

IC 29-1-13

Chapter 13. Collection and Management of Assets

IC 29-1-13-1

Possession of property; duties of personal representative

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. The 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;
- (2) shall keep in tenable repair the buildings and fixtures under the personal representative's control;
- (3) may protect the buildings and fixtures under the personal representative's control by insurance; and
- (4) may maintain an action:
 - (A) for the possession of real property; or
 - (B) to determine the title to real property.

(Formerly: Acts 1953, c.112, s.1301; Acts 1973, P.L.287, SEC.7.) As amended by Acts 1976, P.L.125, SEC.5; Acts 1979, P.L.268, SEC.4; P.L.95-2007, SEC.10.

IC 29-1-13-1.1

Electronically stored documents of deceased

Sec. 1.1. (a) As used in this section, "custodian" means any person who electronically stores the documents or information of another person.

(b) A custodian shall provide to the personal representative of the estate of a deceased person, who was domiciled in Indiana at the time of the person's death, access to or copies of any documents or information of the deceased person stored electronically by the custodian upon receipt by the custodian of:

- (1) a written request for access or copies made by the personal representative, accompanied by a copy of the death certificate and a certified copy of the personal representative's letters testamentary; or
- (2) an order of a court having probate jurisdiction of the deceased person's estate.

(c) A custodian may not destroy or dispose of the electronically stored documents or information of the deceased person for two (2) years after the custodian receives a request or order under subsection (b).

(d) Nothing in this section shall be construed to require a custodian to disclose any information:

- (1) in violation of any applicable federal law; or
- (2) to which the deceased person would not have been permitted access in the ordinary course of business by the custodian.

As added by P.L.12-2007, SEC.1.

IC 29-1-13-1.5

Access to safe deposit box; duties of financial institutions

Sec. 1.5. (a) Upon the death of an individual, a financial institution shall grant access in the following order of priority to a safe deposit box leased by the individual at the time of the individual's death:

- (1) A surviving joint lessee of the safe deposit box, upon the presentation of proof of the individual's status as a joint lessee.
- (2) The personal representative of the individual's estate, upon the presentation of letters testamentary or letters of administration.
- (3) The personal representative named in the individual's will, upon the presentation of an affidavit meeting the requirements of subsection (c) if a probate estate has not been opened.
- (4) The trustee of a trust created by the individual that was revocable during the individual's life, upon the presentation of an affidavit meeting the requirements of subsection (c) if a probate estate has not been opened.
- (5) Any other individual, upon the presentation of a court order directing access to the safe deposit box.

(b) A person granted access to a safe deposit box under subsection (a) may exercise the following rights:

- (1) The right to open the safe deposit box.
- (2) The right to remove the contents of the safe deposit box.
- (3) The right to cancel the lease for the safe deposit box.

(c) An affidavit required by subsection (a)(3) or (a)(4) must contain the following information:

- (1) The name of the individual leasing the safe deposit box and the date of the individual's death.
- (2) A statement as to whether the individual died testate or intestate.
- (3) The name of the county in which the individual was domiciled at the time of the individual's death.
- (4) A statement that no application or petition for the appointment of a personal representative has been granted or is pending in any jurisdiction.
- (5) A statement under the penalty of perjury that the affiant is qualified under subsection (a)(3) or (a)(4) to obtain access to the safe deposit box leased by the individual.

(d) Except as provided in subsection (h), a financial institution that is presented with a request for access to a safe deposit box by a person described in subsection (a):

- (1) shall grant access to the safe deposit box within three (3) business days of the presentation of the appropriate documentation required by subsection (a); and
- (2) is liable to:
 - (A) the estate of the individual leasing the safe deposit box;
 - or
 - (B) an individual entitled to access to the safe deposit box under subsection (a);

if it fails to grant access to the safe deposit box within three (3)

business days of the presentation of the appropriate documentation required by subsection (a).

(e) A financial institution that provides access to a safe deposit box under this section is discharged and released from liability and responsibility for the assets held in the safe deposit box. The financial institution is not required to:

- (1) inquire into the truth of any statement in an affidavit presented under this section; or
- (2) participate in the disposition of the assets held in the safe deposit box.

(f) A plaintiff who prevails in an action:

- (1) to compel a financial institution presented with a request for access to a safe deposit box in accordance with this section to accept the authority of the person requesting access; or
- (2) for damages arising from a financial institution's refusal to grant the requested access;

is entitled to recover the amounts specified in subsection (g).

(g) A prevailing plaintiff described in subsection (f) is entitled to 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 calculated from the date that the appropriate documentation was presented to the financial institution under subsection (a).

(h) If a financial institution requires the services of a locksmith or other contractor to gain access to a safe deposit box, the financial institution has five (5) additional business days to comply with the requirements of subsection (d).

As added by P.L.101-2008, SEC.6.

IC 29-1-13-2

Preserving estate; action to prevent loss

Sec. 2. No executor named in the will shall interfere with the estate entrusted to him further than to preserve the same until the issuing of letters; but, for that purpose, he may prosecute any suit to prevent the loss of any part thereof.

