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Dan Reeves
Timothy Sendak
Jerry Withered



PROBATE CODE STUDY COMMISSION

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Authority: IC 2-5-16-2

MEETING MINUTES¹

Meeting Date: October 9, 2012
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington St., Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Rep. Jud McMillin, Chairperson; Rep. Ralph Foley; Rep. Ed DeLaney; Sen. Joseph Zakas, Vice-Chairperson; Sen. Susan Glick; Joseph H. Davis; Kris Fruehwald; Thomas Hardin; James Martin; David Pendergast; Dan Reeves; Timothy Sendak.

Members Absent: Sen. John Broden; Judge Thomas Lowe; Jerry Withered.

Rep. McMillin called the meeting to order at 1:32 p.m..

The meeting was devoted to consideration of preliminary drafts (PDs) of the proposals of Probate, Trust and Real Property Section of the Indiana State Bar Association (ISBA) that were discussed at the October 2 meeting (see Exhibit A for the text of those drafts).

¹ These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at <http://www.in.gov/legislative>. Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

PD 3184 (Asset protection trusts)

The Commission discussed the following issues:

- The social effect of exempting asset protection trusts from the rule against perpetuities to permit the accumulation of generations of wealth.
- Allowing asset protection trusts in Indiana in order to keep assets from being transferred to other states that already permit these trusts.
- The potential harm to the public of "do-it yourself asset protection trust kits".
- The alienability of real estate held in an asset protection trust.

Attorney Jeff Dible, Frost, Brown, Todd LLC, representing the ISBA made the following points:

- PD 3184 permits the creation of self-settled spendthrift trusts to protect the settlor from future creditors. Currently there are few assets that Indiana law protects from creditors other than retirement accounts, life insurance proceeds payable to a spouse or children, and jointly held property.
- PD 3184 (Section 16) exempts asset protection trusts from the rule against perpetuities and is severable from the rest of the PD.
- Asset protection trusts allow beneficiaries to avoid payment of the generation-skipping tax if they do not receive a distribution.
- Asset protection trusts cannot be used for fraudulent purposes because the settlor has to have a "clean record" (no bankruptcy or claims pending) when the trust is settled.

Rep. Foley made a motion, which failed for lack of a second, to remove the provision exempting asset protection trusts from the rule against perpetuities. Rep. McMillin's motion to recommend PD 3184 to the General Assembly failed with only six affirmative votes (under IC 2-5-16-5.5 at least eight affirmative votes are needed for the Commission to take official action).

PD 3185, PD 3305 (Property tax deduction)

After Ross Hooten, Legislative Services Staff Attorney, explained that PD 3185 and PD 3305 are alternative approaches to the same proposal, the Commission decided that the approach of PD 3305 was preferable and to move forward with PD 3305 only. The Commission amended PD 3305 to allow individuals or their ancestors who occupy property to take a deduction, regardless of when the property is transferred to the owner-entity (before the amendment, only individuals who transferred the property after June 30, 2013 were eligible for the deduction).

The Commission voted to recommend PD 3305, as amended, to the General Assembly by a vote of 12-0.

PD 3188 (Estate lawyer duties)

PD 3188 provides that an estate lawyer's only duty is to the personal representative, a response to the court's decision in *Estate of Lee v. Colussi* N.E.2d (Ind. Ct. App 2011).

The Commission voted to recommend PD 3188 to the General Assembly by a vote of 11-1.

PD 3199 (Preparation of inventory)

PD 3199 specifies that the personal representative's duty to prepare an inventory only applies to the probate assets.

The Commission voted to recommend PD 3199 to the General Assembly by a vote of 12-0.

PD 3276 (Penalties for failure to comply with fiduciary's instruction)

The Commission received testimony from financial institution representatives.

Mr. Dax Denton, representing the Indiana Banker's Association, said that the Association has strong reservations about PD 3276, which would penalize a bank for noncompliance with a small estate affidavit. Mr. Denton said that some banks have not honored these affidavits due to a lack of clarity in the current law.

Attorney Sonja Kriegsmann, Krieg Devault, LLP, made the following remarks about PD 3276:

- The PD lacks provisions like those in the power of attorney statute that allow a financial institution to provide a written explanation for denial of a fiduciary request.
- Financial institutions are prevented from assessing fees for processing fiduciary requests.
- Financial institutions are allowed to condition their compliance on the fiduciary providing certain listed documents, but the list of documents is insufficient.
- The PD references Gramm-Leach-Bliley Financial Modernization Act and should cite the Consumer Protection Bureau of the Federal Trade Commission instead of the Federal Trade Commission.
- Fiduciaries are allowed to collect penalties and attorney's fees if they prevail in an action for noncompliance but financial institutions are not permitted to collect penalties and attorney's fees if they prevail.

The Commission received testimony from representatives of the life insurance industry.

Attorney Trent Hahn, representing the Association of Indiana Life Insurance Companies, made the following remarks about PD 3276:

- Additional penalties for life insurers are unnecessary because penalties are already available under Indiana's unfair claims practices act (IC 27-4-1).

- Life insurers must be able for liability purposes to reject improperly drafted affidavits.
- A procedure already exists that allows a person to file an appeal if a small estate affidavit isn't honored.
- Federal law already requires life insurers to provide a written explanation for denial of a claim.
- A better approach is to improve the small estate affidavit. Michigan has a helpful online affidavit form.

Mr. John Becker, representing American United Life Insurance Company, made the following comments:

- The small estate affidavit needs to be improved. At times life insurers have had to draft the affidavits for fiduciaries who are uneducated in the law. Michigan's online affidavit form makes it easy for insurers to determine whether the affidavit has been completed correctly.
- Life insurers often have to take the time to investigate whether the facts alleged in an affidavit are truthful in order to prevent fraud.
- Some life insurance contracts have a procedure that allows an individual to appeal the denial of a small estate affidavit.

The Commission discussed the following points:

- The pervasiveness of financial institutions in delaying or refusing to comply with fiduciary requests, a problem that has increased with the regionalization of financial institutions.
- The heavy burden on small estates and individuals who lack the power and resources of the financial institutions.
- The need for a financial institution to efficiently process a properly executed small estate affidavit.

The Commission decided to schedule a third meeting for the afternoon of October 17 to finish the discussion on PD 3276 and the other PDs of the ISBA proposals.

Rep. McMillin adjourned the meeting at 3:29 p.m..



**PRELIMINARY DRAFT
No. 3184**

**PREPARED BY
LEGISLATIVE SERVICES AGENCY
2013 GENERAL ASSEMBLY**

DIGEST

Citations Affected: IC 30-4; IC 34-30-2-132.7.

Synopsis: Various probate matters. Authorizes the establishment of asset protection trusts. Prescribes the procedures for establishing an asset protection trust. Bars most claims against an asset protection trust. Permits claims for certain fraudulent transfers, to enforce certain child support orders, and to enforce certain orders for the division of property with respect to a dissolution of marriage or a legal separation. Provides immunity to the trustees and advisers of asset protection trusts and the professionals involved in establishing asset protection trusts. Provides that the rule against perpetuities does not apply to asset protection trusts.

Effective: July 1, 2013.

20131297

PD 3184/DI 92+

2013

PROBATE CODE STUDY COMMISSION

October 9, 2012

EXHIBIT A



A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 30-4-3-2 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2013]: Sec. 2. (a) The settlor may provide in the
3 terms of the trust that the interest of a beneficiary may not be either
4 voluntarily or involuntarily transferred before payment or delivery of
5 the interest to the beneficiary by the trustee.

6 (b) Except as otherwise provided in subsection (c), if the settlor is
7 also a beneficiary of the trust, a provision restraining the voluntary or
8 involuntary transfer of **his the settlor's** beneficial interest will not
9 prevent **his the settlor's** creditors from satisfying claims from **his the**
10 **settlor's** interest in the trust estate.

11 (c) Subsection (a) applies to a trust that meets both of the following
12 requirements, regardless of whether or not the settlor is also a
13 beneficiary of the trust:

14 (1) The trust is a qualified trust under 26 U.S.C. 401(a).

15 (2) The limitations on each beneficiary's control over the
16 beneficiary's interest in the trust complies with 29 U.S.C. 1056(d).

17 **(d) Subsection (a) applies to an asset protection trust (as defined**
18 **in IC 30-4-8-2(1)) whether or not the settlor is also a beneficiary of**
19 **the asset protection trust.**

20 ~~(d)~~ (e) A trust containing terms authorized under subsection (a) may
21 be referred to wherever appropriate as a trust with protective
22 provisions.

23 SECTION 2. IC 30-4-8 IS ADDED TO THE INDIANA CODE AS
24 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
25 1, 2013]:

26 **Chapter 8. Asset Protection Trusts**

27 **Sec. 1. This chapter applies to:**

28 **(1) qualified dispositions to asset protection trusts; and**

29 **(2) dispositions by transferors who are trustees;**

30 **that are made after June 30, 2013.**

31 **Sec. 2. Unless the context requires otherwise, the following**



1 definitions apply throughout this chapter:

2 (1) "Asset protection trust" means an irrevocable trust
3 established under section 3 of this chapter.

4 (2) "Claim" means a right to payment, regardless of whether
5 the right is reduced to judgment, liquidated, unliquidated,
6 fixed, contingent, matured, immature, disputed, undisputed,
7 legal, equitable, secured, or unsecured.

8 (3) "Creditor" means a person who has a claim against the
9 transferor.

10 (4) "Debt" means liability on a claim.

11 (5) "Disposition" means a transfer, conveyance, or assignment
12 of property, including a change in the legal ownership of
13 property that occurs when a trustee is substituted for another
14 trustee or when at least one (1) trustee is added. The term also
15 includes the exercise of a power that causes a transfer of
16 property to a trustee. However, the term does not include the
17 release or relinquishment of an interest in property that, until
18 the release or relinquishment, was the subject of a qualified
19 disposition.

20 (6) "Investment decision" means the retention, purchase, sale,
21 exchange, or tender of the ownership of or rights in an
22 investment, or another transaction affecting the ownership of
23 or rights in an investment.

24 (7) "Person" means an individual at least eighteen (18) years
25 of age, a corporation, a trust, a limited liability company, a
26 limited liability partnership, a partnership, a governmental
27 entity, the state, or a political subdivision of the state.

