall issue an order for a time fixed by the judge directing the defendant to appear for the purpose of controverting plaintiff's affidavit or to otherwise show cause why:

C o p y

(1) a prejudgment order for possession should not issue; and
(2) the property should not be delivered to plaintiff.

Sec. 6. (a) An order issued under section 5 of this chapter must set forth the date, time, and place for the hearing and direct the time within which service shall be made upon the defendant.

(b) The hearing shall be scheduled not sooner than five (5) days, Sundays and holidays excluded, after the date of service.

Sec. 7. An order to show cause issued under section 5 of this chapter must inform the defendant that:

(1) the defendant may:
(A) file affidavits on the defendant's behalf with the court;
(B) appear and present testimony on the defendant's behalf at the time of the hearing; and
(C) file with the court a written undertaking to stay the delivery of the property in accordance with this article; and

(2) if the defendant fails to appear, plaintiff may be granted a judgment of possession.

Sec. 8. The court may issue an order for possession under this chapter after examining the complaint, affidavits, and other evidence or testimony that the court may require.

Sec. 9. The court may issue an order for possession under this chapter before the hearing if probable cause appears that any of the following subdivisions apply:

(1) The defendant gained possession of the property by theft or criminal conversion.

(2) The property consists of one (1) or more negotiable instruments or credit cards.

(3) By reason of specific, competent evidence shown by testimony within the personal knowledge of an affiant or witness, the property is:
(A) perishable, and will perish before any noticed hearing can be had;
(B) in immediate danger of destruction, serious harm, concealment, removal from Indiana, or sale to an innocent purchaser; or
(C) held by a person who threatens to destroy, harm, or conceal the property, remove the property from Indiana, or sell the property to an innocent purchaser.

Sec. 10. Before the court may issue an order for possession without notice under section 12 of this chapter, the plaintiff or the plaintiff's attorney must file an affidavit or certificate showing:

C o p y

(1) the efforts, if any, that have been made to give notice; and
(2) the reasons why notice of the application for the order cannot be given.

Sec. 11. (a) If an order of possession was issued before a hearing under this chapter (or IC 34-1-9.1-4 or IC 34-21-4-4 before their repeal), the defendant or other person from whom possession of the property was taken may apply to the court for an order shortening the time for hearing on the order to show cause.

(b) The court may, upon an application made under subsection (a):

(1) shorten the time until the hearing; and
(2) direct that the matter shall be heard on not less than forty-eight (48) hours notice to the plaintiff.

Sec. 12. An order of possession issued under this chapter without notice shall direct the sheriff or other executing officer to hold the property until further order of the court.

Sec. 13. Under any of the circumstances set forth in this chapter, or instead of the immediate issuance of an order of possession under this chapter, the judge may, in addition to issuing a preliminary order, issue a temporary restraining order directed to the defendant prohibiting certain acts with respect to the property if the issuance of the order appears to be necessary for the preservation of the rights of the parties and the status of the property.

Sec. 14. Upon the hearing on the preliminary order under this chapter, the court shall:

(1) consider the showing made by the parties appearing; and
(2) make a preliminary determination which party, with reasonable probability, is entitled to possession, use, and disposition of the property, pending final adjudication of the claims of the parties.

Sec. 15. If the court determines, in an action under this chapter, that a prejudgment order of possession in the plaintiff's favor should issue, the court shall issue the order.

Sec. 16. If the property claimed by the plaintiff in an action under this chapter has a peculiar value that cannot be compensated by damages, the court may, instead of issuing an order of possession, appoint a receiver to take possession of and hold the property until further order of the court.

Sec. 17. If the defendant in an action under this chapter fails to appear, the court may enter its final judgment with respect to possession as in other cases where there is a default for a failure to

C o p y

appear.

Sec. 18. An order of possession issued under this chapter must:

(1) be directed to the sheriff or other officer charged with the execution of the order within whose jurisdiction the property is believed to be located;

(2) describe the property to be seized; and

(3) direct the executing officer to:

(A) seize the property if it is found;

(B) take the property into custody; and

(C) deliver the property to the plaintiff, unless:

(i) the order was issued without notice; or

(ii) the defendant files a written undertaking in accordance with section 7(1)(C) of this chapter within a time fixed by the court.

Sec. 19. If the order issued in an action under this chapter is a final judgment:

(1) the court does not need to fix a time for the defendant to file a written undertaking;

(2) the order must direct immediate delivery to the plaintiff;

(3) a copy of any written undertaking filed by the plaintiff must be attached to the order; and

(4) the order must inform the defendant that the defendant has the right to:

(A) except to the surety upon the undertaking; or

(B) file a written undertaking for the redelivery of the property as provided in section 7(1)(C) of this chapter.

Sec. 20. Any:

(1) order for possession;

(2) temporary restraining order;

(3) prejudgment order for possession; or

(4) other preliminary transfer of possession;

issued under this article (or IC 34-1-9.1 or IC 34-21 before their repeal) is superseded by the final judgment rendered in an action under this chapter.

Sec. 21. (a) Except as provided in subsection (c), the court may not issue an order of possession, with or without notice, in the plaintiff's favor in an action under this chapter until the plaintiff has filed with the court a written undertaking:

(1) in an amount fixed by the court; and

(2) executed by a surety to be approved by the court;

to the effect that the plaintiff and the surety are bound to the defendant for the value of the property, as determined by the

C o p y

court, along with other damages the defendant may suffer if the property has been wrongfully taken from the defendant.

(b) The amount of the bond may not be less than the value of the property.

(c) If the defendant has failed to appear and final judgment is entered, no written undertaking is required.

Sec. 22. (a) In an action under this chapter, the defendant:

(1) at any time before the hearing on the preliminary order; or

(2) if final judgment has not been entered, within the time fixed in the order of possession;

may require the return of the property upon filing with the court a written undertaking executed by a surety to be approved by the court.

(b) The written undertaking must provide that the defendant is bound:

(1) as to the value of the property, as determined by the court, for the delivery of the property to the plaintiff, if delivery is ultimately ordered; and

(2) for the payment to plaintiff of the sum that may be recovered against the defendant in the action for the defendant's wrongful detention of the property.

Sec. 23. At the time of filing an undertaking under section 22 of this chapter, the defendant must:

(1) serve upon the executing officer and the plaintiff or the plaintiff's attorney a notice of filing of the undertaking; and

(2) file proof of service of the notice referred to in subdivision (1) with the court.

Sec. 24. If the defendant files an undertaking under section 22 of this chapter before the hearing of the order to show cause, proceedings under the order to show cause terminate, unless exception is taken to the surety.

Sec. 25. If the property is in the custody of the executing officer at the time the defendant files an undertaking under section 22 of this chapter, the property shall be redelivered to the defendant not later than five (5) days after the date of service of notice of the filing of the undertaking upon the plaintiff or the plaintiff's attorney.

Sec. 26. (a) If:

(1) any officer, by virtue of any writ of attachment or execution lawfully issued to the officer, attaches or levies upon any personal property as the property of the attachment or

C o p y

execution defendant; and

(2) any other person, firm, limited liability company, or corporation brings an action in replevin against the officer for the possession of any part of the property attached or levied upon;

as soon as process is served upon the officer, the officer may notify the attachment or execution plaintiff, if a resident of the officer's county, and if not a resident of the officer's county, then the attorney of the plaintiff, in writing, of the replevin suit, giving a general description of the property claimed by the replevin plaintiff in the suit, and may demand of the attachment or execution plaintiff a bond to indemnify the officer against any loss for attorney's fees incurred in the defense of the replevin suit and payment of any judgment for damages and costs.

(b) Upon failure of the attachment or execution plaintiff to execute the bond to the officer within five (5) days after the time of service of the notice described in subsection (a) with good and sufficient surety, the officer may deliver up any part of the property sued for in the replevin suit to the replevin plaintiff.

(c) If the bond demanded under subsection (a) is not given and the officer delivers the property to the replevin plaintiff, the attachment or execution plaintiff is estopped from maintaining any action whatever against the officer for the value of the property delivered up or for damages for failing to make any defense in the replevin suit. However, if the action in replevin is pending in the circuit court, the bond shall be approved by the clerk of the circuit court.

Sec. 27. If the defendant or the defendant's attorney is in open court at the time the order of possession is issued under this chapter, a copy of the order shall be delivered promptly to the defendant and the delivery shall be noted in the order book.

Sec. 28. If the defendant and the defendant's attorney are not present in open court when the order of possession is issued under this chapter, sufficient copies of the order shall be delivered to the sheriff or other executing officer. The executing officer shall, without delay, serve upon the defendant a copy of the order of possession:

(1) by delivering the order of possession to:

(A) the defendant personally; or

(B) the defendant's agent from whose possession the property is taken;

(2) if the defendant or the defendant's agent cannot be found,

C o p y

by leaving it at the usual place of abode of either with some person of suitable age and discretion; or

(3) if neither the defendant nor the defendant's agent has any known usual place of abode, by mailing it to the defendant's last known address.

Sec. 29. (a) Upon serving on the defendant a copy of the order of possession under section 28 of this chapter, the executing officer, except as provided in subsection (b), shall immediately take the property into custody if the property is in the possession or control of the defendant or the defendant's agent.

(b) If the property is a housetrailer, recreational vehicle, motor or mobile home, or boat and is being used as the principal dwelling of a defendant, at the expiration of forty-eight (48) hours after the order of possession is served, the officer shall immediately remove the property's occupants and take the property into custody.

Sec. 30. If the property or any part of the property that is subject to an order of possession issued under this chapter is:

(1) in a building or enclosure; and

(2) not voluntarily delivered;

the executing officer shall cause the building or enclosure to be broken open in a manner the officer reasonably believes will cause the least damage to the building or enclosure and take possession of the property.

Sec. 31. An executing officer who has taken property subject to an order of possession issued under this chapter shall:

(1) keep it in a secure place; and

(2) deliver it to the party entitled to the property upon receiving actual, reasonable, and necessary expenses for keeping the property.

Sec. 32. After taking property subject to an order of possession issued under this chapter, an executing officer shall:

(1) note the executing officer's proceedings in writing upon the order of possession; and

(2) return the order of possession to the court in which the action is pending;

within five (5) days after taking the property mentioned in the order.

Sec. 33. In an action to recover the possession of personal property, judgment for the plaintiff may be for:

(1) the delivery of the property, or the value of the property in case delivery is not possible; and

(2) damages for the detention of the property.

C o p y

Sec. 34. In an action to recover the possession of personal property, if the property has been delivered to the plaintiff and the defendant claims a return of the property, judgment for the defendant may be for:

(1) the return of the property, or its value, in case return is not possible; and

(2) damages for the taking and withholding of the property.

Sec. 35. In actions for the recovery of specific personal property, the jury must assess:

(1) the value of the property; and

(2) the damages for the taking or detention of the property; when the jury's verdict results in a judgment for the recovery or return of the property.

SECTION 21. IC 32-36 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

ARTICLE 36. PUBLICITY

Chapter 1. Rights of Publicity

Sec. 1. (a) This chapter applies to an act or event that occurs within Indiana, regardless of a personality's domicile, residence, or citizenship.

(b) This chapter does not affect rights and privileges recognized under any other law that apply to a news reporting or an entertainment medium.

(c) This chapter does not apply to the following:

(1) The use of a personality's name, voice, signature, photograph, image, likeness, distinctive appearance, gestures, or mannerisms in any of the following:

(A) Literary works, theatrical works, musical compositions, film, radio, or television programs.

(B) Material that has political or newsworthy value.

(C) Original works of fine art.

(D) Promotional material or an advertisement for a news reporting or an entertainment medium that:

(i) uses all or part of a past edition of the medium's own broadcast or publication; and

(ii) does not convey or reasonably suggest that a personality endorses the news reporting or entertainment medium.

(E) An advertisement or commercial announcement for a use described in this subdivision.

(2) The use of a personality's name to truthfully identify the

Copy

personality as:

(A) the author of a written work; or

(B) a performer of a recorded performance;

under circumstances in which the written work or recorded performance is otherwise rightfully reproduced, exhibited, or broadcast.

(3) The use of a personality's:

(A) name;

(B) voice;

(C) signature;

(D) photograph;

(E) image;

(F) likeness;

(G) distinctive appearance;

(H) gestures; or

(I) mannerisms;

in connection with the broadcast or reporting of an event or a topic of general or public interest.

Sec. 2. As used in this chapter, "commercial purpose" means the use of an aspect of a personality's right of publicity as follows:

(1) On or in connection with a product, merchandise, goods, services, or commercial activities.

(2) For advertising or soliciting purchases of products, merchandise, goods, services, or for promoting commercial activities.

(3) For the purpose of fundraising.

Sec. 3. As used in this chapter, "name" means the actual or assumed name of a living or deceased natural person that is intended to identify the person.

Sec. 4. As used in this chapter, "news reporting or an entertainment medium" means a medium that publishes, broadcasts, or disseminates advertising in the normal course of its business, including the following:

(1) Newspapers.

(2) Magazines.

(3) Radio and television networks and stations.

(4) Cable television systems.

Sec. 5. As used in this chapter, "person" means a natural person, a partnership, a firm, a corporation, or an unincorporated association.

Sec. 6. As used in this chapter, "personality" means a living or deceased natural person whose:

C o p y

(1) name;
(2) voice;
(3) signature;
(4) photograph;
(5) image;
(6) likeness;
(7) distinctive appearance;
(8) gesture; or
(9) mannerisms;

has commercial value, whether or not the person uses or authorizes the use of the person's rights of publicity for a commercial purpose during the person's lifetime.

Sec. 7. As used in this chapter, "right of publicity" means a personality's property interest in the personality's:

(1) name;
(2) voice;
(3) signature;
(4) photograph;
(5) image;
(6) likeness;
(7) distinctive appearance;
(8) gestures; or
(9) mannerisms.

Sec. 8. (a) A person may not use an aspect of a personality's right of publicity for a commercial purpose during the personality's lifetime or for one hundred (100) years after the date of the personality's death without having obtained previous written consent from a person specified in section 17 of this chapter.

(b) A written consent solicited or negotiated by an athlete agent (as defined in IC 25-5.2-1-1) from a student athlete (as defined in IC 25-5.2-1-2) is void if the athlete agent obtained the consent as the result of an agency contract that:

(1) was void under IC 25-5.2-2-2 or under the law of the state where the agency contract was entered into;
(2) was voided by the student athlete under IC 25-5.2-2-8 or a similar law in the state where the agency contract was entered into; or
(3) was entered into without the notice required under IC 35-46-4-4 or a similar law in the state where the agency contract was entered into.

(c) A written consent for an endorsement contract (as defined in IC 35-46-4-1.5) is void if notice is not given as required by

Copy

IC 35-46-4-4 or a similar law in the state where the endorsement contract is entered into.

Sec. 9. A person who:

(1) engages in conduct within Indiana that is prohibited under section 8 of this chapter;

(2) creates or causes to be created within Indiana goods, merchandise, or other materials prohibited under section 8 of this chapter;

(3) transports or causes to be transported into Indiana goods, merchandise, or other materials created or used in violation of section 8 of this chapter; or

(4) knowingly causes advertising or promotional material created or used in violation of section 8 of this chapter to be published, distributed, exhibited, or disseminated within Indiana;

submits to the jurisdiction of Indiana courts.

Sec. 10. A person who violates section 8 of this chapter may be liable for any of the following:

(1) Damages in the amount of:

(A) one thousand dollars ($1,000); or

(B) actual damages, including profits derived from the unauthorized use;

whichever is greater.

(2) Treble or punitive damages, as the injured party may elect, if the violation under section 8 of this chapter is knowing, willful, or intentional.

Sec. 11. In establishing the amount of the profits under section 10(1)(B) of this chapter:

(1) the plaintiff is required to prove the gross revenue attributable to the unauthorized use; and

(2) the defendant is required to prove properly deductible expenses.

Sec. 12. In addition to any damages awarded under section 10 of this chapter, the court:

(1) shall award to the prevailing party reasonable attorney's fees, costs, and expenses relating to an action under this chapter; and

(2) may order temporary or permanent injunctive relief, except as provided by section 13 of this chapter.

Sec. 13. Injunctive relief is not enforceable against a news reporting or an entertainment medium that has:

(1) contracted with a person for the publication or broadcast

C o p y

of an advertisement; and

(2) incorporated the advertisement in tangible form into material that has been prepared for broadcast or publication.

Sec. 14. (a) This section does not apply to a news reporting or an entertainment medium.

(b) During any period that an action under this chapter is pending, a court may order the impoundment of:

(1) goods, merchandise, or other materials claimed to have been made or used in violation of section 8 of this chapter; and

(2) plates, molds, matrices, masters, tapes, negatives, or other items from which goods, merchandise, or other materials described in subdivision (1) may be manufactured or reproduced.

(c) The court may order impoundment under subsection (b) upon terms that the court considers reasonable.

Sec. 15. (a) This section does not apply to a news reporting or an entertainment medium.

(b) As part of a final judgment or decree, a court may order the destruction or other reasonable disposition of items described in section 14(b) of this chapter.

Sec. 16. The rights recognized under this chapter are property rights, freely transferable and descendible, in whole or in part, by the following:

(1) Contract.

(2) License.

(3) Gift.

(4) Trust.

(5) Testamentary document.

(6) Operation of the laws of intestate succession applicable to the state administering the estate and property of an intestate deceased personality, regardless of whether the state recognizes the property rights set forth under this chapter.

Sec. 17. (a) The written consent required by section 8 of this chapter and the rights and remedies set forth in this chapter may be exercised and enforced by:

(1) a personality; or

(2) a person to whom the recognized rights of a personality have been transferred under section 16 of this chapter.

(b) If a transfer of a personality's recognized rights has not occurred under section 16 of this chapter, a person to whom the personality's recognized rights are transferred under section 18 of

C o p y

this chapter may exercise and enforce the rights under this chapter and seek the remedies provided in this chapter.

Sec. 18. (a) Subject to sections 16 and 17 of this chapter, after the death of an intestate personality, the rights and remedies of this chapter may be exercised and enforced by a person who possesses a total of not less than one-half (1/2) interest of the personality's recognized rights.

(b) A person described in subsection (a) shall account to any other person in whom the personality's recognized rights have vested to the extent that the other person's interest may appear.

Sec. 19. If:

(1) a deceased personality's recognized rights under this chapter were not transferred by:

(A) contract;

(B) license;

(C) gift;

(D) trust; or

(E) testamentary document; and

(2) there are no surviving persons as described in section 17 of this chapter to whom the deceased personality's recognized rights pass by intestate succession;

the deceased personality's rights set forth in this chapter terminate.

Sec. 20. The rights and remedies provided for in this chapter are supplemental to any other rights and remedies provided by law.

SECTION 22. IC 32-37 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

ARTICLE 37. COPYRIGHT

Chapter 1. Application

Sec. 1. This article does not apply to the following:

(1) A contract between a performing rights society and:

(A) a broadcaster licensed by the Federal Communications Commission;

(B) a cable television operator or programmer; or

(C) another transmission service.

(2) An investigation by a law enforcement agency.

(3) An investigation by a law enforcement agency or other person concerning a suspected violation of IC 24-4-10-4, IC 35-43-4-2, or IC 35-43-5-4(11).

Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

C o p y

Sec. 2. (a) "Copyright owner" means the owner of a copyright, enforceable under 17 U.S.C. 101 et seq., of a nondramatic musical work.

(b) The term does not include the owner of a copyright in a motion picture or an audiovisual work, or in part of a motion picture or an audiovisual work.

Sec. 3. (a) "Performing rights society" means an association or a corporation that licenses the public performance of nondramatic musical works on behalf of copyright owners.

(b) The term includes the following:

(1) The American Society of Composers, Authors, and Publishers (ASCAP).

(2) Broadcast Music, Inc. (BMI).

(3) SESAC, Inc.

Sec. 4. "Proprietor" means the owner of:

(1) a professional office;

(2) a retail establishment;

(3) a restaurant;

(4) a bar;

(5) a tavern; or

(6) an establishment similar to an establishment listed under subdivisions (1) through (5);

that is located in Indiana, in which the public may assemble, and in which nondramatic musical works may be performed, broadcast, or otherwise transmitted.

Sec. 5. "Royalty" means a fee payable to a performing rights society for public performance rights.

Chapter 3. Contract Requirements

Sec. 1. (a) At least seventy-two (72) hours before the execution of a contract between a performing rights society and a proprietor, the performing rights society shall provide the proprietor with the following written information:

(1) A schedule of the rates and terms of royalties under the contract.

(2) A toll free telephone number from which the proprietor may obtain answers to inquiries concerning musical works and copyright owners represented by the performing rights society.

(3) Notice that the performing rights society is in compliance with:

(A) state and federal law; and

(B) orders of courts having jurisdiction over:

Copy

(i) rates and terms of royalties; and

(ii) the licensing for public performance of copyrighted nondramatic musical works.

