February 2, 2007

HOUSE BILL No. 1508

DIGEST OF HB 1508 (Updated January 30, 2007 2:34 pm - DI 107)

Citations Affected: IC 29-1; IC 29-3; IC 30-2; IC 30-4; IC 32-38; IC 34-30; noncode.

Synopsis: Probate and trust matters. Provides that when a court has not directed notice by rule, the default certified or registered mail option is replaced by the option to provide notice by first class postage prepaid mail. Specifies that the notice provided by the clerk of the court to an heir, a devisee, a legatee, or a creditor when letters testamentary or of administration are issued shall be served by certified mail. Provides that a will can be admitted to probate more than three years after the decedent's death if the will is presented for probate less than 60 days after: (1) another will previously offered for probate is denied probate; or (2) the probate of another will previously admitted to probate is revoked. Authorizes the use of an affidavit to obtain the information necessary to determine whether the value of a decedent's gross probate estate is low enough to allow the estate to be administered summarily. Provides immunity from civil liability to a person who provides information in good faith reliance upon the affidavit. Increases the maximum gross value of a probate estate that may be summarily distributed and closed upon the filing of an affidavit from $25,000 to $50,000. Specifies that the personal representative has the right to take possession of all the property of the decedent, without exception. Removes a provision under which the personal representative is not authorized to possess property subject to the surviving spouse and family allowances. Provides that the notice requirements applying to hearings on filed estate accountings also apply to a hearing on a petition for a court to decree the final distribution of an estate. Requires

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Effective: July 1, 2007.

Foley

January 23, 2007, read first time and referred to Committee on Judiciary.
February 1, 2007, reported — Do Pass.

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Digest Continued

notice to be given by certified mail when a petition for the appointment of a guardian or for the issuance of a protective order is filed under the probate code. Specifies that when a petition for appointment of a guardian or for the issuance of a protective order is filed with the court, notice of the petition and the hearing on the petition shall be given by certified mail. Removes a provision requiring that notices concerning guardianship petitions be given according to the notice requirements applicable to hearings on guardianship petitions. Provides that upon the termination of a guardianship any remaining property subject to the guardianship may be transferred to a trust approved by the court or to a custodian under the Uniform Transfers to Minors Act. Authorizes the self-appointment of certain fiduciaries as custodians under the Uniform Transfers to Minors Act. Eliminates the requirement that a trust certification document include the trust's taxpayer identification number. Provides that the trustee of a trust to which an interest in real property is transferred is considered the insured owner under a title insurance policy issued for the interest in real property if the transfer meets certain conditions. Makes technical corrections. (The introduced version of this bill was prepared by the probate code study commission.)

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February 2, 2007

First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

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HOUSE BILL No. 1508

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

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

SECTION 1. IC 29-1-1-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12. **(a)** Unless waived and except as otherwise provided by law, all notices required by this article to be served upon any person shall be served as the court shall direct by rule or in a particular case, ~~either:~~ **by:**

~~(a)~~ ~~by~~ **(1)** delivering a copy of the ~~same~~ **notice** to ~~such~~ **the** person or by leaving a copy of the ~~same~~ **notice** at ~~his~~ **the person's** last and usual place of residence, at least ten (10) days before the hearing, if ~~he~~ **the person** is a resident of the state of Indiana;

~~(b)~~ ~~by~~ **(2)** publication, if the person is a nonresident of the state of Indiana or if ~~his~~ **the person's** residence is unknown, once each week for three (3) weeks consecutively in ~~some~~ **a** newspaper printed and circulating in the county where ~~said~~ **the** court is held, the first day of publication to be at least thirty (30) days prior to the date set for hearing; or in case there ~~be~~ **is** no newspaper

printed in ~~said~~ **the** county, then in ~~some~~ **a** newspaper circulating in the county where the proceeding is pending, and designated by the judge or clerk;

~~(c) by registered or certified mail, requesting a return receipt,~~ **(3) first class postage prepaid mail** addressed to ~~such~~ **the** person located in the United States, at ~~his~~ **the person's** address stated in the petition for the hearing, to be posted by depositing in any United States post office in this state at least fourteen (14) days prior to the date set for hearing in ~~said~~ **the** notice;

~~(d) by~~ **(4)** personal service on nonresidents to be served by any officer authorized to serve process in the county of the nonresident, which notice shall be served at least fourteen (14) days prior to the date set for hearing in such notice; or

~~(e) by~~ **(5)** any combination of two (2) or more of the above.