28 (8) "Property" means real property, tangible personal
29 property (as defined in IC 6-4.1-1-13), intangible personal
30 property (as defined in IC 6-4.1-1-5), and an interest in real
31 property, tangible personal property, or intangible personal
32 property.

33 (9) "Qualified affidavit" means a sworn affidavit that meets
34 the requirements of section 4 of this chapter.

35 (10) "Qualified disposition" means a disposition by a
36 transferor to an asset protection trust established under
37 section 3 of this chapter.

38 (11) "Qualified trustee" means a person qualified to serve as
39 the trustee of an asset protection trust under section 5 of this
40 chapter.

41 (12) "Transferor" is a person who directly or indirectly
42 makes a disposition or causes a disposition to be made.

43 (13) "Trust adviser" means a person given authority by the
44 terms of an asset protection trust to direct, consent to, or
45 disapprove actual or proposed investment decisions,
46 distribution decisions, or other decisions related to property



1 in an asset protection trust. The term includes a trust
2 protector or any other person who, in addition to a qualified
3 trustee, holds at least one (1) trust power.

4 **Sec. 3. (a)** Except as otherwise provided in this chapter, a person
5 may establish an asset protection trust.

6 **(b)** A trust is an asset protection trust if the trust satisfies each
7 of the following requirements:

8 **(1)** The trust must provide for the appointment of at least one

9 **(1)** qualified trustee for the property that is the subject of a
10 qualified disposition.

11 **(2)** The trust must expressly incorporate Indiana law to
12 govern the validity, construction, and administration of the
13 trust.

14 **(3)** The trust must be irrevocable.

15 **(4)** The trust must provide that the interests of the transferor
16 or beneficiary in the trust property or the income from the
17 trust property may not voluntarily or involuntarily be
18 transferred, assigned, pledged, or mortgaged before the
19 qualified trustee actually distributes the property or income
20 to the beneficiary.

21 **Sec. 4. (a)** A transferor establishing an asset protection trust
22 under this chapter must sign a qualified affidavit identifying the
23 property to be transferred to the asset protection trust. The
24 qualified affidavit must state the following:

25 **(1)** That the transferor has full right, title, and authority to
26 transfer the property to the asset protection trust.

27 **(2)** That the transfer of the property to the asset protection
28 trust will not render the transferor insolvent.

29 **(3)** That the transferor does not intend to defraud a creditor
30 by transferring the property to the asset protection trust.

31 **(4)** That there are no pending or threatened court actions
32 against the transferor other than the court actions identified
33 by the transferor and attached to the qualified affidavit.

34 **(5)** That the transferor is not involved in any administrative
35 proceedings other than the administrative proceedings
36 identified by the transferor and attached to the qualified
37 affidavit.

38 **(6)** That the transferor does not contemplate filing for relief
39 under the federal bankruptcy code.

40 **(7)** That the property transferred to the asset protection trust
41 is not derived from unlawful activities.

42 **(b)** Except as otherwise provided by this section, the qualified
43 affidavit must be signed by the transferor.

44 **(c)** In the case of a disposition by a transferor who is a trustee,
45 the qualified affidavit must be signed by the transferor who made
46 the original disposition to the trustee. A qualified affidavit signed



1 under this subsection must state the facts as of the time of the
2 original disposition.

3 (d) If the transferor is a married individual at the time the
4 qualified affidavit is signed, the transferor shall provide a copy of
5 the qualified affidavit to the transferor's spouse.

6 Sec. 5. (a) A person may serve as a qualified trustee of an asset
7 protection trust if the person is not the transferor and satisfies
8 either of the following requirements:

9 (1) In the case of an individual, the individual is a resident of
10 Indiana.

11 (2) In all other cases, the person is:

12 (A) authorized by Indiana law to act as a trustee; and

13 (B) subject to the supervision of:

14 (i) the department of financial institutions; or

15 (ii) The Office of the Comptroller of the Currency, the
16 Federal Deposit Insurance Corporation, the Board of
17 Governors of the Federal Reserve System, the Office of
18 Thrift Supervision, or any successor to these agencies.

19 (b) A qualified trustee shall do the following:

20 (1) Maintain or arrange for providing custody of the property
21 subject to the qualified disposition in Indiana.

22 (2) Maintain complete and accurate records for the asset
23 protection trust on an exclusive or nonexclusive basis.

24 (3) Prepare or arrange for the preparation of all required tax
25 returns for the asset protection trust.

26 (4) Materially participate in the administration of the asset
27 protection trust.

28 Sec. 6. (a) Except as provided in section 7 of this chapter, no
29 cause of action of any kind, including a cause of action to enforce
30 a judgment, may be brought for:

31 (1) an attachment or other provisional remedy against
32 property that is the subject of a qualified disposition to an
33 asset protection trust; or

34 (2) the avoidance of a qualified disposition to an asset
35 protection trust.

36 (b) If a court declines to apply Indiana law in determining the
37 effect of a spendthrift provision in an asset protection trust in an
38 action brought against an asset protection trust, the trustee of the
39 asset protection trust shall immediately resign and, without further
40 order of any court, cease to be the trustee of the asset protection
41 trust. When a trustee resigns under this section, the trustee has
42 only the power to convey the trust property to a successor trustee
43 appointed under this section. A successor trustee shall succeed the
44 resigning trustee in accordance with the terms of the asset
45 protection trust. If the trust does not provide for a successor
46 trustee and the trust would otherwise be without a trustee, any



1 beneficiary of the trust may petition an Indiana court to appoint a
 2 successor trustee. The Indiana court receiving the petition shall
 3 appoint a successor trustee to serve in accordance with the terms
 4 and conditions that the court determines are consistent with the
 5 purposes of the trust and this chapter.

6 (c) An asset protection trust and its property are protected
 7 under this section regardless of whether or not the transferor:

8 (1) serves as a trust adviser under section 11 of this chapter;

9 or

10 (2) retains a power described in section 12 of this chapter.

11 Sec. 7. (a) A claim against property that is the subject of a
 12 qualified disposition to an asset protection trust is barred by
 13 section 6 of this chapter unless the claim is one of the following:

14 (1) Except as provided in subsection (b), an action brought in
 15 Indiana under the Uniform Fraudulent Transfer Act
 16 (IC 32-18-2) where the requirements for recovery under the
 17 act are met by clear and convincing evidence.

18 (2) An action to enforce the child support obligations of the
 19 transferor under a judgment or court order in existence at the
 20 time of the transferor's qualified disposition to the asset
 21 protection trust.

22 (3) A court judgment or order for the division of property in
 23 a dissolution of the transferor's marriage or a legal separation
 24 between the transferor and the transferor's spouse, if the
 25 transferor's distribution to the asset protection trust was
 26 made:

27 (A) after the date of the transferor's marriage that is
 28 subject to the dissolution or legal separation; or

29 (B) within thirty (30) days before the date of the
 30 transferor's marriage that is subject to the dissolution or
 31 legal separation unless the transferor provided written
 32 notice of the qualified disposition to the other party to the
 33 marriage at least three (3) days before making the
 34 qualified disposition.

35 (b) A claim brought under an action described in subsection
 36 (a)(1) is extinguished unless:

37 (1) the creditor's claim arose before the qualified disposition
 38 to an asset protection trust was made and the action is
 39 brought not later than the later of:

40 (A) two (2) years after the transfer was made; or

41 (B) six (6) months after the transfer:

42 (i) was recorded or made a public record; or

43 (ii) if not recorded or made a public record, was
 44 discovered or could have reasonably been discovered by
 45 the creditor; or

46 (2) notwithstanding IC 32-18-2-19, the creditor's claim arose



1 concurrent with or after the qualified disposition and the
 2 action is brought not more than two (2) years after the date of
 3 the qualified disposition.

4 (c) A qualified disposition made by a transferor who is a trustee
 5 is considered for purposes of this chapter to have been made on the
 6 date that the property that is subject to the qualified disposition
 7 was originally transferred in trust to the trustee or any predecessor
 8 trustee in a form that satisfies section 3(b)(3) and 3(b)(4) of this
 9 chapter.

10 (d) If more than one (1) qualified disposition is made by means
 11 of the same asset protection trust:

12 (1) the making of a subsequent qualified disposition is
 13 disregarded when determining whether a creditor's claim
 14 with respect to a prior qualified disposition is extinguished
 15 under subsection (b); and

16 (2) any distribution to a beneficiary is considered to have been
 17 made from the latest qualified disposition.

18 Sec. 8. (a) If a creditor's claim is allowed under section 7 of this
 19 chapter, the transferor's qualified disposition to an asset protection
 20 trust is subject to the claim only to the extent necessary to satisfy
 21 the transferor's debt to the creditor making the allowed claim.

22 (b) If a creditor's claim is allowed under section 7 of this
 23 chapter, the claim is limited as follows:

24 (1) If the court is satisfied that a qualified trustee has not
 25 acted in bad faith in accepting or administering the property
 26 that is the subject of the qualified disposition:

27 (A) the qualified trustee has a first and paramount lien
 28 against the property that is the subject of the qualified
 29 disposition in an amount equal to the entire cost, including
 30 attorneys' fees, properly incurred by the qualified trustee
 31 in the defense of the action or proceedings filed by the
 32 creditor;

33 (B) the creditor's claim shall be allowed subject to the
 34 proper fees, costs, preexisting rights, claims, and interests
 35 of the qualified trustee and of any predecessor qualified
 36 trustee that had not acted in bad faith; and

37 (C) it is presumed that the qualified trustee did not act in
 38 bad faith merely by accepting the property that is the
 39 subject of the qualified disposition.

40 (2) If the court is satisfied that a beneficiary of an asset
 41 protection trust has not acted in bad faith;

42 (A) the creditor's claim is subject to the right of the
 43 beneficiary to retain any distribution made upon the
 44 exercise of a trust power or the discretion vested in the
 45 qualified trustee that was properly exercised before the
 46 creditor commenced an action to enforce the claim; and



1 (B) it is presumed that the beneficiary, including a
 2 beneficiary who is also a transferor, did not act in bad faith
 3 merely by creating the asset protection trust or by
 4 accepting a distribution made in accordance with the terms
 5 of the asset protection trust.

6 Sec. 9. A spendthrift provision described in section 3(b)(4) of
 7 this chapter is considered a restriction on the transfer of the
 8 transferor's beneficial interest in the trust that is enforceable
 9 under applicable nonbankruptcy law within the meaning of Section
 10 541(c)(2) of the federal Bankruptcy Code (11 U.S.C. 541(c)(2)) or
 11 any successor provision of the federal bankruptcy code.

