January 15, 2013

HOUSE BILL No. 1056

DIGEST OF HB 1056 (Updated January 15, 2013 8:43 am - DI 107)

Citations Affected: IC 29-1; IC 29-3; IC 30-4.

Synopsis: Probate and trust administration. Makes numerous changes concerning a personal representative's employment of an attorney, the powers and duties of a personal representative, guardianships, and the rules of trust construction. Provides that a personal representative may acquire an interest in real property from the estate if the transaction is authorized by an order of the court after notice and hearing. Removes a provision stating that the fee of a surrogate attorney is included in the costs and expenses of estate administration for purposes of prioritizing claims against an estate. (The introduced version of this bill was prepared by the probate code study commission.)

Effective: July 1, 2013.

McMillin

January 7, 2013, read first time and referred to Committee on Judiciary.
January 15, 2013, reported — Do Pass.

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January 15, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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HOUSE BILL No. 1056

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 29-1-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. (a) The following definitions apply throughout this article, unless otherwise apparent from the context:

(1) "Child" includes an adopted child but does not include a grandchild or other more remote descendants, nor, except as provided in IC 29-1-2-5, a child born out of wedlock.

(2) "Claims" includes liabilities of a decedent which survive, whether arising in contract or in tort or otherwise, funeral expenses, the expense of a tombstone, expenses of administration, and all taxes imposed by reason of the person's death. However, for purposes of IC 29-1-2-1 and IC 29-1-3-1, the term does not include taxes imposed by reason of the person's death.

(3) "Court" means the court having probate jurisdiction.

(4) "Decedent" means one who dies testate or intestate.

(5) "Devise" or "legacy", when used as a noun, means a testamentary disposition of either real or personal property or

both.
(6) "Devise", when used as a verb, means to dispose of either real or personal property or both by will.
(7) "Devisee" includes legatee, and "legatee" includes devisee.
(8) "Distributee" denotes those persons who are entitled to the real and personal property of a decedent under a will, under the statutes of intestate succession, or under IC 29-1-4-1.
(9) "Estate" denotes the real and personal property of the decedent or protected person, as from time to time changed in form by sale, reinvestment, or otherwise, and augmented by any accretions and additions thereto and substitutions therefor and diminished by any decreases and distributions therefrom.
(10) "Fiduciary" includes a:
(A) personal representative;
(B) guardian;
(C) conservator;
(D) trustee; and
(E) person designated in a protective order to act on behalf of a protected person.
(11) "Heirs" denotes those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate, unless otherwise defined or limited by the will.
(12) "Incapacitated" has the meaning set forth in IC 29-3-1-7.5.
(13) "Interested persons" means heirs, devisees, spouses, creditors, or any others having a property right in or claim against the estate of a decedent being administered. This meaning may vary at different stages and different parts of a proceeding and must be determined according to the particular purpose and matter involved.
(14) "Issue" of a person, when used to refer to persons who take by intestate succession, includes all lawful lineal descendants except those who are lineal descendants of living lineal descendants of the intestate.
(15) "Lease" includes an oil and gas lease or other mineral lease.
(16) "Letters" includes letters testamentary, letters of administration, and letters of guardianship.
(17) "Minor" or "minor child" or "minority" refers to any person under the age of eighteen (18) years.
(18) "Mortgage" includes deed of trust, vendor's lien, and chattel mortgage.
(19) "Net estate" refers to the real and personal property of a

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decedent less the allowances provided under IC 29-1-4-1 and enforceable claims against the estate.

(20) "Person" includes natural persons and corporations.

(21) "Personal property" includes interests in goods, money, choses in action, evidences of debt, and chattels real.

(22) "Personal representative" includes executor, administrator, administrator with the will annexed, administrator de bonis non, and special administrator.

(23) "Probate estate" denotes the property transferred at the death of a decedent under the decedent's will or under IC 29-1-2, in the case of a decedent dying intestate.

~~(23)~~ **(24)** "Property" includes both real and personal property.

~~(24)~~ **(25)** "Protected person" has the meaning set forth in IC 29-3-1-13.

~~(25)~~ **(26)** "Real property" includes estates and interests in land, corporeal or incorporeal, legal or equitable, other than chattels real.

