

**IC 23-5**

**ARTICLE 5. OTHER BUSINESS ASSOCIATIONS**

**IC 23-5-1**

Chapter 1. Indiana Business Trust Act

**IC 23-5-1-1**

**Short title**

Sec. 1. This chapter may be cited as the Indiana Business Trust Act of 1963.

*(Formerly: Acts 1963, c.353, s.1.) As amended by P.L.34-1987, SEC.324.*

**IC 23-5-1-2**

**Definitions**

Sec. 2. For the purpose of this chapter:

(a) A "business trust" is an unincorporated business association which is created by a trust instrument, pursuant to common law or enabling legislation, under which property is held, managed, administered, controlled, invested, reinvested, or operated, or business or professional activities for profit are carried on, by a trustee or trustees for the benefit and profit of such person or persons as are or may become the holders of transferable certificates, issued pursuant to the provisions of the trust instrument, which have either restricted or unrestricted transferability, evidencing beneficial interests in the trust estate, including but not limited to a trust of the type known at common law as a business trust, or Massachusetts trust, or a trust qualifying as a real estate investment trust under Section 856 of the Internal Revenue Code or under any similar statute. Such business trust may provide that the holders of such certificates are entitled to the same limitation of personal liability extended to stockholders of private corporations for profit. A business trust shall not be construed to include, and this chapter shall not apply to, the form of trust known as a land trust, under which a trustee or trustees holds the legal or equitable title to real estate, which does not issue transferable certificates of beneficial interest and which has less than one hundred beneficiaries. Nothing in the specific exclusion shall be construed to enlarge the operation or application of this chapter.

(b) A "domestic business trust" is one created under the laws of this state.

(c) A "foreign business trust" is one created under the laws of a territory or state other than Indiana.

(d) The "corpus" of any business trust shall consist of its net worth and shall be equivalent to the capital, paid-in surplus, and accumulated earnings or earned surplus of a corporation.

*(Formerly: Acts 1963, c.353, s.2.) As amended by P.L.2-1987, SEC.33.*

**IC 23-5-1-3**

### **Business trust created prior to chapter**

Sec. 3. A business trust is hereby declared to be a permitted form of association for the conduct of business in this state, provided the provisions of this chapter are complied with, except that nothing contained in this chapter shall be construed to limit, prohibit, or invalidate the existence, acts, or obligations to the state or to any person, of any business trust created or doing business in this state prior to August 12, 1963.

*(Formerly: Acts 1963, c.353, s.3.) As amended by P.L.34-1987, SEC.325.*

### **IC 23-5-1-4**

#### **Required filings; recordation**

Sec. 4. (a) Any business trust, whether domestic or foreign, desiring to transact business in this state, shall file the following documents and information in the office of the secretary of state, on such forms, if any, as such secretary may prescribe:

(1) An executed copy of the trust instrument by which the trust was created and of all amendments thereto or a true and correct copy thereof certified to be such by a trustee thereof before an official authorized to administer oaths or by a public official of another state, territory, or country in whose office an executed copy thereof is on file.

(2) A verified list of the names and addresses of its trustees.

(3) A balance sheet, certified by an independent certified or public accountant or firm of accountants as of the date no earlier than sixty (60) days prior to such date of filing, fairly and truly reflecting its assets and liabilities and specifically setting out its corpus and showing a net worth of not less than one thousand dollars (\$1,000). A foreign business trust shall also file a statement showing the same information required of a foreign corporation under IC 23-1.

(4) The location of its registered office in this state and the name of its resident agent in charge of such registered office.

(b) A foreign business trust shall comply with and be subject to all the provisions of IC 23-1 as though it were a foreign corporation. Before commencement of business in Indiana every trust, domestic or foreign, shall record in the office of the county recorder of the county in which the principal office of said business trust in this state is located a copy of the trust instrument duly bearing the file mark of the secretary of state.