(b) At the request of the proprietor or a representative of the proprietor, not less than seventy-two (72) hours before the execution of a contract between a performing rights society and a proprietor, the performing rights society shall provide the proprietor with the following additional information or specify how the proprietor may, at the proprietor's expense, obtain the following additional information:

(1) The most recent available list of the members or affiliates represented by the society.

(2) The most recent available list of the copyrighted musical works in the performing rights society's repertory.

Sec. 2. A contract executed, issued, or renewed in Indiana between a performing rights society and a proprietor must be in a writing signed by the parties and must include the following information:

(1) The name and business address of the proprietor.

(2) The name and address of the performing rights society.

(3) The name and location of each place of business to which the contract applies.

(4) The duration of the contract.

(5) The schedule of rates and terms of the royalties to be collected under the contract, including, if applicable, the sliding scale or schedule or the increase or decrease of the rates during the term of the contract.

Chapter 4. Prohibitions

Sec. 1. A performing rights society or an agent or employee of a performing rights society may not:

(1) enter into a contract unless the contract is executed in accordance with the provisions of this article;

(2) enter a proprietor's business premises to discuss a contract for the performance of copyrighted works or the payment of royalties without first disclosing:

(A) that the individual is an agent of a performing rights society; and

(B) the purpose of the discussion;

(3) engage in any coercive conduct, act, or practice that substantially disrupts a proprietor's business; or

(4) use or attempt to use any unfair or deceptive act or practice in dealing with a proprietor.

C o p y

Chapter 5. Remedies

Sec. 1. A person who suffers a loss as a result of a violation of this article may:

(1) bring an action to recover:

(A) actual damages; and

(B) reasonable attorney's fees;

(2) seek an injunction; and

(3) seek any other remedy available at law or in equity.

SECTION 23. IC 3-6-11-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. (a) This subsection does not apply to the proprietor or manager of a residential mental health facility. The proprietor or manager of each:

(1) boarding house;

(2) lodging house;

(3) residential building;

(4) apartment; or

(5) other place within which persons are lodged;

shall maintain a complete and accurate list of all residents so domiciled during the period beginning seventy (70) days before each election and ending fifty (50) days before the election.

(b) The proprietor, manager, or association of co-owners of a condominium (as defined in ~~IC 32-1-6)~~ **IC 32-25-2-7)** shall maintain a complete and accurate list of all residents of the condominium during the period beginning seventy (70) days before each election and ending fifty (50) days before the election.

(c) A poll taker for a political party or an independent candidate for a federal or a state office is entitled to enter a place described in subsection (a) or a condominium during reasonable hours to take a poll of residents.

SECTION 24. IC 4-6-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. If the attorney general has reasonable cause to believe that a person may be in possession, custody, or control of documentary material, or may have knowledge of a fact that is relevant to an investigation conducted to determine if a person is or has been engaged in a violation of IC 4-6-9, IC 4-6-10, IC 13-14-10, IC 13-14-12, IC 13-24-2, IC 13-30-4, IC 13-30-5, IC 13-30-6, IC 13-30-8, IC 23-7-8, IC 24-1-2, IC 24-5-0.5, IC 24-5-7, IC 24-5-8, IC 25-1-7, ~~IC 32-9-1.5,~~ **IC 32-34-1,** or any other statute enforced by the attorney general, only the attorney general may issue in writing, and cause to be served upon the person or the person's representative or agent, an investigative demand that requires that the person served do any combination of the following:

C o p y

(1) Produce the documentary material for inspection and copying or reproduction.

(2) Answer under oath and in writing written interrogatories.

(3) Appear and testify under oath before the attorney general or the attorney general's duly authorized representative.

SECTION 25. IC 4-10-10-11, AS ADDED BY P.L.127-2000, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 11. (a) This section applies to a warrant drawn by the ~~state~~ auditor **of state** upon funds in custody of the ~~state~~ treasurer **of state** or a check authorized by law to be issued from funds in custody of any other state agency, if the check or warrant is outstanding and unpaid, but is not determined to be unclaimed property under ~~IC 32-9-1.5.~~ **IC 32-34-1.**

(b) An agreement for which the primary purpose is to pay compensation to locate, deliver, recover, or assist in the recovery of a check or warrant described in subsection (a) is valid only if:

(1) the fee or compensation agreed upon is not more than ten percent (10%) of the amount collected unless the amount collected is fifty dollars ($50) or less;

(2) the agreement is in writing;

(3) the agreement is signed by the apparent owner of the check or warrant described in subsection (a); and

(4) the agreement clearly sets forth:

(A) the nature and value of the property; and

(B) the value of the apparent owner's share after the fee or compensation has been deducted.

(c) This section does not prevent an owner from asserting at any time that an agreement to locate property is otherwise invalid.

SECTION 26. IC 4-13.5-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) The commission may:

(1) adopt **and alter** an official seal; ~~and alter the same at pleasure;~~

(2) adopt, ~~and from time to time~~ amend, and repeal bylaws for the regulation of its affairs and the conduct of its business and prescribe rules and policies in connection with the performance of its functions and duties;

(3) accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance, and any other aid from any source and agree to and comply with **any attached** conditions; ~~attached thereto;~~

(4) acquire real property, or any interest ~~therein,~~ **in real property,** by lease, conveyance (including purchase) in lieu of foreclosure,

C o p y

or foreclosure, own, manage, operate, hold, clear, improve, and construct facilities on ~~such~~ real property, and sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber ~~such~~ real property, or interests ~~therein~~ **in real property** or facilities ~~thereon, where such~~ **on real property, if the** use is necessary or appropriate to the purposes of the commission;

(5) procure insurance against any loss in connection with its operations in ~~such~~ amounts, and from ~~such~~ insurers, as it ~~may deem~~ **considers** necessary or desirable;

(6) borrow funds as set forth in IC 4-13.5-4 and issue revenue bonds of the commission, payable solely from revenues, as set forth in IC 4-13.5-4, or from the proceeds of bonds issued under this article and earnings ~~thereon,~~ **on bonds,** or ~~from~~ both, for the purpose of carrying out its purposes under this article, including paying all or any part of the cost of acquisition or construction of any one (1) or more facilities, or for the purpose of refunding any other bonds or loan contracts of the commission;

(7) establish reserves or sinking funds from the proceeds of the sale of bonds or from other funds, or both, to secure the payment of the bonds;

(8) invest any funds held in reserve or in sinking fund accounts or any money not required for immediate disbursement, in obligations of the state, the United States, or their agencies or instrumentalities, and ~~such~~ other obligors as may be permitted under the terms of any resolution authorizing the issuance of the commission's bonds or other obligations;

(9) include in any borrowing or issue ~~such~~ amounts ~~as may be deemed~~ **considered** necessary by the commission to pay financing charges, interest on the obligations (for a period not exceeding the period of construction and a reasonable time ~~thereafter~~ **after the period of construction** or, if the facility is completed, two (2) years from the date of issue of the obligations), consultant, advisory, and legal fees, and ~~such~~ other expenses ~~as are~~ necessary or incident to ~~such~~ **the** borrowing or issue;

(10) employ fiscal consultants, engineers, bond counsel, other special counsel (with the approval of the attorney general), real estate counselors, appraisers, architectural historians, and ~~such~~ other consultants, employees, and agents as ~~may be~~ required in the judgment of the commission, and fix and pay their compensation from funds available to the commission ~~therefor;~~

C o p y

for the payment of compensation;

(11) make, execute, and effectuate ~~any and all~~ contracts, agreements, or other documents with any governmental agency or any person, corporation, limited liability company, association, partnership, or other organization or entity necessary or convenient to accomplish the purposes of this article;

(12) acquire in the name of the commission by the exercise of the right of condemnation, in the manner provided in this section, ~~such~~ public or private lands, or rights ~~therein,~~ **in lands,** rights-of-way, property, rights, easements, and interests, as it ~~may deem~~ **considers** necessary for carrying out this article; and

(13) do any and all acts and things necessary, proper, or convenient to carry out this article.

(b) The commission may provide for facilities for state agencies or branches of state government ~~but only when~~ **if** the general assembly, by statute:

(1) finds that the state needs renovation, refurbishing, or alteration of existing facilities or construction of additional facilities; and

(2) authorizes the commission to provide for ~~such~~ **the** facilities.

In providing for ~~such~~ **the** facilities, the commission shall proceed under this article.

(c) If the commission is unable to agree with the owners, lessees, or occupants of any real property selected for the purposes of this article, it may proceed to procure the condemnation of the property under ~~IC 32-11-1.~~ **IC 32-24-1.** The commission may not institute ~~such~~ a proceeding until it has adopted a resolution that:

(1) describes the real property sought to be acquired and the purpose for which the real property is to be used;

(2) declares that the public interest and necessity require the acquisition by the commission of the property involved;

(3) sets out any other facts that the commission considers necessary or pertinent.

The resolution is conclusive evidence of the public necessity of the proposed acquisition and shall be referred to the attorney general for action, in the name of the commission, in the circuit or superior court of the county in which the real property is located.

(d) The title to all property acquired in any manner by the commission shall be held in the name of the commission.

SECTION 27. IC 4-20.5-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. This chapter does not apply to either of the following:

(1) Acquisition of property under ~~IC 32-11.~~ **IC 32-24.**

C o p y

(2) Acquisition of property by the Indiana department of transportation. However, this chapter applies to property acquired under IC 8-4.5-5.

SECTION 28. IC 4-20.5-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. (a) An agency that ~~has authority to~~ **may** acquire property under this chapter must comply with ~~IC 32-11.~~ **IC 32-24.**

(b) This chapter does not affect the authority of an agency under another statute to acquire property by eminent domain.

SECTION 29. IC 4-20.5-10-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) An agency may purchase or lease property for the use of a state institution under the administrative control of the agency for the disposal of sewage.

(b) An agency may not purchase more than eighty (80) acres under this section.

(c) An agency may construct on the property any of the following to dispose of the sewage:

(1) Reservoirs.

(2) A drainage system.

(3) Any other sewage disposal system sufficient to dispose of the sewage.

(d) An agency may proceed under ~~IC 32-11~~ **IC 32-24** to acquire property under this section.

SECTION 30. IC 4-20.5-10-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. An agency may acquire property for ~~the~~ purposes of this chapter under either of the following:

(1) IC 4-20.5-3.

(2) ~~IC 32-11.~~ **IC 32-24.**

SECTION 31. IC 4-20.5-11-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. (a) ~~IC 32-11~~ **IC 32-24** applies to acquisition of a road under this chapter.

(b) The owners of all property immediately abutting that part of the road the agency wants to acquire must be made defendants to an action filed under ~~IC 32-11.~~ **IC 32-24.**

SECTION 32. IC 4-20.5-12-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. If the United States wants to acquire title to property in Indiana for any purpose, the United States may acquire property by eminent domain under ~~IC 32-11~~ **IC 32-24** and applicable federal law.

SECTION 33. IC 5-11-10.5-7, AS ADDED BY P.L.127-2000, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

C o p y

JULY 1, 2002]: Sec. 7. (a) This section applies to a warrant or a check drawn from the public funds of a political subdivision, if the check or warrant is outstanding and unpaid, but is not determined to be unclaimed property under ~~IC 32-9-1.5.~~ **IC 32-34-1.**

(b) An agreement for which the primary purpose is to pay compensation to locate, deliver, recover, or assist in the recovery of a check or warrant described in subsection (a) is valid only if:

(1) the fee or compensation agreed upon is not more than ten percent (10%) of the amount collected unless the amount collected is fifty dollars ($50) or less;

(2) the agreement is in writing;

(3) the agreement is signed by the apparent owner; and

(4) the agreement clearly sets forth:

(A) the nature and value of the property; and

(B) the value of the apparent owner's share after the fee or compensation has been deducted.

(c) This section does not prevent an owner from asserting at any time that an agreement to locate property is otherwise invalid.

SECTION 34. IC 5-22-21-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. (a) This chapter applies only to personal property owned by a governmental body that is a state agency.

(b) This chapter does not apply to the following:

(1) The sale of timber by the department of natural resources under IC 14-23-4.

(2) The satisfaction of a lien or judgment by a state agency under court proceedings.

(3) The disposition of unclaimed property under ~~IC 32-9-1.5.~~ **IC 32-34-1.**

SECTION 35. IC 8-1-2.2-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 27. ~~Eminent Domain.~~ **(a)** Municipalities participating in a project and joint agencies ~~shall possess~~ **have** the power of eminent domain to the extent and in the same manner and under the same laws as municipalities or public utilities ~~pursuant to either IC 32-11-1~~ **under IC 32-24-1** or IC 8-1-8. However, a municipality or joint agency exercising the power of eminent domain for a purpose authorized by this chapter ~~shall have no power to~~ **may not** condemn an existing facility used for the generation, transmission, or distribution of electric power and energy. ~~In addition,~~

(b) The commission ~~shall have the power and authority to~~ **may** order that:

(1) the lines and rights-of-way of any public utility or subscriber

C o p y

owned utility, or municipality or municipalities participating in a joint project or joint agency may be crossed by any municipality participating in a joint project or joint agency; or ~~that~~

(2) the lines of any municipalities participating in a joint project or joint agency may be crossed by any public utility or subscriber owned utility.

SECTION 36. IC 8-1-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. ~~Any~~ **(a) A** public utility, except in cities of the third class, engaged in the production, transmission, delivery, or furnishing of heat, light, water, or power or for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid sewage or furnishing facilities for transmission of intelligence by electricity to towns and cities and to the public in general or for the furnishing of elevator or warehouse service, either directly or indirectly, to or for the public, for the purpose of enabling it to perform its functions, ~~is hereby fully empowered and authorized to~~ **may** appropriate and condemn lands of individuals and private corporations, or any easement in any ~~such~~ lands, necessary to the carrying out of its objects, whether the same be for its building, structures, dams, line of poles, wires, mains, conduits, and pipelines, or right-of-way to accommodate railway siding or switch tracks connecting its plant or plants with the tracks of any common carrier, overflowage by ~~back-water~~ **backwater** from its dams, waste, or ~~sluice-ways. Provided,~~ **sluiceways.**

(b) However, ~~that,~~ within the limits of any incorporated town or city, ~~such~~ **the** authority to appropriate ~~shall~~ **does** not:

(1) extend to lands situated in any city block in which more than fifty percent (50%) of the frontage is devoted to residence purposes; ~~and provided further, that the provisions of this chapter shall not~~

(2) extend to common carriers engaged in the transportation of freight or passengers; ~~nor~~ **or**

(3) give to any public utility any right or authority to:

(A) appropriate any land or easement ~~therein~~ within the corporate limits of any city for overflowage by ~~back-water~~ **backwater** from any dam; ~~nor to~~

(B) appropriate or acquire any dam, race, or ~~sluice-way~~ **sluiceway** existing on May 31, 1921, or any interest in either, except to use water for condensation purposes; ~~nor to~~

(C) appropriate or acquire any pipeline laid or contained within the limits of private property; ~~nor to~~ **or**

(D) authorize any corporation developing hydroelectric power

Copy

to unreasonably interfere with or disturb the natural flow of the stream from which ~~such~~ power ~~shall or~~ may be derived. Lands or easements in lands acquired by ~~such~~ appropriation and condemnation shall be held and enjoyed by ~~such~~ **the** company for ~~such~~ **those** purposes ~~as fully and completely~~ as though the ~~same~~ **land or easement** had been acquired by purchase.

(c) The appropriation and condemnation of lands and easements in lands authorized by this section ~~shall~~ **must** be ~~had and~~ done ~~in all respect~~s under ~~and pursuant to~~ the terms and conditions and in the manner prescribed by ~~IC 32-11-1.~~ **IC 32-24-1.**

SECTION 37. IC 8-1-30-5, AS ADDED BY P.L.145-1999, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. (a) As used in this section, "subject utility company" refers to a utility company that is the subject of a finding by the commission under section 4 of this chapter.

(b) If the commission makes a finding under section 4 of this chapter, the commission may, after notice and hearing, make appropriate orders to do any of the following:

(1) Provide for the acquisition of the subject utility company by another utility company, a municipally owned utility, or by another person that has the ability to operate the subject utility company:

(A) in compliance with law and the commission's orders; and

(B) to remedy any deficiencies found by the commission.

(2) Provide for the appointment of a receiver to operate the subject public utility:

(A) in compliance with law and the commission's orders; and

(B) to remedy any deficiencies found by the commission.

(c) Before making an order under subsection (b), the commission shall give notice of the hearing to the following:

(1) The subject utility company.

(2) Other utility companies in Indiana.

(3) Appropriate public agencies and political subdivisions, including all municipalities, located in the subject utility company's service territory.

(d) An order under subsection (b)(1) must provide:

(1) that the person acquiring the subject utility company must pay the fair market value of the subject utility company at the time of acquisition; and

(2) the specific accounting methods and appraisal procedures and terms by which the fair market value of the subject utility company is to be determined.

C o p y

(e) An order under subsection (b)(1) may provide cost recovery mechanisms for costs associated with improvements to the acquired system that are immediate and necessary to remedy deficiencies, including any of the following:

(1) A mechanism for expediting any adjustments to the rate base and rates of the person acquiring the subject utility company.

(2) Surcharges on customers of the acquired utility company system to pay for extraordinary costs.

(3) A plan for deferring certain improvement costs and recovering costs in phases.

(4) A plan for equalizing rates of the subject utility company with the rates of the person acquiring the subject utility company, if necessary.

(5) Other incentives to the person acquiring the subject utility company, including adjustments to the allowed rate of return.

(f) If the commission makes an order under subsection (b)(2), the attorney general shall file an action in a court with jurisdiction on behalf of the commission for the appointment of a receiver under ~~IC 34-48.~~ **IC 32-30-5.** The receiver appointed by the court:

(1) has the same rights and duties under Indiana law as a utility company providing water or sewer service; and

(2) shall continue to operate the subject utility company until the court finds that the subject utility company:

(A) has the ability to comply and will comply with Indiana law and the commission's orders relating to the operation of the utility company; and

(B) has the ability to operate without any of the deficiencies found by the commission.

SECTION 38. IC 8-1.5-2-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 15. (a) If the municipality and the owners of a public utility are unable to agree upon a price to be paid for the property of the public utility, the municipality may:

(1) by ordinance declare that a public necessity exists for the condemnation of the utility property; and

(2) bring an action in the circuit or superior court of the county where the municipality is located against the utility for the condemnation of the property.

(b) An ordinance adopted under subsection (a) is final.

(c) For the purpose of acquiring the property of a public utility, the municipality:

(1) may exercise the power of eminent domain in accordance with

C o p y

~~IC 32-11,~~ **IC 32-24;** and

(2) is required only to establish the necessity of taking as this chapter requires.

(d) The provisions of this section do not apply to the acquisition of electric utility property or the assignment of service areas covered by IC 8-1-2.3 and IC 8-1-2-95.1.

SECTION 39. IC 8-1.5-2-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 17. (a) A municipality, by exercising the power of eminent domain in accordance with ~~IC 32-11~~ **IC 32-24** or other applicable law, may acquire property rights inside or outside its corporate boundaries as necessary for the business of a municipally owned utility.

(b) The municipal legislative body may provide for utility lines to be laid through the municipality as the municipally owned utility requires. The municipality may use any property or property rights necessary for constructing, acquiring, operating, or protecting from injury or pollution the municipally owned utility services.

(c) For the purpose of preserving and protecting from injury or pollution the municipal water services, the municipality may exercise its powers in areas within twenty-five (25) miles outside its corporate boundaries.

(d) All attachments made to the utility fixtures, whether intended for public or private use, are subject to the supervision and rules of the utility for protection against abuse or destruction or the inordinate use or waste of utility services.

SECTION 40. IC 8-3-1.5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 9. The procedure for any necessary condemnation proceedings is set forth in ~~IC 32-11-1.~~ **IC 32-24-1.**

SECTION 41. IC 8-4-7-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 8. The condemnations authorized in section 7 of this chapter may be made ~~and had~~ according to:

(1) the provisions of the charter of any or either of ~~said~~ **the** proprietary companies; ~~or under and according to~~

(2) the general railroad law of ~~this state~~ **Indiana** in ~~force~~ **effect** at the time ~~providing~~ **that provides** for the condemnation of real estate for railroad purposes; or ~~according to IC 32-11-1.~~

(3) IC 32-24-1.

SECTION 42. IC 8-5-15-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 15. (a) The board may exercise the power of eminent domain for the purpose of carrying out this chapter and award damages to landowners for real estate and

C o p y

property rights appropriated and taken. ~~In case~~ **If** the board cannot agree with the owners, lessees, or occupants of any real estate selected by ~~them~~ **the board** for the purpose set forth in this chapter, ~~it~~ **the board** may proceed to procure the condemnation of the property under ~~IC 32-11.~~ **IC 32-24.**

(b) Relocation assistance under IC 8-23-17 shall be provided to any person displaced under this section.

(c) ~~Where~~ **If** the property over and across which the railroad must be constructed and must operate is already in use or acquired for use for a public purpose, the public use or acquisition of the property is not a bar to the right of the board to condemn the property for the purpose of this chapter.