~~(26)~~ **(27)** "Will" includes all wills, testaments, and codicils. The term also includes a testamentary instrument which merely appoints an executor or revokes or revives another will.

(b) The following rules of construction apply throughout this article unless otherwise apparent from the context:

(1) The singular number includes the plural and the plural number includes the singular.

(2) The masculine gender includes the feminine and neuter.

SECTION 2. IC 29-1-7.5-3.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3.2. (a) Not more than two (2) months after the appointment of a personal representative under this chapter, the personal representative shall prepare a verified inventory of the ~~estate's assets.~~ **decedent's probate estate.** The inventory may consist of at least one (1) written instrument.

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

(1) Real property, with plat or survey description, and if a homestead, designated as a homestead.

(2) Furniture and household goods.

(3) Emblements and annual crops raised by labor.

(4) Corporate stocks, including the class, the par value or that the

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stock has no par value, and if preferred stock, the dividend rate.

(5) Mortgages, bonds, notes, or other written evidences of debt or of ownership described by the name of the debtor, recording data, and other identification.

(6) Bank accounts, money, and insurance policies if payable to the estate of the decedent or to the decedent's personal representative.

(7) All other personal property accurately identified, including the decedent's proportionate share in any partnership. However, no inventory of the partnership property is required.

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

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

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

SECTION 3. IC 29-1-10-20 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 20. (a) As used in this section, "estate lawyer" refers to a lawyer performing services for an estate at the request of the estate's personal representative.**

(b) Except as otherwise provided in a written agreement between the estate lawyer and an interested person, an estate lawyer:

(1) represents and owes a duty only to the personal representative;

(2) does not have a duty to collect, possess, manage, maintain, monitor, or account for estate assets, unless otherwise required by a specific order of the court; and

(3) is not liable for any loss suffered by the estate, except to the extent the loss was caused by the estate lawyer's breach of a duty owed to the personal representative.

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(c) If a provision of a court's local probate rule conflicts with this section, this section controls.

SECTION 4. IC 29-1-10-21 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 21. (a) All authority to act with respect to an estate administered under IC 29-1-7 and IC 29-1-7.5 is vested exclusively in the personal representative.**

(b) If this article prohibits an action by the personal representative, the prohibition will restrict the personal representative, regardless of court order, unless:

(1) a majority in interest of the distributees expressly consent to the proposed action; or

(2) the statute imposing the restriction expressly permits a court to approve the prohibited action.

SECTION 5. IC 29-1-12-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. (a) Within two (2) months after ~~his~~ **the** appointment **of a personal representative,** unless a longer time ~~shall be~~ **is** granted by the court, ~~every~~ **the** personal representative shall prepare a verified inventory ~~in one (1) or more written instruments indicating~~ **of the decedent's probate estate. The verified inventory must:**

(1) consist of at least one (1) written instrument;

(2) indicate the fair market value of each item of property; ~~of the decedent which shall come to his possession or knowledge, including~~ **and**

(3) include a statement of all known liens and other charges on any item.

~~Such~~ **(b)** Property **listed in the inventory required by subsection (a)** ~~shall~~ **must** be classified ~~therein~~ as follows:

(1) Real property, with plat or survey description, and if a homestead, designated as ~~such;~~ **a homestead.**

(2) Furniture and household goods.

(3) Emblements and annual crops raised by labor.

(4) Corporate stocks including the class, the par value or that it has no par value, if preferred stock the dividend rate.

(5) Mortgages, bonds, notes or other written evidences of debt or of ownership described by name of debtor, recording data, and other identification.

(6) Bank accounts, money, and insurance policies if payable to the estate of the decedent or to ~~his~~ **the decedent's** personal representative.

(7) All other personal property accurately identified, including the

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decedent's proportionate share in any partnership, but no inventory of the partnership property shall be required.

~~(b)~~ **(c)** The personal representative may employ a disinterested appraiser to assist ~~him~~ in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The ~~names~~ **name** and ~~addresses~~ **address** of any appraiser ~~shall~~ **must** be indicated on the inventory with the item or items ~~he~~ appraised **by the appraiser.**

~~(c)~~ **(d)** The personal representative shall furnish a copy of the inventory, or any supplement or amendment to it, to interested persons who request it, unless ~~he~~ **the personal representative** has filed the original of the inventory, or any supplement or amendment to it, with the court.

