

## **IC 29-1-10**

### Chapter 10. Personal Representatives

#### **IC 29-1-10-0.1**

##### **Application of certain amendments to chapter**

Sec. 0.1. The amendments made to section 1 of this chapter by P.L.118-1997 do not apply to an individual whose death occurs before July 1, 1997.

*As added by P.L.220-2011, SEC.476.*

#### **IC 29-1-10-1**

##### **Letters testamentary; letters of general administration; persons to whom granted; order; qualifications**

Sec. 1. (a) Domiciliary letters testamentary or domiciliary letters of general administration may be granted to one (1) or more of the persons mentioned in this subsection, natural or corporate, who are not disqualified, in the following order:

- (1) To the executor or executors designated in a will that has been admitted to probate.
- (2) To a surviving spouse who is a devisee in a will that has been admitted to probate.
- (3) To a devisee in a will that has been admitted to probate.
- (4) To the surviving spouse, or to the person or persons nominated by the surviving spouse or to the surviving spouse and the person or persons nominated by the surviving spouse.
- (5) To:
  - (A) an heir;
  - (B) the person or persons nominated by an heir; or
  - (C) an heir and the person or persons nominated by an heir.
- (6) If there is not a person listed in subdivisions (1) through (5), then to any other qualified person.

(b) No person is qualified to serve as a domiciliary personal representative who is:

- (1) under eighteen (18) years of age;
- (2) incapacitated unless the incapacity is caused only by:
  - (A) physical illness;
  - (B) physical impairment; or
  - (C) physical infirmity;
- (3) a convicted felon, either under the laws of the United States or of any state or territory of the United States;
- (4) a resident corporation not authorized to act as a fiduciary in this state; or
- (5) a person whom the court finds unsuitable.

(c) A nonresident individual or corporate fiduciary may qualify and serve as a joint personal representative with a resident personal representative only by:

- (1) filing with the court that has jurisdiction of the administration of the decedent's estate a bond in an amount:
  - (A) not less than:
    - (i) the probable value of the estate's personal property;

- plus
- (ii) the estimated rents and profits to be derived from the property in the estate during the probate period; and
- (B) not greater than the probable gross value of the estate; and
- (2) otherwise meeting the qualifications of subsection (b).
- (d) A nonresident individual who otherwise qualifies under subsection (b) may qualify to serve as a personal representative in Indiana only by filing with the court that has jurisdiction of the administration of the decedent's estate:
  - (1) notice in writing of the individual's acceptance of the appointment as personal representative;
  - (2) notice of the appointment of a resident agent to accept service of process, notices, and other documents; and
  - (3) a bond in an amount:
    - (A) not less than:
      - (i) the probable value of the estate's personal property; plus
      - (ii) the estimated rents and profits to be derived from the property in the estate during the probate period; and
    - (B) not greater than the probable gross value of the estate.
- (e) If a personal representative becomes a nonresident of this state, the representative remains qualified to serve only if the representative files with the court that has jurisdiction of the administration of the estate a bond in an amount:
  - (1) not less than:
    - (A) the probable value of the estate's personal property; plus
    - (B) the estimated rents and profits to be derived from the property in the estate during the probate period; and
  - (2) not greater than the probable gross value of the estate.
- (f) A nonresident individual who satisfies the conditions of subsection (d) or (e) submits personally to the jurisdiction of the court in any proceeding that relates to the estate of the decedent.  
*(Formerly: Acts 1953, c.112, s.1001; Acts 1973, P.L.287, SEC.5; Acts 1975, P.L.289, SEC.2.) As amended by Acts 1982, P.L.173, SEC.1; P.L.33-1989, SEC.39; P.L.118-1997, SEC.19.*

### **IC 29-1-10-2**

#### **Letters; renouncing right**

Sec. 2. Any person entitled to letters testamentary or to general letters of administration may renounce his right thereto in writing, which renunciation shall be filed with the clerk.

*(Formerly: Acts 1953, c.112, s.1002.)*

### **IC 29-1-10-3**

#### **Letters; issuance; conditions**

Sec. 3. Letters testamentary, of administration, of administration with the will annexed, de bonis non, and all other letters special or otherwise, shall be issued to the person entitled to receive the same when:

(a) Said person, if an individual, has taken and subscribed before the clerk or any other officer authorized to administer oaths, an oath or affirmation that he will faithfully discharge the duties of his trust according to law and has given such bond as may be required and the bond has been approved by the court.