SECTION 43. IC 8-9.5-7-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 9. **(a)** The commission ~~is authorized to~~ **may** exercise the power of eminent domain for the purpose of carrying out ~~any of the provisions of~~ this chapter and to award damages to landowners for real estate and property rights appropriated and taken. ~~In case~~ **If** the commission cannot agree with the owners, lessees, or occupants of any real estate selected by ~~them~~ **the board** for the purpose ~~herein~~ set forth ~~it~~ **in this chapter, the board** may proceed to procure the condemnation of the property under ~~the provisions of IC 32-11.~~ **IC 32-24.**

(b) Relocation assistance under IC 8-23-17 shall be provided to any person displaced under this section. ~~Where~~

(c) If the property over and across which the automated transit system must be constructed and operate is already in use or acquired for use for a public purpose, the public use or acquisition of the property shall not be a bar to the right of the commission to condemn the property for ~~the~~ purposes of this chapter.

SECTION 44. IC 8-21-9-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 15. **(a) If the department considers a purchase expedient,** the department may acquire by purchase ~~whenever it shall deem such purchase expedient,~~ any land, property, rights, rights-of-way, franchises, easements, and other interest in lands, including lands under water and riparian rights, as it ~~may deem~~ **considers** necessary or convenient for the construction and operation of any airport or airport facility.

(b) The appropriation and condemnation of lands and easements in lands ~~herein~~ authorized ~~shall~~ **by this chapter must** be made under ~~and pursuant to~~ the terms and conditions of and in the manner prescribed in ~~IC 32-11-1.~~ **IC 32-24-1.**

(c) The department shall take title ~~thereto~~ in the name of the state of

Copy

Indiana.

(d) The department ~~is hereby further authorized and empowered to~~ **may:**

(1) sell, transfer, and convey any ~~such~~ land or any interest ~~therein so~~ **in land** acquired, or any ~~portion thereof, when~~ **part of the land or interest in land if** the ~~same shall~~ **land or interest in land is** no longer ~~be~~ needed for such purposes; and ~~it is further authorized and empowered to~~

(2) transfer and convey any ~~such~~ lands or interests ~~therein~~ **in lands** as may be necessary or convenient for the construction and operation of any airport or airport facility, or as otherwise required under this chapter. However, ~~no such~~ **a** sale ~~shall~~ **may not** be made without the approval of the governor first obtained and at not less than the appraised value established by three (3) independent appraisers appointed by the governor.

The department may restrict the use of any land ~~so~~ sold by it and provide for a reversion to the department ~~in the event~~ **if** the land ~~shall~~ **is** not ~~be~~ used for the purpose represented by the purchaser. ~~and such~~ **Provisions concerning** restrictions and reversions ~~shall~~ **must** be set out in appropriate covenants in the deeds of conveyance. ~~which~~ **The** deeds ~~shall be subject to the approval of~~ **must be approved by** the governor.

(e) The department may ~~also~~ lease to others for development or use any ~~portion~~ **part** of the land owned by the department, together with any airport facility ~~or airport facilities thereon~~ **on the land** or to be constructed ~~thereon,~~ **on the land,** on ~~such~~ terms ~~as~~ the department ~~shall determine~~ **determines** to be advantageous. ~~All such~~ Leases covering a period of more than four (4) years ~~shall be subject to the approval of~~ **must be approved by** the governor. Leases of lands under the jurisdiction or control of the department ~~shall~~ **may** be made only for ~~such~~ uses and purposes as are calculated to contribute to the growth and development of the airport and airport facilities under the jurisdiction or control of the department. ~~In the event~~

(f) If the department ~~shall lease~~ **leases** to others for a period of more than four (4) years an airport facility ~~or airport facilities~~ financed by the issuance of revenue bonds, the rental ~~shall~~ **must** be in an amount at least sufficient to pay the interest on and principal of the amount of ~~such~~ **the** bonds representing the cost of ~~such~~ **the** airport facility ~~or airport facilities~~ to the extent ~~such~~ **the** interest and principal is payable during the term of the lease. ~~Such~~ **The** lease ~~shall also~~ **must** provide for the payment by the lessee ~~or lessees~~ of all costs of maintenance, repair, and insurance.

C o p y

(g) The department may acquire or purchase an existing airport facility ~~only when such~~ **if:**

(1) the facility is located on land acquired for the purpose of constructing a continental or an intercontinental airport; or ~~when~~

(2) operation of ~~such an~~ **the** airport would be detrimental to the safe use of ~~such an~~ **the** airport facility.

(h) The department may ~~also~~ enter into contracts, leases and other use agreements with air carriers, airport concessionaires, airport tenants, and other airport users under agreed terms, conditions, charges, and fees for a term not exceeding twenty (20) years. ~~excepting such~~ **However,** lease agreements for land rental ~~which~~ may be entered into for a term not exceeding ninety-nine (99) years ~~when~~ **if** the lessee ~~shall~~ **will** use the leased land for the construction of buildings or other facilities at **the** lessee's expense.

SECTION 45. IC 8-21-12-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 14. (a) The authority may exercise the power of eminent domain to carry out this chapter and may award damages to landowners for real estate and property rights appropriated. ~~and in case~~ **If** the authority cannot agree with the owners, lessees, or occupants of real estate selected by the authority for the purposes in this chapter, the authority may procure the condemnation of the property. The authority may proceed under ~~IC 32-11-1, and that chapter~~ **IC 32-24-1. IC 32-24-1** applies to airports, landing fields, districts, and restricted zones adjoining them to the extent that ~~IC 32-11-1~~ **IC 32-24-1** is not inconsistent with this chapter.

(b) If:

(1) it is necessary to establish and fix a restricted zone on and across land that:

(A) is already in use for another public purpose; or

(B) has been condemned or appropriated for a use authorized by statute; and

(2) the land is being used for that purpose by the corporation so appropriating it;

the public use or prior condemnation does not bar the right of the authority to condemn the use of ground for aviation purposes. Use by the authority does not permanently prevent the use of the land for the prior public use or by the corporation condemning or appropriating it.

(c) The authority may not take or disturb property or facilities belonging to a public utility or common carrier engaged in interstate commerce ~~which~~ **if the** property or facilities are required for the proper and convenient operation of the utility or carrier, unless provision is made for the restoration, relocation, or duplication of the property or

C o p y

facilities elsewhere, at the sole cost of the authority.

SECTION 46. IC 8-22-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10. (a) The board of an eligible entity:

(1) may exercise the power of eminent domain for the purpose of carrying out this chapter;

(2) may award damages to landowners for real property rights appropriated; and ~~in case~~

(3) if the board cannot agree with the owners, lessees, or occupants of real property selected by the board for the purposes in this chapter, may procure the condemnation of the property.

The board may proceed under ~~IC 32-11-1, and that statute~~ **IC 32-24-1. IC 32-24-1** applies to airports, landing fields, and restricted zones adjoining them to the extent that it is not inconsistent with this chapter.

(b) ~~Where~~ **If** the land on or across which it is necessary to establish and fix a restricted zone ~~or zones~~ is already in use for another public purpose or has been condemned or appropriated for a use authorized by statute, and is being used for that purpose by the corporation so appropriating it, the public use or prior condemnation does not bar the right of the board to condemn the use of the ground for aviation purposes. Use by the board does not permanently prevent the use of the land for the prior public use or by the corporation condemning or appropriating it.

(c) In a proceeding prosecuted by the board to condemn the use of land for purposes permitted by this chapter, the burden is upon the board to show that its use will not permanently or seriously interfere with the continued public use of the land or by the corporation condemning it, or its successors. However, in ~~such a~~ **the** proceeding, the board may require the removal or the burying beneath the surface of the ground of wires, cables, power lines, or other structures within a restricted zone established under this chapter. In a proceeding prosecuted by the board to condemn or appropriate land, the use of land, or rights in land for purposes permitted by this chapter;

(1) the board and all owners and holders of property or rights in property sought to be taken are governed by and have the same rights to procedure, notices, hearings, assessments, and payments of benefits and awards as are prescribed by statute for the appropriation and condemnation of real property; and

(2) the property owners have like powers and rights of remonstrance and of appeals to the circuit or superior court in the county in which the entity is located.

Appeals affect only the amount of the assessment of awards of the

C o p y

person appealing and must conform to all laws relating to appeals. The payment of all damages awarded for all lands, property, or rights in them appropriated under this chapter shall be paid entirely out of the funds under the control of the board.

(d) Notwithstanding this or any other statute or any charter, the eligible entity may take possession of the property to be acquired at any time after the filing of the petition describing the property in condemnation proceedings. It is not precluded from abandoning the condemnation of the property in any case where possession has not been taken. The board:

(1) may acquire and use any land reasonably necessary for the purposes of this chapter; ~~but~~ **and**

(2) may not acquire or use land that is still being used and is necessary for the purposes for which it was previously condemned.

SECTION 47. IC 8-22-3-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 15. (a) The board:

(1) may exercise the power of eminent domain to carry out this chapter; ~~and~~

(2) may award damages to landowners for real estate and property rights appropriated; and ~~in case~~

(3) if the board cannot agree with the owners, lessees, or occupants of real estate selected by the board for the purposes in this chapter, ~~it~~ may procure the condemnation of the property.

The board may proceed under ~~IC 32-11-1, and that chapter~~ **IC 32-24-1. IC 32-24-1** applies to airports, landing fields, and restricted zones adjoining them to the extent that it is not inconsistent with this chapter.

(b) ~~Where~~ **If** the land on and across which it is necessary to establish and fix a restricted zone ~~or zones~~ is already in use for another public purpose or has been condemned or appropriated for a use authorized by statute, and is being used for that purpose by the corporation so appropriating it, the public use or prior condemnation does not bar the right of the board to condemn the use of ground for aviation purposes. Use by the board does not permanently prevent the use of the land for the prior public use or by the corporation condemning or appropriating it.

(c) In a proceeding prosecuted by the board to condemn the use of land for purposes permitted by this chapter, the burden is upon the board to show that its use will not permanently or seriously interfere with the continued public use of the land or by the corporation condemning it, or its successors. However, in ~~such a~~ **the** proceeding the board may require the removal or the burying beneath the surface of the

C o p y

ground of wires, cables, power lines, or other structures within a restricted zone established under this chapter.

(d) The board may not take or disturb property or facilities belonging to a public utility or common carrier engaged in interstate commerce ~~which~~ **if the** property or facilities are required for the proper and convenient operation of the utility or carrier, unless provision is made for the restoration, relocation, or duplication of the property or facilities elsewhere, at the sole cost of the board.

SECTION 48. IC 8-23-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. Except as otherwise provided in this chapter, ~~IC 32-11-1~~ **IC 32-24-1** applies to real property transactions conducted by the department.

SECTION 49. IC 8-23-17-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 27. (a) The court having jurisdiction of a proceeding instituted by an agency to acquire real property by eminent domain shall award the owner of a right, or title to, or interest in, the real property the sum that will in the opinion of the court reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if:

(1) the final judgment is that the agency cannot acquire the real property by eminent domain; or

(2) the proceeding is abandoned by the agency.

(b) An award made under subsection (a) shall be paid by the agency for whose benefit the eminent domain proceedings were instituted.

(c) The court rendering a judgment for the plaintiff in a proceeding brought under ~~IC 32-11-1-12~~ **IC 32-24-1-16** or any other Indiana law providing for the institution of proceedings by the owner seeking just compensation for property taken for public use in awarding compensation for the taking of property by an agency, or the agency effecting a settlement of a proceeding, shall determine and award or allow to the plaintiff, as a part of the judgment or settlement a sum that will in the opinion of the court or the agency reimburse the plaintiff for reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the proceeding.

SECTION 50. IC 8-23-20-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10. The department may acquire and shall pay just compensation for the removal of signs that do not conform to this chapter. A removal by the department or sign owner under this chapter constitutes a taking, and the owner shall be compensated under ~~IC 32-11-1.~~ **IC 32-24-1.** Compensation shall be

C o p y

paid for the following:

(1) The taking from the owner of a sign of all rights, titles, and interests in the sign, and of the owner's leasehold or other interest in the land.

(2) The taking from the owner of the real property on which the sign is located and of the right to erect and maintain signs on the real property.

SECTION 51. IC 10-1-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. **(a)** If any money, goods, or other property ~~which~~ **that** has been stolen, lost, or abandoned comes into possession of an employee of the state police department by virtue of ~~his~~ **the employee's** office, ~~he~~ **the employee** shall deliver the ~~same~~ **money, goods, or other property** to ~~such~~ **another** employee of the department as ~~may be~~ designated by the superintendent and shall ~~thereupon~~ be relieved from further responsibility ~~therefor.~~ **for the money, goods, or other property.**

(b) If: ~~any such~~

(1) the money, goods, or other property remains unclaimed in the possession or control of ~~any such~~ **the** employee to whom delivered for six (6) months; and

(2) the ~~whereabouts~~ **location** of the owner is unknown; ~~such~~ **the** goods or other property shall be sold at public auction. Notice of the time and place of ~~such~~ **the** sale with a description of the property to be sold being first given by publishing the same once a week for two (2) weeks consecutively in some newspaper of general circulation printed in the community in which the sale is to be held. Any ~~such~~ property ~~which~~ **that** is ~~of a~~ perishable ~~nature~~ or ~~which~~ will deteriorate greatly in value by keeping, or any property of which the expense of keeping will be likely to exceed the value ~~thereof,~~ **of the property,** may be sold at public auction, in accordance with the rules or orders of the superintendent. ~~and should~~ **If** the nature of ~~such~~ **the** property ~~necessitate~~ **requires** an immediate sale, the six (6) month period of custody and the notice of sale provided in this section may be waived at the discretion of the superintendent.

(c) The proceeds of every ~~such~~ sale, after deducting all reasonable charges and expenses incurred in relation to ~~such~~ **the** property, and all ~~such~~ money shall be presumed abandoned and shall be delivered to the attorney general for deposit into the abandoned property fund for disposition as provided by ~~IC 32-9-1.5-33~~ **IC 32-34-1-33** and ~~IC 32-9-1.5-34.~~ **IC 32-34-1-34.**

(d) ~~The provisions of~~ This chapter ~~shall~~ **does** not apply to property seized upon a search warrant nor to any other property the custody and

C o p y

disposition of which is otherwise provided by law.

SECTION 52. IC 10-4-1-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 25. (a) ~~Each~~ **A** person ~~within this state~~ **in Indiana** shall conduct himself **or herself and** keep and manage his **or her** affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state and the public successfully to meet disaster emergencies. This obligation includes appropriate personal service and use or restriction on the use of property in time of disaster emergency. Compensation for services or for the taking or use of property ~~shall~~ **may** be **made** only to the extent:

(1) that obligations recognized in this chapter are exceeded in a particular case; ~~and then only to the extent~~ **and**

(2) that the claimant may not have volunteered ~~his~~ **the claimant's** services or property without compensation.

(b) ~~No~~ Personal services may **not** be compensated by the state or any subdivision or agency of ~~it,~~ **the state** except under statute, local law, or ordinance.

(c) Compensation for property ~~shall~~ **may** be paid only if the property was commandeered or otherwise used in coping with a disaster emergency and its use or destruction was ordered by the governor or a member of the disaster emergency forces of this state.

(d) Any person claiming compensation for the use, damage, loss, or destruction of property under this chapter ~~shall~~ **must** make a claim for it. ~~which~~ **The** claim ~~shall~~ **must** be filed and **shall be** adjudicated as provided in ~~IC 1971, 32-11.~~ **IC 32-24.**

(e) ~~Nothing in~~ This section ~~applies~~ **does not apply** to or ~~authorizes~~ **authorize** compensation for the destruction or damaging of standing timber or other property in order to provide a fire break or to the release of waters or the breach of impoundments in order to reduce pressure or other danger from actual or threatened flood.

SECTION 53. IC 10-7-1-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 16. (a) The board of commissioners of any county, acting jointly with the board of public works of any city located ~~therein,~~ **in the county,** to acquire grounds, real property, and interests ~~therein~~ **in real property,** by purchase or condemnation for any of the purposes authorized by this chapter, ~~shall have the right, and authority is hereby granted to any county and jointly to any county and any city located therein, to~~ **may** proceed under ~~IC 32-11,~~ **IC 32-24,** together with all the powers of eminent domain granted under this chapter to any county under any statute relating to appropriation and condemnation for use of ~~such~~ **the** county, of any

C o p y

property, real or personal. However, before ~~such~~ **the** board of commissioners ~~shall have the right to~~ **may** purchase real property and interests ~~therein,~~ **in real property,** either by ~~such~~ **the** county, or jointly by ~~such~~ **the** county and any city located ~~therein,~~ ~~such~~ **in the county, the** board of commissioners or board of trustees, as provided in section 11 of this chapter, or board of commissioners acting jointly with the board of public works of any city located ~~therein,~~ ~~shall cause~~ ~~such~~ **in the county, must have the** real property ~~to be~~ appraised at its true cash value by at least three (3) disinterested freeholders of ~~such~~ **the** county and ~~shall~~ **may** not ~~have the right to~~ pay more than the appraised value for any real property and interests ~~therein.~~ **in real property.**

(b) ~~In the event~~ **If** any owner refuses to sell ~~such~~ real property at ~~such~~ **the** appraised value, ~~thereof,~~ ~~then the same shall~~ **the property must** be acquired by condemnation. If a county acts alone, an attorney representing the county shall conduct all the legal proceedings necessary in the purchase or condemnation of real property, and it shall be the duty of the legal department of any city and an attorney representing the county and the legal department of any city, ~~when such~~ **if** county and city act jointly under this chapter, to conduct all the necessary legal proceedings, without additional compensation, for the purchase or condemnation of real property.

(c) ~~In the event~~ **If** any county acquires real property for any of the purposes provided for by this chapter, or joins with any city located in ~~such~~ **the** county in the acquisition of real property for any of the purposes provided for in this chapter, ~~such~~ **the** county acting by and through its board of commissioners, or ~~such~~ **the** county by and through its board of commissioners acting jointly with any city located ~~therein,~~ **in the county,** by and through its board of public works, with the approval of the mayor, as the case may be, ~~shall have the right to~~ **may:**

(1) grant the use of any real property or buildings and improvements ~~thereon~~ **on real property** so acquired, to any organization of soldiers, sailors, and marines of the United States, and others for rent or charge, or without any rent or charge; and ~~shall also have the right to~~

(2) sell the buildings and improvements on ~~such~~ **the** real property. ~~and~~

The net rent or proceeds of the sale of ~~such~~ **the** building and improvements on ~~such~~ **the** real property, if ~~such~~ **the** real property was acquired by the county, shall be added to and become a part of the county world war memorial fund. ~~and~~ If ~~such~~ **the** real property was acquired by ~~such~~ **the** county and any city located ~~therein~~ **in the county** jointly, ~~then such~~ **the** rent and proceeds of sale shall be added to ~~such~~

C o p y

the county world war memorial fund and ~~such~~ **the** city world war memorial fund in the same proportions that ~~such~~ **the** city and county contributed to the acquisition ~~thereof,~~ **of the real property, buildings, and improvements**, or ~~such~~ **the** county. ~~or such~~ **The** county and any city located ~~therein~~ **in the county** acting jointly, as provided in this chapter, ~~shall have the right to~~ **may** convey any real property so acquired to the state and provide in the contract with the state as to the rent of ~~such~~ buildings and improvements ~~thereon,~~ **on real property,** until necessary to remove the ~~same,~~ **buildings and improvements,** and for the sale of ~~such~~ **the** buildings and improvements ~~whenever such~~ **if the** real property is needed by ~~said~~ **the** board of trustees for world war memorial and other public purposes. ~~and such~~ **The** contract ~~shall~~ **must** provide how ~~such~~ **the** net rent or proceeds ~~shall~~ **will** be applied.

(d) ~~In the event~~ **If** any county institutes proceedings to condemn any real property or interests ~~therein~~ **in real property** or other property under this chapter, ~~such~~ **the** suit ~~shall~~ **must** be brought:

(1) in the name of ~~such~~ **the** county;

(2) by an attorney representing the county; **and**

(3) at the direction of the board of commissioners of ~~such~~ **the** county.

(e) ~~In the event of~~ **If** the joint condemnation of real property under this chapter, by any county and by any city located ~~therein, such~~ **in the county, the** suit ~~shall~~ **must** be brought in the name of ~~such~~ **the** county, as provided in this section, and in the name of ~~such~~ **the** city by its legal department, without additional compensation, ~~therefor~~ at the direction of the board of public works. ~~Such~~ **The** county, or ~~such~~ **the** county and ~~such~~ **the** city jointly, ~~shall have a right to~~ **may:**

(1) join in one **(1)** action as defendants the owners and all persons interested in one (1) or more tracts of real property to be condemned; or ~~such county, or such county and city jointly, may~~

(2) institute proceedings to condemn separate tracts of real property.