(b) In all cases where service by publication is ordered but personal service or service by registered mail is not ordered, all persons directed by the provisions of this article, or by order of the court, to be notified, whose names and addresses are known or can by reasonable diligence be ascertained by the party charged with the duty of giving ~~such~~ notice, shall in addition to ~~such~~ **the** published notice **required by order,** be served by a written notice by United States **first class postage prepaid** mail at least fourteen (14) days prior to the date set for hearing in ~~said~~ **the** notice.

(c) The personal representative or party charged with the duty of giving ~~said~~ notice shall furnish the clerk with sufficient copies of ~~said~~ **the** notice, prepared for mailing, and the clerk shall mail the ~~same.~~ **notice.**

SECTION 2. IC 29-1-7-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) As soon as letters testamentary or of administration, general or special, supervised or unsupervised, have been issued, the clerk of the court shall publish notice of the estate administration.

(b) The notice required under subsection (a) shall be published in a newspaper of general circulation, printed in the English language and published in the county where the court is located, once each week for two (2) consecutive weeks. A copy of the notice, with proof of publication, shall be filed with the clerk of the court as a part of the administration of the estate within thirty (30) days after the publication. If no newspaper is published in the county, the notice shall be published in a newspaper published in an adjacent county.

(c) The notice required under subsection (a) shall be served by **certified** mail on each heir, devisee, legatee, and known creditor whose

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name and address is set forth in the petition for probate or letters. The personal representative shall furnish sufficient copies of the notice, prepared for mailing, and the clerk of the court shall mail the notice upon the issuance of letters.

(d) The personal representative or the personal representative's agent shall serve notice on each creditor of the decedent:

(1) whose name is not set forth in the petition for probate or letters under subsection (c);

(2) who is known or reasonably ascertainable within one (1) month after the first publication of notice under subsection (a); and

(3) whose claim has not been paid or settled by the personal representative.

The notice may be served by mail or any other means reasonably calculated to ensure actual receipt of the notice by a creditor.

(e) Notice under subsection (d) shall be served within one (1) month after the first publication of notice under subsection (a) or as soon as possible after the elapse of one (1) month. If the personal representative or the personal representative's agent fails to give notice to a known or reasonably ascertainable creditor of the decedent under subsection (d) within one (1) month after the first publication of notice under subsection (a), the period during which the creditor may submit a claim against the estate includes an additional period ending two (2) months after the date notice is given to the creditor under subsection (d). However, a claim filed under IC 29-1-14-1(a) more than nine (9) months after the death of the decedent is barred.

(f) A schedule of creditors that received notice under subsection (d) shall be delivered to the clerk of the court as soon as possible after notice is given.

(g) The giving of notice to a creditor or the listing of a creditor on the schedule delivered to the clerk of the court does not constitute an admission by the personal representative that the creditor has an allowable claim against the estate.

(h) If any person entitled to receive notice under this section is under a legal disability, the notice may be served upon or waived by the person's natural or legal guardian or by the person who has care and custody of the person.

(i) The notice shall read substantially as follows:

NOTICE OF ADMINISTRATION

In the _____ Court of _____ County, Indiana.

Notice is hereby given that _____ was, on the ____ day of _____, 20 __, appointed personal representative of the estate of

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_____, deceased, who died on the ___ day of _____, 20 __.

All persons who have claims against this estate, whether or not now due, must file the claim in the office of the clerk of this court within three (3) months from the date of the first publication of this notice, or within nine (9) months after the decedent's death, whichever is earlier, or the claims will be forever barred.

Dated at _____, Indiana, this ___ day of _____, 20 __.

_____
CLERK OF THE _____ COURT
FOR _____ COUNTY, INDIANA

SECTION 3. IC 29-1-7-15.1, AS AMENDED BY P.L.238-2005, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 15.1. (a) When it has been determined that a decedent died intestate and letters of administration have been issued upon the decedent's estate, no will shall be probated unless it is presented for probate before the court decrees final distribution of the estate.

