

IC 30-4-6

Chapter 6. Procedure

IC 30-4-6-1

Jurisdiction

Sec. 1. (Jurisdiction)

Jurisdiction in this state for all matters arising under this article shall be with the court exercising probate jurisdiction.

(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-2

Continuing jurisdiction

Sec. 2. (Continuing Jurisdiction)

The court will have continuing jurisdiction to supervise the administration of the trust only if the settlor expressly directs in the terms of the trust that the court is to have that jurisdiction.

(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-3

Venue; transfer of trust's principal place of administration; notice; objection to transfer

Sec. 3. (a) Venue in a proceeding brought by the attorney general against a trustee or a trust lies in Marion County, unless a court determines that venue in Marion County would be a hardship for a trustee or a trust.

(b) Unless the terms of the trust provide otherwise, venue in a proceeding brought by a party other than the attorney general for matters arising under this article shall be exclusively in the county in which the principal place of administration of the trust is located. The principal place of administration of a trust is that usual place at which the records pertaining to the trust are kept or, if there is no such place, the trustee's residence. If there are cotrustees, the principal place of administration is either that of the corporate trustee, if there is only one (1); that of the individual trustee who has custody of the records, if there is but one (1) such person and there is no corporate cotrustee; or, if neither of these alternatives apply, that of any of the cotrustees.

(c) Unless the trust provides otherwise, a trustee is under a continuing duty to administer the trust at a place appropriate to the trust's purposes and administration.

(d) Unless the trust provides otherwise, and without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of a duty prescribed by subsection (b), may transfer the trust's principal place of administration to another state or to a jurisdiction outside the United States.

(e) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than sixty (60) days before initiating the transfer. The notice of proposed transfer must include the following information:

(1) The name of the jurisdiction to which the principal place of

administration is to be transferred.

(2) The address and telephone number of the new location at which the trustee can be contacted.

(3) An explanation of the reasons for the proposed transfer.

(4) The date on which the proposed transfer is anticipated to occur.

(5) The date, not less than sixty (60) days after the giving of notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

(f) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(g) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed under IC 30-4-3-33.

(h) If the principal place of administration is maintained in another state, venue in this state for any matters arising under this article shall be in the county stipulated in writing by the parties to the trust or, if there is no such stipulation, in the county where the trust property, or the evidence of the trust property, which is the subject of the action is either situated or generally located.

(i) Any party to an action or proceeding shall be entitled to a change of venue or change of judge as provided in the Indiana Rules of Procedure. A change of venue in any action shall not be construed to authorize a permanent change of venue for all matters arising under this article, and, upon conclusion of the action, venue shall return to the court where the action was initiated.

(Formerly: Acts 1971, P.L.416, SEC.7.) As amended by P.L.238-2005, SEC.43; P.L.245-2005, SEC.9; P.L.1-2006, SEC.494.

IC 30-4-6-4

Docketing of trusts in general

Sec. 4. Except as provided in section 7 of this chapter and IC 30-4-7, unless the terms of the trust expressly direct that the court is to have continuing jurisdiction over the administration of the trust:

(1) a trustee need not docket a trust in the records of the court nor may the court require a trust to be docketed; and

(2) with respect to a decedent's estate docketed for the purpose of probate or administration, which either establishes a trust or makes a devise to another trust, the court shall have no continuing jurisdiction over the administration of the trust after any distribution from the estate is paid or delivered to the trustee.

(Formerly: Acts 1971, P.L.416, SEC.7.) As amended by P.L.200-1991, SEC.5.

IC 30-4-6-5

Pleadings

Sec. 5. (Pleadings)

Any proceedings under this article may be initiated on either a petition or complaint and upon notice as provided in 30-4-6-6.
(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-6

Notice

Sec. 6. (Notice)

(a) Notice must be given to any person or his personal representative who is named as a party in a petition or complaint, whose rights may be affected or upon whom a liability might be imposed by any proceeding; to the Attorney General if the trust is for a benevolent public purpose; and to any other person whom the court may order to be given notice.