12 Sec. 10. Except as permitted by the provisions of an asset
 13 protection trust and by sections 11 and 12 of this chapter, the
 14 transferor may not have any rights or authority with respect to the
 15 principal or income of the asset protection trust. An agreement or
 16 understanding purporting to grant or permit the retention of any
 17 greater rights or authority is void.

18 Sec. 11. A transferor who makes a qualified disposition may also
 19 serve as an investment adviser to the trust. However, the
 20 transferor may not serve as a trust adviser to an asset protection
 21 trust except with respect to the retention of a veto right permitted
 22 by section 12(a)(1) of this chapter.

23 Sec. 12. (a) An asset protection trust is not considered revocable
 24 because of the inclusion of one (1) or more of the following:

25 (1) A transferor's power to veto a distribution from the trust.
 26 (2) A power of appointment (other than the power to appoint
 27 to the transferor, the transferor's creditors, the transferor's
 28 estate, or the creditors of the transferor's estate) that may be
 29 exercised by will or other written instrument of the transferor
 30 that is effective only upon the transferor's death.

31 (3) The transferor's potential or actual receipt of income or
 32 principal, including right to income retained in the trust.

33 (4) The transferor's potential or actual receipt of income or
 34 principal from a charitable remainder unitrust or charitable
 35 remainder annuity trust (as those terms are defined in Section
 36 664 of the Internal Revenue Code).

37 (5) The transferor's potential or actual receipt of income or
 38 principal from a grantor retained annuity trust or grantor
 39 retained unitrust that is allowed under Section 2702 of the
 40 Internal Revenue Code.

41 (6) The transferor's potential or actual receipt or use of
 42 principal when that potential or actual receipt or use results
 43 from a qualified trustee's acting:

44 (A) in the qualified trustee's discretion;

45 (B) under a standard that governs the distribution of
 46 principal and does not confer upon the transferor a power



1 to consume, invade, or appropriate property for the benefit
 2 of the transferor unless the power of the transferor is
 3 limited by an ascertainable standard relating to health,
 4 education, support, or maintenance within the meaning of
 5 Section 2041(b)(1)(A) or Section 2514(c)(1) of the Internal
 6 Revenue Code; or

7 (C) at the direction of an adviser described in section 13 of
 8 this chapter who acts:

9 (i) in the adviser's discretion; or

10 (ii) under a standard that governs the distribution of
 11 principal and does not confer upon the transferor a
 12 power to consume, invade, or appropriate property for
 13 the benefit of the transferor unless the power of the
 14 transferor is limited by an ascertainable standard
 15 relating to health, education, support, or maintenance
 16 within the meaning of Section 2041(b)(1)(A) or Section
 17 2514(c)(1) of the Internal Revenue Code.

18 (7) The transferor's right to remove a trustee or adviser and
 19 to appoint a new trustee or adviser as long as that right does
 20 not include the appointment of a person who is a related or
 21 subordinate party to the transferor within the meaning of
 22 Section 672(c) of the Internal Revenue Code.

23 (8) The transferor's potential or actual use of real property
 24 held under a qualified personal residence trust (as defined in
 25 Section 2702(c) of the Internal Revenue Code).

26 (b) For the purposes of subsection (a)(6)(A), a qualified trustee
 27 is presumed to have discretion with respect to the distribution of
 28 principal unless that discretion is denied to the qualified trustee by
 29 the terms of the asset protection trust.

30 Sec. 13. (a) A transferor may appoint one (1) or more advisers
 31 who may have authority under the terms of the trust:

32 (1) to remove and appoint qualified trustees or trust advisers;
 33 and

34 (2) to direct, consent to, or disapprove distributions from the
 35 trust.

36 (b) Trust advisers are not required to satisfy the requirements
 37 imposed upon trustees by section 5 of this chapter.

38 Sec. 14. If:

39 (1) a qualified trustee of an asset protection trust ceases to
 40 meet the requirements of section 5 of this chapter; and

41 (2) there remains no trustee of the asset protection trust that
 42 meets the requirements of section 5 of this chapter;

43 the qualified trustee described in subdivision (1) is considered to
 44 have resigned when the qualified trustee ceased to meet the
 45 requirements of section 5 of this chapter and a successor trustee
 46 provided for in the asset protection trust shall become a qualified



1 trustee. If the asset protection trust does not provide for a
 2 successor qualified trustee, a court shall appoint a successor
 3 qualified trustee upon the application of any interested party.

4 Sec. 15. (a) Notwithstanding any provision of law to the
 5 contrary, a person is entitled to only the rights with respect to a
 6 qualified disposition that are provided by this chapter. No person,
 7 including a creditor whose claim arises before or after a qualified
 8 disposition, may bring a claim or a cause of action against:

9 (1) a trustee or an adviser of an asset protection trust; or

10 (2) any person involved in the counseling, drafting,
 11 preparation, execution, or funding of an asset protection trust.

12 (b) This subsection applies to a cause of action to enforce a
 13 judgment notwithstanding any provision of law to the contrary. A
 14 cause of action to enforce a judgment may not be brought at law or
 15 equity against:

16 (1) a trustee or adviser of an asset protection trust; or

17 (2) any person involved in the counseling, drafting,
 18 preparation, execution, or funding of an asset protection
 19 trust;

20 if, as of the date of the cause of action, a cause of action by a
 21 creditor with respect to the asset protection trust would be barred
 22 by this section.

23 (c) For purposes of this section, the counseling, drafting,
 24 preparation, execution, and funding of an asset protection trust
 25 include the counseling, drafting, preparation, execution, and
 26 funding of a limited partnership or a limited liability company if
 27 interests in the limited partnership or limited liability company are
 28 subsequently transferred to the asset protection trust.

29 Sec. 16. The common law rule against perpetuities and the
 30 Uniform Statutory Rule Against Perpetuities (IC 32-17-8) do not
 31 apply to:

32 (1) the property or property interests in an asset protection
 33 trust; or

34 (2) the terms and provisions of an asset protection trust.

35 SECTION 3. IC 34-30-2-132.7 IS ADDED TO THE INDIANA
 36 CODE AS A NEW SECTION TO READ AS FOLLOWS
 37 [EFFECTIVE JULY 1, 2013]: Sec. 132.7. IC 30-4-8-15 (Concerning
 38 asset protection trusts).





PRELIMINARY DRAFT
No. 3185

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2013 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 6-1.1-1-9; IC 6-1.1-12-17.9.

Synopsis: Property tax deductions. Provides that an individual with a beneficial or ownership interest in a trust or in one of various types of business entities is considered the owner of real property that the individual possesses and is entitled to occupy under the terms of the trust or agreement with the business entity. Removes a provision concerning the ownership of real property that specifically referred to a qualified personal residence trust in favor of the more general language described above in the rules of construction for the property tax law and a statute concerning the application of various property tax deductions.

Effective: July 1, 2013.



A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-1.1-1-9, AS AMENDED BY P.L.101-2008,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2013]: Sec. 9. (a) For purposes of this article, the "owner" of
4 tangible property shall be determined by using the rules contained in
5 this section.

6 **(b) As used in this section, "entity" means a partnership, limited**
7 **partnership, limited liability partnership, association, corporation,**
8 **limited liability company, trust, or similar entity.**

9 ~~(b)~~ **(c)** Except as otherwise provided in this section, the holder of the
10 legal title to personal property, or the legal title in fee to real property,
11 is the owner of that property.

12 ~~(c)~~ **(d)** When title to tangible property passes on the assessment date
13 of any year, only the person obtaining title is the owner of that property
14 on the assessment date.

15 ~~(d)~~ **(e)** When the mortgagee of real property is in possession of the
16 mortgaged premises, the mortgagee is the owner of that property.

17 ~~(e)~~ **(f)** When personal property is security for a debt and the debtor
18 is in possession of the property, the debtor is the owner of that property.

19 ~~(f)~~ **(g)** When a life tenant of real property is in possession of the real
20 property, the life tenant is the owner of that property.

21 ~~(g)~~ **(h)** When the grantor of a ~~qualified personal residence~~ trust
22 created under United States Treasury Regulation 25.2702-5(c)(2) or an
23 **individual with a beneficial (whether discretionary or not) or**
24 **ownership interest in an entity** is:

25 (1) in possession of the real property transferred to the trust or
26 entity; and

27 (2) entitled to occupy the real property ~~rent free~~ under the terms
28 of the trust or an agreement or other provision that binds the
29 entity;

30 the grantor or the individual with a beneficial (whether
31 discretionary or not) or ownership interest in the entity is the owner



1 of that real property.

2 SECTION 2. IC 6-1.1-12-17.9, AS AMENDED BY P.L.101-2008,
 3 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 4 JULY 1, 2013]: Sec. 17.9. (a) **As used in this section, "entity" means**
 5 **a partnership, limited partnership, limited liability partnership,**
 6 **association, corporation, limited liability company, trust, or similar**
 7 **entity.**

8 (b) A trust **or other entity** is entitled to a deduction under section
 9 9, 11, 13, 14, 16, or 17.4 of this chapter for real property owned by the
 10 trust **or other entity** and occupied by an individual if the county
 11 auditor determines that the individual:

12 (1) upon verification in the body of the deed or otherwise, has
 13 either:

14 (A) a beneficial interest in the trust **or a beneficial (whether**
 15 **discretionary or not) or ownership interest in the entity;** or

16 (B) the right to occupy the real property **rent free** under the
 17 terms of a ~~qualified personal residence~~ **the trust created by the**
 18 ~~individual under United States Treasury Regulation~~
 19 ~~25.2702-5(c)(2);~~ **or an agreement or other provision that**
 20 **binds the entity;**

21 (2) otherwise qualifies for the deduction; and

22 (3) would be considered the owner of the real property under
 23 ~~IC 6-1.1-1-9(f) or IC 6-1.1-1-9(g) or IC 6-1.1-1-9(h).~~

24 SECTION 3. [EFFECTIVE JULY 1, 2013] (a) **IC 6-1.1-1-9 and**
 25 **IC 6-1.1-12-17.9, both as amended by this act, apply to property**
 26 **taxes imposed for an assessment date after January 15, 2014.**

27 (b) **This SECTION expires January 1, 2016.**





PRELIMINARY DRAFT
No. 3188

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2013 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 29-1-10-20.