(b) No real estate situate in Indiana of which any person may die seized shall be sold by the executor or administrator of the deceased person's estate to pay any debt or obligation of the deceased person, which is not a lien of record in the county in which the real estate is situate, or to pay any costs of administration of any decedent's estate, unless letters testamentary or of administration upon the decedent's estate are taken out within five (5) months after the decedent's death.

(c) The title of any real estate or interest therein purchased in good faith and for a valuable consideration from the heirs of any person who died seized of the real estate shall not be affected or impaired by any devise made by the person of the real estate so purchased, unless:

(1) the will containing the devise has been probated and recorded in the office of the clerk of the court having jurisdiction within five (5) months after the death of the testator; or

(2) an action to contest the will's validity is commenced within the time provided by law and, as a result, the will is ultimately probated.

(d) The will of the decedent shall not be admitted to probate unless the will is presented for probate ~~not more than~~ **before the latest of the following dates:**

(1) Three (3) years after the individual's death.

(2) Sixty (60) days after the entry of an order denying the probate of a will of the decedent previously offered for probate and objected to under section 16 of this chapter.

(3) Sixty (60) days after the entry of an order revoking

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probate of a will of the decedent previously admitted to probate and contested under section 17 of this chapter.

However, in the case of an individual presumed dead under IC 29-2-5-1, the three (3) year period commences with the date the individual's death has been established by appropriate legal action.

SECTION 4. IC 29-1-7.5-3, AS AMENDED BY P.L.61-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) Subject to section 2(d) of this chapter, a personal representative who administers an estate under this chapter may do the following without order of the court:

(1) Retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment.

(2) Receive assets from fiduciaries or other sources.

(3) Perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as the personal representative may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(A) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(B) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement.

(4) Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances.

(5) If funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments which would be reasonable for use by trustees generally.

(6) Acquire or dispose of an asset, including land in this or

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another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset.

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

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

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

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

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

(12) Vote stocks or other securities in person or by general or limited proxy.

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

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

(15) Hold, manage, safeguard, and control the estate's real and personal property, insure the assets of the estate against damage, loss, and liability, and insure the personal representative personally against liability as to third persons.

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

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

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owner thereof in satisfaction of the indebtedness secured by lien.

(18) Pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate.

(19) Hold an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or another domestic or foreign form of business or enterprise.

(20) Continue a business.

(21) Take any action that may be taken by shareholders, partners, members, or property owners, including contributing additional capital to or merging, consolidating, reorganizing, recapitalizing, dissolving, or otherwise changing the form of the business organization.

(22) Allocate items of income or expense to either estate income or principal, as permitted or provided by IC 30-2-14.

(23) Employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of the personal representative's administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one (1) or more agents to perform any act of administration, whether or not discretionary.

(24) Do any of the following concerning a claim or demand made in favor of or against the estate for the protection of the estate and of the personal representative in the performance of the personal representative's duties:

(A) Release, assign, settle, compromise, or contest the claim or demand.

(B) Participate in mediation or submit to arbitration to resolve any dispute concerning the claim or demand.

(C) Extend the time for payment of the claim or demand.

(D) Abandon the claim or demand.

(25) Sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances.

(26) Select a settlement option under any qualified or nonqualified benefit or retirement plan, annuity, or life insurance payable to the estate, and take appropriate action to collect the proceeds.

(27) Inspect and investigate property held, directly or indirectly, by the personal representative for the purpose of:

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(A) determining the application of environmental law with respect to the property; and

(B) doing the following:

(i) Take action to prevent, abate, or remedy an actual or a potential violation of an environmental law affecting the property, whether taken before or after the assertion of a claim or the initiation of governmental enforcement by federal, state, or local authorities.

(ii) Compromise claims against the estate that may be asserted for an alleged violation of environmental law.

(iii) Pay the expense of inspection, review, abatement, or remedial action to comply with the environmental law.