(b) The form of notice required shall be in the form of a summons as provided for in the Indiana Rules of Procedure or in such other form as may be ordered or approved by the court.

(c) The manner of service of a notice shall be the same as that provided in the Indiana Rules of Procedure for service of summons or such other manner as may be ordered or approved by the court.

(d) Any person who is a nonresident of this state or whose address is unknown may be served by publication according to the Indiana Rules of Procedure. All persons served by publication whose names and addresses are known or can be ascertained by reasonable diligence shall, in addition to such published notice, be served by registered or certified mail or other public means by which a return receipt may be requested.

(e) The court shall give notice in any case in which it acts on its own motion.

(f) Any person not under a legal disability or a personal representative may waive in writing notice of the proceeding.

(g) An order of the court is binding as to all persons who are given notice of the proceeding, even though less than all interested persons receive notice.

(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-7

Docketing as part of proceeding

Sec. 7. (Docketing as Part of Proceeding)

(a) If it is necessary to the determination of any issue of law or fact in a proceeding, the court may direct that a copy of the trust instrument, if any, be kept in its records.

(b) The filing of the trust instrument under subsection (a) of this section shall not result in continuing supervisory jurisdiction by the court. Upon conclusion of the proceeding, the trust instrument shall be removed from the court's records.

(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-8

Bonding

Sec. 8. (a) Unless the terms of the trust provide otherwise, the trustee need not provide a bond to secure the trustee's performance as trustee.

(b) If the trust is subject to continuing supervisory jurisdiction by the court, the court may, on its own motion, direct the trustee to provide a bond to secure performance of the trustee's duties.

(c) Upon petition by an interested party, the court may direct the trustee to provide a bond to secure the trustee's performance, if the court deems it reasonably necessary to protect the interest of any beneficiary.

(d) Unless the terms of the trust provide otherwise, the court may, in its discretion, direct a trustee appointed by the court under IC 30-4-3-33 to file a bond to secure the performance of the trustee's duties.

(e) In any case in which bond is required, unless otherwise specified, the court shall determine the amount, term and surety of the bond to be provided. The court may also excuse a requirement of bond, reduce or increase the amount of the bond, release the surety, or permit substitution of another bond with the same or different sureties.

(Formerly: Acts 1971, P.L.416, SEC.7.) As amended by P.L.238-2005, SEC.44.

IC 30-4-6-9

Suit on bond

Sec. 9. (Suit on Bond)

(a) The court may, on breach of the obligation of the bond of the trustee, after notice to the obligors on the bond and to such other persons as the court directs, determine the damages, and by appropriate proceeding enforce the collection thereof from those liable on the bond. Such determination and enforcement may be made by the court upon its own motion or upon application of a successor trustee, or of any other interested person. Damages may be assessed on behalf of all interested persons and may be paid over to the successor or other non-defaulting trustee or any other person the court may direct.

(b) The bond of the trustee shall not be void upon the first recovery, but may be proceeded upon from time to time until the whole penalty is exhausted.

(c) If the court has already determined the liability of the trustee, the sureties shall not be permitted thereafter to deny such liability in any action or hearing to determine their liability; but the surety may intervene in any hearing to determine the liability of the trustee.

(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-10

Representation by class or similar interest

Sec. 10. (Representation by Class or Similar Interest)

Any adjudication involving the interests of persons represented by a personal representative shall be lawful and binding upon all

interested persons, whether born or unborn, whether notified or not notified, and whether represented or not, provided, those interested persons are of the same class or have interests similar to the predominant interests of any person so notified or represented.