Synopsis: Estate lawyers. Defines a lawyer performing services for an estate at the request of the estate's personal representative as an "estate lawyer". Specifies that an estate lawyer represents only the personal representative. Specifies that an estate lawyer does not have a duty to anyone other than the personal representative or a duty to collect, possess, manage, maintain, monitor, or account for estate assets. Specifies that an estate lawyer is not liable for any loss suffered by the estate, except to the extent that the loss was caused by the lawyer's breach of a duty owed to the personal representative. Provides that an estate lawyer may expand the scope of the estate lawyer's representation, duties, and potential liability through a written agreement with an interested person.

Effective: July 1, 2013.



A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 29-1-10-20 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2013]: **Sec. 20. (a) As used in this section, "estate lawyer" refers**
4 **to a lawyer performing services for an estate at the request of the**
5 **estate's personal representative.**
6 **(b) Except as otherwise provided in a written agreement**
7 **between the estate lawyer and an interested person, an estate**
8 **lawyer:**
9 **(1) represents and owes a duty only to the personal**
10 **representative;**
11 **(2) does not have a duty to collect, possess, manage, maintain,**
12 **monitor, or account for estate assets, unless otherwise**
13 **required by a specific order of the court; and**
14 **(3) is not liable for any loss suffered by the estate, except to**
15 **the extent the loss was caused by the estate lawyer's breach of**
16 **a duty owed to the personal representative.**
17 **(c) If a provision of a court's local probate rule conflicts with**
18 **this section, this section controls.**





**PRELIMINARY DRAFT
No. 3305**

**PREPARED BY
LEGISLATIVE SERVICES AGENCY
2013 GENERAL ASSEMBLY**

DIGEST

Citations Affected: IC 6-1.1-12.

Synopsis: Property tax deductions. Provides that property owned by an entity other than an individual, an individual buying under contract, a cooperative housing cooperation, certain trusts, or certain entities that were eligible for the standard deduction in 2009, is eligible for the standard deduction and other property tax deductions, if: (1) the property is located in Indiana and consists of a dwelling and not more than one acre of real estate surrounding the dwelling; (2) the property is the principal place of residence of an individual; (3) the resident individual is a shareholder, partner, or member of the entity that owns the property; (4) the property is transferred by the resident individual to the entity after June 30, 2013; and (5) the property was eligible for the standard deduction on the most recent assessment date occurring before the date on which ownership was transferred from the individual to the entity.

Effective: July 1, 2013.



A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-1.1-12-17.8, AS AMENDED BY
2 P.L.182-2009(ss), SECTION 109, IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 17.8. (a) An individual
4 who receives a deduction provided under section 1, 9, 11, 13, 14, 16,
5 17.4, or 37 of this chapter in a particular year and who remains eligible
6 for the deduction in the following year is not required to file a
7 statement to apply for the deduction in the following year. However, for
8 purposes of a deduction under section 37 of this chapter, the county
9 auditor may, in the county auditor's discretion, terminate the deduction
10 for assessment dates after January 15, 2012, if the individual does not
11 comply with the requirement in IC 6-1.1-22-8.1(b)(9), as determined
12 by the county auditor, before January 1, 2013. Before the county
13 auditor terminates the deduction because the taxpayer claiming the
14 deduction did not comply with the requirement in IC 6-1.1-22-8.1(b)(9)
15 before January 1, 2013, the county auditor shall mail notice of the
16 proposed termination of the deduction to:
17 (1) the last known address of each person liable for any property
18 taxes or special assessment, as shown on the tax duplicate or
19 special assessment records; or
20 (2) the last known address of the most recent owner shown in the
21 transfer book.
22 (b) An individual who receives a deduction provided under section
23 1, 9, 11, 13, 14, 16, or 17.4 of this chapter in a particular year and who
24 becomes ineligible for the deduction in the following year shall notify
25 the auditor of the county in which the real property, mobile home, or
26 manufactured home for which the individual claims the deduction is
27 located of the individual's ineligibility in the year in which the
28 individual becomes ineligible. An individual who becomes ineligible
29 for a deduction under section 37 of this chapter shall notify the county
30 auditor of the county in which the property is located in conformity
31 with section 37 of this chapter.



1 (c) The auditor of each county shall, in a particular year, apply a
 2 deduction provided under section 1, 9, 11, 13, 14, 16, 17.4, or 37 of this
 3 chapter to each individual who received the deduction in the preceding
 4 year unless the auditor determines that the individual is no longer
 5 eligible for the deduction.

6 (d) An individual who receives a deduction provided under section
 7 1, 9, 11, 13, 14, 16, 17.4, or 37 of this chapter for property that is
 8 jointly held with another owner in a particular year and remains eligible
 9 for the deduction in the following year is not required to file a
 10 statement to reapply for the deduction following the removal of the
 11 joint owner if:

12 (1) the individual is the sole owner of the property following the
 13 death of the individual's spouse;

14 (2) the individual is the sole owner of the property following the
 15 death of a joint owner who was not the individual's spouse; or

16 (3) the individual is awarded sole ownership of the property in a
 17 divorce decree.

18 However, for purposes of a deduction under section 37 of this chapter,
 19 if the removal of the joint owner occurs before the date that a notice
 20 described in IC 6-1.1-22-8.1(b)(9) is sent, the county auditor may, in
 21 the county auditor's discretion, terminate the deduction for assessment
 22 dates after January 15, 2012, if the individual does not comply with the
 23 requirement in IC 6-1.1-22-8.1(b)(9), as determined by the county
 24 auditor, before January 1, 2013. Before the county auditor terminates
 25 the deduction because the taxpayer claiming the deduction did not
 26 comply with the requirement in IC 6-1.1-22-8.1(b)(9) before January
 27 1, 2013, the county auditor shall mail notice of the proposed
 28 termination of the deduction to the last known address of each person
 29 liable for any property taxes or special assessment, as shown on the tax
 30 duplicate or special assessment records or the last known address of the
 31 most recent owner shown in the transfer book.

32 (e) A trust entitled to a deduction under section 9, 11, 13, 14, 16,
 33 17.4, or 37 of this chapter for real property owned by the trust and
 34 occupied by an individual in accordance with section 17.9 of this
 35 chapter is not required to file a statement to apply for the deduction, if:

36 (1) the individual who occupies the real property receives a
 37 deduction provided under section 9, 11, 13, 14, 16, 17.4, or 37 of
 38 this chapter in a particular year; and

39 (2) the trust remains eligible for the deduction in the following
 40 year.

41 However, for purposes of a deduction under section 37 of this chapter,
 42 the individuals that qualify the trust for a deduction must comply with
 43 the requirement in IC 6-1.1-22-8.1(b)(9) before January 1, 2013.

44 (f) A cooperative housing corporation (as defined in 26 U.S.C. 216)
 45 that is entitled to a deduction under section 37 of this chapter in the
 46 immediately preceding calendar year for a homestead (as defined in



1 section 37 of this chapter) is not required to file a statement to apply for
 2 the deduction for the current calendar year if the cooperative housing
 3 corporation remains eligible for the deduction for the current calendar
 4 year. However, the county auditor may, in the county auditor's
 5 discretion, terminate the deduction for assessment dates after January
 6 15, 2012, if the individual does not comply with the requirement in
 7 IC 6-1.1-22-8.1(b)(9), as determined by the county auditor, before
 8 January 1, 2013. Before the county auditor terminates a deduction
 9 because the taxpayer claiming the deduction did not comply with the
 10 requirement in IC 6-1.1-22-8.1(b)(9) before January 1, 2013, the
 11 county auditor shall mail notice of the proposed termination of the
 12 deduction to:

13 (1) the last known address of each person liable for any property
 14 taxes or special assessment, as shown on the tax duplicate or
 15 special assessment records; or

16 (2) the last known address of the most recent owner shown in the
 17 transfer book.

18 (g) An individual who:

19 (1) was eligible for a homestead credit under IC 6-1.1-20.9
 20 (repealed) for property taxes imposed for the March 1, 2007, or
 21 January 15, 2008, assessment date; or

22 (2) would have been eligible for a homestead credit under
 23 IC 6-1.1-20.9 (repealed) for property taxes imposed for the March
 24 1, 2008, or January 15, 2009, assessment date if IC 6-1.1-20.9 had
 25 not been repealed;

26 is not required to file a statement to apply for a deduction under section
 27 37 of this chapter if the individual remains eligible for the deduction in
 28 the current year. An individual who filed for a homestead credit under
 29 IC 6-1.1-20.9 (repealed) for an assessment date after March 1, 2007 (if
 30 the property is real property), or after January 1, 2008 (if the property
 31 is personal property), shall be treated as an individual who has filed for
 32 a deduction under section 37 of this chapter. However, the county
 33 auditor may, in the county auditor's discretion, terminate the deduction
 34 for assessment dates after January 15, 2012, if the individual does not
 35 comply with the requirement in IC 6-1.1-22-8.1(b)(9), as determined
 36 by the county auditor, before January 1, 2013. Before the county
 37 auditor terminates the deduction because the taxpayer claiming the
 38 deduction did not comply with the requirement in IC 6-1.1-22-8.1(b)(9)
 39 before January 1, 2013, the county auditor shall mail notice of the
 40 proposed termination of the deduction to the last known address of
 41 each person liable for any property taxes or special assessment, as
 42 shown on the tax duplicate or special assessment records, or to the last
 43 known address of the most recent owner shown in the transfer book.

44 (h) If a county auditor terminates a deduction because the taxpayer
 45 claiming the deduction did not comply with the requirement in
 46 IC 6-1.1-22-8.1(b)(9) before January 1, 2013, the county auditor shall



1 reinstate the deduction if the taxpayer provides proof that the taxpayer
 2 is eligible for the deduction and is not claiming the deduction for any
 3 other property.

4 (i) A taxpayer described in section ~~37(k)~~ **(37)(k)(5)(A)** of this
 5 chapter is not required to file a statement to apply for the deduction
 6 provided by section 37 of this chapter for a calendar year beginning
 7 after December 31, 2008, if the property owned by the taxpayer
 8 remains eligible for the deduction for that calendar year. However, the
 9 county auditor may terminate the deduction for assessment dates after
 10 January 15, 2012, if the individual residing on the property owned by
 11 the taxpayer does not comply with the requirement in
 12 IC 6-1.1-22-8.1(b)(9), as determined by the county auditor, before
 13 January 1, 2013. Before the county auditor terminates a deduction
 14 because the individual residing on the property did not comply with the
 15 requirement in IC 6-1.1-22-8.1(b)(9) before January 1, 2013, the
 16 county auditor shall mail notice of the proposed termination of the
 17 deduction to:

- 18 (1) the last known address of each person liable for any property
 19 taxes or special assessment, as shown on the tax duplicate or
 20 special assessment records; or
- 21 (2) the last known address of the most recent owner shown in the
 22 transfer book.