(28) Distribute assets of the estate upon such terms as the personal representative may impose. To the extent practicable, taking into account the decedent's probable intention, the power to distribute assets includes the power to:

(A) pay an amount to a distributee who is under a legal disability or whom the personal representative reasonably believes to be incapacitated by:

(i) paying the amount directly to the distributee or applying the amount for the distributee's use and benefit;

(ii) paying the amount to the guardian appointed for the distributee;

(iii) paying the amount to a custodian under the Indiana Uniform Transfers to Minors Act (IC 30-2-8.5) or a custodial trustee under the Uniform Custodial Trust Act (IC 30-2-8.6); or

(iv) paying the amount to the trustee of a trust established by the decedent or by the personal representative under subsection (b); and

(B) make distributions of estate income and principal in kind, in cash, or partly in each, in shares of differing composition.

(29) Perform any other act necessary or appropriate to administer the estate.

(b) A personal representative who administers an estate under this chapter may, without court order, establish a trust to make distributions to a distributee who is under a legal disability or whom the personal representative reasonably believes is incapacitated. In establishing a trust under this subsection, a personal representative may exercise:

(1) the authority given to custodians under the Indiana Uniform Transfers to Minors Act (IC 30-2-8.5) to create a trust that satisfies the requirements of Section ~~2503~~ **2503(c)** of the Internal

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Revenue Code and the regulations adopted under that Section; or (2) the authority given to an attorney in fact under IC 30-5-5-15(a)(3) to establish a revocable trust for the benefit of a principal.

SECTION 5. IC 29-1-8-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.5. (a) This section does not apply to the following:**

(1) Real property owned by a decedent.

(2) The contents of a safe deposit box rented by a decedent from a financial institution organized or reorganized under the law of any state (as defined in IC 28-2-17-19) or the United States.

(b) After the death of a decedent, a person:

(1) indebted to the decedent; or

(2) having possession of:

(A) personal property;

(B) an instrument evidencing a debt;

(C) an obligation;

(D) a chose in action;

(E) a life insurance policy;

(F) a bank account; or

(G) intangible property, including annuities, fixed income investments, mutual funds, cash, money market accounts, or stocks;

belonging to the decedent;

shall furnish the date of death value of the indebtedness or property and the names of the known beneficiaries of property described in this subsection to a person who presents an affidavit containing the information required by subsection (c).

(c) An affidavit presented under subsection (b) must state:

(1) the name, address, Social Security number, and date of death of the decedent;

(2) the name and address of the affiant, and the relationship of the affiant to the decedent;

(3) that the disclosure of the date of death value is necessary to determine whether the decedent's estate can be administered under the summary procedures set forth in this chapter; and

(4) that the affiant is answerable and accountable for the information received to the decedent's personal representative, if any, or to any other person having a superior right to the property or indebtedness.

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(d) A person presented with an affidavit under subsection (b) must provide the requested information within three (3) business days after being presented with the affidavit.

(e) A person who acts in good faith reliance on an affidavit presented under subsection (b) is immune from liability for the disclosure of the requested information.

(f) A person who:

(1) is presented with an affidavit under subsection (b); and

(2) refuses to provide the requested information within three

(3) business days after being presented with the affidavit;

is liable to the estate of the decedent.

(g) A plaintiff who prevails in an action to compel a person presented with an affidavit under subsection (b) to accept the authority of the affiant or in an action for damages arising from a person's refusal to provide the information requested in an affidavit presented under subsection (b) shall recover the following:

(1) Three (3) times the amount of the actual damages.

(2) Attorney's fees and court costs.

(3) Prejudgment interest on the actual damages from the date the affidavit was presented to the person.

SECTION 6. IC 29-1-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) If it appears that the value of a decedent's gross probate estate, less liens and encumbrances, does not exceed the sum of:

(1) ~~twenty-five~~ **fifty** thousand dollars ~~($25,000),~~ **($50,000);**

(2) the costs and expenses of administration; and

(3) reasonable funeral expenses;

the personal representative or a person acting on behalf of the distributees, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled to it and file a closing statement as provided in section 4 of this chapter.

(b) If an estate described in subsection (a) includes real property, an affidavit may be recorded in the office of the recorder in the county in which the real property is located. The affidavit must contain the following:

(1) The legal description of the real property.