SECTION 54. IC 10-7-6-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 12. (a) The board of public works of any city, acting for ~~such~~ **the** city or acting jointly with the board of commissioners of the county in which it is located, to acquire grounds, real property, and interests ~~therein~~ **in real property** by purchase or condemnation for any of the purposes authorized by this chapter, ~~shall have the right, and authority is hereby granted to any city and to any county in which it is located, to~~ **may** proceed under ~~IC 32-11,~~ **IC 32-24,** together with all powers of eminent domain granted in this chapter or any other statute. However, before ~~such~~ **the**

C o p y

board of public works ~~shall have the right to~~ **may** purchase any real property or interests ~~therein,~~ **in real property,** either by ~~such~~ **the** city or jointly by ~~such~~ **the** city and the county in which it is located, ~~such~~ **the** board of public works or board of trustees, as provided in section 11 of this chapter, or board of public works acting jointly with the board of commissioners of the county in which ~~such~~ **the** city is located, ~~shall cause such~~ **must have the** real property ~~to be~~ appraised at its true cash value by at least three (3) disinterested freeholders of ~~such~~ **the** city and ~~shall~~ **may** not ~~have the right to~~ pay more than ~~such~~ **the** appraised value for any real property or interests ~~therein. In the event~~ **in real property. If** any owner refuses to sell ~~such~~ real property at ~~such~~ **the** appraised value, ~~thereof, then same shall~~ **the real property or interests in real property must** be acquired by condemnation. ~~It shall be the duty of~~ The legal department of ~~such~~ **the** city ~~to~~ **shall** conduct all necessary proceedings for the purchase or condemnation of real property by ~~such~~ **the** city and county jointly, for any purpose under this chapter, without additional compensation. ~~therefor.~~

(b) ~~In the event~~ **If** any city institutes proceedings to condemn any real property or interests ~~therein~~ **in real property** under this chapter, ~~such~~ **the** suit ~~shall~~ **must** be brought in the name of ~~such~~ **the** city by the legal department ~~thereof,~~ **of the city,** without additional compensation, ~~therefor,~~ at the direction of the board of public works. ~~And in the event of the~~ **If there is a** joint condemnation of any real property by any city and the county in which it is located, ~~such~~ **the** suit ~~shall~~ **must** be brought in the name of ~~such~~ **the** city as provided in this section and in the name of ~~such~~ **the** county, by an attorney representing the county, at the direction of the board of county commissioners of ~~such~~ **the** county. ~~Such~~ **The** city, or ~~such~~ **the** city and county jointly, ~~shall have the right to~~ **may:**

(1) join in one (1) action as defendants the owners and all persons interested in one (1) or more tracts of real property to be condemned; or ~~such city and county jointly may~~

(2) institute proceedings to condemn separate tracts of real property and interests ~~therein.~~ **in real property.**

SECTION 55. IC 12-17-2-33, AS AMENDED BY P.L.57-2000, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 33. (a) The bureau shall, each month, prepare a list of each person against whom a child support obligation lien is held under IC 31-16-16-3 (or IC 31-2-11-9 before its repeal). The list must identify each person liable for a lien by name, address, amount of lien, and either Social Security number or employer identification number. The bureau shall certify a copy of the list to the bureau of motor

C o p y

vehicles.

(b) The bureau of motor vehicles shall, before issuing the title to a motor vehicle under IC 9-17, determine whether the purchaser's or assignee's name is on the most recent monthly lien list. If the purchaser's or assignee's name is on the list, the bureau shall enter as a lien on the title the name of the state as the lienholder. The state's lien on a title under this section is subordinate to a prior perfected security interest if the interest is defined and perfected under ~~either~~ **any** of the following:

(1) IC 26-1-9.1.

(2) IC 32-8 **(before its repeal).**

(3) IC 32-28.

(4) IC 32-29.

(5) IC 32-33.

(6) IC 32-34-10.

(c) A lien against the title under this section must be treated in the same manner as any other subordinate title lien.

(d) The bureau shall prescribe and furnish release forms for use by the bureau. When the amount of the lien is paid, the bureau shall issue to the person against whom the lien was held a release stating that the amount represented by the lien has been paid. The bureau may also issue a release to a person against whom the lien is held if the person has made arrangements, agreed to by the bureau, for the payment of the amount represented by the lien.

(e) The director of the bureau or the director's designee is the custodian of all titles having the state as the sole lienholder under this section. Upon receiving a title from the bureau of motor vehicles under this section, the director shall notify the owner of the motor vehicle.

(f) The bureau shall reimburse the bureau of motor vehicles for all costs incurred by the bureau in implementing this section.

SECTION 56. IC 13-17-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. A private citizen, the commissioner, the governor, or the attorney general may initiate a civil action under:

(1) IC 13-14-10-2;

(2) IC 13-15-3-6;

(3) IC 13-17-4;

(4) IC 13-30-1-1 through IC 13-30-1-7;

(5) IC 13-30-3-2 through IC 13-30-3-9; or

(6) ~~IC 34-19-1-2;~~ **IC 32-30-6-7;**

whichever is applicable, to enjoin or abate emissions resulting from the operation of an existing emitting facility or source.

C o p y

SECTION 57. IC 13-18-16-16, AS AMENDED BY P.L.220-1999, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 16. (a) A nonprofit water utility may adopt a resolution approved by its board of directors under this section that reconstitutes the nonprofit water utility as a water authority to be named as provided in the resolution.

(b) A resolution adopted under this section must allow:

(1) the structure of the board of directors; and

(2) the rules governing the water authority;

to remain the same as those applicable to the nonprofit water utility.

(c) The water authority shall retain all its powers, privileges, rights, and exemptions as a nonprofit water utility under:

(1) its existing bylaws and articles; and

(2) all laws applicable to nonprofit water utilities and local water corporations, including powers granted under ~~IC 32-11-3-1.~~ **IC 32-24-4-1.**

(d) A water authority constituted under this section is a political subdivision of the state.

(e) A copy of a resolution adopted under this section must be filed with the secretary of state. When the secretary of state receives a copy of a resolution under this subsection, the secretary of state shall dissolve the corporate status of the nonprofit water utility for purposes of state law.

(f) A water authority constituted under this section shall:

(1) remain obligated under any existing contracts or agreements; and

(2) remain obligated and assume the indebtedness;

of the nonprofit water utility.

(g) Notwithstanding any other law and subject to subsection (h), a water authority constituted under this section is subject only to the laws applicable to nonprofit water utilities and local water corporations.

(h) A water authority constituted under this section is subject to IC 8-1.5-3-8 for purposes of setting rates and charges.

SECTION 58. IC 14-13-1-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 17. (a) The commission may acquire by appropriation under Indiana eminent domain law:

(1) any land, property, rights, rights-of-way, franchises, easements, or other interests in real property, including land under water and riparian rights; or

(2) any existing facilities, betterments, and improvements, or other property;

necessary and proper for the creation, development, establishment,

C o p y

maintenance, or operation of a project or any part of a project.

(b) If property is acquired under Indiana eminent domain law, the commission shall use the property only for the specific uses that are stated in the complaint filed under ~~IC 32-11-1-2~~ **IC 32-24-1-4** and for no other purpose.

SECTION 59. IC 14-17-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. The attorney general shall do the following:

(1) In the proper court, file an action in the name of the state of Indiana on the relation of the commission for the condemnation of the real property or right.

(2) Proceed under ~~IC 32-11~~ **IC 32-24** to condemn the real property or right under this chapter.

SECTION 60. IC 14-27-6-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 33. (a) The board may do the following:

(1) Exercise the power of eminent domain for the purpose of carrying out this chapter.

(2) Award damages to landowners for real property and property rights appropriated and taken.

(b) If the board cannot agree with the owner, lessee, or occupant of real property selected by the board for the purpose set forth in this chapter, the board may proceed to procure the condemnation of the property as provided in this chapter.

(c) If not in conflict or inconsistent with this chapter, the board may also proceed under ~~IC 32-11. IC 32-11~~ **IC 32-24. IC 32-24** applies to levees under this chapter as far as ~~IC 32-11~~ **IC 32-24** is not in conflict or inconsistent with this chapter.

SECTION 61. IC 14-28-1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 11. (a) The commission may exercise the power of eminent domain. If the commission is unable to agree with the owner for the purchase of:

(1) land;

(2) an easement;

(3) a flood easement;

(4) other interest in land; or

(5) other property or right that in the commission's opinion is necessary for the commission's purposes;

the commission may acquire the property or right by condemnation under ~~IC 32-11.~~ **IC 32-24.**

(b) The commission must adopt an appropriate resolution and deliver the resolution to the attorney general.

C o p y

(c) The attorney general shall commence and prosecute an action in the name of the state of Indiana on the relation of the commission for the appropriation of the property or right. The title to the property or right acquired vests in the state.

SECTION 62. IC 14-29-6-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 13. (a) As used in this section, "conservation easement" has the meaning set forth in ~~IC 32-5-2.6-1.~~ **IC 32-23-5-2.**

(b) As used in this section, "land use easement" means the granting of the right of the general public to use the adjacent land.

(c) As used in this section, "scenic easement" means the granting of protection of adjacent land in the land's present state to preserve the land's natural or scenic characteristics.

(d) As used in this section, "water use easement" means the granting of the right of the general public to travel along or across all water parts of the river.

(e) The director may do the following:

(1) Acquire on behalf of the state land in fee title or any other interest in land, including the following:

(A) Water use easements.

(B) Scenic easements.

(C) Land use easements.

(2) Exercise the right of eminent domain on behalf of the state to acquire the following:

(A) Conservation easements.

(B) Water use easements.

(f) Land or an interest in land may be acquired by purchase with appropriated or donated money, exchanges, donations, or otherwise.

(g) The director may seek financial assistance for land acquisition and for facility development of scenic rivers from the following:

(1) Federal and local governmental sources.

(2) Private groups and individuals.

SECTION 63. IC 14-30-2-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 22. (a) For the purposes of this chapter, the commission may do the following:

(1) Acquire by grant, gift, purchase, or devise and dispose of conservation easements under ~~IC 32-5-2.6~~ **IC 32-23-5** in land within the one hundred (100) year flood plains and the wetlands in the basin.

(2) Acquire by grant, gift, purchase, or devise improvements within the one hundred (100) year flood plains of the basin for the purpose of removal of those improvements.

C o p y

(3) Adopt rules under IC 4-22-2 that restrict construction within the one hundred (100) year flood plains of the basin.

(4) Acquire, dispose, hold, use, improve, maintain, operate, own, manage, or lease real or personal property by grant, gift, purchase, or devise.

(b) The commission may exercise the powers granted by this section as follows:

(1) For ~~the~~ purposes of ~~IC 32-5-2.6.~~ **IC 32-23-5.**

(2) To contribute to the following:

(A) Flood control.

(B) Flood damage reduction.

(C) Improvements in water quality.

(D) Soil conservation.

SECTION 64. IC 14-30-2-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 24. (a) This section does not apply to the following:

(1) The adoption of rules restricting construction within the one hundred (100) year flood plain.

(2) The acquisition of conservation easements under ~~IC 32-5-2.6.~~ **IC 32-23-5.**

(3) The investigation of alleged violations of the Indiana flood control laws.

(b) A power of the commission may not be exercised upon any of the following:

(1) A river included in the natural, scenic, or recreational river system under IC 14-29-6 or the river's associated one hundred (100) year flood plain.

(2) A nature preserve under IC 14-31-1.

SECTION 65. IC 14-36-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 6. The department may acquire land by:

(1) negotiation; or

(2) exercise of the power of eminent domain under ~~IC 32-11-1.~~ **IC 32-24-1.**

SECTION 66. IC 15-8-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) A grantee shall accept applications for services to farmers, including the following:

(1) Accepting telephone inquiries from farmers.

(2) Developing a system to provide referral services to benefit farmers in cooperation with:

(A) private farm, financial, and attorney bar organizations; and

(B) public agencies and institutions.

C o p y

(3) Fostering strong relationships with government and private lending institutions in order to facilitate a stronger line of communication between farmers and lenders.

(4) Informing farmers about policies, practices, and procedures of lenders.

(5) Training and educating farmers about laws that affect them, particularly new legislation on debt restructuring, mediation, debtor exemptions, land leases, chattel securities, homestead redemptions, and financial problems related to the Farm Credit System, the Consolidated Farm Services Agency, and conventional lending institutions.

(6) Providing borrower training sessions in cooperation with the United States Department of Agriculture.

(7) At the request of a farmer who is borrowing money, assisting the farmer with loan applications and other legal documents.

(8) Assisting a farmer in organizing farm operations as a corporation, an S corporation, a partnership, or any other business entity, as suits the farmer's particular needs.

(9) Assisting the farmer with estate planning.

(10) Negotiating a debt restructuring settlement between a farmer and the farmer's creditors.

(11) Representing the farmer in court on matters related to the farming operation if:

(A) the farmer is not able to obtain representation from the private bar; or

(B) the nature of the farmer's case does not make it feasible for the farmer to obtain other legal representation.

(b) The service of negotiating a debt restructuring settlement between a farmer and the farmer's creditors under subsection (a)(10) may include the following:

(1) Providing guidance on restructuring debt, including guidance concerning:

(A) chapters 7, 11, 12, and 13 of the federal bankruptcy law (11 U.S.C. 101 et seq.); or

(B) assignments for the benefit of creditors under ~~IC 32-12-1.~~ **IC 32-18-1.**

(2) Arranging for a meeting between a farmer and the farmer's creditors.

(3) At a farmer's request, sending a counselor to meetings between lenders and borrowers to facilitate communications.

(4) Advising and assisting a farmer and the farmer's creditors in reaching an agreement.

C o p y

(5) Assisting a farmer in preparing a debt restructuring proposal.

SECTION 67. IC 16-22-8-42 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 42. If the board and the owner of real property desired for hospital or other purposes in carrying out this chapter cannot agree on the price, the corporation has the right to condemn. Condemnation proceedings may be instituted in the name of the corporation under ~~IC 32-11.~~ **IC 32-24.**

SECTION 68. IC 16-22-9-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 8. The acquisition and condemnation authorized by this chapter shall be made in accordance with ~~IC 32-11-1~~ **IC 32-24-1** and ~~IC 32-11-6.~~ **IC 32-24-6.**

SECTION 69. IC 16-22-9-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 9. The:

(1) costs and expenses incurred in the condemnation proceedings, including reasonable attorney's fees for the condemning authority; and

(2) award or damages due the owner of the real property taken in the condemnation proceedings;

shall be paid by the nonprofit hospital corporation to the owner of the real property or to the clerk of the court and possession taken by the nonprofit hospital corporation in accordance with ~~IC 32-11-1-7.~~ **IC 32-24-1-10.**

SECTION 70. IC 20-3-11-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 22. (a) The ~~said~~ board of school commissioners ~~shall~~ **may** not ~~have power to~~ create any debt in excess of ~~the sum of~~ twenty-five thousand dollars ($25,000) in the aggregate, except as otherwise provided in this chapter, and except further ~~such~~ debts as are on or after March 9, 1931, authorized by the general school laws of ~~this state,~~ **Indiana,** including within ~~such~~ **the** latter exception, but not by way of limitation, ~~thereof,~~ IC 21-4-20 and IC 20-5-1 through IC 20-5-6.

(b) Notwithstanding the provisions of subsection (a), ~~said~~ **the** board ~~shall be~~ **is** liable upon its lawful contracts with persons rendering services and furnishing materials incident to the ordinary current operations of its schools ~~when such~~ **if the** contracts have been entered into as **provided** in this chapter ~~provided~~ and in accordance with law. ~~and~~ The obligations of ~~said~~ **the** board to ~~such~~ persons rendering services or furnishing materials ~~shall~~ **may** not be considered to be limited or prohibited by any of the provisions of this chapter.

(c) ~~In case~~ **If** the compensation to be paid for the purchase of any real estate or interest ~~therein~~ **in real estate** required by ~~said~~ **the** board for its purposes cannot be agreed upon or determined by the ~~said~~ board

C o p y

and the persons owning or having an interest in the land desired for its purposes or sites, ~~then~~ the board of school commissioners ~~shall have~~ **has** the power of eminent domain and ~~it~~ shall ~~be its duty to~~ proceed to have ~~such~~ **the** compensation determined and to acquire the title to ~~such~~ **the** real estate or interest ~~therein~~ **in the real estate** by action in court ~~in pursuance of IC 32-11.~~ **under IC 32-24.** The right and power of ~~said~~ **the** board to own and acquire real estate and interests ~~therein~~ **in real estate** in any of the manners and for any of the purposes specified in this chapter or by the general school laws of this state ~~shall~~ **may** not be limited to real estate situated within the corporate boundaries of the civil city in which any ~~such~~ school city is located. ~~but such~~ **However, the** right and power to acquire and own real estate ~~shall extend~~ **extends** to any parcel or trace of real estate the whole of which is situated:

(1) within one-half (1/2) mile of the nearest point on the corporate boundary of ~~such~~ **the** civil city; or

(2) within, or within one-half (1/2) mile of the nearest point on the boundary of, any platted territory lying outside ~~of,~~ but contiguous to, or contiguous to another platted territory ~~which~~ **that** is contiguous to, the corporate boundary of ~~such~~ **the** civil city.

(d) ~~The term~~ "Platted territory", as used in subsection (c), ~~is hereby defined to mean~~ **means** any territory or land area of which a plat has been recorded in the manner provided by the laws of ~~the state of~~ Indiana pertaining to the recording of plats of land.

(e) Before acquiring any real estate or interest ~~therein~~ **in real estate** outside the corporate limits of ~~such~~ **the** civil city, ~~said~~ **the** board ~~shall,~~ **must,** by resolution made a matter of record in its corporate minutes, find and determine that, in the judgment of ~~said~~ **the** board, the real estate or interest ~~therein so~~ **in real estate** to be acquired will be needed for the future purposes of ~~said~~ **the** board. ~~Nothing contained in~~ This chapter ~~shall be construed to~~ **does not** limit ~~in any way~~ the right of any ~~such~~ board to accept, own, and hold ~~any~~ real estate or interest ~~therein,~~ **in real estate,** wherever situated, ~~which may be~~ **that is** acquired by ~~such~~ **the** board by gift or devise.

SECTION 71. IC 21-1-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) This section applies only when a school corporation or school township sustains loss by fire, wind, cyclone, or other disaster of all or a major portion of its school building or school buildings.

(b) A school corporation or school township seeking to exercise its right of eminent domain under ~~IC 32-11~~ **IC 32-24** for the purpose of obtaining land for use in reconstructing or replacing the school building or school buildings ~~shall~~ **may** not ~~be authorized to~~ condemn

C o p y

more than twice the acreage established by the Indiana state board of education as the minimum acreage requirement for the type of school building damaged or destroyed and being reconstructed or replaced. In determining the acreage, land already owned by the school corporation or school township ~~which~~ **that** adjoins any part of the land out of which additional land is sought to be condemned shall be used in computing the total acreage for the reconstruction or replacement of the school building or school buildings under this section. The need for the additional land ~~shall be~~ **is** subject to judicial review in the court where the condemnation action is filed and may, at the request of either party, be tried either by the court or a jury before appraisers are appointed with full rights of appeal, by either party, from the interlocutory findings.

(c) This chapter ~~shall be~~ **is** supplemental to any other law and repeals by implication any law in conflict with this chapter.

SECTION 72. IC 22-12-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. (a) "Class 1 structure" means any part of the following:

(1) A building or structure that is intended to be or is occupied or otherwise used in any part by any of the following:

(A) The public.

(B) Three (3) or more tenants.

(C) One (1) or more persons who act as the employees of another.

(2) A site improvement affecting access by persons with physical disabilities to a building or structure described in subdivision (1).

(3) Any class of buildings or structures that the commission determines by rules to affect a building or structure described in subdivision (1), except buildings or structures described in subsections (c) through (e).

(b) Subsection (a)(1) includes a structure that contains three (3) or more condominium units (as defined in ~~IC 32-1-6-2)~~ **IC 32-25-2-9)** or other units that:

(1) are intended to be or are used or leased by the owner of the unit; and

(2) are not completely separated from each other by an unimproved space.

(c) Subsection (a)(1) does not include a building or structure that:

(1) is intended to be or is used only for an agricultural purpose on the land where it is located; and

(2) is not used for retail trade or is a stand used for retail sales of farm produce for eight (8) or less consecutive months in a

Copy

calendar year.

(d) Subsection (a)(1) does not include a Class 2 structure.

(e) Subsection (a)(1) does not include a vehicular bridge.

SECTION 73. IC 23-1-45-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) A corporation's board of directors may propose dissolution for submission to the shareholders.

(b) For a proposal to dissolve to be adopted:

(1) the board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(2) the shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (e).

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with IC 23-1-29-5. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider dissolving the corporation.

(e) Unless the articles of incorporation or the board of directors (acting under subsection (c)) require a greater vote or a vote by voting groups, the proposal to dissolve to be adopted must be approved by a majority of all the votes entitled to be cast on that proposal.