23 **(j) A taxpayer described in section (37)(k)(5)(B) of this chapter**
 24 **is not required to file a statement to apply for the deduction**
 25 **provided by section 9, 11, 13, 14, 16, 17.4, or 37 of this chapter for**
 26 **real property owned by the taxpayer and occupied by the**
 27 **individual described in section 37(k)(5)(B)(i) of this chapter, if:**

- 28 (1) **the individual who occupies the real property receives a**
 29 **deduction provided under section 9, 11, 13, 14, 16, 17.4, or 37**
 30 **of this chapter in a particular year; and**
- 31 (2) **the taxpayer remains eligible for the deduction in the**
 32 **following year.**

33 SECTION 2. IC 6-1.1-12-37, AS AMENDED BY P.L.137-2012,
 34 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2013]: Sec. 37. (a) The following definitions apply throughout
 36 this section:

- 37 (1) "Dwelling" means any of the following:
 38 (A) Residential real property improvements that an individual
 39 uses as the individual's residence, including a house or garage.
 40 (B) A mobile home that is not assessed as real property that an
 41 individual uses as the individual's residence.
 42 (C) A manufactured home that is not assessed as real property
 43 that an individual uses as the individual's residence.
- 44 (2) "Homestead" means an individual's principal place of
 45 residence:
 46 (A) that is located in Indiana;



- 1 (B) that:
- 2 (i) the individual owns;
- 3 (ii) the individual is buying under a contract; recorded in the
- 4 county recorder's office, that provides that the individual is
- 5 to pay the property taxes on the residence;
- 6 (iii) the individual is entitled to occupy as a
- 7 tenant-stockholder (as defined in 26 U.S.C. 216) of a
- 8 cooperative housing corporation (as defined in 26 U.S.C.
- 9 216); or
- 10 (iv) is a residence described in section 17.9 of this chapter
- 11 that is owned by a trust if the individual is an individual
- 12 described in section 17.9 of this chapter; and
- 13 (C) that consists of a dwelling and the real estate, not
- 14 exceeding one (1) acre, that immediately surrounds that
- 15 dwelling.

16 Except as provided in subsection (k), the term does not include
 17 property owned by a corporation, partnership, limited liability
 18 company, or other entity not described in this subdivision.

19 (b) Each year a homestead is eligible for a standard deduction from
 20 the assessed value of the homestead for an assessment date. The
 21 deduction provided by this section applies to property taxes first due
 22 and payable for an assessment date only if an individual has an interest
 23 in the homestead described in subsection (a)(2)(B) on:

- 24 (1) the assessment date; or
- 25 (2) any date in the same year after an assessment date that a
- 26 statement is filed under subsection (e) or section 44 of this
- 27 chapter, if the property consists of real property.

28 Subject to subsection (c), the auditor of the county shall record and
 29 make the deduction for the individual or entity qualifying for the
 30 deduction.

31 (c) Except as provided in section 40.5 of this chapter, the total
 32 amount of the deduction that a person may receive under this section
 33 for a particular year is the lesser of:

- 34 (1) sixty percent (60%) of the assessed value of the real property,
- 35 mobile home not assessed as real property, or manufactured home
- 36 not assessed as real property; or
- 37 (2) forty-five thousand dollars (\$45,000).

38 (d) A person who has sold real property, a mobile home not assessed
 39 as real property, or a manufactured home not assessed as real property
 40 to another person under a contract that provides that the contract buyer
 41 is to pay the property taxes on the real property, mobile home, or
 42 manufactured home may not claim the deduction provided under this
 43 section with respect to that real property, mobile home, or
 44 manufactured home.

45 (e) Except as provided in sections 17.8 and 44 of this chapter and
 46 subject to section 45 of this chapter, an individual who desires to claim



1 the deduction provided by this section must file a certified statement in
 2 duplicate, on forms prescribed by the department of local government
 3 finance, with the auditor of the county in which the homestead is
 4 located. The statement must include:

5 (1) the parcel number or key number of the property and the name
 6 of the city, town, or township in which the property is located;

7 (2) the name of any other location in which the applicant or the
 8 applicant's spouse owns, is buying, or has a beneficial interest in
 9 residential real property;

10 (3) the names of:

11 (A) the applicant and the applicant's spouse (if any):

12 (i) as the names appear in the records of the United States
 13 Social Security Administration for the purposes of the
 14 issuance of a Social Security card and Social Security
 15 number; or

16 (ii) that they use as their legal names when they sign their
 17 names on legal documents;

18 if the applicant is an individual; or

19 (B) each individual who qualifies property as a homestead
 20 under subsection (a)(2)(B) and the individual's spouse (if any):

21 (i) as the names appear in the records of the United States
 22 Social Security Administration for the purposes of the
 23 issuance of a Social Security card and Social Security
 24 number; or

25 (ii) that they use as their legal names when they sign their
 26 names on legal documents;

27 if the applicant is not an individual; and

28 (4) either:

29 (A) the last five (5) digits of the applicant's Social Security
 30 number and the last five (5) digits of the Social Security
 31 number of the applicant's spouse (if any); or

32 (B) if the applicant or the applicant's spouse (if any) do not
 33 have a Social Security number, any of the following for that
 34 individual:

35 (i) The last five (5) digits of the individual's driver's license
 36 number.

37 (ii) The last five (5) digits of the individual's state
 38 identification card number.

39 (iii) If the individual does not have a driver's license or a
 40 state identification card, the last five (5) digits of a control
 41 number that is on a document issued to the individual by the
 42 federal government and determined by the department of
 43 local government finance to be acceptable.

44 If a form or statement provided to the county auditor under this section,
 45 IC 6-1.1-22-8.1, or IC 6-1.1-22.5-12 includes the telephone number or
 46 part or all of the Social Security number of a party or other number



1 described in subdivision (4)(B) of a party, the telephone number and
 2 the Social Security number or other number described in subdivision
 3 (4)(B) included are confidential. The statement may be filed in person
 4 or by mail. If the statement is mailed, the mailing must be postmarked
 5 on or before the last day for filing. The statement applies for that first
 6 year and any succeeding year for which the deduction is allowed. With
 7 respect to real property, the statement must be completed and dated in
 8 the calendar year for which the person desires to obtain the deduction
 9 and filed with the county auditor on or before January 5 of the
 10 immediately succeeding calendar year. With respect to a mobile home
 11 that is not assessed as real property, the person must file the statement
 12 during the twelve (12) months before March 31 of the year for which
 13 the person desires to obtain the deduction.

14 (f) If an individual who is receiving the deduction provided by this
 15 section or who otherwise qualifies property for a deduction under this
 16 section:

17 (1) changes the use of the individual's property so that part or all
 18 of the property no longer qualifies for the deduction under this
 19 section; or

20 (2) is no longer eligible for a deduction under this section on
 21 another parcel of property because:

22 (A) the individual would otherwise receive the benefit of more
 23 than one (1) deduction under this chapter; or

24 (B) the individual maintains the individual's principal place of
 25 residence with another individual who receives a deduction
 26 under this section;

27 the individual must file a certified statement with the auditor of the
 28 county, notifying the auditor of the change of use, not more than sixty
 29 (60) days after the date of that change. An individual who fails to file
 30 the statement required by this subsection is liable for any additional
 31 taxes that would have been due on the property if the individual had
 32 filed the statement as required by this subsection plus a civil penalty
 33 equal to ten percent (10%) of the additional taxes due. The civil penalty
 34 imposed under this subsection is in addition to any interest and
 35 penalties for a delinquent payment that might otherwise be due. One
 36 percent (1%) of the total civil penalty collected under this subsection
 37 shall be transferred by the county to the department of local
 38 government finance for use by the department in establishing and
 39 maintaining the homestead property data base under subsection (i) and,
 40 to the extent there is money remaining, for any other purposes of the
 41 department. This amount becomes part of the property tax liability for
 42 purposes of this article.

43 (g) The department of local government finance shall adopt rules or
 44 guidelines concerning the application for a deduction under this
 45 section.

46 (h) This subsection does not apply to property in the first year for



1 which a deduction is claimed under this section if the sole reason that
 2 a deduction is claimed on other property is that the individual or
 3 married couple maintained a principal residence at the other property
 4 on March 1 in the same year in which an application for a deduction is
 5 filed under this section or, if the application is for a homestead that is
 6 assessed as personal property, on March 1 in the immediately
 7 preceding year and the individual or married couple is moving the
 8 individual's or married couple's principal residence to the property that
 9 is the subject of the application. Except as provided in subsection (n),
 10 the county auditor may not grant an individual or a married couple a
 11 deduction under this section if:

12 (1) the individual or married couple, for the same year, claims the
 13 deduction on two (2) or more different applications for the
 14 deduction; and

15 (2) the applications claim the deduction for different property.

16 (i) The department of local government finance shall provide secure
 17 access to county auditors to a homestead property data base that
 18 includes access to the homestead owner's name and the numbers
 19 required from the homestead owner under subsection (e)(4) for the sole
 20 purpose of verifying whether an owner is wrongly claiming a deduction
 21 under this chapter or a credit under IC 6-1.1-20.4, IC 6-1.1-20.6, or
 22 IC 6-3.5.

23 (j) A county auditor may require an individual to provide evidence
 24 proving that the individual's residence is the individual's principal place
 25 of residence as claimed in the certified statement filed under subsection
 26 (e). The county auditor may limit the evidence that an individual is
 27 required to submit to a state income tax return, a valid driver's license,
 28 or a valid voter registration card showing that the residence for which
 29 the deduction is claimed is the individual's principal place of residence.
 30 The department of local government finance shall work with county
 31 auditors to develop procedures to determine whether a property owner
 32 that is claiming a standard deduction or homestead credit is not eligible
 33 for the standard deduction or homestead credit because the property
 34 owner's principal place of residence is outside Indiana.