(2) The following statement: "It appears that the decedent's gross probate estate, less liens and encumbrances, does not exceed the sum of the following: ~~twenty-five~~ **fifty** thousand dollars ~~($25,000),~~ **($50,000),** the costs and expenses of administration, and reasonable funeral expenses.".

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(3) The name of each person entitled to at least a part interest in the real property as a result of a decedent's death, the share to which each person is entitled, and whether the share is a divided or undivided interest.

(4) A statement which explains how each person's share has been determined.

SECTION 7. IC 29-1-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative or a person acting on behalf of the distributees may close an estate administered under the summary procedures of section 3 of this chapter by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(1) to the best knowledge of the personal representative or person acting on behalf of the distributees the value of the gross probate estate, less liens and encumbrances, did not exceed the sum of:

~~(A) the allowance, if any, provided by IC 29-1-4-1;~~

(A) fifty thousand dollars ($50,000);

(B) the costs and expenses of administration; and

(C) reasonable funeral expenses;

(2) the personal representative or person acting on behalf of the distributees has fully administered the estate by disbursing and distributing it to the persons entitled to it; and

(3) the personal representative or person acting on behalf of the distributees has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom ~~he~~ **the personal representative or person acting on behalf of the distributees** is aware and has furnished a full account in writing of ~~his~~ **the** administration to the distributees whose interests are affected.

(b) If no actions, claims, objections, or proceedings involving the personal representative or person acting on behalf of the distributees are filed in the court within three (3) months after the closing statement is filed, the appointment of the personal representative or the duties of the person acting on behalf of the distributees terminate.

(c) A closing statement filed under this section has the same effect as one (1) filed under IC 29-1-7.5-4.

(d) A copy of any affidavit recorded under section 3(b) of this chapter must be attached to the closing statement filed under this section.

SECTION 8. IC 29-1-13-1 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. Every personal representative shall have a right to **take,** and shall take, possession of all the real and personal property of the decedent. ~~other than allowances under IC 29-1-4-1. He~~ **A personal representative:**

(1) shall pay the taxes and collect the rents and earnings thereon until the estate is settled or until delivered by order of the court to the distributees; ~~He~~

(2) shall keep in tenantable repair the buildings and fixtures under ~~his~~ **the personal representative's** control; ~~and~~

(3) may protect the ~~same~~ **buildings and fixtures under the personal representative's control** by insurance; ~~He~~ **and**

(4) may maintain an action:

(A) for the possession of real property; or

(B) to determine the title to ~~the same.~~ **real property.**

SECTION 9. IC 29-1-17-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) After the expiration of the time limit for the filing of claims, and after all claims against the estate, including state and federal inheritance and estate taxes, have been determined, paid, or provision made therefor, except contingent and unmatured claims which cannot then be paid, the personal representative shall, if the estate is in a condition to be closed, render ~~his~~ **a** final account and at the same time petition the court to decree the final distribution of the estate. Notice of the hearing of the petition shall be given ~~to all interested persons.~~ **under IC 29-1-16-6.**

(b) In its decree of final distribution, the court shall designate the persons to whom distribution is to be made, and the proportions or parts of the estate, or the amounts, to which each is entitled under the will and the provisions of this probate code, including the provisions regarding advancements, election by the surviving spouse, lapse, renunciation, adjudicated compromise of controversies, and retainer. Every tract of real property so distributed shall be specifically described therein. The decree shall find that all state and federal inheritance and estate taxes are paid, and if all claims have been paid, it shall so state; otherwise, the decree shall state that all claims except those therein specified are paid and shall describe the claims for the payment of which a special fund is set aside, and the amount of such fund. If any contingent claims which have been duly allowed are still unpaid and have not become absolute, such claims shall be described in the decree, which shall state whether the distributees take subject to them. If a fund is set aside for the payment of contingent claims, the decree shall provide for the distribution of such fund in the event that all or a part of it is not needed to satisfy such contingent claims. If a

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decree of partial distribution has been previously made, the decree of final distribution shall expressly confirm it, or, for good cause, shall modify said decree and state specifically what modifications are made.