(f) After a proposal for dissolution is adopted, the corporation shall give the notices required by IC 6-8.1-10-9, IC 22-4-32-23, and ~~IC 32-9-1.5-25.~~ **IC 32-34-1-25.**

SECTION 74. IC 23-14-60-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. (a) If:

(1) any number of persons have:

(A) acted together as an association or corporation;

(B) acquired, as an association or corporation, land for cemetery purposes;

(C) sold and granted to persons the right to bury the dead in lots located on the land; and

(D) actually managed and controlled the land as a cemetery for at least thirty (30) years; but

(2) the organization that the persons attempted to establish as a corporation or cemetery association is defective and incomplete because of a failure to comply with the formalities required by

C o p y

law in force at some time since the original parties first assumed to act as an association or corporation;

the owners of the right to bury the dead on lots in the cemetery and those who may acquire the right become and continue to be a cemetery association or corporation from March 14, 1913.

(b) The owners of the right to bury the dead on lots in a cemetery referred to in subsection (a) have all the rights and powers of a cemetery association or corporation organized under this article, IC 23-1, or IC 23-17, including the power of eminent domain under ~~IC 32-11-1.~~ **IC 32-24-1.**

SECTION 75. IC 23-17-22-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) A corporation's board of directors may propose dissolution for submission to the members.

(b) For a proposal to dissolve to be adopted, the following conditions must be met:

(1) The board of directors must recommend dissolution to the members unless the board of directors determines that because of conflict of interest or other special circumstances the board should not make a recommendation and communicates the basis for the board's determination to the members.

(2) The members entitled to vote must approve the proposal to dissolve as provided under subsection (f).

(3) A person whose approval is required by articles of incorporation authorized under IC 23-17-17-1 for an amendment to the articles of incorporation or bylaws must approve the proposal to dissolve in writing.

(c) If a corporation does not have members, dissolution must be approved by a majority of the directors in office at the time dissolution is approved. The corporation shall provide notice to directors of a director's meeting where an approval for dissolution will be sought under IC 23-17-15-3. The notice must state that the purpose of the meeting is to consider the proposed dissolution.

(d) The board of directors may condition the board's submission of the proposal for dissolution on any basis.

(e) The corporation must notify each member, whether or not entitled to vote, of the proposed members' meeting under IC 23-17-10-5. The notice must state that the purpose of the meeting is to consider dissolving the corporation.

(f) Unless articles of incorporation or a board of directors acting under subsection (d) require a greater vote or a vote by voting groups, the proposal to dissolve to be adopted must be approved by the

C o p y

members by a majority of the votes cast on the proposal.

(g) After a proposal for dissolution is adopted, the corporation must give the notices required under the following:

(1) IC 6-8.1-10-9.

(2) IC 22-4-32-23.

(3) ~~IC 32-9-1.5-25.~~ **IC 32-34-1-25.**

SECTION 76. IC 24-4-7-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 7. (a) If a principal makes a revocable offer of a commission to a sales representative who is not an employee of the principal, the sales representative is entitled to the commission agreed upon if:

(1) the principal revokes the offer of commission and the sales representative establishes that the revocation was for a purpose of avoiding payment of the commission;

(2) the revocation occurs after the sales representative has obtained a written order for the principal's product because of the efforts of the sales representative; and

(3) the principal's product that is the subject of the order is shipped to and paid for by a customer.

(b) This section may not be construed:

(1) to impair the application of ~~IC 32-2-1~~ **IC 32-21-1** (statute of frauds);

(2) to abrogate any rule of agency law; or

(3) to unconstitutionally impair the obligations of contracts.

SECTION 77. IC 24-5-12-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 8. As used in this chapter, "seller" means a person who, personally, through salespersons, or through the use of an automated dialing and answering device, makes a solicitation if in the solicitation any one (1) of the following occurs:

(1) There is a false representation or implication that a prospect will receive a gift, prize, or the value of a gift or prize.

(2) There is an offer of a vacation at a reduced price if the vacation involves the prospect attending a presentation in which the prospect is solicited to purchase a time share or camping club membership and if the seller does not own the time share or camping club, does not represent the owner of the time share or camping club, or misrepresents the value of the vacation. Terms in this subdivision have the meaning set forth in ~~IC 24-5-9.~~ **IC 32-32.**

(3) There is a representation or implication that a prospect who buys office equipment or supplies will, because of some unusual

C o p y

event or imminent price increase, be able to buy these items at prices that are below those that are usually charged or will be charged for the items if the price advantage for the prospect does not exist.

(4) There is a false representation or implication as to the identity of the person making the solicitation.

(5) There is a representation or implication that the items for sale are manufactured or supplied by a person other than the actual manufacturer or supplier.

(6) There is an offer to sell the prospect precious metals, precious stones, coal, or other minerals, or any interest in oil, gas, or mineral fields, wells, or exploration sites, if the seller does not own the items, does not represent the owner, or misrepresents the value of the items.

SECTION 78. IC 26-1-10-102 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 102. (1) To the extent that the following statutes are inconsistent with IC 26-1-7, ~~such~~ **the** statutes are repealed:

~~IC 32-8-35,~~ **IC 32-33-14,** dealing with liens for warehousing and forwarding.

IC 26-3-4, prescribing requirements of warehouse receipts for goods stored in another state.

(2) To the extent that the following statutes are inconsistent with IC 26-1, ~~such~~ **the** statutes are repealed:

IC 26-2-3, governing the rights of parties on certain negotiable and non-negotiable instruments.

IC 30-2-4-3, concerning fiduciaries.

(3) To the extent that IC 34-1-2-1 (before its repeal), IC 34-1-2-2 (before its repeal), and IC 34-11-2 prescribe statutes of limitations inconsistent with IC 26-1-2-725, IC 26-1-2-725 prevails.

SECTION 79. IC 26-2-9 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

Chapter 9. Credit Agreements

Sec. 1. As used in this chapter, "credit agreement" means an agreement to:

(1) lend or forbear repayment of money, goods, or things in action;

(2) otherwise extend credit; or

(3) make any other financial accommodation.

Sec. 2. As used in this chapter, "creditor" means:

(1) a bank, a savings bank, a trust company, a savings

Copy

association, a credit union, an industrial loan and investment company, or any other financial institution regulated by any agency of the United States or any state, including a consumer finance institution licensed to make supervised or regulated loans under IC 24-4.5;

(2) a person authorized to sell and service loans for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, issue securities backed by the Government National Mortgage Association, make loans insured by the United States Department of Housing and Urban Development, make loans guaranteed by the United States Department of Veterans Affairs, or act as a correspondent of loans insured by the United States Department of Housing and Urban Development or guaranteed by the United States Department of Veterans Affairs; or

(3) an insurance company or its affiliates that extend credit under a credit agreement with a debtor.

Sec. 3. As used in this chapter, "debtor" means a person who:

(1) obtains credit under a credit agreement with a creditor;

(2) seeks a credit agreement with a creditor; or

(3) owes money to a creditor.

Sec. 4. A debtor may bring an action upon a credit agreement only if the agreement:

(1) is in writing;

(2) sets forth all material terms and conditions of the credit agreement, including the loan amount, rate of interest, duration, and security; and

(3) is signed by the creditor and the debtor.

Sec. 5. A debtor may bring an action upon an agreement with a creditor to enter into a new credit agreement, amend or modify a prior credit agreement, forbear from exercising rights under a prior credit agreement, or grant an extension under a prior credit agreement only if the agreement:

(1) is in writing;

(2) sets forth all the material terms and conditions of the agreement; and

(3) is signed by the creditor and the debtor.

SECTION 80. IC 26-3-7-31, AS AMENDED BY P.L.173-1999, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 31. (a) Whenever it appears to the satisfaction of the director that a licensee cannot meet the licensee's outstanding grain

C o p y

obligations owed to depositors, or when a licensee refuses to submit the licensee's records or property to lawful inspection, the director may give notice to the licensee to do any of the following:

(1) Cover the shortage with grain that is fully paid for.

(2) Give additional bond, letter of credit, or cash deposit as required by the director.

(3) Submit to inspection as the director may deem necessary.

(b) If the licensee fails to comply with the terms of the notice within five (5) business days from the date of its issuance, or within an extension of time that the director may allow, the director may petition the circuit court of the Indiana county where the licensee's principal place of business is located seeking the appointment of a receiver. If the court determines in accordance with ~~IC 34-48-1~~ **IC 32-30-5** that a receiver should be appointed, upon the request of the licensee the court may appoint the agency or its representative to act as receiver. The agency or its representative shall not be appointed as receiver except upon the request of the licensee. If the agency or its representative is appointed, any person interested in an action as described in ~~IC 34-48-1-2~~ **IC 32-30-5-2** may after twenty (20) days request that the agency or its representative be removed as receiver. If the agency or its representative is not serving as receiver, the receiver appointed shall meet and confer with representatives of the agency regarding the licensee's grain related obligations and, before taking any actions regarding those obligations, the receiver and the court shall consider the agency's views and comments.

SECTION 81. IC 26-3-8-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 15. (a) Any sale of the personal property under this chapter shall be held at the self-service storage facility or, if that facility is not a suitable place for a sale, at the suitable place nearest to where the property is held or stored.

(b) The owner may buy the personal property at any sale under this chapter.

(c) An owner may satisfy the owner's lien from the proceeds of a sale under this chapter. If the proceeds of a sale under this chapter exceed the amount of the owner's lien, the owner shall hold the balance for delivery, upon demand, to the renter. If the renter does not claim the balance of the proceeds within one (1) year after the sale, the balance shall be treated as unclaimed property under ~~IC 32-9-1.5.~~ **IC 32-34-1.**

SECTION 82. IC 27-3-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) Subject to section 2 of this chapter, any domestic company may adopt a plan of exchange with any acquiring corporation providing for the exchange of the

C o p y

outstanding stock of the domestic company for shares of stock or other securities issued by the acquiring corporation or cash or other consideration, or any combination, ~~thereof~~ in the following manner. The boards of directors of the domestic company and of the acquiring corporation by resolutions approved by a majority of the whole of each ~~such~~ board shall adopt a plan of exchange ~~which shall set~~ **that sets** forth the terms and conditions of the exchange and the mode of carrying the ~~same~~ **terms and conditions** into effect and ~~such~~ other provisions with respect to the exchange as may be deemed necessary or desirable.

(b) The domestic company and the acquiring corporation shall submit to the insurance commissioner three (3) copies of the plan of exchange certified by an officer of each as having been adopted in accordance with subsection (a). ~~Such~~ **The** copies of the plan of exchange shall be accompanied by financial statements of the domestic company for its last preceding fiscal year prepared pursuant to IC 27-1-20-21, pro forma financial statements of each corporation based on the assumption that the plan of exchange was effective as proposed at the end of the last preceding fiscal year of the domestic company, an estimate of expenses already incurred and of expenses expected to be incurred in connection with the proposed plan of exchange, and a written statement ~~which~~ **that** sets forth for each corporation the proposed changes, if any, in management policies and in the identity of officers and directors of the domestic company and of the acquiring corporation ~~which~~ **that** are initially contemplated ~~should~~ **if** the plan of exchange ~~be~~ **is** effected as proposed. The insurance commissioner shall hold a hearing upon the fairness of ~~(i)~~ the terms, conditions, and provisions of the plan of exchange and ~~(ii)~~ the proposed exchange of stock or other securities of the acquiring corporation or cash or other consideration or any combination thereof for the stock of the domestic company at which ~~hearing~~ the policyholders and the shareholders of both the domestic company and the acquiring corporation and any other interested party ~~shall have the right to~~ **may** appear and to become party to the proceeding. The commissioner shall require the domestic company and the acquiring corporation to produce ~~such~~ evidence as ~~he shall deem~~ **the commissioner considers** necessary to establish the foregoing, including ~~in any event~~ evidence concerning the valuation of the respective companies and the method utilized by the management of each corporation to accomplish ~~such~~ **the** valuation, inclusive of the value established with respect to the stock of the domestic company ~~which~~ **that** is proposed to be exchanged as well as the value of the stock, securities, and consideration other than cash to

C o p y

be offered by the acquiring corporation in ~~such~~ **the** exchange. ~~Such~~ **The** hearing shall be commenced not less than twenty (20) days after the date on which the plan of exchange is presented to the commissioner. The hearing shall be held in ~~the city of~~ Indianapolis, Indiana, at ~~such~~ **a** place, date, and time ~~as~~ **specified by** the insurance commissioner. ~~shall specify.~~ Notice of the hearing shall be published in a newspaper of general circulation in the city ~~or cities wherein are located~~ **where** the principal office of the domestic company and of the acquiring corporation **are located** and ~~in the city of~~ Indianapolis once a week for two (2) successive weeks. Written notice of the hearing shall be mailed at least ten (10) days ~~prior to~~ **before** the hearing by the domestic company and by the acquiring corporation to all of their respective shareholders. All expenses of publication shall be borne by the domestic company or the acquiring corporation, or both, as ~~shall be~~ specified in the plan of exchange. Except as otherwise provided in this section, the hearing and the determination ~~made therein shall be~~ **are** subject to IC 4-21.5-3. The commissioner shall issue an order approving the plan of exchange as delivered to ~~him~~ **the commissioner** by the domestic company and the acquiring corporation and ~~such~~ **the** modifications ~~therein as~~ **approved by** a majority of the whole board of directors of each ~~such~~ corporation ~~shall approve~~ if ~~he~~ **the commissioner** finds:

~~(i)~~ **(1)** that the plan, including all ~~such~~ modifications, if effected, will not tend adversely to affect the financial stability or management of the domestic company or the general capacity or intention to continue the safe and prudent transaction of the insurance business of the domestic company, or of the acquiring corporation, if it is a domestic insurance company;

~~(ii)~~ **(2)** that the interests of the policyholders and shareholders of the domestic company, and, if the acquiring corporation is a domestic insurance company, the policyholders of the acquiring corporation are protected;

~~(iii)~~ **(3)** that the fulfillment of the plan will not affect either the contractual obligations of the domestic company and of the acquiring corporation, if it is a domestic insurance company, to its policyholders or the ability and tendency of either to render service to its policyholders in the future; and

~~(iv)~~ **(4)** that the terms and conditions of the plan of exchange and the proposed issuance and exchange are fair and reasonable.

The order of the commissioner approving or disapproving the plan of exchange shall be filed in the department within sixty (60) days after the date the plan of exchange is presented to ~~him.~~ **the commissioner.**

C o p y

The department shall give notice of ~~such~~ **the** order in the manner prescribed in IC 4-21.5-3 to all parties to the proceeding, and the department shall endorse the commissioner's approval or disapproval on the plan of exchange in the manner provided in IC 27-1-6-8 and shall deliver copies ~~thereof~~ to the domestic company and to the acquiring corporation. Any party to ~~such~~ **the** proceeding aggrieved by ~~such~~ **the** order ~~shall be~~ **are** entitled to a judicial review ~~thereof~~ **of the order** in accordance with IC 4-21.5-5.

(c) The plan of exchange as approved by the insurance commissioner shall then be submitted to a vote of the shareholders of the domestic company at an annual or special meeting of the shareholders. Notice of the submission of the plan to the shareholders shall be included in the notice of ~~such~~ **the** annual or special meeting. The shareholders entitled to vote in respect of the plan may vote in person or by proxy, and each ~~such~~ shareholder ~~shall have~~ **has** one (1) vote for each share of voting stock held by ~~him.~~ **the shareholder.** Jointly owned shares ~~shall~~ **may** only be voted jointly. The plan shall be approved by the shareholders of the domestic company upon receiving the affirmative votes representing two thirds (2/3) of the outstanding capital stock of the domestic company or ~~such~~ **a** larger proportion as may be specified in the plan of exchange. Notwithstanding shareholder adoption of the plan of exchange and at any time ~~prior to~~ **before** the filing of the certificate setting forth the plan of exchange by the department, pursuant to section 4 of this chapter, the plan of exchange may be abandoned pursuant to a provision for ~~such~~ abandonment, if any, contained in the plan of exchange.

(d) Within ten (10) days after the plan of exchange ~~shall be~~ **is** adopted by the shareholders of the domestic company, a written notice of the adoption of the plan of exchange shall be mailed or delivered personally to each shareholder of record of ~~such~~ **the** company who was entitled to vote ~~thereon.~~ **on the plan.** The domestic company shall ~~thereafter~~ file with the department an affidavit of the secretary or an assistant secretary of ~~such~~ **the** company or of an officer of the transfer agent of ~~such~~ **the** company that ~~such~~ **the** notice was given.

(e) Any shareholder of the domestic company owning shares not voted in favor of ~~such~~ **the** plan at the meeting at which the plan was approved by the shareholders of the domestic company may object in writing to the plan and demand payment, should the plan become effective, of the fair value of any ~~of such~~ shares as of the day on which the plan of exchange was approved by the shareholders of the domestic company pursuant to subsection (c). ~~Such~~ **The** objection and demand must be received, together with the certificate or certificates

C o p y

representing the shares with respect to which objection and demand have been made for notation ~~thereon~~ that ~~such~~ **the** objection and demand have been made, by the domestic company or its transfer agent within thirty (30) days after the date of ~~said~~ **the** meeting of shareholders. ~~No such~~ **The** objection and demand ~~shall~~ **may not** pertain to any shares ~~which~~ **that** were voted in favor of the plan. Objection and demand can only be made jointly by the holders of any share jointly held. ~~No such~~ **The** objection and demand may **not** be withdrawn unless the domestic company, by ~~a duly~~ **an** authorized officer, consents ~~thereto~~ in writing. Upon the plan of exchange becoming effective, the holder of any shares, with respect to which ~~such~~ **the** objection and demand have been made and certificates for which have been delivered to the domestic company or its transfer agent for notation, or any transferee, ~~thereof, shall cease~~ **ceases** to be a shareholder of the domestic company with respect to ~~such~~ **the** shares and ~~shall have no~~ **does not have** rights with respect to ~~such~~ **the** shares except the right to receive payment ~~therefor in accordance with the provisions of~~ **for the shares under** this subsection. Every shareholder failing to make objection and demand accompanied by certificates representing the shares with respect to which ~~such~~ **the** objection and demand have been made or withdrawing ~~such~~ **the** objection and demand as provided in this subsection ~~shall be~~ **are** conclusively presumed to have assented to, and to have agreed to be bound by, the plan of exchange in accordance with its terms. Within forty-five (45) days after the date of the meeting of shareholders of the domestic company at which the plan of exchange was approved by ~~such~~ **the** shareholders, the domestic company, or, if the plan of exchange ~~so~~ specifies, the acquiring corporation, shall mail a written offer to each holder of record of shares with respect to which an objection and demand have been made, as provided in this subsection, to pay for ~~such~~ **the** shares a price per share ~~deemed~~ **considered** by ~~such~~ **the** corporation to be the fair value ~~thereof~~ **of the shares** as of the date of ~~such~~ **the** meeting. The form of written offer to be used, including the price per share, shall first be submitted to and approved by the insurance commissioner. If ~~such~~ **the** offer is accepted in writing by ~~such~~ **the** holder, ~~such~~ **the** corporation shall pay ~~such~~ **the** holder, within forty-five (45) days after the date of the plan of exchange becoming effective, ~~such~~ **the** price upon the surrender of the certificate or certificates representing ~~such~~ **the** shares. If, within thirty (30) days after the date of the mailing of ~~such~~ **the** written offer, the domestic company or the acquiring corporation, as the case may be, and a shareholder do not ~~so~~ agree, ~~such~~ **the** corporation or the shareholder may, within

C o p y

ninety (90) days after the date of the mailing of ~~such~~ **the** written offer, petition the circuit or the superior court of the county in which the principal office of the domestic company is located to appraise the fair value of ~~such~~ **the** shares as of the date of the meeting of shareholders of the domestic company at which the plan of exchange was approved by ~~such~~ **the** shareholders and payment of the appraised value ~~thereof~~ **of the shares** shall be made by the domestic company or, if the plan of exchange so specifies, the acquiring corporation within sixty (60) days after the entry of the judgment or order finding ~~such~~ **the** appraised value upon the surrender of the certificate or certificates representing ~~such~~ **the** shares. The practice, procedure, and judgment in the circuit or superior court upon ~~such~~ **the** petition ~~shall be~~ **is** the same, so far as practical, as that under ~~IC 32-11. Such~~ **IC 32-24. The** judgment of ~~such~~ **the** circuit or superior court ~~shall be~~ **is** final. All shares acquired by the domestic company upon payment of the value ~~therefor~~ **of the shares** shall be canceled by the board of directors of the domestic company upon the plan of exchange becoming effective or at any time ~~thereafter,~~ **after the plan becomes effective** and the capital stock of the domestic company shall be decreased in accordance with IC 27-1-8-12. If the plan of exchange does not become effective, the right of shareholders or transferees to be paid the fair value of their shares under this subsection shall cease, and their status shall be the same as that of shareholders who voted in favor of the plan. If a shareholder or ~~his~~ **the shareholder's** transferee with respect to any share or shares for which objection and demand has been made:

~~(i)~~ **(1)** withdraws ~~such~~ **the** objection and demand in the manner provided by this subsection;

~~(ii)~~ **(2)** fails to submit a certificate or certificates at the time and in the manner required by this subsection;

~~(iii)~~ **(3)** does not file a petition for the determination of fair value within the time and in the manner provided in this subsection and neither the domestic company nor the acquiring corporation files a petition for such determination; or

~~(iv)~~ **(4)** is adjudged by a court of competent jurisdiction not to be entitled to the relief provided by this subsection;

~~then in any such event~~ the right of the shareholder or ~~his~~ **the shareholder's** transferee to be paid the fair value of ~~such~~ **the** share or shares under this subsection shall cease, and ~~his~~ **the shareholder's** status with respect to ~~such~~ **the** share or shares ~~shall be~~ **is** the same as that of a shareholder who voted in favor of the plan.