35 (k) As used in this section, "homestead" includes property that
 36 satisfies each of the following requirements:

37 (1) The property is located in Indiana and consists of a dwelling
 38 and the real estate, not exceeding one (1) acre, that immediately
 39 surrounds that dwelling.

40 (2) The property is the principal place of residence of an
 41 individual.

42 (3) The property is owned by an entity that is not described in
 43 subsection (a)(2)(B).

44 (4) The individual residing on the property is a shareholder,
 45 partner, or member of the entity that owns the property.

46 (5) **Either of the following requirements are satisfied by the**



- 1 **property:**
- 2 **(A)** The property was eligible for the standard deduction under
- 3 this section on March 1, 2009.
- 4 **(B) The property satisfies both of the following**
- 5 **requirements:**
- 6 **(i) The property is transferred by the individual**
- 7 **described in subdivision (2) to the entity described in**
- 8 **subdivision (4) after June 30, 2013.**
- 9 **(ii) The property was eligible for the standard deduction**
- 10 **under this section on the most recent assessment date**
- 11 **occurring before the date on which ownership was**
- 12 **transferred from the individual to the entity.**
- 13 (1) If a county auditor terminates a deduction for property described
- 14 in subsection ~~(k)~~ **(k)(5)(A)** with respect to property taxes that are:
- 15 (1) imposed for an assessment date in 2009; and
- 16 (2) first due and payable in 2010;
- 17 on the grounds that the property is not owned by an entity described in
- 18 subsection (a)(2)(B), the county auditor shall reinstate the deduction if
- 19 the taxpayer provides proof that the property is eligible for the
- 20 deduction in accordance with subsection ~~(k)~~ **(k)(5)(A)** and that the
- 21 individual residing on the property is not claiming the deduction for
- 22 any other property.
- 23 (m) For assessments dates after 2009, the term "homestead"
- 24 includes:
- 25 (1) a deck or patio;
- 26 (2) a gazebo; or
- 27 (3) another residential yard structure, as defined in rules adopted
- 28 by the department of local government finance (other than a
- 29 swimming pool);
- 30 that is assessed as real property and attached to the dwelling.
- 31 (n) A county auditor shall grant an individual a deduction under this
- 32 section regardless of whether the individual and the individual's spouse
- 33 claim a deduction on two (2) different applications and each
- 34 application claims a deduction for different property if the property
- 35 owned by the individual's spouse is located outside Indiana and the
- 36 individual files an affidavit with the county auditor containing the
- 37 following information:
- 38 (1) The names of the county and state in which the individual's
- 39 spouse claims a deduction substantially similar to the deduction
- 40 allowed by this section.
- 41 (2) A statement made under penalty of perjury that the following
- 42 are true:
- 43 (A) That the individual and the individual's spouse maintain
- 44 separate principal places of residence.
- 45 (B) That neither the individual nor the individual's spouse has
- 46 an ownership interest in the other's principal place of



1 residence.
 2 (C) That neither the individual nor the individual's spouse has,
 3 for that same year, claimed a standard or substantially similar
 4 deduction for any property other than the property maintained
 5 as a principal place of residence by the respective individuals.

6 A county auditor may require an individual or an individual's spouse to
 7 provide evidence of the accuracy of the information contained in an
 8 affidavit submitted under this subsection. The evidence required of the
 9 individual or the individual's spouse may include state income tax
 10 returns, excise tax payment information, property tax payment
 11 information, driver license information, and voter registration
 12 information.

13 (o) If:
 14 (1) a property owner files a statement under subsection (e) to
 15 claim the deduction provided by this section for a particular
 16 property; and
 17 (2) the county auditor receiving the filed statement determines
 18 that the property owner's property is not eligible for the deduction;
 19 the county auditor shall inform the property owner of the county
 20 auditor's determination in writing. If a property owner's property is not
 21 eligible for the deduction because the county auditor has determined
 22 that the property is not the property owner's principal place of
 23 residence, the property owner may appeal the county auditor's
 24 determination to the county property tax assessment board of appeals
 25 as provided in IC 6-1.1-15. The county auditor shall inform the
 26 property owner of the owner's right to appeal to the county property tax
 27 assessment board of appeals when the county auditor informs the
 28 property owner of the county auditor's determination under this
 29 subsection.

30 SECTION 3. IC 6-1.1-12-37.1 IS ADDED TO THE INDIANA
 31 CODE AS A NEW SECTION TO READ AS FOLLOWS
 32 [EFFECTIVE JULY 1, 2013]: **Sec. 37.1. A person who is entitled to**
 33 **a standard deduction from the assessed value of property under**
 34 **section 37(k)(5)(B) of this chapter is also entitled to a deduction**
 35 **under section 9, 11, 13, 14, 16, or 17.4 of this chapter for real**
 36 **property owned by the person and occupied by the individual**
 37 **described in section 37(k)(5)(B)(i) if the county auditor determines**
 38 **that the individual otherwise qualifies for the deduction.**





**PRELIMINARY DRAFT
No. 3199**

**PREPARED BY
LEGISLATIVE SERVICES AGENCY
2013 GENERAL ASSEMBLY**

DIGEST

Citations Affected: IC 29-1.

Synopsis: Estate administration. Provides that the term "probate estate" denotes property transferred under the decedent's will or under the laws of intestacy, in the case of a decedent dying intestate. Specifies that a personal representative's duty to prepare an inventory applies only to the decedent's probate estate.

Effective: July 1, 2013.



A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 29-1-1-3 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2013]: Sec. 3. (a) The following definitions
3 apply throughout this article, unless otherwise apparent from the
4 context:

5 (1) "Child" includes an adopted child but does not include a
6 grandchild or other more remote descendants, nor, except as
7 provided in IC 29-1-2-5, a child born out of wedlock.

8 (2) "Claims" includes liabilities of a decedent which survive,
9 whether arising in contract or in tort or otherwise, funeral
10 expenses, the expense of a tombstone, expenses of administration,
11 and all taxes imposed by reason of the person's death. However,
12 for purposes of IC 29-1-2-1 and IC 29-1-3-1, the term does not
13 include taxes imposed by reason of the person's death.

14 (3) "Court" means the court having probate jurisdiction.

15 (4) "Decedent" means one who dies testate or intestate.

16 (5) "Devise" or "legacy", when used as a noun, means a
17 testamentary disposition of either real or personal property or
18 both.

19 (6) "Devise", when used as a verb, means to dispose of either real
20 or personal property or both by will.

21 (7) "Devisee" includes legatee, and "legatee" includes devisee.

22 (8) "Distributee" denotes those persons who are entitled to the
23 real and personal property of a decedent under a will, under the
24 statutes of intestate succession, or under IC 29-1-4-1.

25 (9) "Estate" denotes the real and personal property of the decedent
26 or protected person, as from time to time changed in form by sale,
27 reinvestment, or otherwise, and augmented by any accretions and
28 additions thereto and substitutions therefor and diminished by any
29 decreases and distributions therefrom.

30 (10) "Fiduciary" includes a:

31 (A) personal representative;



- 1 (B) guardian;
 2 (C) conservator;
 3 (D) trustee; and
 4 (E) person designated in a protective order to act on behalf of
 5 a protected person.
- 6 (11) "Heirs" denotes those persons, including the surviving
 7 spouse, who are entitled under the statutes of intestate succession
 8 to the real and personal property of a decedent on the decedent's
 9 death intestate, unless otherwise defined or limited by the will.
- 10 (12) "Incapacitated" has the meaning set forth in IC 29-3-1-7.5.
- 11 (13) "Interested persons" means heirs, devisees, spouses,
 12 creditors, or any others having a property right in or claim against
 13 the estate of a decedent being administered. This meaning may
 14 vary at different stages and different parts of a proceeding and
 15 must be determined according to the particular purpose and
 16 matter involved.
- 17 (14) "Issue" of a person, when used to refer to persons who take
 18 by intestate succession, includes all lawful lineal descendants
 19 except those who are lineal descendants of living lineal
 20 descendants of the intestate.
- 21 (15) "Lease" includes an oil and gas lease or other mineral lease.
- 22 (16) "Letters" includes letters testamentary, letters of
 23 administration, and letters of guardianship.
- 24 (17) "Minor" or "minor child" or "minority" refers to any person
 25 under the age of eighteen (18) years.
- 26 (18) "Mortgage" includes deed of trust, vendor's lien, and chattel
 27 mortgage.
- 28 (19) "Net estate" refers to the real and personal property of a
 29 decedent less the allowances provided under IC 29-1-4-1 and
 30 enforceable claims against the estate.
- 31 (20) "Person" includes natural persons and corporations.
- 32 (21) "Personal property" includes interests in goods, money,
 33 choses in action, evidences of debt, and chattels real.
- 34 (22) "Personal representative" includes executor, administrator,
 35 administrator with the will annexed, administrator de bonis non,
 36 and special administrator.
- 37 **(23) "Probate estate" denotes the property transferred at the**
 38 **death of a decedent under the decedent's will or under**
 39 **IC 29-1-2, in the case of a decedent dying intestate.**
- 40 ~~(23)~~ (24) "Property" includes both real and personal property.
- 41 ~~(24)~~ (25) "Protected person" has the meaning set forth in
 42 IC 29-3-1-13.
- 43 ~~(25)~~ (26) "Real property" includes estates and interests in land,
 44 corporeal or incorporeal, legal or equitable, other than chattels
 45 real.
- 46 ~~(26)~~ (27) "Will" includes all wills, testaments, and codicils. The



1 term also includes a testamentary instrument which merely
2 appoints an executor or revokes or revives another will.

3 (b) The following rules of construction apply throughout this article
4 unless otherwise apparent from the context:

5 (1) The singular number includes the plural and the plural number
6 includes the singular.

7 (2) The masculine gender includes the feminine and neuter.

8 SECTION 2. IC 29-1-7.5-3.2 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3.2. (a) Not more than
10 two (2) months after the appointment of a personal representative under
11 this chapter, the personal representative shall prepare a verified
12 inventory of the ~~estate's assets~~; **decedent's probate estate**. The
13 inventory may consist of at least one (1) written instrument.

14 (b) The inventory required under subsection (a) must indicate the
15 fair market value of each item of property ~~of the decedent of which the~~
16 ~~personal representative has possession or knowledge~~; **belonging to the**
17 **probate estate**, including a statement of all known liens and other
18 charges on any item. The property ~~shall~~ **must** be classified in the
19 inventory as follows:

20 (1) Real property, with plat or survey description, and if a
21 homestead, designated as a homestead.

