

## **IC 30-4**

### **ARTICLE 4. TRUST CODE**

#### **IC 30-4-1**

##### Chapter 1. General Provisions

#### **IC 30-4-1-1**

##### **Definition of "trust"; relationships excluded from this article; transferability of employee benefit trust**

Sec. 1. (a) A trust is a fiduciary relationship between a person who, as trustee, holds title to property and another person for whom, as beneficiary, the title is held.

(b) Subject to IC 30-4-2-8, the same person may be both the trustee and a beneficiary.

(c) The rules of law contained in this article do not apply to:

- (1) trusts created by operation of law;
- (2) business trusts (as defined in IC 23-5-1);
- (3) security instruments and creditor arrangements;
- (4) voting trusts;
- (5) religious, educational, and cultural institutions, created in other than trust form, except with respect to the application of IC 30-4-5-18 through IC 30-4-5-23 as those sections relate to the maintenance of federal income tax exemption privileges to which an institution is entitled;
- (6) corporations and other entities governed by IC 23-17, except with respect to IC 30-4-5-18 through IC 30-4-5-23 as those sections relate to the maintenance of federal income tax exemption privileges to which a corporation or other entity is entitled;
- (7) except as provided in this article for trusts for a benevolent public purpose and as provided in the Indiana uniform prudent investor act (IC 30-4-3.5):
  - (A) prepaid funeral plans;
  - (B) trusts for the care and upkeep of cemeteries; and
  - (C) agreements to furnish funeral services; and
- (8) trusts created or authorized by statute other than this article.

(d) IC 30-4-3-2(a) applies to an employee benefit trust that meets the requirements set forth in IC 30-4-3-2(c). However, no other provision of this article applies to an employee benefit trust.

*(Formerly: Acts 1971, P.L.416, SEC.2; Acts 1972, P.L.11, SEC.12.)  
As amended by P.L.287-1987, SEC.1; P.L.41-2000, SEC.1;  
P.L.61-2008, SEC.12.*

#### **IC 30-4-1-1.5**

##### **IC 30-2-4 and IC 30-2-5 not repealed**

Sec. 1.5. This article does not repeal:

- (1) IC 30-2-4 (the Uniform Fiduciaries Act); or
- (2) IC 30-2-5 (the Uniform Act for the Simplification of Fiduciary Security Transfers).

*As added by P.L.1-1989, SEC.60.*

## **IC 30-4-1-2**

### **Other definitions**

Sec. 2. As used in this article:

- (1) "Adult" means any person eighteen (18) years of age or older.
- (2) "Affiliate" means a parent, descendant, spouse, spouse of a descendant, brother, sister, spouse of a brother or sister, employee, director, officer, partner, joint venturer, a corporation subject to common control with the trustee, a shareholder, or corporation who controls the trustee or a corporation controlled by the trustee other than as a fiduciary, an attorney, or an agent.
- (3) "Beneficiary" has the meaning set forth in IC 30-2-14-2.
- (4) "Breach of trust" means a violation by the trustee of any duty which is owed to the settlor or beneficiary.
- (5) "Charitable trust" means a trust in which all the beneficiaries are the general public or organizations, including trusts, corporations, and associations, and that is organized and operated wholly for religious, charitable, scientific, public safety testing, literary, or educational purposes. The term does not include charitable remainder trusts, charitable lead trusts, pooled income funds, or any other form of split-interest charitable trust that has at least one (1) noncharitable beneficiary.
- (6) "Court" means a court having jurisdiction over trust matters.
- (7) "Income", except as otherwise stated in a trust agreement, has the meaning set forth in IC 30-2-14-4.
- (8) "Income beneficiary" has the meaning set forth in IC 30-2-14-5.
- (9) "Inventory value" means the cost of property to the settlor or the trustee at the time of acquisition or the market value of the property at the time it is delivered to the trustee, or the value of the property as finally determined for purposes of an estate or inheritance tax.
- (10) "Minor" means any person under the age of eighteen (18) years.
- (11) "Person" has the meaning set forth in IC 30-2-14-9.
- (12) "Personal representative" means an executor or administrator of a decedent's or absentee's estate, guardian of the person or estate, guardian ad litem or other court appointed representative, next friend, parent or custodian of a minor, attorney in fact, or custodian of an incapacitated person (as defined in IC 29-3-1-7.5).
- (13) "Principal" has the meaning set forth in IC 30-2-14-10.
- (14) "Qualified beneficiary" means:
  - (A) a beneficiary who, on the date the beneficiary's qualification is determined:
    - (i) is a distributee or permissible distributee of trust income or principal;
    - (ii) would be a distributee or permissible distributee of trust income or principal if the interest of the distributee

- described in item (i) terminated on that date;
- (iii) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date;
- (iv) has sent the trustee a request for notice;
- (v) is a charitable organization expressly designated to receive distributions under the terms of a charitable trust;
- (vi) is a person appointed to enforce a trust for the care of an animal under IC 30-4-2-18; or
- (vii) is a person appointed to enforce a trust for a noncharitable purpose under IC 30-4-2-19; or

(B) the attorney general, if the trust is a charitable trust having its principal place of administration in Indiana.

(15) "Remainderman" means a beneficiary entitled to principal, including income which has been accumulated and added to the principal.

(16) "Settlor" means a person who establishes a trust including the testator of a will under which a trust is created.

(17) "Trust estate" means the trust property and the income derived from its use.