SECTION 83. IC 27-5-9-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 21. **(a)** A receiver may

C o p y

be appointed for any ~~such~~ corporation under ~~IC 34-48-1. In the event of the appointment of~~ **IC 32-30-5.**

(b) If a receiver **is appointed** for any ~~such~~ corporation, ~~such~~ **the** receiver ~~shall be~~ **is** entitled to receive all securities of ~~such~~ **the** company deposited with the insurance commissioner. ~~And~~

(c) Receivers may be appointed by ~~the~~ courts ~~of this state~~ for foreign corporations doing business in ~~this state~~ **Indiana** under this chapter. ~~and such~~ **The** receivers ~~shall~~ have the right to the possession of any securities of ~~such~~ **the** corporation in the hands of the commissioner. ~~And~~

(d) Receivers appointed under ~~the provisions of~~ this chapter shall collect or dispose of securities and pay out the funds realized ~~therefrom~~ **from the securities** as the courts appointing ~~them~~ **the receivers** may direct.

SECTION 84. IC 33-4-3-7, AS AMENDED BY P.L.180-1999, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 7. The small claims docket has jurisdiction over the following:

(1) Civil actions in which the amount sought or value of the property sought to be recovered is not more than three thousand dollars ($3,000). The plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of any claim that exceeds three thousand dollars ($3,000) in order to bring it within the jurisdiction of the small claims docket.

(2) Possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed three thousand dollars ($3,000).

(3) Emergency possessory actions between a landlord and tenant under ~~IC 32-7-9.~~ **IC 32-31-6.**

SECTION 85. IC 33-5-2-4, AS AMENDED BY P.L.180-1999, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. (a) Except as provided in subsection (b), the small claims docket has jurisdiction over the following:

(1) Civil actions in which the amount sought or value of the property sought to be recovered is not more than three thousand dollars ($3,000). The plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of any claim that exceeds three thousand dollars ($3,000) in order to bring it within the jurisdiction of the small claims docket.

(2) Possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed three thousand dollars ($3,000).

C o p y

(3) Emergency possessory actions between a landlord and tenant under ~~IC 32-7-9.~~ **IC 32-31-6.**

(b) This subsection applies to a county having a population of more than three hundred thousand (300,000) but less than four hundred thousand (400,000). The small claims docket has jurisdiction over the following:

(1) Civil actions in which the amount sought or value of the property sought to be recovered is not more than six thousand dollars ($6,000). The plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of any claim that exceeds six thousand dollars ($6,000) in order to bring it within the jurisdiction of the small claims docket.

(2) Possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed six thousand dollars ($6,000).

(3) Emergency possessory actions between a landlord and tenant under ~~IC 32-7-9.~~ **IC 32-31-6.**

SECTION 86. IC 33-5-19.3-11, AS AMENDED BY P.L.180-1999, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 11. (a) The court has a standard small claims and misdemeanor division.

(b) Notwithstanding IC 33-5-2-4, the small claims docket has jurisdiction over the following:

(1) Civil actions in which the amount sought or value of the property sought to be recovered is not more than six thousand dollars ($6,000). The plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of any claim that exceeds six thousand dollars ($6,000) in order to bring the claim within the jurisdiction of the small claims docket.

(2) Possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed six thousand dollars ($6,000).

(3) Emergency possessory actions between a landlord and tenant under ~~IC 32-7-9.~~ **IC 32-31-6.**

SECTION 87. IC 33-10.5-7-1, AS AMENDED BY P.L.180-1999, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. Each judge of the county court shall maintain the following dockets:

(1) An offenses and violations docket.

(2) A small claims docket for the following:

(A) All cases where the amount sought or value of the property sought to be recovered is three thousand dollars ($3,000) or

C o p y

less; the plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of his claim over three thousand dollars ($3,000) to bring it within the jurisdiction of the small claims docket.

(B) All possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed three thousand dollars ($3,000).

(C) Emergency possessory actions between a landlord and tenant under ~~IC 32-7-9.~~ **IC 32-31-4.**

(3) A plenary docket for all other civil cases.

SECTION 88. IC 33-11.6-4-3.5, AS ADDED BY P.L.180-1999, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3.5. The court has original and concurrent jurisdiction with the circuit and superior court in emergency possessory actions between a landlord and tenant under ~~IC 32-7-9.~~ **IC 32-31-6.**

SECTION 89. IC 34-6-2-103, AS AMENDED BY P.L.95-2001, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 103. (a) "Person", for purposes of IC 34-14, has the meaning set forth in IC 34-14-1-13.

~~(b) "Person", for purposes of IC 34-19-2, has the meaning set forth in IC 35-41-1.~~

~~(c)~~ **(b)** "Person", for purposes of IC 34-24-4, means:

(1) an individual;

(2) a governmental entity;

(3) a corporation;

(4) a firm;

(5) a trust;

(6) a partnership; or

(7) an incorporated or unincorporated association that exists under or is authorized by the laws of this state, another state, or a foreign country.

~~(d)~~ **(c)** "Person", for purposes of IC 34-26-2, includes individuals at least eighteen (18) years of age and emancipated minors.

~~(e)~~ **(d)** "Person", for purposes of IC 34-26-4, has the meaning set forth in IC 35-41-1-22.

~~(f)~~ **(e)** "Person", for purposes of IC 34-30-5, means any of the following:

(1) An individual.

(2) A corporation.

(3) A partnership.

(4) An unincorporated association.

(5) The state (as defined in IC 34-6-2-140).

C o p y

(6) A political subdivision (as defined in IC 34-6-2-110).
(7) Any other entity recognized by law.

~~(g)~~ **(f)** "Person", for purposes of IC 34-30-6, means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity that:

(1) has qualifications or experience in:
(A) storing, transporting, or handling a hazardous substance or compressed gas;
(B) fighting fires;
(C) emergency rescue; or
(D) first aid care; or
(2) is otherwise qualified to provide assistance appropriate to remedy or contribute to the remedy of the emergency.

~~(h)~~ **(g)** "Person", for purposes of IC 34-30-18, includes:

(1) an individual;
(2) an incorporated or unincorporated organization or association;
(3) the state of Indiana;
(4) a political subdivision (as defined in IC 36-1-2-13);
(5) an agency of the state or a political subdivision; or
(6) a group of such persons acting in concert.

~~(i)~~ **(h)** "Person", for purposes of sections 42, 43, 69, and 95 of this chapter, means an individual, an incorporated or unincorporated organization or association, or a group of such persons acting in concert.

~~(j)~~ **(i)** "Person" for purposes of IC 34-30-10.5, means the following:

(1) A political subdivision (as defined in IC 36-1-2-13).
(2) A volunteer fire department (as defined in IC 36-8-12-2).
(3) An employee of an entity described in subdivision (1) or (2) who acts within the scope of the employee's responsibilities.
(4) A volunteer firefighter (as defined in IC 36-8-12-2) who is acting for a volunteer fire department.

SECTION 90. IC 34-7-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. Statutes outside IC 34 providing causes of action or procedures include the following:

(1) IC 4-21.5-5 (Judicial review of administrative agency actions).
(2) IC 22-3-4 (Worker's compensation administration and procedures).
(3) IC 22-4-17 (Unemployment compensation system, employee's claims for benefits).
(4) IC 22-4-32 (Unemployment compensation system, employer's appeal process).
(5) IC 22-9 (Civil rights actions).

C o p y

(6) IC 31-14 (Paternity).
(7) IC 31-15 (Dissolution of marriage and legal separation).
(8) IC 31-16 (Support of children and other dependants).
(9) IC 31-17 (Custody and visitation).
(10) IC 31-19 (Adoption).
(11) ~~IC 32-15~~ **IC 32-27-2, IC 32-30-1, IC 32-30-2, IC 32-30-2.1, IC 32-30-2, IC 32-30-4, IC 32-30-9, IC 32-30-10, IC 32-30-12, IC 32-30-13, and IC 32-30-14** (Real Property).
(12) IC 33-1-3 (Attorney Liens).

SECTION 91. IC 34-19-3-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 12. (a) The court, after a hearing, may grant a judgment of restitution or the possession of the property to the owner if:

(1) the owner and tenant are parties to the action; and
(2) the tenant has failed to obey an order issued under section 10 or 11 of this chapter.

(b) If the court orders the owner to have possession of the property, the court shall require the sheriff to execute the order of possession not later than five (5) days after the order is issued.

(c) If the owner is awarded possession of the property, the owner may seek an order from the court allowing removal of a tenant's personal property under ~~IC 32-7-6.~~ **IC 32-31-4.**

SECTION 92. IC 34-26-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. In addition to the injunctions and restraining orders discussed in this article, the following statutes also contain provisions concerning injunctions or restraining orders:

(1) ~~IC 34-19-1~~ **IC 32-30-6** (governing nuisance actions).
(2) ~~IC 34-19-2~~ **IC 32-30-7** (governing actions for indecent nuisance).
(3) IC 34-24-2 (governing civil remedies for racketeering activities).

SECTION 93. IC 34-30-2-135 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 135. ~~IC 32-2-1-1~~ **IC 32-21-1-1** (Concerning persons for breach of certain unwritten contracts).

SECTION 94. IC 34-30-2-136 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 136. ~~IC 32-2-1-6~~ **IC 32-21-1-6** (Concerning persons making unwritten representations about another person).

SECTION 95. IC 34-30-2-137 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 137. ~~IC 32-8-11-6~~

C o p y

IC 32-29-1-7 (Concerning mortgagors for actions on mortgages for which a certificate of satisfaction has been acknowledged by the mortgagee).

SECTION 96. IC 34-30-2-138 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 138. ~~IC 32-8-28-1~~ **IC 32-33-7-2** (Concerning proprietor or manager of a hotel, apartment hotel, or inn in certain circumstances involving the safekeeping of personal property of guests).

SECTION 97. IC 34-30-2-139 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 139. ~~IC 32-9-1.5-29~~ **IC 32-34-1-29** (Concerning holders of abandoned property who deliver the property to the attorney general).

SECTION 98. IC 34-30-2-140 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 140. ~~IC 32-10-9-5~~ **IC 32-26-9-5** (Concerning township trustee for contracts to repair fences).

SECTION 99. IC 34-31-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 9. ~~IC 32-8-28-1~~ **IC 32-33-7-2** (Concerning proprietor or manager of a hotel, apartment hotel, or inn for guest's valuables kept in a safe).

SECTION 100. IC 34-36-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. In actions for the recovery of property, the jury must make the assessments required under ~~IC 34-21-10.~~ **IC 32-35-2-35.**

SECTION 101. IC 34-41-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. The circumstances under which seals are required on deeds and other instruments conveying land are governed by ~~IC 32-2-5-1~~ **IC 32-21-1-12** and IC 34-37-1.

SECTION 102. IC 34-49-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. ~~When~~ **If** a suit is brought:

(1) in replevin; **and**

(2) against an officer who issued a writ of attachment or execution under **IC 32-35-2-26 (or** IC 34-21-6-1 or IC 34-2-4-1 before ~~its~~ **their** repeal);

the officer may demand a bond from the attachment or execution plaintiff to indemnify the officer in the replevin suit.

SECTION 103. IC 34-54-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. Judgments in actions concerning the recovery of the possession of personal property are governed by ~~IC 34-21-9.~~ **IC 32-35-2-33 and IC 32-35-2-34.**

C o p y

SECTION 104. IC 34-54-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. Judgments in mortgage actions are governed under ~~IC 32-15-8.~~ **IC 32-30-12.**

SECTION 105. IC 34-54-10-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. The purchase of property subject to judgment is governed by ~~IC 32-15-9.~~ **IC 32-30-13.**

SECTION 106. IC 35-50-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) Except as provided in subsection (i), in addition to any sentence imposed under this article for a felony or misdemeanor, the court may, as a condition of probation or without placing the person on probation, order the person to make restitution to the victim of the crime, the victim's estate, or the family of a victim who is deceased. The court shall base its restitution order upon a consideration of:

(1) property damages of the victim incurred as a result of the crime, based on the actual cost of repair (or replacement if repair is inappropriate);

(2) medical and hospital costs incurred by the victim (before the date of sentencing) as a result of the crime;

(3) earnings lost by the victim (before the date of sentencing) as a result of the crime including earnings lost while the victim was hospitalized or participating in the investigation or trial of the crime; and

(4) funeral, burial, or cremation costs incurred by the family or estate of a homicide victim as a result of the crime.

(b) A restitution order under subsection (a) or (i) is a judgment lien that:

(1) attaches to the property of the person subject to the order;

(2) may be perfected;

(3) may be enforced to satisfy any payment that is delinquent under the restitution order by the person in whose favor the order is issued or the person's assignee; and

(4) expires;

in the same manner as a judgment lien created in a civil proceeding.

(c) When a restitution order is issued under subsection (a), the issuing court may order the person to pay the restitution, or part of the restitution, directly to the victim services division of the Indiana criminal justice institute in an amount not exceeding:

(1) the amount of the award, if any, paid to the victim under IC 5-2-6.1; and

(2) the cost of the reimbursements, if any, for emergency services provided to the victim under IC 16-10-1.5 (before its repeal) or

Copy

IC 16-21-8.

The victim services division of the Indiana criminal justice institute shall deposit the restitution received under this subsection in the violent crime victims compensation fund established by IC 5-2-6.1-40.

(d) When a restitution order is issued under subsection (a) or (i), the issuing court shall send a certified copy of the order to the clerk of the circuit court in the county where the felony or misdemeanor charge was filed. The restitution order must include the following information:

(1) The name and address of the person that is to receive the restitution.

(2) The amount of restitution the person is to receive.

Upon receiving the order, the clerk shall enter and index the order in the circuit court judgment docket in the manner prescribed by IC 33-17-2-3. The clerk shall also notify the department of insurance of an order of restitution under subsection (i).

(e) An order of restitution under subsection (a) or (i) does not bar a civil action for:

(1) damages that the court did not require the person to pay to the victim under the restitution order but arise from an injury or property damage that is the basis of restitution ordered by the court; and

(2) other damages suffered by the victim.

(f) Regardless of whether restitution is required under subsection (a) as a condition of probation or other sentence, the restitution order is not discharged by the completion of any probationary period or other sentence imposed for a felony or misdemeanor.

(g) A restitution order under subsection (a) or (i) is not discharged by the liquidation of a person's estate by a receiver under **IC 32-30-5 (or** IC 34-48-1, IC 34-48-4, IC 34-48-5, ~~and~~ IC 34-48-6, ~~or~~ IC 34-1-12, ~~and~~ **or** IC 34-2-7 before their repeal).

(h) The attorney general may pursue restitution ordered by the court under subsections (a) and (c) on behalf of the victim services division of the Indiana criminal justice institute established under IC 5-2-6-8.

(i) The court may order the person convicted of an offense under IC 35-43-9 to make restitution to the victim of the crime. The court shall base its restitution order upon a consideration of the amount of money that the convicted person converted, misappropriated, or received, or for which the convicted person conspired. The restitution order issued for a violation of IC 35-43-9 must comply with subsections (b), (d), (e), and (g), and is not discharged by the completion of any probationary period or other sentence imposed for a violation of IC 35-43-9.

C o p y

SECTION 107. IC 35-50-5-4, AS AMENDED BY P.L.1-1999, SECTION 79, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. (a) This section applies only:

(1) if the county in which a criminal proceeding was filed adopts an ordinance under IC 36-2-13-15; and

(2) to a person who is sentenced under this article for a felony or a misdemeanor.

(b) At the time the court imposes a sentence, the court may order the person to execute a reimbursement plan as directed by the court and make repayments under the plan to the county for the costs described in IC 36-2-13-15.

(c) The court shall fix an amount under this section that:

(1) may not exceed an amount the person can or will be able to pay;

(2) does not harm the person's ability to reasonably be self-supporting or to reasonably support any dependent of the person; and

(3) takes into consideration and gives priority to any other restitution, reparation, repayment, costs, fine, or child support obligations the person is required to pay.

(d) When an order is issued under this section, the issuing court shall send a certified copy of the order to the clerk of the circuit court in the county where the felony or misdemeanor charge was filed. Upon receiving the order, the clerk shall enter and index the order in the circuit court judgment docket in the manner prescribed by IC 33-17-2-3.

(e) An order under this section is not discharged:

(1) by the completion of a sentence imposed for a felony or misdemeanor; or

(2) by the liquidation of a person's estate by a receiver under **IC 32-30-5 (or** IC 34-48-1, IC 34-48-4, IC 34-48-5, and IC 34-48-6 **before their repeal).**

SECTION 108. IC 36-2-7-10, AS AMENDED BY P.L.241-1999, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10. (a) The county recorder shall tax and collect the fees prescribed by this section for recording, filing, copying, and other services the recorder renders, and shall pay them into the county treasury at the end of each calendar month. The fees prescribed and collected under this section supersede all other recording fees required by law to be charged for services rendered by the county recorder.

(b) The county recorder shall charge the following:

(1) Six dollars ($6) for the first page and two dollars ($2) for each

C o p y

additional page of any document the recorder records if the pages are not larger than eight and one-half (8 1/2) inches by fourteen (14) inches.

(2) Fifteen dollars ($15) for the first page and five dollars ($5) for each additional page of any document the recorder records, if the pages are larger than eight and one-half (8 1/2) inches by fourteen (14) inches.

(3) For attesting to the release, partial release, or assignment of any mortgage, judgment, lien, or oil and gas lease contained on a multiple transaction document, the fee for each transaction after the first is the amount provided in subdivision (1) plus the amount provided in subdivision (4) and one dollar ($1) for marginal mortgage assignments or marginal mortgage releases.

(4) One dollar ($1) for each cross-reference of a recorded document.

(5) One dollar ($1) per page not larger than eight and one-half (8 1/2) inches by fourteen (14) inches for furnishing copies of records produced by a photographic process, and two dollars ($2) per page that is larger than eight and one-half (8 1/2) inches by fourteen (14) inches.

(6) Five dollars ($5) for acknowledging or certifying to a document.

(7) Five dollars ($5) for each deed the recorder records, in addition to other fees for deeds, for the county surveyor's corner perpetuation fund for use as provided in ~~IC 32-1-1-10~~ **IC 32-19-4-3** or IC 36-2-12-11(e).

(8) A fee in an amount authorized under IC 5-14-3-8 for transmitting a copy of a document by facsimile machine.

(9) A fee in an amount authorized by an ordinance adopted by the county legislative body for duplicating a computer tape, a computer disk, an optical disk, microfilm, or similar media. This fee may not cover making a handwritten copy or a photocopy or using xerography or a duplicating machine.

(10) A supplemental fee of three dollars ($3) for recording a document that is paid at the time of recording. The fee under this subdivision is in addition to other fees provided by law for recording a document.

(c) The county treasurer shall establish a recorder's records perpetuation fund. All revenue received under subsection (b)(5), (b)(8), (b)(9), and (b)(10) shall be deposited in this fund. The county recorder may use any money in this fund without appropriation for the preservation of records and the improvement of record keeping systems

C o p y

and equipment.

(d) As used in this section, "record" or "recording" includes the functions of recording, filing, and filing for record.

(e) The county recorder shall post the fees set forth in subsection (b) in a prominent place within the county recorder's office where the fee schedule will be readily accessible to the public.

(f) The county recorder may not tax or collect any fee for:

(1) recording an official bond of a public officer, a deputy, an appointee, or an employee; or

(2) performing any service under any of the following:

(A) IC 6-1.1-22-2(c).

(B) IC 8-23-7.

(C) IC 8-23-23.

(D) IC 10-5-4-3.

(E) IC 10-5-7-1(a).

(F) IC 12-14-13.

(G) IC 12-14-16.

(g) The state and its agencies and instrumentalities are required to pay the recording fees and charges that this section prescribes.

SECTION 109. IC 36-6-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. The executive shall do the following:

(1) Keep a written record of official proceedings.

(2) Manage all township property interests.

(3) Keep township records open for public inspection.

(4) Attend all meetings of the township legislative body.

(5) Receive and pay out township funds.

(6) Examine and settle all accounts and demands chargeable against the township.

(7) Administer poor relief under IC 12-20 and IC 12-30-4.

(8) Perform the duties of fence viewer under ~~IC 32-10.~~ **IC 32-26.**

(9) Act as township assessor when required by IC 36-6-5.

(10) Provide and maintain cemeteries under IC 23-14.

(11) Provide fire protection under IC 36-8.

(12) File an annual personnel report under IC 5-11-13.