(b) Some officer of the corporation, if the person is a corporation, has taken and subscribed before the clerk or any other officer authorized to administer oaths, an oath or affirmation that said bank or trust company will faithfully discharge the duties of its trust according to law, has filed an acceptance of the appointment, duly executed and acknowledged by one (1) of its officers and, if a bond is required to be filed by it, shall have filed such bond as may be required and the bond shall have been approved by the court. The oath and, if a bank or trust company, also the acceptance shall be filed and recorded as a part of the proceedings of the estate.

*(Formerly: Acts 1953, c.112, s.1003; Acts 1971, P.L.407, SEC.1.)*

#### **IC 29-1-10-4**

##### **Letters; evidence of authority**

Sec. 4. Letters issued to a personal representative, attested by the clerk, and under the seal of the court issuing them, shall be conclusive evidence of the authority of the person to whom they are issued until superseded or revoked, and shall extend to all the estate, personal and real, of the decedent within the state. The record of such letters and duly certified transcripts thereof, may be given in evidence with like effect as the originals.

*(Formerly: Acts 1953, c.112, s.1004.)*

#### **IC 29-1-10-5**

##### **Actions or proceedings; evidence of authority**

Sec. 5. In any action or proceeding brought by the personal representative in such representative capacity, it shall not be necessary for him to make profert of his letters, nor shall his right to sue as such personal representative be questioned, unless the opposite party shall file a plea denying such right, with his affidavit to the truth thereof thereunto attached, in which case a copy of the letters issued to such personal representative, duly authenticated, shall be all the evidence necessary to establish such right.

*(Formerly: Acts 1953, c.112, s.1005.)*

#### **IC 29-1-10-6**

##### **Removal of personal representatives for reasons other than a change in control of a corporate fiduciary**

Sec. 6. (a) This section does not apply to the removal of a corporate fiduciary after a change in control of the corporate fiduciary.

(b) When the personal representative becomes incapacitated (unless the incapacity is caused only by a physical illness, infirmity, or impairment), disqualified, unsuitable or incapable of discharging the representative's duties, has mismanaged the estate, failed to

perform any duty imposed by law or by any lawful order of the court, or has ceased to be domiciled in Indiana, the court may remove the representative in accordance with either of the following:

(1) The court on its own motion may, or on petition of any person interested in the estate shall, order the representative to appear and show cause why the representative should not be removed. The order shall set forth in substance the alleged grounds upon which such removal is based, the time and place of the hearing, and may be served upon the personal representative in the same manner as a notice is served under this article.

(2) The court may without motion, petition or application, for any such cause, in cases of emergency, remove such personal representative instantly without notice or citation.

(c) The removal of a personal representative after letters are duly issued does not invalidate official acts performed prior to removal. *(Formerly: Acts 1953, c.112, s.1006.) As amended by Acts 1982, P.L.171, SEC.28; P.L.33-1989, SEC.40; P.L.143-2009, SEC.12.*

#### **IC 29-1-10-6.5**

##### **Removal of personal representative following a change in control of a corporate fiduciary**

Sec. 6.5. (a) This section does not apply to the removal of a personal representative under section 6 of this chapter.

(b) An interested person may petition the court for the removal of a corporate fiduciary appointed by the court as personal representative if there has been a change in the control of the corporate fiduciary and either of the following applies:

(1) The change in the control of the corporate fiduciary occurred after the date of the execution of the decedent's will but before the decedent's death.

(2) The change in the control of the corporate fiduciary occurred after the corporate fiduciary was appointed and during the administration of the decedent's estate.

(c) A petition described in subsection (b) must be filed:

(1) not later than thirty (30) days after an interested person receives notice under IC 29-1-7-7(c) or IC 29-1-7.5-1.5, in the case of a change of control described in subsection (b)(1); or

(2) not later than a reasonable time after the change of control, in the case of a change of control described in subsection (b)(2).

(d) The court may remove the corporate fiduciary if the court determines, after a hearing, that the removal is in the best interests of all interested persons. The court may replace the corporate fiduciary with another corporate fiduciary or an individual.

(e) For purposes of this section, a change in control of a corporate fiduciary occurs whenever a person or group of persons acting in concert acquires the beneficial ownership of a total of at least twenty-five percent (25%) of the outstanding voting stock of:

(1) a corporate fiduciary; or

(2) a corporation controlling a corporate fiduciary.