(18) "Trust for a benevolent public purpose" means a charitable trust (as defined in subdivision (5)), a split-interest trust (as defined in Section 4947 of the Internal Revenue Code), a perpetual care fund or an endowment care fund established under IC 23-14-48-2, a prepaid funeral plan or funeral trust established under IC 30-2-9, a funeral trust established under IC 30-2-10, a trust or an escrow account created from payments of funeral, burial services, or merchandise in advance of need described in IC 30-2-13, and any other form of split-interest charitable trust that has both charitable and noncharitable beneficiaries, including but not limited to charitable remainder trusts, charitable lead trusts, and charitable pooled income funds.

(19) "Trust property" means property either placed in trust or purchased or otherwise acquired by the trustee for the trust regardless of whether the trust property is titled in the name of the trustee or the name of the trust.

(20) "Trustee" has the meaning set forth in IC 30-2-14-13.

*(Formerly: Acts 1971, P.L.416, SEC.2; Acts 1973, P.L.293, SEC.5.)  
As amended by P.L.33-1989, SEC.94; P.L.138-1994, SEC.1;  
P.L.41-2000, SEC.2; P.L.84-2002, SEC.3; P.L.238-2005, SEC.19;  
P.L.61-2008, SEC.13.*

### **IC 30-4-1-3**

#### **Application and interpretation of rules of law and terms of trust**

Sec. 3. (Application and Interpretation of the Rules of Law and the Terms of the Trust)

The rules of law contained in this article shall be interpreted and applied to the terms of the trust so as to implement the intent of the settlor and the purposes of the trust. If the rules of law and the terms

of the trust conflict, the terms of the trust shall control unless the rules of law clearly prohibit or restrict the article which the terms of the trust purport to authorize.

*(Formerly: Acts 1971, P.L.416, SEC.2.)*

#### **IC 30-4-1-4**

##### **Application of this article with respect to pre-existing trusts**

Sec. 4. (Application of the Article with Respect to Pre-Existing Trusts)

Except as provided elsewhere in this article, the rules of law contained in this article shall apply to all trusts created prior to September 2, 1971 unless to do so would:

- (1) adversely affect a right given to any beneficiary;
- (2) give a right to any beneficiary which he was not intended to have when the trust was created;
- (3) impose a duty or liability on any person which was not intended to be imposed when the trust was created; or
- (4) relieve any person from any duty or liability imposed by the terms of the trust or under prior law.

*(Formerly: Acts 1971, P.L.416, SEC.2.) As amended by Acts 1982, P.L.171, SEC.117.*

#### **IC 30-4-1-5**

##### **Construction of pronouns**

Sec. 5. (Construction of Pronouns)

A pronoun used in this article may be construed, unless the context requires otherwise, without regard to gender or whether the person or thing to which it refers is animate or inanimate.

*(Formerly: Acts 1971, P.L.416, SEC.2.)*

#### **IC 30-4-1-6**

##### **Construction of singular number**

Sec. 6. (Construction of Singular Number)

Any word appearing in the singular number in this article may be construed as plural, unless the context requires otherwise.

*(Formerly: Acts 1971, P.L.416, SEC.2.)*

#### **IC 30-4-1-7**

##### **Trust Code Study Commission report**

Sec. 7. The report of the Trust Code Study Commission made according to IC 2-5-11 (repealed) may be consulted by the courts to determine the reasons, purpose and policies of this article, and may be used as a guide to its construction and application.

*(Formerly: Acts 1971, P.L.416, SEC.2.) As amended by P.L.1-2009, SEC.153.*

#### **IC 30-4-1-8**

##### **Effect of requirement of exercising power of appointment by reference**

Sec. 8. If a trust creating a power of appointment expressly

requires that the power be exercised by a reference, an express reference, or a specific reference to the power or its source, it is presumed that the settlor's intention, in requiring that the grantee exercise the power by making reference to the particular power or to the creating instrument, was to prevent an inadvertent exercise of the power.

*As added by P.L.252-2001, SEC.30.*

#### **IC 30-4-1-9**

##### **Specific indication of power of appointment required**

Sec. 9. A trust shall not operate as to the exercise of a power of appointment, which the settlor may have with respect to any real or personal property, unless by its terms the trust specifically indicates that the settlor intended to exercise the power.

*As added by P.L.252-2001, SEC.31.*

#### **IC 30-4-1-10**

##### **Distribution under laws of intestate succession when manner not specified**

Sec. 10. If a distribution in favor of "descendants", "issue", or "heirs of the body" does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the distribution is to take effect in possession or enjoyment, in such shares they would receive, under the applicable law of intestate succession, as if the designated ancestor had then died intestate, unmarried, and owning the subject matter of the distribution.

*As added by P.L.252-2001, SEC.32.*

#### **IC 30-4-1-11**

##### **Choice of law**

Sec. 11. The meaning and legal effect of a distribution under a trust shall be determined by the law of the state selected by the settlor in the trust, unless the application of that law is contrary to the public policy of this state.

*As added by P.L.252-2001, SEC.33.*

#### **IC 30-4-1-12**

##### **Persons born out of wedlock**

Sec. 12. In construing a trust making a distribution to a person described by relationship to the settlor or to another person, a person born out of wedlock shall be considered the child of the person's mother. If the right of a person born out of wedlock to inherit from the person's father is established under IC 29-1-2-7, the person shall also be considered a child of the person's father.

*As added by P.L.252-2001, SEC.34.*

#### **IC 30-4-1-13**

##### **Applicability of constructive trust provisions**

Sec. 13. IC 29-1-2-12.1 applies to a trust.

*As added by P.L.238-2005, SEC.20.*