(c) If a distributee dies before distribution to ~~him~~ **the distributee** of ~~his~~ **the distributee's** share of the estate, ~~such~~ **the distributee's** share may be distributed to the personal representative of ~~his~~ **the distributee's** estate, if there ~~be~~ **is** one; or if no administration on ~~his~~ **the deceased distributee's** estate is had and none is necessary according to ~~IC 1971,~~ **IC** 29-1-8, the share of ~~such~~ **the deceased** distributee shall be distributed in accordance ~~therewith.~~ **with IC 29-1-8.**

(d) The decree of final distribution shall be a conclusive determination of the persons who are the successors in interest to the estate of the decedent and of the extent and character of their interest therein, subject only to the right of appeal and the right to reopen the decree. It shall operate as the final adjudication of the transfer of the right, title, and interest of the decedent to the distributees therein designated; but no transfer before or after the decedent's death by an heir or devisee shall affect the decree, nor shall the decree affect any rights so acquired by grantees from the heirs or devisees.

(e) Whenever the decree of final distribution includes real property, a certified copy thereof shall be recorded by the personal representative in every county of this state in which any real property distributed by the decree is situated except the county in which the estate is administered. The cost of recording such decree shall be charged to the estate.

SECTION 10. IC 29-1-19-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. Upon the filing of a petition for the appointment of a guardian or the issuance of a protective order under this article, notice shall be given to the incapacitated person, and to other persons ~~in the manner provided by IC 29-3-6,~~ and ~~also to~~ the ~~Department as provided by this chapter.~~ **department by certified mail.**

SECTION 11. IC 29-3-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) When a petition for appointment of a guardian or for the issuance of a protective order is filed with the court, notice of the petition and the hearing on the petition shall be given **by certified mail** as follows:

(1) If the petition is for the appointment of a successor guardian, notice shall be given unless the court, for good cause shown, orders that notice is not necessary.

(2) If the petition is for the appointment of a temporary guardian, notice shall be given as required by IC 29-3-3-4(a).

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(3) If the subject of the petition is a minor, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:

(A) The minor, if at least fourteen (14) years of age, unless the minor has signed the petition.

(B) Any living parent of the minor, unless parental rights have been terminated by a court order.

(C) Any person alleged to have had the principal care and custody of the minor during the sixty (60) days preceding the filing of the petition.

(D) Any other person that the court directs.

(4) If it is alleged that the person is an incapacitated person, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:

(A) The alleged incapacitated person, the alleged incapacitated person's spouse, and the alleged incapacitated person's adult children, or if none, the alleged incapacitated person's parents.

(B) Any person who is serving as a guardian for, or who has the care and custody of, the alleged incapacitated person.

(C) In case no person other than the incapacitated person is notified under clause (A), at least one (1) of the persons most closely related by blood or marriage to the alleged incapacitated person.

(D) Any person known to the petitioner to be serving as the alleged incapacitated person's attorney-in-fact under a durable power of attorney.

(E) Any other person that the court directs.

Notice is not required under this subdivision if the person to be notified waives notice or appears at the hearing on the petition.

(b) Whenever a petition (other than one for the appointment of a guardian or for the issuance of a protective order) is filed with the court, notice of the petition and the hearing on the petition shall be given to the following persons, unless they appear or waive notice:

(1) The guardian.

(2) Any other persons that the court directs, including the following:

(A) Any department, bureau, agency, or political subdivision of the United States or of this state that makes or awards compensation, pension, insurance, or other allowance for the benefit of an alleged incapacitated person.

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(B) Any department, bureau, agency, or political subdivision of this state that may be charged with the supervision, control, or custody of an alleged incapacitated person.

~~(c) All notices required by this section shall be given in the manner prescribed by IC 29-1-1-12 through IC 29-1-1-14.~~

SECTION 12. IC 29-3-12-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) Unless the protected person has been adjudicated an incapacitated person, the court shall terminate the guardianship of a minor upon:

(1) the minor's attaining eighteen (18) years of age; or

(2) the minor's death.

The court may terminate the guardianship of a minor upon the minor's adoption or marriage.

(b) The court shall terminate the guardianship of an incapacitated person upon:

(1) adjudication by the court that the protected person is no longer an incapacitated person; or

(2) the death of the protected person.