*(Formerly: Acts 1963, c.353, s.4.) As amended by P.L.149-1986, SEC.48; P.L.34-1997, SEC.13.*

### **IC 23-5-1-5**

#### **Application and filing fees**

Sec. 5. Contemporaneously with the filing in the office of the secretary of state of the instruments required by section 4 of this chapter, domestic and foreign business trusts shall pay to the secretary of state an application fee of twenty dollars (\$20).

*(Formerly: Acts 1963, c.353, s.5.) As amended by P.L.34-1987, SEC.326; P.L.34-1997, SEC.14.*

#### **IC 23-5-1-6**

##### **Conditions precedent to beginning business; liability for violations**

Sec. 6. No business trust shall transact any business in this state, except such as may be incident to its organization, until it has fully complied with sections 4 and 5 of this chapter, and in event of any violation of this section, all trustees of such business trust, except those who filed their written dissent in the office of the secretary of state before such business was transacted, shall be jointly and severally liable for all debts and obligations of the business trust arising from the business so transacted in this state prior to compliance with sections 4 and 5 of this chapter.

*(Formerly: Acts 1963, c.353, s.6.) As amended by P.L.34-1987, SEC.327.*

#### **IC 23-5-1-7**

##### **Amendments to trust instruments; filing; fees; recordation**

Sec. 7. The trust instrument by which any business trust was created may be amended in the manner specified therein or in such manner as is valid under the common or statutory law applicable to such business trust; provided, that no such amendment adopted subsequent to the preliminary filings required by section 4 of this chapter shall be legally effective in this state until an executed copy thereof has been filed in the office of the secretary of state accompanied by a fee of thirteen dollars (\$13) and a file-marked copy thereof recorded in the office of the county recorder of the county in which the principal office of said business trust in this state is located.

*(Formerly: Acts 1963, c.353, s.7.) As amended by P.L.34-1987, SEC.328.*

#### **IC 23-5-1-8**

##### **Powers; construction of instruments; terms and conditions; binding effect**

Sec. 8. The power and authority of any business trust authorized under this chapter to transact business in this state shall be as specified in the instrument by which it was created as amended, including but not limited to general grants of power to act and limitations upon individual liability of stockholders, which instrument shall be construed and interpreted in accordance with the common and statutory law applicable to business trusts. Any such trust shall have the right to sue and be sued and if incidental to its purposes the right in its own name, or in the name of the person or persons or corporation or corporations who are from time to time its trustee or trustees, to acquire, hold title to, mortgage, sell, convey, lease, operate, invest in, lend on the security of, and otherwise deal in or with real and personal property; provided, that no business trust shall engage in the business of operating a savings association or

credit union or have the power or authority to conduct a banking, railroad, insurance, surety, safe deposit, mortgage guaranty, or building and loan business, or in the business of mining or manufacturing, or in any business regulated under the utility regulatory commission, or take any action which is in violation of this chapter. Subject to the limitations in this section on power and authority, any person dealing with a business trust authorized under this chapter to transact business in this state shall be bound by the terms and conditions of the instrument by which the trust was created and by any amendments thereto which have been filed and recorded in compliance with section 7 of this chapter.

*(Formerly: Acts 1963, c.353, s.8.) As amended by P.L.34-1987, SEC.329; P.L.23-1988, SEC.112; P.L.79-1998, SEC.23.*

### **IC 23-5-1-9**

#### **Applicability of general corporate laws**

Sec. 9. Business trusts and certificates of beneficial interests in business trusts are subject to all applicable provisions of law, relating to domestic and foreign corporations, respectively, with regard to the issuance and transfer of securities, merger into a domestic corporation, and the filing of required statements, reports and service of process.

*(Formerly: Acts 1963, c.353, s.9.) As amended by P.L.34-1987, SEC.330; P.L.80-1989, SEC.16; P.L.226-1989, SEC.4.*

### **IC 23-5-1-9.1**

#### **Adoption of provisions of general corporate law**

Sec. 9.1. (a) A business trust, by resolution of the trustees, may adopt a provision of law related to domestic and foreign corporations not listed under section 9 of this chapter.