22 (2) Furniture and household goods.

23 (3) Emblements and annual crops raised by labor.

24 (4) Corporate stocks, including the class, the par value or that the
25 stock has no par value, and if preferred stock, the dividend rate.

26 (5) Mortgages, bonds, notes, or other written evidences of debt or
27 of ownership described by the name of the debtor, recording data,
28 and other identification.

29 (6) Bank accounts, money, and insurance policies if payable to the
30 estate of the decedent or to the decedent's personal representative.

31 (7) All other personal property accurately identified, including the
32 decedent's proportionate share in any partnership. However, no
33 inventory of the partnership property is required.

34 (c) In preparing the inventory required under subsection (a), the
35 personal representative may employ a disinterested appraiser to
36 ascertain the fair market value as of the date of the decedent's death of
37 an asset that has a value that may be subject to reasonable doubt.
38 Different persons may be employed to appraise different kinds of assets
39 included in the estate. The ~~names name~~ and ~~addresses address~~ of any
40 appraiser ~~shall~~ **must** be indicated on the inventory with the item or
41 items the appraiser appraised.

42 (d) The personal representative shall furnish a copy of the inventory
43 required under subsection (a), or a supplement or amendment to the
44 inventory, to a distributee who requests a copy.

45 (e) The personal representative may certify to the court that the
46 inventory required under subsection (a), a supplement, or an



1 amendment to the inventory has been prepared and is available.
 2 However, the court may not require the personal representative to file
 3 a copy of the inventory, a supplement, or an amendment to the
 4 inventory with the court.

5 SECTION 3. IC 29-1-12-1 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. (a) Within two (2)
 7 months after ~~his~~ **the appointment of a personal representative**, unless
 8 a longer time ~~shall be~~ **is** granted by the court, ~~every~~ **the** personal
 9 representative shall prepare a verified inventory in ~~one (1)~~ **or more**
 10 ~~written instruments indicating of the decedent's probate estate. The~~
 11 **verified inventory must:**

12 **(1) consist of at least one (1) written instrument;**

13 **(2) indicate** the fair market value of each item of property; ~~of the~~
 14 ~~decedent which shall come to his possession or knowledge;~~
 15 ~~including and~~

16 **(3) include** a statement of all known liens and other charges on
 17 any item.

18 ~~Such~~ **(b) Property listed in the inventory required by subsection**
 19 **(a) shall must** be classified ~~therein~~ as follows:

20 (1) Real property, with plat or survey description, and if a
 21 homestead, designated as ~~such~~; **a homestead;**

22 (2) Furniture and household goods;

23 (3) Emblements and annual crops raised by labor;

24 (4) Corporate stocks including the class, the par value or that it
 25 has no par value, if preferred stock the dividend rate;

26 (5) Mortgages, bonds, notes or other written evidences of debt or
 27 of ownership described by name of debtor, recording data, and
 28 other identification;

29 (6) Bank accounts, money, and insurance policies if payable to the
 30 estate of the decedent or to ~~his~~ **the decedent's** personal
 31 representative;

32 (7) All other personal property accurately identified, including the
 33 decedent's proportionate share in any partnership, but no
 34 inventory of the partnership property shall be required.

35 ~~(b)~~ **(c)** The personal representative may employ a disinterested
 36 appraiser to assist ~~him~~ in ascertaining the fair market value as of the
 37 date of the decedent's death of any asset the value of which may be
 38 subject to reasonable doubt. Different persons may be employed to
 39 appraise different kinds of assets included in the estate. The ~~names~~
 40 **name and addresses address** of any appraiser ~~shall must~~ be indicated
 41 on the inventory with the item or items ~~he~~ **appraised by the appraiser.**

42 ~~(c)~~ **(d)** The personal representative shall furnish a copy of the
 43 inventory, or any supplement or amendment to it, to interested persons
 44 who request it, unless ~~he~~ **the personal representative** has filed the
 45 original of the inventory, or any supplement or amendment to it, with
 46 the court.





PRELIMINARY DRAFT
No. 3276

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2013 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 29-1; IC 29-3-9-12; IC 30-5; IC 34-30-2.

Synopsis: Probate administration. Provides for an enforcement action against third parties that do not comply with a fiduciary's instruction. Provides for treble damages if the fiduciary prevails in the enforcement action.

Effective: July 1, 2013.



A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 29-1-8-1.5, AS ADDED BY P.L.95-2007,
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2013]: Sec. 1.5. (a) This section does not apply to the
4 following:

- 5 (1) Real property owned by a decedent.
6 (2) The contents of a safe deposit box rented by a decedent from
7 a financial institution organized or reorganized under the law of
8 any state (as defined in IC 28-2-17-19) or the United States.

9 (b) After the death of a decedent, a person:

- 10 (1) indebted to the decedent; or
11 (2) having possession of:
12 (A) personal property;
13 (B) an instrument evidencing a debt;
14 (C) an obligation;
15 (D) a chose in action;
16 (E) a life insurance policy;
17 (F) a bank account; or
18 (G) intangible property, including annuities, fixed income
19 investments, mutual funds, cash, money market accounts, or
20 stocks;

21 belonging to the decedent;

22 shall furnish the date of death value of the indebtedness or property and
23 the names of the known beneficiaries of property described in this
24 subsection to a person who presents an affidavit containing the
25 information required by subsection (c).

26 (c) An affidavit presented under subsection (b) must state:

- 27 (1) the name, address, Social Security number, and date of death
28 of the decedent;
29 (2) the name and address of the affiant, and the relationship of the
30 affiant to the decedent;
31 (3) that the disclosure of the date of death value is necessary to



1 determine whether the decedent's estate can be administered
 2 under the summary procedures set forth in this chapter; and
 3 (4) that the affiant is answerable and accountable for the
 4 information received to the decedent's personal representative, if
 5 any, or to any other person having a superior right to the property
 6 or indebtedness.

7 (d) A person presented with an affidavit under subsection (b) must
 8 provide the requested information within three (3) business days after
 9 being presented with the affidavit.

10 (e) A person who acts in good faith reliance on an affidavit
 11 presented under subsection (b) is immune from liability for the
 12 disclosure of the requested information.

13 (f) If a person: who:

14 (1) is presented with an affidavit under subsection (b); and

15 (2) **fails or** refuses to provide the requested information within
 16 **three (3) ten (10)** business days after being presented with the
 17 affidavit;

18 **is liable to the estate of the decedent: the presenter of the affidavit**
 19 **may bring an enforcement proceeding against that person and may**
 20 **pursue available remedies under IC 29-1-13-10.5.**

21 (g) A plaintiff who prevails in an action to compel a person
 22 presented with an affidavit under subsection (b) to accept the authority
 23 of the affiant or in an action for damages arising from a person's refusal
 24 to provide the information requested in an affidavit presented under
 25 subsection (b) shall recover the following:

26 (1) Three (3) times the amount of the actual damages:

27 (2) Attorney's fees and court costs:

28 (3) Prejudgment interest on the actual damages from the date the
 29 affidavit was presented to the person:

30 SECTION 2. IC 29-1-8-2 IS AMENDED TO READ AS FOLLOWS
 31 [EFFECTIVE JULY 1, 2013]: Sec. 2. (a) The person paying,
 32 delivering, transferring, or issuing personal property or the evidence
 33 thereof pursuant to affidavit is discharged and released to the same
 34 extent as if ~~he~~ **the person** dealt with a personal representative of the
 35 decedent. ~~He~~ **The person** is not required to see to the application of the
 36 personal property or evidence thereof or to inquire into the truth of any
 37 statement in the affidavit.

38 (b) If any person to whom an affidavit is delivered **fails or** refuses
 39 to pay, deliver, transfer, or issue any personal property or evidence
 40 thereof, it may be recovered or its payment, delivery, transfer, or
 41 issuance compelled upon proof of their right in a proceeding brought
 42 for the purpose by or on behalf of the persons entitled thereto.
 43 **Proceedings and orders under this subsection are in addition to the**
 44 **remedies available in an enforcement proceeding under**
 45 **IC 29-1-13-10.5.**

46 (c) Any person to whom payment, delivery, transfer, or issuance is



1 made is answerable and accountable therefor to any personal
 2 representative of the estate or to any other person having a superior
 3 right.

4 SECTION 3. IC 29-1-13-10 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 10. (a) Upon the filing
 6 of a petition by the personal representative or any other person
 7 interested in the estate alleging that any person has, or is suspected to
 8 have, concealed, embezzled, converted or disposed, of any real or
 9 personal property belonging to the estate of a decedent, or has
 10 possession or knowledge of any such property or of any instruments in
 11 writing relating to such property, the court having probate jurisdiction,
 12 upon such notice as it may direct, may order such person to appear
 13 before it for disclosure, and may finally adjudicate the rights of the
 14 parties before the court with respect to such property. Insofar as
 15 concerns parties claiming an interest adverse to the estate, such
 16 procedure for disclosure or to determine title is an independent
 17 proceeding and not with IC 29-1-7-2.

18 (b) Any person so ordered to appear who fails or refuses to appear,
 19 or who refuses to answer concerning such property or to deliver up any
 20 such property in which no interest adverse to the estate is claimed by
 21 him, may be attached and imprisoned in the discretion of the court.

22 (c) **If a person fails to comply with the written demand or**
 23 **instruction of the personal representative regarding property of**
 24 **the decedent, the personal representative may bring an**
 25 **enforcement proceeding and pursue available remedies under**
 26 **section 10.5 of this chapter.**

27 SECTION 4. IC 29-1-13-10.5 IS ADDED TO THE INDIANA
 28 CODE AS A NEW SECTION TO READ AS FOLLOWS
 29 [EFFECTIVE JULY 1, 2013]: Sec. 10.5. (a) **This section applies to**
 30 **transactions or dealings between third parties and:**

31 (1) **an affiant, claimant, or other person who signs and issues**
 32 **or presents a small estate affidavit under IC 29-1-8-1,**
 33 **IC 29-1-8-1.5, or IC 29-1-8-3;**

34 (2) **a personal representative holding domiciliary letters**
 35 **testamentary or letters of general administration issued to**
 36 **that personal representative under IC 29-1-10;**

37 (3) **a domiciliary foreign personal representative who has**
 38 **complied with IC 29-2-1-5, if no proceedings for appointment**
 39 **of a local personal representative are pending and if no local**
 40 **personal representative has been appointed; or**

41 (4) **a guardian appointed and holding letters of guardianship**
 42 **under IC 29-3 with respect to the property of a minor or an**
 43 **incapacitated adult.**

44 (b) **This section does not apply to claims, demands, or requests**
 45 **for distributions from trusts. If a trust beneficiary or the**
 46 **representative of a deceased or incapacitated trust beneficiary**



1 contends that a trustee has failed or refused to make a required
 2 distribution, the beneficiary's available procedures and remedies
 3 are governed by the terms of the trust, the applicable provisions of
 4 IC 30-2 and IC 30-4, and the common law.