(13) Provide and maintain township parks and community centers under IC 36-10.

(14) Destroy detrimental plants, noxious weeds, and rank vegetation under IC 15-3-4.

(15) Provide insulin to the poor under IC 12-20-16.

(16) Perform other duties prescribed by statute.

SECTION 110. IC 36-7-4-702 IS AMENDED TO READ AS

C o p y

FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 702. (a) In determining whether to grant primary approval of a plat, the plan commission shall determine if the plat or subdivision qualifies for primary approval under the standards prescribed by the subdivision control ordinance.

(b) The subdivision control ordinance must specify the standards by which the commission determines whether a plat qualifies for primary approval. The ordinance must include standards for:

(1) minimum width, depth, and area of lots in the subdivision;

(2) public way widths, grades, curves, and the coordination of subdivision public ways with current and planned public ways; and

(3) the extension of water, sewer, and other municipal services.

The ordinance may also include standards for the allocation of areas to be used as public ways, parks, schools, public and semipublic buildings, homes, businesses, and utilities, **and** any other standards related to the purposes of this chapter.

(c) The standards fixed in the subdivision control ordinance under subsection (b) may not be lower than the minimum standards prescribed in the zoning ordinance for a similar use.

(d) As a condition of primary approval of a plat, the commission may specify:

(1) the manner in which public ways shall be laid out, graded, and improved;

(2) a provision for water, sewage, and other utility services;

(3) a provision for lot size, number, and location;

(4) a provision for drainage design; and

(5) a provision for other services as specified in the subdivision control ordinance.

(e) The subdivision control ordinance may not regulate condominiums regulated by ~~IC 32-1-6.~~ **IC 32-25.**

SECTION 111. IC 36-7-14-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 20. (a) ~~Whenever~~ **If** the redevelopment commission considers it necessary to acquire real property in a blighted area by the exercise of the power of eminent domain, they shall adopt a resolution setting out their determination to exercise that power and directing their attorney to file a petition in the name of the unit on behalf of the department of redevelopment, in the circuit or superior court of the county in which the property is situated.

(b) Eminent domain proceedings under this section are governed by ~~IC 32-11~~ **IC 32-24** and other applicable statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired under this section, but property belonging

C o p y

to the state or any political subdivision may not be acquired without its consent.

(c) The court having jurisdiction shall direct the clerk of the circuit court to execute a deed conveying the title of real property acquired under this section to the unit for the use and benefit of its department of redevelopment.

SECTION 112. IC 36-7-14-32.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 32.5. (a) The commission may acquire a parcel of real property by the exercise of eminent domain when the real property has all of the following characteristics:

(1) The real property is an unsafe building (as defined in IC 36-7-9-4) and is subject to an order issued under IC 36-7-9-5.

(2) The owner of the real property has not complied with the order issued under IC 36-7-9-5.

(3) The real property is not being used as a residence or for a business enterprise.

(4) The real property is capable of being developed or rehabilitated to provide affordable housing for low or moderate income families or to provide other development that will benefit or serve low or moderate income families.

(5) The unsafe condition of the real property has a negative impact on the use or value of the neighboring properties or other properties in the community.

(b) The commission or the commission's designated hearing examiner shall conduct a public meeting to determine whether a parcel of real property has the characteristics set forth in subsection (a). Each person holding a fee or life estate interest of record in the property must be given notice by first class mail of the time and date of the hearing at least ten (10) days before the hearing and is entitled to present evidence and make arguments at the hearing.

(c) ~~Whenever~~ **If** the commission considers it necessary to acquire real property under this section, the commission shall adopt a resolution setting out the commission's determination to exercise that power and directing the commission's attorney to file a petition in the name of the city on behalf of the department in the circuit or superior court with jurisdiction in the county.

(d) Eminent domain proceedings under this section are governed by ~~IC 32-11.~~ **IC 32-24.**

(e) The commission shall use real property acquired under this section for one (1) of the following purposes:

(1) Sale in an urban homestead program under IC 36-7-17.

C o p y

(2) Sale to a family whose income is at or below the county's median income for families.

(3) Sale or grant to a neighborhood development corporation with a condition in the granting clause of the deed requiring the nonprofit development corporation to lease or sell the property to a family whose income is at or below the county's median income for families or to cause development that will serve or benefit families whose income is at or below the unit's median income for families.

(4) Any other purpose appropriate under this chapter so long as it will serve or benefit families whose income is at or below the unit's median income for families.

(f) A neighborhood development corporation or nonprofit corporation that receives property under this section must agree to rehabilitate or otherwise develop the property in a manner that is similar to and consistent with the use of the other properties in the area served by the corporation.

SECTION 113. IC 36-7-15.1-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 13. (a) ~~Whenever~~ **If** the commission considers it necessary to acquire real property in a blighted, deteriorated, or deteriorating area by the exercise of the power of eminent domain, it shall adopt a resolution setting out its determination to exercise that power and directing its attorney to file a petition in the name of the city on behalf of the department in the circuit or superior court of the county.

(b) Eminent domain proceedings under this section are governed by ~~IC 32-11.~~ **IC 32-24.**

SECTION 114. IC 36-7-15.1-22.5, AS AMENDED BY P.L.86-1999, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 22.5. (a) The commission may acquire a parcel of real property by the exercise of eminent domain when the following conditions exist:

(1) The real property is an unsafe premises (as defined in IC 36-7-9) and is subject to an order issued under IC 36-7-9 or a notice of violation issued by the county's health and hospital corporation under its powers under IC 16-22-8.

(2) The real property is not being used as a residence or for a business enterprise.

(3) The real property is capable of being developed or rehabilitated to provide affordable housing for low or moderate income families or to provide other development that will benefit or serve low or moderate income families.

C o p y

(4) The blighted condition of the real property has a negative impact on the use or value of the neighboring properties or other properties in the community.

(b) The commission or its designated hearing examiner shall conduct a public meeting to determine whether the conditions set forth in subsection (a) exist relative to a parcel of real property. Each person holding a fee or life estate interest of record in the property must be given notice by first class mail of the time and date of the hearing at least ten (10) days before the hearing, and is entitled to present evidence and make arguments at the hearing.

(c) ~~Whenever~~ **If** the commission considers it necessary to acquire real property under this section, it shall adopt a resolution setting out its determination to exercise that power and directing its attorney to file a petition in the name of the city on behalf of the department in the circuit or superior court in the county.

(d) Eminent domain proceedings under this section are governed by ~~IC 32-11.~~ **IC 32-24.**

(e) The commission shall use real property acquired under this section for one (1) of the following purposes:

(1) Sale in an urban homestead program under IC 36-7-17.

(2) Sale to a family whose income is at or below the county's median income for families.

(3) Sale or grant to a neighborhood development corporation or other nonprofit corporation, with a condition in the granting clause of the deed requiring the nonprofit organization to lease or sell the property to a family whose income is at or below the county's median income for families or to cause development that will serve or benefit families whose income is at or below the county's median income for families. However, a nonprofit organization is eligible for a sale or grant under this subdivision only if the county fiscal body has determined that the nonprofit organization meets the criteria established under subsection (f).

(4) Any other purpose appropriate under this chapter so long as it will serve or benefit families whose income is at or below the county's median income for families.

(f) The county fiscal body shall establish criteria for determining the eligibility of neighborhood development corporations and other nonprofit corporations for sales and grants of real property under subsection (e)(3). A neighborhood development corporation or other nonprofit corporation may apply to the county fiscal body for a determination concerning the corporation's compliance with the criteria established under this subsection.

C o p y

(g) A neighborhood development corporation or nonprofit corporation that receives property under this section must agree to rehabilitate or otherwise develop the property in a manner that is similar to and consistent with the use of the other properties in the area served by the corporation.

SECTION 115. IC 36-7-15.1-39, AS ADDED BY P.L.102-1999, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 39. (a) A commission has the duties set forth in section 6 of this chapter.

(b) A commission may exercise all the powers set forth in section 7 of this chapter, except that all powers regarding condemnation and eminent domain under this section are vested solely in the legislative body of an excluded city. Eminent domain proceedings under this section are governed by ~~IC 32-11.~~ **IC 32-24.**

SECTION 116. IC 36-7-18-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 28. (a) A housing authority may, by the exercise of the power of eminent domain, acquire any real property that it considers necessary for its purposes under this chapter, if it first adopts a resolution declaring that necessity. An authority may exercise the power of eminent domain:

(1) under ~~IC 32-11-1;~~ **IC 32-24;**

(2) under ~~IC 32-11-1.5,~~ **IC 32-24-2,** as if it ~~was~~ **were** a works board; or

(3) under any other applicable statutory provisions for the exercise of the power of eminent domain.

(b) Property already devoted to a public use may be acquired under this section, but real property belonging to the state or any political subdivision may not be acquired without the consent of the state or political subdivision that owns the property.

SECTION 117. IC 36-7-23-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 7. The authority may exercise the power of eminent domain, with the approval of the executive of the unit affected, for any public use in the manner provided by ~~IC 32-11-1.~~ **IC 32-24-1.**

SECTION 118. IC 36-7-24-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 8. With the approval of the executive of the county affected, an authority may exercise the power of eminent domain under ~~IC 32-11-1.~~ **IC 32-24-1.**

SECTION 119. IC 36-7-30-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 16. (a) If the reuse authority considers it necessary to acquire real property in or serving a reuse area by the exercise of the power of eminent domain, it shall

C o p y

adopt a resolution setting out its determination to exercise that power and directing its attorney to file a petition in the name of the unit on behalf of the reuse authority, in the circuit or superior court of the county in which the property is situated. The resolution must contain a finding by the reuse authority that the property to be acquired is in a blighted area (as defined in IC 36-7-1-3). The resolution must be approved by the legislative body of the unit before the petition is filed.

(b) Eminent domain proceedings under this section are governed by ~~IC 32-11~~ **IC 32-24** and other applicable statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired under this section, but property belonging to the state or a political subdivision may not be acquired without the consent of the state or the political subdivision.

(c) The court having jurisdiction shall direct the clerk of the circuit court to execute a deed conveying the title of real property acquired under this section to the unit for the use and benefit of the reuse authority.

SECTION 120. IC 36-9-4-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 32. **(a)** The board of directors of a public transportation corporation may exercise the power of eminent domain for the condemnation of any interest in real or personal property for use within the taxing district of the corporation.

(b) Proceedings for the condemnation of property by the board are governed by ~~IC 32-11-1~~ **IC 32-24-1** to the extent it is not in conflict with this chapter.

(c) The board may not institute ~~such~~ proceedings until it has adopted an ordinance generally describing the property to be acquired, declaring that the public interest and necessity require the acquisition by the corporation of the property involved, and declaring that the acquisition is necessary for the establishment, development, extension, or improvement of the system. The ordinance is conclusive evidence of the public necessity of the proposed acquisition and that the proposed acquisition is planned in a manner most compatible with the greatest public good and the least private injury.

SECTION 121. IC 36-9-6.1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. Except as provided in section 5 of this chapter, a works board carrying out a thoroughfare plan under this chapter:

(1) has the same powers to:

(A) appropriate or condemn property;

(B) lay out, change, widen, straighten, or vacate public ways or public places;

C o p y

(C) award and pay damages; and
(D) assess and collect benefits;
(2) shall proceed in the same manner; and
(3) is subject to the same rights of property owners, including the right to appeal;

as a works board that appropriates property under ~~IC 32-11~~ **IC 32-24** and lays out, changes, widens, straightens, or vacates public ways or public places under IC 36-9-6.

SECTION 122. IC 36-9-11.1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10. (a) In exercising the power of eminent domain, the board shall proceed under ~~IC 32-11.~~ **IC 32-24.**

(b) The title to all real property acquired by the department shall be conveyed to "City of _____".

(c) The board may make and enter into contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter. All contracts shall be entered into under the general provisions of this title.

(d) The board may lease or rent to others any parking facility or any property acquired for off-street parking purposes, including air rights above the facilities or property, in accordance with IC 36-1-11.

(e) The board may sell any property, including air rights, acquired or developed for off-street parking purposes, if it first adopts a resolution specifically describing the property to be sold and declaring either:

(1) that the property is no longer needed for the use of the department; or
(2) that a sale of the property subject to any restriction, limitation, or condition set out in the resolution will effect the purposes of this chapter.

The property shall then be sold in accordance with IC 36-1-11. Property that has been pledged, or the revenues of which have been pledged, to secure the payment of any outstanding obligations on it, may not be sold unless all the obligations are redeemed and cancelled coincidentally with the conveyance of the property.

(f) All conveyances of real property shall be executed in the name of "City of _____", and must be approved by the executive of the consolidated city. Such an instrument is not required to have a seal in order to be executed.

(g) In the letting of construction contracts the board shall proceed under IC 36-1-12, subject to the approval of the executive.

SECTION 123. IC 36-9-23-14 IS AMENDED TO READ AS

C o p y

FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 14. (a) A municipality may, in the manner prescribed by ~~IC 32-11,~~ **IC 32-24,** condemn:

(1) sewage works; and

(2) any land, easements, franchises, and other property it considers necessary for the construction of sewage works or for improvements to sewage works.

However, the municipality may pay for any property condemned or purchased only from money provided under this chapter.

(b) In any proceedings to condemn, orders that are just to the municipality and to the owners of the property to be condemned may be made. An undertaking or other security securing the property owners against any loss or damage resulting from the failure of the municipality to accept and pay for the property may be required, but the undertaking or security imposes liability upon the municipality only in the amount that may be paid from money provided under this chapter.

(c) If the board wants to purchase sewage works, it may obtain and exercise an option for the purchase of the works, or may enter into a contract for the purchase in the manner and under the terms and conditions that it considers proper.

(d) If the board wants to purchase or condemn sewage works already constructed, it must, at or before the time of adoption of the ordinance authorizing the acquisition, determine what repairs, replacements, additions, and other actions are required to make the works effective for their purpose. An estimate of the cost of these actions shall be included in the estimate of cost made under section 11 of this chapter. These actions shall be taken upon the acquisition of the works, as a part of the cost of the acquisition.

SECTION 124. IC 36-9-23-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 28. (a) The legislative body of a municipality that operates sewage works under this chapter may, by ordinance, require the owners, lessees, or users of property served by the works to pay a deposit to ensure payment of sewer fees.

(b) The deposit required may not exceed the estimated average payment due from the property served by the sewage works for a three (3) month period. The deposit must be retained in a separate fund.

(c) The deposit, less any outstanding penalties and service fees, shall be refunded to the depositor after a notarized statement from the depositor that as of a certain date the property being served:

(1) has been conveyed or transferred to another person; or

(2) no longer uses or is connected with any part of the municipal sewage system.

A statement under subdivision (1) must include the name and address

C o p y

of the person to whom the property is conveyed or transferred.

(d) If a depositor fails to satisfy costs and fees within sixty (60) days after the termination of his use or ownership of the property served, he forfeits his deposit and all accrued interest. The forfeited amount shall be applied to the depositor's outstanding fees. Any excess that remains due after application of the forfeiture may be collected in the manner prescribed by section 31 or 32 of this chapter.

(e) A deposit may be used to satisfy all or part of any judgment awarded the municipality under section 31 of this chapter.

(f) A deposit made under this section that has remained unclaimed by the depositor for more than seven (7) years after the termination of the services for which the deposit was made becomes the property of the municipality. ~~IC 32-9-1.5~~ **IC 32-34-1** (unclaimed property) does not apply to a deposit described in this subsection.

SECTION 125. IC 36-9-23-28.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 28.5. (a) This section does not apply to a deposit made under section 28 of this chapter.

(b) ~~IC 32-9-1.5~~ **IC 32-34-1** does not apply to an overpayment described in subsection (d).

(c) As used in this section, "payor" refers to the owner, lessee, or user of property served by the sewage works who has paid for service from the sewage works.

(d) An overpayment of sewer fees that remains unclaimed by a payor for more than seven (7) years after the termination of the service for which the overpayment was made becomes the property of the municipality.

SECTION 126. IC 36-9-29-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 19. After the flood control board has published notice of the filing of the acquisition and damage roll under section 18(c) of this chapter, it may acquire the property described in the roll by purchase, by contract, or by the exercise of the power of eminent domain under ~~IC 32-11.~~ **IC 32-24.**

SECTION 127. IC 36-9-29.1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10. ~~Whenever~~ **If** the board has finally confirmed any resolution for all or any part of any project of flood prevention and control, and any property is required to be condemned, appropriated, or purchased, or is damaged or injuriously affected by the carrying out of the flood prevention project and work, the board shall proceed with reference to this property and awards of damages in all respects, whenever necessary, in accordance with ~~IC 32-11.~~ **IC 32-24.** Any part of the appropriation proceedings as to any property may be included in either the original resolution or any

C o p y

subsequent resolutions.

SECTION 128. IC 36-9-31-3, AS AMENDED BY P.L.67-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. In order to provide for the collection and disposal of waste in the consolidated city and for the management, operation, acquisition, and financing of facilities for waste disposal, the board may exercise the following powers on behalf of the city, in addition to the powers specifically set forth elsewhere in this chapter:

(1) To sue and be sued.

(2) To exercise the power of eminent domain as provided in ~~IC 32-11~~ **IC 32-24** within the corporate boundaries of the city; however, the power of eminent domain may not be exercised to acquire the property of any public utility used for the production or distribution of energy.

(3) To provide for the collection of waste accumulated within the service district and to provide for disposal of waste accumulated within the waste disposal district, including contracting with persons for collection, disposal, or waste storage, and the recovery of byproducts from waste, and granting these persons the right to collect and dispose of any such wastes and store and recover byproducts from them.

(4) To plan, design, construct, finance, manage, own, lease, operate, and maintain facilities for waste disposal.

(5) To enter into all contracts or agreements necessary or incidental to the collection, disposal, or recovery of byproducts from waste, such as put or pay contracts, contracts and agreements for the design, construction, operation, financing, ownership, or maintenance of facilities or the processing or disposal of waste or the sale or other disposition of any products generated by a facility. Notwithstanding any other statute, any such contract or agreement may be for a period not to exceed forty (40) years.

(6) To enter into agreements for the leasing of facilities in accordance with IC 36-1-10; however, any such agreement having an original term of five (5) or more years is subject to approval by the state board of tax commissioners under IC 6-3.5. Such an agreement may be executed before approval, but if the state board of tax commissioners does not approve the agreement, it is void.

(7) To purchase, lease, or otherwise acquire real or personal property.

(8) To contract for architectural, engineering, legal, or other professional services.

C o p y

(9) To exclusively control, within the city, the collection, transportation, storage, and disposal of waste and, subject to the provisions of sections 6 and 8 of this chapter, to fix fees in connection with these matters.
(10) To determine exclusively the location and character of any facility, subject to local zoning ordinances and environmental management laws (as defined in IC 13-11-2-71).
(11) To sell or lease to any person any facility or part of it.
(12) To make and contract for plans, surveys, studies, and investigations.
(13) To enter upon property to make surveys, soundings, borings, and examinations.
(14) To accept gifts, grants, or loans of money, other property, or services from any source, public or private, and to comply with their terms.
(15) To issue from time to time waste disposal district bonds to finance the cost of facilities as provided in section 9 of this chapter.
(16) To issue from time to time revenue bonds to finance the cost of facilities as provided in section 10 of this chapter.
(17) To issue from time to time waste disposal development bonds to finance the cost of facilities as provided in section 11 of this chapter.
(18) To issue from time to time notes in anticipation of grants or in anticipation of the issuance of bonds to finance the cost of facilities as provided in section 13 of this chapter.
(19) To establish fees for the collection and disposal of waste, subject to the provisions of sections 6 and 8 of this chapter.
(20) To levy a tax within the service district to pay costs of operation in connection with waste collection, waste disposal, mowing services, and animal control, subject to regular budget and tax levy procedures. For purposes of this subdivision, "mowing services" refers only to mowing services for rights-of-way or on vacant property.
(21) To levy a tax within the waste disposal district to pay costs of operation in connection with waste disposal, subject to regular budget and tax levy procedures.
(22) To borrow in anticipation of taxes.
(23) To employ staff engineers, clerks, secretaries, and other employees in accordance with an approved budget.
(24) To issue requests for proposals and requests for qualifications as provided in section 4 of this chapter.

C o p y

(25) To require all persons located within the service district or waste disposal district to deposit waste at sites designated by the board.

(26) To otherwise do all things necessary for the collection and disposal of waste and the recovery of byproducts from it.

SECTION 129. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2002]: IC 24-4.6-2; IC 24-4.6-2.1; IC 24-5-9; IC 24-5-11.5; IC 32-1; IC 32-2; IC 32-3; IC 32-4; IC 32-5; IC 32-6; IC 32-7; IC 32-8; IC 32-9; IC 32-10; IC 32-11; IC 32-12; IC 32-13; IC 32-14; IC 32-15; IC 34-6-2-7; IC 34-6-2-66; IC 34-6-2-68; IC 34-6-2-74; IC 34-6-2-107; IC 34-6-2-121; IC 34-6-2-125; IC 34-6-2-126; IC 34-6-2-149; IC 34-19; IC 34-21; IC 34-34; IC 34-48.