(b) If a business trust adopts a provision of law under subsection (a), the business trust shall:

- (1) file notice of the adoption in the office of the secretary of state; and
- (2) record notice of the adoption in the office of the county recorder of the county in which the principal office of the business trust is located.

*As added by P.L.226-1989, SEC.5.*

### **IC 23-5-1-10**

#### **Repealed**

*(Repealed by P.L.34-1997, SEC.28.)*

### **IC 23-5-1-10.1**

#### **Biennial report; fee**

Sec. 10.1. (a) As used in this section, "trust" means a:

- (1) domestic business trust; or
- (2) foreign business trust;

as defined in section 2 of this chapter.

(b) Each trust authorized to transact business in Indiana shall

deliver a biennial report to the secretary of state for filing that sets forth the following:

- (1) The name of the trust and the state or country under whose law the trust is created.
- (2) The address of the trust's registered office and the name of its registered agent at that office in Indiana.
- (3) The address of the trust's principal office.

(c) When a biennial report is filed, it must be accompanied by the following:

- (1) A verified list of the names and addresses of the trustees of the business trust.
- (2) Executed copies of all amendments to:
  - (A) the original trust instrument; and
  - (B) amendments to the trust instrument that:
    - (i) were adopted not later than December 31 of the preceding year; and
    - (ii) have not been filed under section 7 of this chapter.

(3) A fee of fifteen dollars (\$15) per year to be paid biennially.

(d) Information in the biennial report must be current as of the date the biennial report is executed on behalf of the trust.

(e) The first biennial report must be delivered to the secretary of state in the second year following the calendar year in which a domestic business trust was created or a foreign business trust was authorized to transact business. The biennial report is due during the same month as the month in which the trust was created or authorized to transact business.

(f) Subsequent biennial reports must be delivered to the secretary of state every second year following the year in which the last biennial report was filed. The secretary of state may accept reports during the two (2) months before the month that they are due.

(g) If a biennial report does not contain the information required by this section, the secretary of state shall promptly notify the reporting trust in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within thirty (30) days after the effective date of notice, it is considered to be timely filed.

*As added by P.L.34-1997, SEC.15.*

### **IC 23-5-1-11**

#### **Surrender of authority to transact business; closing out business; effect of withdrawal**

Sec. 11. (a) Any business trust, domestic or foreign, which has obtained authority under this chapter to transact business in Indiana may surrender its said authority at any time by:

- (1) filing in the office of the secretary of state a file-marked copy of a resolution duly adopted by its trustees declaring its intention to withdraw, accompanied by a withdrawal fee of thirteen dollars (\$13);
- (2) recording a copy thereof in the office of the county recorder of the county in which the principal office of said business trust

in this state is located; and

(3) filing all annual reports and paying all annual fees required by section 10 of this chapter and not theretofore filed and paid.

(b) During a period of five (5) years following the effective date of such withdrawal, the business trust shall nevertheless be entitled to convey and dispose of its property and assets in this state, settle and close out its business in this state, and perform any other act or acts pertinent to the liquidation of its business, property, and assets in this state, and to prosecute and defend all suits filed prior to the expiration of said five (5) year period involving causes of action prior to the effective date of such withdrawal or arising out of any action or transactions occurring during said five (5) year period in the course of the liquidation of its business, property, or assets. The withdrawal of a business trust as provided in this section shall have no effect upon any suit filed by or against it prior to the expiration of said five (5) year period until such suit has been finally determined or otherwise finally concluded and all judgments, orders, and decrees entered therein have been fully executed, even though such final determination, conclusion, or execution occurs after the expiration of said five (5) year period.

(c) With respect to a foreign business trust, withdrawal under this section shall not affect its written consent to be sued in the courts of this state, or the jurisdiction over public foreign business trusts of the courts of this state, with respect to any cause of action which arose prior to the effective date of its withdrawal.

*(Formerly: Acts 1963, c.353, s.11.) As amended by P.L.34-1987, SEC.331.*