(c) The court may terminate any guardianship if:

(1) the guardianship property does not exceed the value of three thousand five hundred dollars ($3,500);

(2) the guardianship property is reduced to three thousand five hundred dollars ($3,500);

(3) the domicile or physical presence of the protected person is changed to another state and a guardian has been appointed for the protected person and the protected person's property in that state; or

(4) the guardianship is no longer necessary for any other reason.

(d) When a guardianship terminates otherwise than by the death of the protected person, the powers of the guardian cease, except that the guardian may pay the claims and expenses of administration that are approved by the court and exercise other powers that are necessary to complete the performance of the guardian's trust, including payment and delivery of the remaining property for which the guardian is responsible to:

(1) the protected person; ~~or~~

(2) in the case of an unmarried minor, to a person having care and custody of the minor with whom the minor resides;

(3) a trust approved by the court, including a trust created by the guardian, in which:

(A) the protected person is the sole beneficiary of the trust; and

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(B) the terms of the trust satisfy the requirements of Section 2503(c) of the Internal Revenue Code and the regulations under that Section;

(4) a custodian under the Uniform Transfers to Minors Act (IC 30-2-8.5); or

(5) another responsible person as the court orders.

(e) When a guardianship terminates by reason of the death of the protected person, the powers of the guardian cease, except that the guardian may pay the expenses of administration that are approved by the court and exercise other powers that are necessary to complete the performance of the guardian's trust and may deliver the remaining property for which the guardian is responsible to the protected person's personal representative or to a person who presents the guardian with an affidavit under IC 29-1-8-1 or IC 29-2-1-2. If approved by the court, the guardian may pay directly the following:

(1) Reasonable funeral and burial expenses of the protected person.

(2) Reasonable expenses of the protected person's last illness.

(3) The protected person's federal and state taxes.

(4) Any statutory allowances payable to the protected person's surviving spouse or surviving children.

(5) Any other obligations of the protected person.

SECTION 13. IC 30-2-8.5-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 20. (a) A personal representative or trustee may make an irrevocable transfer under section 24 of this chapter to a custodian for the benefit of a minor as authorized in the governing will or trust.

(b) If the testator or settlor has nominated a custodian under section 18 of this chapter to receive the custodial property, the transfer shall be made to that person.

(c) If the testator or settlor has not nominated a custodian under section 18 of this chapter, or a person nominated as custodian dies before the transfer or is unable, declines, or is ineligible to serve, the personal representative or the trustee shall designate the custodian from among those eligible to serve as custodian for property of that kind under section 24(a) of this chapter. **The personal representative or trustee may be designated as custodian under this subsection if the personal representative or trustee is eligible to serve as custodian for property of that kind under section 24(a) of this chapter.**

SECTION 14. IC 30-2-8.5-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 21. (a) A personal representative or trustee may make an irrevocable transfer to another

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adult or trust company as custodian for the benefit of a minor under section 24 of this chapter in the absence of a will or under a will or trust that does not contain an authorization to do so. **The personal representative or trustee may also serve as the custodian of the transferred property if the personal representative or trustee is qualified under section 24 of this chapter.**

(b) A guardian may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor under section 24 of this chapter. **The guardian may also serve as the custodian of the transferred property if the guardian is qualified under section 24 of this chapter.**

(c) A transfer under subsection (a) or (b) may be made only if:

(1) the personal representative, trustee, or guardian considers the transfer to be in the best interest of the minor;

(2) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument; and

(3) the transfer is authorized by the court if the property transferred exceeds ten thousand dollars ($10,000) in value.

SECTION 15. IC 30-2-8.5-29, AS AMENDED BY P.L.238-2005, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 29. (a) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to:

(1) the duty or ability of the custodian personally or of any other person to support the minor; or

(2) any other income or property of the minor that may be applicable or available for the support of the minor.

(b) At any time and without a court order, a custodian may transfer part or all of the custodial property to a trust, including a trust created by the custodian, in which:

(1) the minor is the sole beneficiary of the trust; and

(2) the terms of the trust satisfy the requirements of Section ~~2503~~ **2503(c)** of the Internal Revenue Code and the regulations under that section.

The transfer terminates the custodianship of the property to the extent of the transfer.