(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-10.5

Persons who represent interests of and bind other persons

Sec. 10.5. (a) Except as provided in the terms of a trust, and to the extent there is not a conflict of interest between the representative and the person represented or among those being represented:

- (1) a guardian may represent and bind the protected person who is subject to the guardianship;
- (2) an attorney in fact who has authority to act with respect to the particular question or dispute may represent and bind the principal;
- (3) a trustee may represent and bind the beneficiaries of the trust;
- (4) a personal representative of a decedent's estate may represent and bind persons interested in the estate; and
- (5) a parent may represent and bind the parent's minor, unborn, or not yet adopted child if a guardian for the child has not been appointed;

with regard to a particular question or dispute.

(b) The holder of a general power of appointment, including a general testamentary power of appointment, may represent and bind persons whose interests are subject to the power of appointment, including:

- (1) permissible appointees; and
- (2) takers in default.

(c) Unless otherwise represented:

- (1) a minor;
- (2) an incapacitated person;
- (3) an unborn or a not yet adopted child; or
- (4) a person whose identity or location is unknown and not reasonably ascertainable;

may be represented by and bound by another person who has a substantially identical interest with respect to the particular question or dispute but only to the extent there is not a conflict of interest between the representative and the person represented.

(d) If the court determines that an interest is not represented under this section or that the otherwise available representation might be inadequate, the court may appoint a guardian ad litem to receive notice, give consent, and otherwise represent, bind, and act on behalf of:

- (1) a minor;
- (2) an incapacitated person;
- (3) an unborn child; or
- (4) a person whose identity or location is unknown.

If not precluded by conflict of interest, a guardian ad litem may be

appointed to represent several persons or interests. A guardian ad litem may act on behalf of the person represented with respect to any matter arising under this title, regardless of whether a judicial proceeding concerning the trust is pending. In making decisions, a guardian ad litem may consider general benefits accruing to the living members of the family of the persons represented.

(e) Notice to a person who may represent and bind another person under this section has the same effect as if notice were given directly to the other person.

(f) The consent of a person who may represent and bind another person under this section is binding on the person represented unless the person represented objects to the representation before the consent would have become effective.

As added by P.L.238-2005, SEC.45.

IC 30-4-6-11

Appeals

Sec. 11. (Appeals)

(a) Any person considering himself aggrieved by any decision of a court having jurisdiction in proceedings under this article may prosecute an appeal to the court having jurisdiction of such an appeal. That appeal shall be taken as appeals are taken in civil causes.

(b) In an appeal, the trustee will be entitled to a stay of proceedings without bond.

(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-12

Statute of limitations

Sec. 12. Unless previously barred by adjudication, consent or limitation, any right against a trustee for breach of trust shall be barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the right is commenced within three (3) years after receipt of the final account or statement if, being an adult, it is received by him personally or if, being a minor or person with a disability, it is received by his personal representative. The rights thus barred do not include the rights to recover from a trustee for fraud, misrepresentation or inadequate disclosure related to the settlement of the trust.

(Formerly: Acts 1971, P.L.416, SEC.7.) As amended by P.L.99-2007, SEC.195.

IC 30-4-6-13

Application of rules of procedure

Sec. 13. (Application of Rules of Procedure)

Except as otherwise provided in this article, the Indiana Rules of Procedure shall apply with respect to procedure in any matter arising under this article.

(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-14

Contesting validity of revocable trust; time limits

Sec. 14. (a) A person must commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of the following:

(1) Ninety (90) days after the person receives from the trustee a copy of the trust certification and a notice informing the person of:

- (A) the trust's existence;
- (B) the trustee's name and address; and
- (C) the time allowed for commencing the proceeding.

(2) Three (3) years after the settlor's death.

(b) More than one hundred twenty (120) days after the death of the settlor of a trust that was revocable at the settlor's death, the trustee may distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for the distribution unless:

(1) the trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(2) a potential contestant notifies the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced not later than sixty (60) days after the contestant sends the trustee the notification.

(c) A beneficiary of a trust that is determined to be invalid shall return any distribution received.

As added by P.L.238-2005, SEC.46.