SECTION 6. IC 29-1-14-9, AS AMENDED BY P.L.149-2012, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 9. (a) All claims shall be classified in one (1) of the following classes. If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(1) Costs and expenses of administration.

(2) Reasonable funeral expenses. However, in any estate in which the decedent was a recipient of public assistance under IC 12-1-1 through IC 12-1-12 (before its repeal) or any of the following, the amount of funeral expenses having priority over any claim for the recovery of public assistance shall not exceed the limitations provided for under IC 12-14-6, IC 12-14-17, and IC 12-14-21:

TANF assistance.
TANF burials.
TANF IMPACT/J.O.B.S.
Temporary Assistance to Other Needy Families (TAONF) assistance.
ARCH.
Blind relief.
Child care.
Child welfare adoption assistance.
Child welfare adoption opportunities.
Child welfare assistance.
Child welfare child care improvement.
Child welfare child abuse.
Child welfare child abuse and neglect prevention.
Child welfare children's victim advocacy program.

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Child welfare foster care assistance.
Child welfare independent living.
Child welfare medical assistance to wards.
Child welfare program review action group (PRAG).
Child welfare special needs adoption.
Food Stamp administration.
Health care for indigent (HCI).
ICES.
IMPACT (food stamps).
Title IV-D (ICETS).
Title IV-D child support administration.
Title IV-D child support enforcement (parent locator).
Medicaid assistance.
Medical services for inmates and patients (590).
Room and board assistance (RBA).
Refugee social service.
Refugee resettlement.
Repatriated citizens.
SSI burials and disabled examinations.
Title XIX certification.

(3) Allowances made under IC 29-1-4-1.

(4) All debts and taxes having preference under the laws of the United States.

(5) Reasonable and necessary medical expenses of the last sickness of the decedent, including compensation of persons attending the decedent.

(6) All debts and taxes having preference under the laws of this state; but no personal representative shall be required to pay any taxes on any property of the decedent unless such taxes are due and payable before possession thereof is delivered by the personal representative pursuant to the provisions of IC 29-1.

(7) All other claims allowed.

(b) No preference shall be given in the payment of any claim over any other claim of the same class, nor shall a claim due and payable be entitled to a preference over claims not due.

~~(c) For purposes of subsection (a), costs and expenses of administration include the fee of a surrogate attorney that has been:~~

~~(1) approved by a court under the rules of the Indiana Supreme Court governing surrogate attorneys; and~~

~~(2) filed as a claim in the estate of a deceased attorney.~~

SECTION 7. IC 29-1-15-16.5, AS ADDED BY P.L.238-2005, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2013]: Sec. 16.5. (a) This section applies to a supervised or an unsupervised estate.

(b) Unless authorized by:

(1) a will;

(2) a trust;

(3) the consent of all heirs, legatees, or beneficiaries; ~~or~~

(4) an adjudicated compromise agreement approved by the court under IC 29-1-9; **or**

(5) an order of the court issued after notice and hearing to all interested persons to ensure that adequate consideration is received by the estate for the interest acquired;

any sale (including an auction sale), encumbrance, lease, or rental of real property that is an asset of the estate is void if the sale, encumbrance, lease, or rental of the real property causes the personal representative to directly or indirectly acquire a beneficial interest in the real property.

(c) This section does not prohibit a personal representative from enforcing or fulfilling any enforceable contract or agreement:

(1) executed during the decedent's lifetime; and

(2) between the decedent and the personal representative in the personal representative's individual capacity.

SECTION 8. IC 29-3-9-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 6. (a) Unless otherwise directed by the court, a guardian (other than a temporary guardian) shall file with the court:

(1) at least biennially, not more than thirty (30) days after the anniversary date of the guardian's appointment; and

(2) not more than thirty (30) days after the termination of the appointment;

a written verified account of the guardian's administration.

(b) A temporary guardian shall file with the court, within thirty (30) days after the termination of the temporary guardian's appointment, and otherwise as ordered by the court, a written verified account of the temporary guardian's administration.

(c) A written verified account required under this section must include the incapacitated person's or minor's current residence and a description of the condition and circumstances of the incapacitated person or minor.