(c) On petition of an interested person or the minor if the minor is at least fourteen (14) years of age, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit as much of the custodial property as the court considers advisable for the use

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and benefit of the minor.

(d) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect an obligation of a person to support the minor.

SECTION 16. IC 30-4-4-5, AS ADDED BY P.L.238-2005, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) A trustee may furnish to a person other than a beneficiary a certification of trust instead of a copy of the trust instrument. The certification of trust must contain the following information:

(1) That the trust exists and the date the trust instrument was executed.

(2) The identity of the settlor.

(3) The identity and address of the currently acting trustee.

(4) The powers of the trustee.

(5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust.

(6) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all the cotrustees are required in order to exercise the powers of the trustee.

~~(7) The trust's taxpayer identification number.~~

~~(8)~~ **(7)** The manner of taking title to trust property.

(b) A certification of trust may be signed or authenticated by any trustee.

(c) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(d) A certification of trust may contain the dispositive terms of a trust.

(e) A recipient of a certification of trust may require the trustee to furnish copies of excerpts from the original trust instrument and later amendments that:

(1) designate the trustee; and

(2) confer on the trustee the power to act in a pending transaction in which the recipient has an interest.

(f) A person who acts in reliance on a certification of trust without knowledge that the representations contained in the certification of trust are incorrect:

(1) is not liable to any person for acting in reliance on the certification of trust; and

(2) may assume without inquiry the existence of the facts contained in the certification of trust.

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Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying on the certification.

(g) A person who in good faith enters into a transaction in reliance on a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(h) A person making a demand for the trust instrument in addition to a certification of trust or excerpts from the original trust instrument is liable for damages if the court determines that a person did not act in good faith in demanding the trust instrument.

(i) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

SECTION 17. IC 32-38 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

ARTICLE 38. TITLE INSURANCE AND TRANSFERS TO CERTAIN TRUSTS

Chapter 1. Application

Sec. 1. This article applies to a policy or commitment issued after June 30, 2007.

Chapter 2. Definitions

Sec. 1. The definitions in IC 27-7-3-2 apply throughout this article.

Sec. 2. "Commitment" means a commitment for title insurance.

Sec. 3. "Estate" has the meaning set forth in IC 29-1-1-3.

Sec. 4. "Named insured owner" means the person identified in a policy or commitment as the insured owner or the proposed insured owner of an interest in real property that is insured or proposed to be insured under the policy or commitment.

Sec. 5. "Personal representative" has the meaning set forth in IC 29-1-1-3.

Sec. 6. "Policy" means a title insurance policy.

Sec. 7. "Power of appointment" means a power of appointment described in IC 32-17-6.

Sec. 8. "Trust" has the meaning set forth in IC 30-4-1-1.

Chapter 3. Transfers to Certain Trusts

Sec. 1. The trustee of a trust is considered to be the insured owner under a policy or commitment that insures or proposes to insure an interest in real property that is transferred to the trust if:

(1) the transferee of the interest in real property is the trustee

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of the trust, the trust was established by the named insured owner, and the transferor is the named insured owner;

(2) the named insured owner reserves the right to amend or revoke the trust during the named insured owner's lifetime;

(3) the named insured owner is a natural person; and

(4) the transfer of the interest in real property is made by the named insured owner personally or by:

(A) the named insured owner's attorney in fact;

(B) the named insured owner's guardian or other similar person in a guardianship or protective proceeding in which the named insured owner is an incapacitated or a protected person; or

(C) the personal representative of the deceased named insured owner's estate under the terms and conditions of the named insured owner's last will and testament;

even if the named insured owner transfers the interest in real property to the trustee described in this section after the effective date of the policy or commitment.

SECTION 18. IC 34-30-2-122.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 122.7. IC 29-1-8-1.5 (Concerning a person who relies on an affidavit requesting information necessary to determine whether an estate can be summarily administered).**

SECTION 19. [EFFECTIVE JULY 1, 2007] **IC 29-1-8-3 and IC 29-1-8-4, both as amended by this act, apply to the estate of an individual who dies after June 30, 2007.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1508, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

LAWSON L, Chair

Committee Vote: yeas 11, nays 1.

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