(f) The removal of a corporate fiduciary after letters are duly issued does not invalidate official acts performed before the removal.

(g) If a corporate fiduciary is replaced under this section, the corporate fiduciary is entitled to receive reasonable compensation for services rendered before the removal.

*As added by P.L.143-2009, SEC.13. Amended by P.L.6-2010, SEC.8.*

#### **IC 29-1-10-7**

##### **Successor representatives; appointment**

Sec. 7. When a personal representative dies, is removed by the court, or resigns and such resignation is accepted by the court, the court may, and if he was the sole or last surviving personal representative and administration is not completed, the court shall appoint another personal representative in his place.

*(Formerly: Acts 1953, c.112, s.1007.)*

#### **IC 29-1-10-8**

##### **Successor representatives; rights and powers**

Sec. 8. When a successor personal representative or an administrator with the will annexed is appointed, he shall have all the rights and powers of his predecessor or of the executor designated in the will, except that he shall not exercise powers given in the will which by its terms are personal to the executor therein designated.

*(Formerly: Acts 1953, c.112, s.1008.)*

#### **IC 29-1-10-9**

##### **Joint representatives; powers; survivor**

Sec. 9. Every power exercisable by joint personal representative may be exercised by the survivor of them when one is dead or by the other when one appointment is terminated by order of the court, unless the power is given in the will and its terms otherwise provide as to the exercise of such power.

*(Formerly: Acts 1953, c.112, s.1009.)*

#### **IC 29-1-10-10**

##### **Joint representatives; powers**

Sec. 10. Where there are two (2) or more personal representatives, the following powers can be exercised, except as otherwise provided in section 11 of this chapter, only by all of them:

- (a) the institution of a suit on behalf of the estate;
- (b) the employment of an attorney;
- (c) the carrying on the business of the deceased;
- (d) the voting of corporate shares of the estate;
- (e) the exercise of those powers given by the will which, by the terms of the will, are to be exercised only by all of the personal representatives, or by all the survivors of them.

All other powers can be exercised by any one of the personal representatives, unless the will otherwise provides.

*(Formerly: Acts 1953, c.112, s.1010.) As amended by Acts 1982, P.L.171, SEC.29.*

### **IC 29-1-10-11**

#### **Joint representatives; powers; voting shares of stock**

Sec. 11. (a) Where powers possessed by two (2) or more personal representatives are to be exercised by them jointly, the will of the majority shall control the manner in which such power shall be exercised unless the will otherwise provides.

Where the personal representatives, or a majority of them, cannot agree, or where they are equally divided upon the manner in which such power shall be exercised, other than in the voting of shares of stock, the court shall, upon petition filed by any of such personal representatives or by any party in interest, direct the manner in which such power shall be exercised, and such power shall be exercised only in accordance with such direction.

(b) Shares of stock held by personal representatives may be voted by the personal representatives in such manner as the instrument or order appointing such personal representatives may direct. In the absence of such direction or the inability of the personal representatives to act in accordance therewith, the following provisions shall apply:

(1) Where shares of stock are held jointly by two (2) or more personal representatives, such shares shall be voted in accordance with the will of the majority.

(2) Where the personal representatives or a majority of them cannot agree, or where they are equally divided upon the question of voting such shares of stock, the court shall, upon petition filed by any of such personal representatives or by any party in interest, direct the voting of such shares as it may deem for the best interest of the beneficiaries, and such shares shall be voted in accordance with such direction.

*(Formerly: Acts 1953, c.112, s.1011.)*

### **IC 29-1-10-12**

#### **Voting corporate shares**

Sec. 12. The personal representative may vote shares of corporate stock in person, or by proxy, discretionary or otherwise and with or without right of substitution and revocation.

*(Formerly: Acts 1953, c.112, s.1012.)*

### **IC 29-1-10-12.5**

#### **Protection of persons dealing in good faith**

Sec. 12.5. A person who in good faith either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. No provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here

expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is in addition to that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

*As added by Acts 1977, P.L.297, SEC.3.*

### **IC 29-1-10-13**

#### **Compensation; attorney's services**

Sec. 13. If a testator by will makes provision for the compensation of his personal representative, that shall be taken as his full compensation unless he files in the court a written instrument renouncing all claims for the compensation provided by the will before qualifying as personal representative. The personal representative, when no compensation is provided in the will, or when he renounces all claim to the compensation provided in the will, shall be allowed such compensation for his services as the court shall deem just and reasonable. Additional compensation may be allowed for his services as attorney and for other services not required of a personal representative. An attorney performing services for the estate at the instance of the personal representative shall have such compensation therefor out of the estate as the court shall deem just and reasonable. Such compensation may be allowed at the final settlement; but at any time during administration a personal representative or his attorney may apply to the court for an allowance upon the compensation of the personal representative and upon attorney's fees.