(d) **The court shall conduct a hearing on each verified account filed under this section. The court shall give notice to each person entitled to receive notice that an accounting has been filed and will be acted upon by the court on the date set unless written objections**

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are presented to the court on or before that date. The court shall give the notice ~~of the hearing of each account of a guardianship shall be given,~~ **required by this subsection,** unless waived, to the following:

(1) The protected person, **unless waived by the court. If notice to the protected person is waived, the court shall give notice to a person who is not the guardian of the protected person in the following priority:**

(A) The protected person's spouse.

(B) An adult child of the protected person.

(C) A parent of the protected person.

(D) A guardian ad litem appointed by the court under subsection (e).

(2) In the case of a protected person who has died, the personal representative of the estate of the protected person, if any.

(3) Any other persons that the court directs.

(e) The court may appoint a guardian ad litem to review on behalf of a protected person an accounting filed under this section if:

(1) the protected person does not have a spouse, an adult child, or a parent; or

(2) the same individual:

(A) served as the protected person's guardian before the death of the protected person; and

(B) is the personal representative of the protected person's estate.

~~(e)~~ **(f)** When an account other than an account in final settlement is filed, the court may approve the same ex parte, but the account may be reviewed by the court at any subsequent time and does not become final until an account in final settlement is approved by the court after notice and hearing.

~~(f)~~ **(g)** When notice of hearing has been given under this section, the order of the court approving the intermediate account or the final account is binding upon all persons.

~~(g)~~ **(h)** When a guardian files with the court proper receipts or other evidence satisfactory to the court showing that the guardian has delivered to the appropriate persons all the property for which the guardian is accountable as guardian, the court shall enter an order of discharge. The order of discharge operates as a release from the duties of the guardian's office that have not yet terminated and operates as a bar to any suit against the guardian and the guardian's sureties, unless the suit is commenced within one (1) year from the date of the discharge.

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SECTION 9. IC 30-4-3-1.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 1.3. (a) While a trust is revocable and the settlor has the capacity to revoke the trust:**

(1) the rights of the beneficiaries are subject to the control of; and

(2) the duties of the trustee are owed exclusively to;

the settlor.

(b) A settlor is presumed to have capacity for the purposes of subsection (a) until the trustee receives from at least one (1) licensed physician written certification that the settlor lacks the capacity to revoke the trust.

(c) If a revocable trust has more than one settlor, the duties of the trustee are owed to all of the settlors having capacity to revoke the trust.

(d) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

(e) If a trustee reasonably believes that a settlor of a revocable trust lacks capacity to revoke the trust, the trustee is authorized to provide information to the settlor's designated agent (even if the designated agent is one (1) of two (2) or more trustees) or to any beneficiary who, if the settlor were deceased, would be entitled to distributions from the trust.

(f) A person who becomes a successor trustee of a revocable trust upon the death, resignation, or incapacity of a trustee who was also a settlor is not liable for any act or failure to act by the settlor while the settlor was trustee.

(g) A successor trustee of a revocable trust who succeeds a trustee who was also a settlor of the trust does not have a duty to:

(1) investigate any act or failure to act by the predecessor trustee;

(2) review any accounting of the predecessor trustee; or

(3) take action on account of any breach of trust by the predecessor trustee.

SECTION 10. IC 30-4-3-35, AS AMENDED BY P.L.36-2011, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 35. (a) This section is intended to ensure that if real property is transferred to one (1) or more revocable trusts created by a husband and wife for estate planning purposes, the husband and wife will ~~enjoy the~~ **maintain** real estate ownership protections ~~that~~

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equivalent to those they would ~~otherwise enjoy~~ **have** if they owned that real property in an estate by the entireties including an estate by the entireties created under IC 32-17-3-1.

(b) As used in this section, "joint matrimonial trust" means a single inter vivos trust established under this section by settlors who are ~~related as~~ husband and wife.

(c) As used in this section, "matrimonial property" means real property that:

(1) is subject to a written election to treat the property as matrimonial property under this section; and

(2) is owned by a matrimonial trust.

(d) As used in this section, "matrimonial trust" means a trust established under this section to own matrimonial property.

(e) As used in this section, "separate matrimonial trust" means a separate trust that is also a matrimonial trust.

(f) As used in this section, "separate trust" means a trust established by one (1) individual.