C o p y

SENATE MOTION

Mr. President: I move that Senator Smith S be added as second author of Senate Bill 57.

KENLEY

C o p y

COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 57, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 140, line 5, delete "(c)".

Page 173, line 10, delete "IC 32-35-8" and insert "**IC 32-34-8**".

Page 173, line 30, delete "IC 32-35-8-18" and insert "**IC 32-34-8-18**".

Page 174, line 16, delete "IC 32-35-8," and insert "**IC 32-34-8,**".

Page 174, line 20, delete "IC 32-35-8." and insert "**IC 32-34-8.**".

Page 262, between lines 32 and 33, begin a new paragraph and insert:

"**Sec. 20. The court's approval of a receiver's partial account or report, as provided in section 14 of this chapter, releases and discharges the receiver and the surety on the receiver's bond for all matters and things related to or contained in the partial account or report.**

Sec. 21. Upon the:

(1) court's approval of the receiver's final account or report, as provided in section 14 of this chapter; and

(2) receiver's performance and compliance with the court's order made on the final report;

the receiver and the surety on the receiver's bond shall be fully and finally discharged and the court shall declare the receivership estate finally settled and closed subject to the right of appeal of the receiver or any creditor, shareholder, or other interested party who has filed objections or exceptions as provided in section 18 of this chapter.

Sec. 22. (a) This section applies to any action, proceeding, or matter relating to or involving a receivership estate.

(b) Except as provided in subsections (c) and (d), a party to a proceeding described in subsection (a) is entitled to a change of judge or a change of venue from the county for the same reasons and upon the same terms and conditions under which a change of judge or a change of venue from the county is allowed in any civil action.

(c) This section does not authorize a change of venue from the county:

(1) concerning expenses allowed by the court incidental to the operation, management, or administration of the receivership estate;

C o p y

(2) upon any petition or proceeding to remove a receiver; or
(3) upon the objections or exceptions to any partial or final account or report of any receiver.

(d) A change of venue is not allowed from the county of the administration of any receivership estate, or upon any petition or proceeding to remove a receiver, or upon objections or exceptions to a partial or final account or report of a receiver.".

Page 287, line 37, delete "9." and insert "**10.**".
Page 288, line 3, delete "10." and insert "**11.**".
Page 288, line 8, delete "11." and insert "**12.**".
Page 288, line 11, delete "12." and insert "**13.**".
Page 288, line 13, delete "13." and insert "**14.**".
Page 288, line 15, delete "14." and insert "**15.**".
Page 288, line 18, delete "15." and insert "**16.**".
Page 288, line 23, delete "16." and insert "**17.**".
Page 288, line 25, delete "17." and insert "**18.**".
Page 288, line 35, delete "18." and insert "**19.**".
Page 289, line 23, delete "19." and insert "**20.**".
Page 300, delete lines 28 through 39.
Delete pages 301 through 319.
Page 320, delete lines 1 through 9.
Page 320, line 10, delete "IC 32-33" and insert "IC 32-32".
Page 320, line 13, delete "33." and insert "**32.**".
Page 329, line 32, delete "IC 32-34" and insert "IC 32-33".
Page 329, line 35, delete "34." and insert "**33.**".
Page 345, line 29, delete "IC 32-34-9." and insert "**IC 32-33-9.**".
Page 359, line 22, delete "IC 32-36-2." and insert "**IC 32-35-2.**".
Page 360, line 2, delete "IC 32-35" and insert "IC 32-34".
Page 360, line 5, delete "35." and insert "**34.**".
Page 367, line 34, delete "IC 32-35-3." and insert "**IC 32-34-3.**".
Page 391, line 11, delete "IC 32-35-1-31." and insert "**IC 32-34-1-31.**".
Page 399, line 11, delete "9." and insert "**8.**".
Page 411, line 25, delete "IC 32-36" and insert "IC 32-35".
Page 411, line 28, delete "36." and insert "**35.**".
Page 419, line 26, delete "IC 32-37" and insert "IC 32-36".
Page 419, line 29, delete "37." and insert "**36.**".
Page 425, line 13, delete "IC 32-38" and insert "IC 32-37".
Page 425, line 16, delete "38." and insert "**37.**".
Page 428, line 35, delete "IC 32-35-1," and insert "**IC 32-34-1,**".
Page 429, line 14, delete "IC 32-35-1." and insert "**IC 32-34-1.**".
Page 433, delete lines 16 through 22.

C o p y

Page 433, line 28, delete "IC 32-35-1." and insert "**IC 32-34-1.**".

Page 434, line 15, delete "IC 32-35-1." and insert "**IC 32-34-1.**".

Page 436, between lines 4 and 5, begin a new paragraph and insert:

"SECTION 39. IC 8-1-30-5, AS ADDED BY P.L.145-1999, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. (a) As used in this section, "subject utility company" refers to a utility company that is the subject of a finding by the commission under section 4 of this chapter.

(b) If the commission makes a finding under section 4 of this chapter, the commission may, after notice and hearing, make appropriate orders to do any of the following:

(1) Provide for the acquisition of the subject utility company by another utility company, a municipally owned utility, or by another person that has the ability to operate the subject utility company:

(A) in compliance with law and the commission's orders; and

(B) to remedy any deficiencies found by the commission.

(2) Provide for the appointment of a receiver to operate the subject public utility:

(A) in compliance with law and the commission's orders; and

(B) to remedy any deficiencies found by the commission.

(c) Before making an order under subsection (b), the commission shall give notice of the hearing to the following:

(1) The subject utility company.

(2) Other utility companies in Indiana.

(3) Appropriate public agencies and political subdivisions, including all municipalities, located in the subject utility company's service territory.

(d) An order under subsection (b)(1) must provide:

(1) that the person acquiring the subject utility company must pay the fair market value of the subject utility company at the time of acquisition; and

(2) the specific accounting methods and appraisal procedures and terms by which the fair market value of the subject utility company is to be determined.

(e) An order under subsection (b)(1) may provide cost recovery mechanisms for costs associated with improvements to the acquired system that are immediate and necessary to remedy deficiencies, including any of the following:

(1) A mechanism for expediting any adjustments to the rate base and rates of the person acquiring the subject utility company.

(2) Surcharges on customers of the acquired utility company

C o p y

system to pay for extraordinary costs.

(3) A plan for deferring certain improvement costs and recovering costs in phases.

(4) A plan for equalizing rates of the subject utility company with the rates of the person acquiring the subject utility company, if necessary.

(5) Other incentives to the person acquiring the subject utility company, including adjustments to the allowed rate of return.

(f) If the commission makes an order under subsection (b)(2), the attorney general shall file an action in a court with jurisdiction on behalf of the commission for the appointment of a receiver under ~~IC 34-48.~~ **IC 32-30-5.** The receiver appointed by the court:

(1) has the same rights and duties under Indiana law as a utility company providing water or sewer service; and

(2) shall continue to operate the subject utility company until the court finds that the subject utility company:

(A) has the ability to comply and will comply with Indiana law and the commission's orders relating to the operation of the utility company; and

(B) has the ability to operate without any of the deficiencies found by the commission.".

Page 445, line 9, delete "IC 32-35-1-33" and insert "**IC 32-34-1-33**".

Page 445, line 10, delete "IC 32-35-1-34." and insert "**IC 32-34-1-34.**".

Page 450, line 4, delete "IC 32-34." and insert "**IC 32-33.**".

Page 450, line 5, delete "IC 32-35-10." and insert "**IC 32-34-10.**".

Page 450, between lines 20 and 21, begin a new paragraph and insert:

"SECTION 58. IC 13-17-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. A private citizen, the commissioner, the governor, or the attorney general may initiate a civil action under:

(1) IC 13-14-10-2;

(2) IC 13-15-3-6;

(3) IC 13-17-4;

(4) IC 13-30-1-1 through IC 13-30-1-7;

(5) IC 13-30-3-2 through IC 13-30-3-9; or

(6) ~~IC 34-19-1-2;~~ **IC 32-30-6-7;**

whichever is applicable, to enjoin or abate emissions resulting from the operation of an existing emitting facility or source.".

Page 460, line 5, delete "IC 32-35-1-25." and insert "**IC 32-34-1-25.**".

C o p y

Page 461, line 28, delete "IC 32-35-1-25." and insert "**IC 32-34-1-25.**".

Page 462, line 24, delete "IC 32-33." and insert "**IC 32-32.**".

Page 463, line 7, delete "IC 32-34-14," and insert "**IC 32-33-14,**".

Page 464, between lines 30 and 31, begin a new paragraph and insert:

"SECTION 82. IC 26-3-7-31, AS AMENDED BY P.L.173-1999, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 31. (a) Whenever it appears to the satisfaction of the director that a licensee cannot meet the licensee's outstanding grain obligations owed to depositors, or when a licensee refuses to submit the licensee's records or property to lawful inspection, the director may give notice to the licensee to do any of the following:

(1) Cover the shortage with grain that is fully paid for.

(2) Give additional bond, letter of credit, or cash deposit as required by the director.

(3) Submit to inspection as the director may deem necessary.

(b) If the licensee fails to comply with the terms of the notice within five (5) business days from the date of its issuance, or within an extension of time that the director may allow, the director may petition the circuit court of the Indiana county where the licensee's principal place of business is located seeking the appointment of a receiver. If the court determines in accordance with ~~IC 34-48-1~~ **IC 32-30-5** that a receiver should be appointed, upon the request of the licensee the court may appoint the agency or its representative to act as receiver. The agency or its representative shall not be appointed as receiver except upon the request of the licensee. If the agency or its representative is appointed, any person interested in an action as described in ~~IC 34-48-1-2~~ **IC 32-30-5-2** may after twenty (20) days request that the agency or its representative be removed as receiver. If the agency or its representative is not serving as receiver, the receiver appointed shall meet and confer with representatives of the agency regarding the licensee's grain related obligations and, before taking any actions regarding those obligations, the receiver and the court shall consider the agency's views and comments.".

Page 465, line 4, delete "IC 32-35-1." and insert "**IC 32-34-1.**".

Page 470, between lines 26 and 27, begin a new paragraph and insert:

"SECTION 85. IC 27-5-9-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 21. **(a)** A receiver may be appointed for any ~~such~~ corporation under ~~IC 34-48-1. In the event of the appointment of~~ **IC 32-30-5.**

C o p y

(b) If a receiver **is appointed** for any ~~such~~ corporation, ~~such~~ **the** receiver ~~shall be~~ **is** entitled to receive all securities of ~~such~~ **the** company deposited with the insurance commissioner. ~~And~~

(c) Receivers may be appointed by ~~the~~ courts ~~of this state~~ for foreign corporations doing business in ~~this state~~ **Indiana** under this chapter. ~~and such~~ **The** receivers ~~shall~~ have the right to the possession of any securities of ~~such~~ **the** corporation in the hands of the commissioner. ~~And~~

(d) Receivers appointed under ~~the provisions of~~ this chapter shall collect or dispose of securities and pay out the funds realized ~~therefrom~~ **from the securities** as the courts appointing ~~them~~ **the receivers** may direct.".

Page 472, between lines 35 and 36, begin a new paragraph and insert:

"SECTION 91. IC 34-6-2-103, AS AMENDED BY P.L.95-2001, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 103. (a) "Person", for purposes of IC 34-14, has the meaning set forth in IC 34-14-1-13.

~~(b) "Person", for purposes of IC 34-19-2, has the meaning set forth in IC 35-41-1.~~

~~(c)~~ **(b)** "Person", for purposes of IC 34-24-4, means:

(1) an individual;
(2) a governmental entity;
(3) a corporation;
(4) a firm;
(5) a trust;
(6) a partnership; or
(7) an incorporated or unincorporated association that exists under or is authorized by the laws of this state, another state, or a foreign country.

~~(d)~~ **(c)** "Person", for purposes of IC 34-26-2, includes individuals at least eighteen (18) years of age and emancipated minors.

~~(e)~~ **(d)** "Person", for purposes of IC 34-26-4, has the meaning set forth in IC 35-41-1-22.

~~(f)~~ **(e)** "Person", for purposes of IC 34-30-5, means any of the following:

(1) An individual.
(2) A corporation.
(3) A partnership.
(4) An unincorporated association.
(5) The state (as defined in IC 34-6-2-140).
(6) A political subdivision (as defined in IC 34-6-2-110).

C o p y

(7) Any other entity recognized by law.

~~(g)~~ **(f)** "Person", for purposes of IC 34-30-6, means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity that:

(1) has qualifications or experience in:

(A) storing, transporting, or handling a hazardous substance or compressed gas;

(B) fighting fires;

(C) emergency rescue; or

(D) first aid care; or

(2) is otherwise qualified to provide assistance appropriate to remedy or contribute to the remedy of the emergency.

~~(h)~~ **(g)** "Person", for purposes of IC 34-30-18, includes:

(1) an individual;

(2) an incorporated or unincorporated organization or association;

(3) the state of Indiana;

(4) a political subdivision (as defined in IC 36-1-2-13);

(5) an agency of the state or a political subdivision; or

(6) a group of such persons acting in concert.

~~(i)~~ **(h)** "Person", for purposes of sections 42, 43, 69, and 95 of this chapter, means an individual, an incorporated or unincorporated organization or association, or a group of such persons acting in concert.

~~(j)~~ **(i)** "Person" for purposes of IC 34-30-10.5, means the following:

(1) A political subdivision (as defined in IC 36-1-2-13).

(2) A volunteer fire department (as defined in IC 36-8-12-2).

(3) An employee of an entity described in subdivision (1) or (2) who acts within the scope of the employee's responsibilities.

(4) A volunteer firefighter (as defined in IC 36-8-12-2) who is acting for a volunteer fire department.".

Page 473, between lines 30 and 31, begin a new paragraph and insert:

"SECTION 94. IC 34-26-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. In addition to the injunctions and restraining orders discussed in this article, the following statutes also contain provisions concerning injunctions or restraining orders:

(1) ~~IC 34-19-1~~ **IC 32-30-6** (governing nuisance actions).

(2) ~~IC 34-19-2~~ **IC 32-30-7** (governing actions for indecent nuisance).

(3) IC 34-24-2 (governing civil remedies for racketeering activities).".

C o p y

Page 474, line 8, delete "IC 32-34-7-2" and insert "**IC 32-33-7-2**".

Page 474, line 13, delete "IC 32-35-1-29" and insert "**IC 32-34-1-29**".

Page 474, line 21, delete "IC 32-34-7-2" and insert "**IC 32-33-7-2**".

Page 474, between lines 22 and 23, begin a new paragraph and insert:

"SECTION 102. IC 34-36-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. In actions for the recovery of property, the jury must make the assessments required under ~~IC 34-21-10.~~ **IC 32-35-2-35.**".

Page 474, between lines 27 and 28, begin a new paragraph and insert:

"SECTION 104. IC 34-49-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. ~~When~~ **If** a suit is brought:

(1) in replevin; **and**

(2) against an officer who issued a writ of attachment or execution under **IC 32-35-2-26 (or** IC 34-21-6-1 or IC 34-2-4-1 before ~~its~~ **their** repeal);

the officer may demand a bond from the attachment or execution plaintiff to indemnify the officer in the replevin suit.

SECTION 105. IC 34-54-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. Judgments in actions concerning the recovery of the possession of personal property are governed by ~~IC 34-21-9.~~ **IC 32-35-2-33 and IC 32-35-2-34.**".

Page 474, between lines 33 and 34, begin a new paragraph and insert:

"SECTION 108. IC 35-50-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) Except as provided in subsection (i), in addition to any sentence imposed under this article for a felony or misdemeanor, the court may, as a condition of probation or without placing the person on probation, order the person to make restitution to the victim of the crime, the victim's estate, or the family of a victim who is deceased. The court shall base its restitution order upon a consideration of:

(1) property damages of the victim incurred as a result of the crime, based on the actual cost of repair (or replacement if repair is inappropriate);

(2) medical and hospital costs incurred by the victim (before the date of sentencing) as a result of the crime;

(3) earnings lost by the victim (before the date of sentencing) as a result of the crime including earnings lost while the victim was

C o p y

hospitalized or participating in the investigation or trial of the crime; and

(4) funeral, burial, or cremation costs incurred by the family or estate of a homicide victim as a result of the crime.

(b) A restitution order under subsection (a) or (i) is a judgment lien that:

(1) attaches to the property of the person subject to the order;

(2) may be perfected;

(3) may be enforced to satisfy any payment that is delinquent under the restitution order by the person in whose favor the order is issued or the person's assignee; and

(4) expires;

in the same manner as a judgment lien created in a civil proceeding.

(c) When a restitution order is issued under subsection (a), the issuing court may order the person to pay the restitution, or part of the restitution, directly to the victim services division of the Indiana criminal justice institute in an amount not exceeding:

(1) the amount of the award, if any, paid to the victim under IC 5-2-6.1; and

(2) the cost of the reimbursements, if any, for emergency services provided to the victim under IC 16-10-1.5 (before its repeal) or IC 16-21-8.

The victim services division of the Indiana criminal justice institute shall deposit the restitution received under this subsection in the violent crime victims compensation fund established by IC 5-2-6.1-40.

(d) When a restitution order is issued under subsection (a) or (i), the issuing court shall send a certified copy of the order to the clerk of the circuit court in the county where the felony or misdemeanor charge was filed. The restitution order must include the following information:

(1) The name and address of the person that is to receive the restitution.

(2) The amount of restitution the person is to receive.

Upon receiving the order, the clerk shall enter and index the order in the circuit court judgment docket in the manner prescribed by IC 33-17-2-3. The clerk shall also notify the department of insurance of an order of restitution under subsection (i).

(e) An order of restitution under subsection (a) or (i) does not bar a civil action for:

(1) damages that the court did not require the person to pay to the victim under the restitution order but arise from an injury or property damage that is the basis of restitution ordered by the court; and

C o p y

(2) other damages suffered by the victim.

(f) Regardless of whether restitution is required under subsection (a) as a condition of probation or other sentence, the restitution order is not discharged by the completion of any probationary period or other sentence imposed for a felony or misdemeanor.

(g) A restitution order under subsection (a) or (i) is not discharged by the liquidation of a person's estate by a receiver under **IC 32-30-5 (or** IC 34-48-1, IC 34-48-4, IC 34-48-5, ~~and~~ IC 34-48-6, ~~or~~ IC 34-1-12, ~~and~~ **or** IC 34-2-7 before their repeal).

(h) The attorney general may pursue restitution ordered by the court under subsections (a) and (c) on behalf of the victim services division of the Indiana criminal justice institute established under IC 5-2-6-8.

(i) The court may order the person convicted of an offense under IC 35-43-9 to make restitution to the victim of the crime. The court shall base its restitution order upon a consideration of the amount of money that the convicted person converted, misappropriated, or received, or for which the convicted person conspired. The restitution order issued for a violation of IC 35-43-9 must comply with subsections (b), (d), (e), and (g), and is not discharged by the completion of any probationary period or other sentence imposed for a violation of IC 35-43-9.

SECTION 109. IC 35-50-5-4, AS AMENDED BY P.L.1-1999, SECTION 79, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. (a) This section applies only:

(1) if the county in which a criminal proceeding was filed adopts an ordinance under IC 36-2-13-15; and

(2) to a person who is sentenced under this article for a felony or a misdemeanor.

(b) At the time the court imposes a sentence, the court may order the person to execute a reimbursement plan as directed by the court and make repayments under the plan to the county for the costs described in IC 36-2-13-15.

(c) The court shall fix an amount under this section that:

(1) may not exceed an amount the person can or will be able to pay;

(2) does not harm the person's ability to reasonably be self-supporting or to reasonably support any dependent of the person; and

(3) takes into consideration and gives priority to any other restitution, reparation, repayment, costs, fine, or child support obligations the person is required to pay.

(d) When an order is issued under this section, the issuing court

C o p y

shall send a certified copy of the order to the clerk of the circuit court in the county where the felony or misdemeanor charge was filed. Upon receiving the order, the clerk shall enter and index the order in the circuit court judgment docket in the manner prescribed by IC 33-17-2-3.

(e) An order under this section is not discharged:

(1) by the completion of a sentence imposed for a felony or misdemeanor; or

(2) by the liquidation of a person's estate by a receiver under **IC 32-30-5 (or** IC 34-48-1, IC 34-48-4, IC 34-48-5, and IC 34-48-6 **before their repeal).**".

Page 486, line 20, delete "IC 32-35-1" and insert "**IC 32-34-1**".

Page 486, line 25, delete "IC 32-35-1" and insert "**IC 32-34-1**".

Page 489, line 26, delete "IC 22-9.5;".

Page 489, line 29, after "IC 32-15;" insert "IC 34-6-2-7; IC 34-6-2-66; IC 34-6-2-68; IC 34-6-2-74; IC 34-6-2-107; IC 34-6-2-121; IC 34-6-2-125; IC 34-6-2-126; IC 34-6-2-149;".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 57 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 0.

C o p y