(Formerly: Acts 1953, c.112, s.1302.)

IC 29-1-13-3

Actions; trespass; waste; costs; examine party

Sec. 3. Every personal representative shall have full power to maintain any suit in any court of competent jurisdiction, in his name as such personal representative, for any demand of whatever nature due the decedent or his estate or for the recovery of possession of any property of the estate or for trespass or waste committed on the estate of the decedent in his lifetime, or while in the possession of the personal representative; but he shall not be liable, in his individual capacity, for any costs in such suit, and shall have power, at his option, to examine the opposite party under oath, touching such demand.

(Formerly: Acts 1953, c.112, s.1303.)

IC 29-1-13-4

Fraudulent conveyances; recovery

Sec. 4. The real and personal property liable for the payment of debts of a decedent shall include all property transferred by him with intent to defraud his creditors or any of them, or transferred by any other means which is in law void as against his creditors or any of them; and the right to recover such property, so far as necessary for the payment of the debts of the decedent, shall be in the personal representative, who shall take such steps as may be necessary to recover the same. Such property shall constitute general assets for the payment of all creditors; but no property so transferred shall be taken from anyone who purchased it for a valuable consideration, in good faith and without knowledge of the fraud.

(Formerly: Acts 1953, c.112, s.1304.)

IC 29-1-13-5

Compromise; debtor or obligor

Sec. 5. When it appears for the best interest of the estate, the personal representative may on order of the court effect a fair and reasonable compromise with any debtor or other 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, he may, in lieu of foreclosure, accept a conveyance or transfer of such encumbered assets from the owner thereof in satisfaction of the indebtedness secured by such lien, if it appears for the best interest of the estate and if the court shall so order. In the absence of prior authorization or subsequent approval of the court, no compromise shall bind the estate.

(Formerly: Acts 1953, c.112, s.1305.)

IC 29-1-13-6

Real estate interest as personal assets; proceeds from sale of real estate

Sec. 6. (a) Unless foreclosure shall have been completed and redemption period shall have expired prior to the death of a decedent, real property mortgages, the interest in the mortgaged premises conveyed thereby, and the debt secured thereby, or any real property acquired by the personal representative in settlement of a debt or liability, or any real property sold by the decedent on written contract, the purchase price of which shall not have been paid in full prior to the death of the decedent, shall be deemed personal assets in the hands of his personal representative and be distributed and accounted for as such, but any sale, mortgage, lease or exchange of any of such real property made after the death of the decedent shall be made pursuant to IC 29-1-15, unless otherwise provided in the will of the decedent.

(b) In all cases of a sale of real property by a personal

representative, upon order of the court the surplus of the proceeds of such sale remaining on the final settlement of the account shall be considered as real property and disposed of among the persons and in the same proportions as the real property would have been if it had not been sold.

(Formerly: Acts 1953, c.112, s.1306.) As amended by Acts 1982, P.L.171, SEC.34.

IC 29-1-13-7

Mortgages; release and discharge

Sec. 7. When, in any case, a mortgage to the decedent is redeemed, or the debt secured thereby is or has been paid to the decedent or to his personal representative, the latter shall release and discharge the mortgage.

(Formerly: Acts 1953, c.112, s.1307.)

IC 29-1-13-8

Valueless property; abandonment

Sec. 8. When any property is valueless, or is so encumbered, or is in such condition that it is of no benefit to the estate, the court may order the personal representative to abandon it.

(Formerly: Acts 1953, c.112, s.1308.)

IC 29-1-13-9

Embezzlement; conversion

Sec. 9. If a person embezzles or converts to the person's own use the personal property of a decedent before the appointment of a personal representative, the person is liable to the estate for the value of the property embezzled or converted.

(Formerly: Acts 1953, c.112, s.1309.) As amended by P.L.154-1990, SEC.8.

IC 29-1-13-10

Petitions; concealment; embezzlement; conversion; adverse interest; attachment

Sec. 10. (a) Upon the filing of a petition by the personal representative or any other person interested in the estate alleging that any person has, or is suspected to have, concealed, embezzled, converted or disposed, of any real or personal property belonging to the estate of a decedent, or has possession or knowledge of any such property or of any instruments in writing relating to such property, the court having probate jurisdiction, upon such notice as it may direct, may order such person to appear before it for disclosure, and may finally adjudicate the rights of the parties before the court with respect to such property. Insofar as concerns parties claiming an interest adverse to the estate, such procedure for disclosure or to determine title is an independent proceeding and not with IC 29-1-7-2.

(b) Any person so ordered to appear who fails or refuses to appear, or who refuses to answer concerning such property or to

deliver up any such property in which no interest adverse to the estate is claimed by him, may be attached and imprisoned in the discretion of the court.

(Formerly: Acts 1953, c.112, s.1310.) As amended by Acts 1982, P.L.171, SEC.35.