(g) A matrimonial trust may be established:

(1) jointly by a husband and wife; or

(2) in two (2) or more separate trusts.

(h) A husband and wife may elect to treat real property as matrimonial property with a written statement of the election:

(1) in an instrument or instruments conveying the real property to a matrimonial trust or trusts; or

(2) in a separate writing that must be recorded in the county where the real property is situated and indexed in the records of the county recorder's office to the instrument or instruments that convey the real property to a matrimonial trust or trusts.

(i) A guardian of a husband or wife may make an election under this section:

(1) without the approval of the court if the guardian has unlimited powers under IC 29-3-8-4; and

(2) with the approval of the court in all other cases.

(j) An attorney in fact of a husband and wife may join in the making of an election under this section under the powers conferred upon the attorney in fact by IC 30-5-5-2 if the power of attorney is recorded in the county where the real property is situated and indexed in the records of the county recorder's office to the instrument or instruments that convey the real property to a matrimonial trust or trusts.

(k) The terms of a separate matrimonial trust or a joint matrimonial trust may (but are not required to) restrict the sale or transfer of the matrimonial property for:

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(1) the lifetime of the settlor who dies first;
(2) the lifetime of the surviving settlor; or
(3) another defined time period.

(l) An interest in matrimonial property is not severable during the marriage of the husband and wife unless:

(1) both the husband and wife join in the severance in writing; or
(2) a third party owns and forecloses a mortgage or other lien against the interests of both the husband and wife in the matrimonial property.

(m) Notwithstanding any other provision of this section, the legal rights of a lienholder that exist at the time of an election to treat the real property subject to the lien as matrimonial property may not be subject to a severance described in subsection (l) without the lienholder's written consent.

(n) To the extent that a matrimonial trust continues to be a matrimonial trust after the death of a settlor (as provided by subsections ~~(o)~~ **(p)** and ~~(q)),~~ **(r));**

(1) real property held or owned in a separate trust and for which an earlier election was made under this section continues to be matrimonial property; and
(2) an unsecured creditor or judgment lien creditor who has a claim only against the deceased settlor but not against the surviving settlor cannot enforce that claim against the deceased settlor's interest or the surviving settlor's interest in the matrimonial property.

(o) After the death of a settlor of a matrimonial trust (whether separate or joint), the issue of whether the surviving settlor's interest in the matrimonial property will be exposed to the claims of the surviving settlor's existing creditors or new creditors must be determined according to:

(1) the nature and extent of the surviving settlor's interest in the matrimonial property under the terms of the deceased settlor's separate trust or the joint trust;
(2) all other relevant facts and circumstances; and
(3) pertinent principles of nontrust law outside this article.

~~(o)~~ **(p)** Matrimonial property held in a separate matrimonial trust or in a joint matrimonial trust continues to be matrimonial property after the death of one (1) settlor:

(1) if the settlors reserved a life estate in the matrimonial property for each settlor when they conveyed the matrimonial property to the matrimonial trust or trusts; or
(2) if the deceased settlor's separate trust provides to the surviving

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settlor:

(A) a life estate;

(B) an interest that qualifies for a deduction from the gross estate of the decedent under Section 2056 of the Internal Revenue Code regardless of whether an election is made to qualify the interest for the deduction; or

(C) in some respect the current right to occupy or receive rent, royalties, or other kinds of income with respect to the matrimonial property.

~~(p)~~ **(q)** A separate matrimonial trust established by a deceased settlor ceases to be a matrimonial trust upon the termination of payments to the surviving settlor as a result of the surviving settlor's death or as a result of the surviving settlor's valid disclaimer of all interests in the matrimonial property held in the deceased settlor's trust.

~~(q)~~ **(r)** A separate matrimonial trust established by a settlor who remains alive continues to be a matrimonial trust during that settlor's remaining lifetime, so long as the settlor retains the right to use or occupy matrimonial property held in the settlor's separate trust.

~~(r)~~ **(s)** A matrimonial trust ceases to be a matrimonial trust upon the dissolution of the marriage of the settlors.

~~(s)~~ **(t)** A husband and wife may revoke a matrimonial trust by together executing a writing expressing the revocation.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1056, 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.

STEUERWALD, Chair

Committee Vote: yeas 12, nays 0.

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