*(Formerly: Acts 1953, c.112, s.1013.)*

### **IC 29-1-10-14**

#### **Actions on probate; expenses and attorney's fees**

Sec. 14. When any person designated as executor in a will, or the administrator with the will annexed, or if at any time there be no such representative, then any devisee therein, defends it or prosecutes any proceedings in good faith and with just cause for the purpose of having it admitted to probate, whether successful or not, he shall be allowed out of the estate his necessary expenses and disbursements including reasonable attorney's fees in such proceedings.

*(Formerly: Acts 1953, c.112, s.1014.)*

### **IC 29-1-10-15**

#### **Special administrator; appointment; appeal of order**

Sec. 15. A special administrator may be appointed by the court if:

- (a) from any cause delay is necessarily occasioned in granting letters, or
- (b) before the expiration of the time allowed by law for issuing letters, any competent person shall file his affidavit with the

clerk that anyone is intermeddling with the estate or that there is no one having authority to take care of the same, or

(c) if any person shall have died testate and objections to the probate of his will shall have been filed as provided by law.

The appointment of a special administrator may be for a specified time to perform duties respecting specific property, or to perform particular acts as shall be stated in the order of appointment. The fact that a person has been designated as executor in a decedent's will shall not disqualify him from being appointed special administrator of such decedent's estate or any portion thereof.

The special administrator shall make such reports as the court shall direct, and shall account to the court upon the termination of his authority. Otherwise, and except as the provisions of this article by terms apply to general personal representatives, and except as ordered by the court, the law and procedure relating to personal representatives in this article shall apply to special administrators. The order appointing a special administrator shall not be appealable. *(Formerly: Acts 1953, c.112, s.1015.) As amended by Acts 1982, P.L.171, SEC.30.*

#### **IC 29-1-10-16**

##### **Pending will contest; administration of estate**

Sec. 16. Prior to the adjudication of a pending will contest any general personal representative or any special administrator, within the limits of his authority, shall proceed to administer the estate pursuant to the law respecting intestate estates, so far as the same may be done consistent with the terms of any such will.

*(Formerly: Acts 1953, c.112, s.1016.)*

#### **IC 29-1-10-17**

##### **Damages for wrongful death**

Sec. 17. An administrator collecting damages for personal injury resulting in the death of any decedent, may, at any time, file in the court where he was appointed his final report with respect to such proceeds, and the same may be approved by the court, and it shall not be necessary to publish any notice of the final settlement of such estate unless the same is ordered by the court. In the event that said administrator was appointed for the sole purpose of collecting such damages it shall not be necessary to publish any notice of the issuance of letters of administration.

*(Formerly: Acts 1953, c.112, s.1017.)*

#### **IC 29-1-10-18**

##### **Wrongful death; nonresident; appointment of administrator**

Sec. 18. Any court having probate jurisdiction in the state of Indiana may appoint an administrator for the estate of a nonresident for the sole purpose of bringing an action to recover damages for the wrongful death of such nonresident. The appointment may be made in the county in which the death occurred; or in the county in which the injury causing the death was received; or in the county in which

any party defendant to the suit resides. The appointment shall in no way depend upon whether or not the decedent left assets.

*(Formerly: Acts 1953, c.112, s.1018.)*

#### **IC 29-1-10-19**

##### **Termination of authority; validity of prior acts**

Sec. 19. All acts of personal representatives whose authority shall subsequently be terminated because an estate found to be intestate is later found to be testate, or vice versa, because of a revocation of letters, or for any other cause, which acts were lawful when performed, according to the authority under which such personal representative was acting, shall be valid insofar as concerns the rights and liabilities of a purchaser, lessee, or encumbrancer, for value in good faith or a personal representative who has acted in good faith. No person delivering or transferring property to a personal representative or to any other person by authority of the letters issued to such personal representative or upon court order or pursuant to a will under which such a personal representative is acting, shall be held accountable by virtue of such acts performed prior to such termination of authority if such acts were lawful in accordance with the apparent authority of such letters, court order or will.

*(Formerly: Acts 1953, c.112, s.1019.)*