IC 29-1-13-11

Business of decedent; continuing

Sec. 11. Upon a showing of advantage to the estate, the court may authorize the personal representative to continue any business of the decedent for the benefit of the estate; but if the decedent died testate and his estate is solvent, the order of the court shall be subject to the provisions of the will. The order may be with or without notice. If notice is not given to all interested persons before the order is made, notice of the order shall be given within five (5) days after the order, and any such person not previously notified by publication or otherwise may show cause why the order should be revoked or modified. The order may provide:

(a) For the conduct of the business solely by the personal representative or jointly with one (1) or more of the decedents' surviving partners, or as a corporation to be formed by the personal representative alone or acting with others;

(b) The extent of the liability of the estate, or any part thereof, or the personal representative, for obligations incurred in the continuation of the business;

(c) As to whether liabilities incurred in the conduct of the business are to be chargeable solely to the part of the estate set aside for use in the business or to the estate as a whole; and

(d) As to the period of time for which the business may be conducted, and such other conditions, restrictions, regulations and requirements as the court may order.

(Formerly: Acts 1953, c.112, s.1311.)

IC 29-1-13-12

Conveyance or lease after death of decedent

Sec. 12. (a) When any person legally bound to make a conveyance or lease dies before making the same, the court, with or without notice, may direct the personal representative to make the conveyance or lease to the person entitled thereto. A petition for this purpose may be made by any person claiming to be entitled to such conveyance or lease, or by the personal representative, or by any other person interested in the estate or claiming an interest in the real property or contract, and shall show the description of the land and the facts upon which such claim for conveyance or lease is based. Upon satisfactory proofs the court may order the personal representative to execute and deliver an instrument of conveyance or lease to the person entitled thereto upon performance of the contract. A certified copy of the order may be recorded with the deed of conveyance or lease in the office of the recorder of the county where the land lies, and shall be prima facie evidence of the due

appointment and qualification of the personal representative, the correctness of the proceedings and the authority of the personal representative.

(b) If a personal representative has been given power by will to make a conveyance or lease, he may, in lieu of the foregoing procedure, and without order of the court, execute a conveyance or lease, pursuant to and in accordance with such power, to the person entitled thereto upon performance of the contract. A certified copy of the will and a certified copy of the personal representative's letters may be recorded with the deed of conveyance or lease in the office of the recorder of the county where the land lies, and shall be prima facie evidence of the due appointment and qualification of the personal representative and his authority to execute the deed of conveyance or lease.

(c) If the contract for a lease or conveyance requires the giving of warranties, the deed or lease to be given by the personal representative shall contain the warranties required. Such warranties shall be binding on the estate as though made by the decedent but shall not bind the personal representative personally.

(Formerly: Acts 1953, c.112, s.1312.)

IC 29-1-13-13

Contracts; performance by personal representative

Sec. 13. If at the time of his death the decedent was obligated by the terms of any contract to further performance thereunder, his personal representative may, if it appears feasible and in the best interests of the estate, proceed to carry out the terms of such contract. In the event that the performance of such contract shall necessitate the expenditure of funds of the estate, or shall require the utilization of assets other than property which is itself the subject matter of such contract, such personal representative shall request and receive instructions from the court regarding the performance thereof.

(Formerly: Acts 1953, c.112, s.1313.)

IC 29-1-13-14

Investment of funds

Sec. 14. Subject to his primary duty to preserve the estate for prompt distribution, and to the terms of the will, if any, the personal representative may with the approval of the court whenever it is reasonable to do so, invest the funds of the estate and make them productive. Such investments shall be restricted to the kinds of investments permitted to trustees by the laws of this state.

(Formerly: Acts 1953, c.112, s.1314.)

IC 29-1-13-15

Deposit of funds

Sec. 15. Whenever it is consistent with a proper administration of the estate, the personal representative may deposit, as a fiduciary, the funds of the estate in a bank in this state as a general deposit, either in a checking account or in a savings account. If the personal

representative is a bank or trust company, it may make such deposit in its own bank.

(Formerly: Acts 1953, c.112, s.1315.)

IC 29-1-13-16

Collection of indebtedness; secure possession of property; special administrator appointed

Sec. 16. Whenever any interested person files with the court having jurisdiction of an estate a petition showing that such person has reason to believe and does believe that the personal representative of the estate or any other person is indebted to the estate, or that any property is in the possession of the personal representative of the estate or of any other person, and that diligent effort is not being made to collect such indebtedness or to secure possession of such property for the estate, the court shall hold a hearing upon such petition and shall determine what action, if any, shall be taken. Should the court decide that there is sufficient merit in the petitioner's claim to warrant action, it shall direct the personal representative to take such action as the court deems necessary; provided, however, where the person claimed to be indebted to the estate or having in his possession property belonging to the estate is the personal representative or where the court is of the opinion that the personal representative would not or could not for any reason prosecute such action with sufficient vigor, it shall appoint a special administrator to take such action as it shall direct.

(Formerly: Acts 1953, c.112, s.1316.)