5 (c) The following definitions apply throughout this section:

6 (1) "Fiduciary's instruction" means a small estate affidavit,
 7 letter, instruction, or other written request that:

8 (A) is delivered to a third party;

9 (B) is signed by a requesting party with respect to money,
 10 securities, choses in action, or other property titled in the
 11 name of or otherwise owned by a property owner,
 12 including debts owed to the property owner;

13 (C) asks or instructs the third party to deliver, transfer
 14 ownership of, or release the money, securities, choses in
 15 action, or other property titled in the name of or otherwise
 16 owned by a property owner;

17 (D) purports to be within the scope of the authority of the
 18 requesting party who signed the small estate affidavit,
 19 letter, instruction, or other written request; and

20 (E) is accompanied (as applicable) by a small estate
 21 affidavit in proper form under IC 29-1-8-1, IC 29-1-8-1.5,
 22 or IC 29-1-8-3, or by a true copy of the letters
 23 testamentary, letters of administration, or letters of
 24 guardianship issued to the requesting party, bearing a
 25 certificate of the clerk of the issuing court that is not more
 26 than sixty (60) days old.

27 (2) "Property owner" means:

28 (A) an Indiana resident decedent for whom a supervised or
 29 unsupervised estate has been opened under IC 29-1;

30 (B) an Indiana resident decedent for whom an affiant or
 31 claimant is entitled to use a small estate affidavit under
 32 IC 29-1-8-1, IC 29-1-8-1.5, or IC 29-1-8-3;

33 (C) a nonresident decedent who owns property in Indiana
 34 and for whom a domiciliary foreign personal
 35 representative has complied with IC 29-2-1-5; or

36 (D) a minor or incapacitated adult for whom letters of
 37 guardianship over the property of the minor or
 38 incapacitated adult have been issued to a guardian
 39 appointed under IC 29-3.

40 (3) "Requesting party" means a claimant, affiant, personal
 41 representative, or guardian who:

42 (A) signs a fiduciary's instruction; and

43 (B) presents the fiduciary's instruction to a third party.

44 (4) "Third party" means an individual, a bank, a regulated
 45 investment company, a trust company, a life insurance
 46 company, a securities transfer agent, a stock registrar, a



1 retirement plan administrator, a custodian of an individual
2 retirement account, a financial institution, or another person
3 that:

4 (A) possesses tangible or intangible personal property or
5 choses in action belonging to a property owner; or

6 (B) is indebted to a property owner.

7 (d) A third party shall confirm to a requesting party, within ten
8 (10) business days after the third party's receipt of the fiduciary's
9 instruction, that the third party will comply with the fiduciary's
10 instruction. A third party is considered to be in noncompliance or
11 to have failed to comply with a fiduciary's instruction if the third
12 party:

13 (1) fails or refuses (including through silence or inaction) to
14 confirm to a requesting party, within ten (10) business days
15 after the third party's receipt of the fiduciary's instruction,
16 that the third party will comply with the fiduciary's
17 instruction; or

18 (2) imposes or charges a research fee or processing fee (other
19 than a standard fee or commission that is charged to all living
20 and deceased customers for re-titling or transferring record
21 ownership) as a condition to complying with the fiduciary's
22 instruction.

23 (e) A third party may impose commercially reasonable
24 conditions on its compliance with a fiduciary's instruction,
25 including requiring a requesting party to provide one (1) or more
26 of the following with respect to a deceased property owner:

27 (1) An affidavit of domicile.

28 (2) A death certificate.

29 (3) A copy of the deceased property owner's probated will, if
30 the will is relevant for the purpose of determining the persons
31 who are ultimately entitled to receive the property for which
32 the delivery, release, or transfer is sought in the fiduciary's
33 instruction.

34 (4) A consent to transfer approved by the county assessor or
35 by the Indiana department of state revenue for the property
36 referred to in the fiduciary's instruction, if IC 6-4.1-8-4
37 applies to the property.

38 (f) If a requesting party has not already complied with a
39 commercially reasonable condition imposed by a third party under
40 subsection (e) at the time of the third party's receipt of the
41 fiduciary's instruction, the ten (10) business day period for
42 confirming the third party's intent to comply with the fiduciary's
43 instruction begins running on the first business day after the day
44 on which the third party receives information or documents
45 complying with all of the commercially reasonable conditions
46 imposed by the third party.



1 (g) A third party that refers a fiduciary's instruction to legal
 2 counsel for review is not entitled to an extension of the ten (10)
 3 business day period for confirming the third party's intent to
 4 comply with the fiduciary's instruction. The issuance of an opinion
 5 or other legal advice by the legal counsel for the third party does
 6 not excuse the third party's noncompliance with the fiduciary's
 7 instruction.

8 (h) To the extent that a third party's compliance with a
 9 fiduciary's instruction would involve disclosure of nonpublic,
 10 personal information (as defined in 16 C.F.R. 313.3(n)) about the
 11 property or debts of a deceased or incapacitated individual who is
 12 the property owner, this section is a state law authorizing the third
 13 party to make disclosure for purposes of the Gramm-Leach-Bliley
 14 Financial Modernization Act (15 U.S.C. 6801), consistent with 16
 15 C.F.R. 313.15(a)(7)(i).

16 (i) If a third party fails to confirm the third party's intent to
 17 comply with the fiduciary's instruction within ten (10) business
 18 days, refuses to comply with the fiduciary's instruction, or refuses
 19 to cooperate with the requesting party, the requesting party may
 20 bring an enforcement proceeding by a verified petition against the
 21 third party in the probate court:

22 (1) that issued letters testamentary, letters of administration,
 23 or letters of guardianship to the requesting party;

24 (2) in the county in which the requesting party complied with
 25 IC 29-2-1-5 with respect to a deceased property owner who
 26 was not an Indiana resident; or

27 (3) in the county in which venue would be proper for
 28 petitioning for letters of administration, if:

29 (A) the property owner is deceased;

30 (B) no letters have been issued; and

31 (C) the fiduciary's instruction is a small estate affidavit
 32 under IC 29-1-8.

33 (j) The court in which a verified petition is filed under
 34 subsection (i) shall schedule a hearing on the petition and direct
 35 service upon the third party of notice of the filing of the petition
 36 and of notice of the hearing under IC 29-1-1-12 and IC 29-1-1-15.
 37 The third party may serve and file a responsive pleading on or
 38 before the hearing date, but a responsive pleading is not required.

39 (k) The following apply to an enforcement proceeding brought
 40 under subsection (i):

41 (1) The parties to the proceeding may not request a change of
 42 the judge or venue of the proceeding.

43 (2) The petitioner has the burden of proving the third party's
 44 noncompliance and the actual damages and expenses of the
 45 requesting party by a preponderance of the evidence.

46 (l) After a hearing in an enforcement proceeding brought under



1 subsection (i) or following the nonappearance or default of the
 2 third party on the hearing date, the court may issue an order
 3 requiring the third party to comply with the fiduciary's
 4 instruction, with or without supplementation or modification in the
 5 court's order. Continued noncompliance by the third party is
 6 punishable as contempt of court.

7 (m) If the requesting party prevails in an enforcement
 8 proceeding brought under subsection (i), the third party shall pay
 9 the following to the requesting party:

10 (1) Three (3) times the amount of actual damages sustained by
 11 the requesting party as a result of the third party's
 12 noncompliance.

13 (2) To the extent not already included in and reimbursed as
 14 part of the requesting party's actual damages, the actual
 15 travel expenses incurred by the requesting party in attending
 16 the hearing.

17 (3) The requesting party's reasonable attorney fees and
 18 disbursements, in an amount determined by the court.

19 (4) The costs of the proceeding.

20 (n) If a personal representative is appointed for a decedent's
 21 estate under IC 29-1-7 after a requesting party commences an
 22 enforcement proceeding under subsection (i) because of a third
 23 party's noncompliance with a small estate affidavit, the personal
 24 representative must be substituted as the petitioner in the action.
 25 If the personal representative prevails in the action, the personal
 26 representative is entitled to the remedies described in subsections
 27 (l) and (m) on behalf of the estate and all the distributees.

28 (o) A third party who:

29 (1) receives a fiduciary's instruction from a requesting party
 30 with respect a property owner's property;

31 (2) acts in good faith and without actual knowledge of a lack
 32 of authority of the requesting party; and

33 (3) complies with the fiduciary's instruction;

34 is immune from civil or criminal liability that might otherwise
 35 result from the third party's actions in reliance on the fiduciary's
 36 instruction.

37 SECTION 5. IC 29-3-9-12 IS ADDED TO THE INDIANA CODE
 38 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 39 1, 2013]: Sec. 12. (a) This section applies only to a guardianship of
 40 the property of a minor or an incapacitated adult.

41 (b) If a third party fails to comply with the guardian's written
 42 demand or instruction issued by the guardian within the scope of
 43 the guardian's authority, the guardian may bring an enforcement
 44 proceeding and pursue available remedies under IC 29-1-13-10.5.

45 SECTION 6. IC 30-5-8-5, AS AMENDED BY P.L.42-2012,
 46 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2013]: Sec. 5. A copy of the power of attorney has the same
 2 force and effect as the original power of attorney if the attorney in fact
 3 or the person granting the power of attorney certifies that the copy is a
 4 true and correct copy **in a certification that:**

5 **(1) is acknowledged by the signer in the presence of a notary;**
 6 **or**

7 **(2) states that the signer swears or affirms under the penalties**
 8 **of perjury to the truth of the statements in the certification.**

9 SECTION 7. IC 30-5-8-7, AS ADDED BY P.L.238-2005,
 10 SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2013]: Sec. 7. (a) A person who acts in good faith reliance on
 12 a power of attorney is immune from liability to the same extent as if the
 13 person had dealt directly with the named principal and the named
 14 principal had been competent and not incapacitated.

15 (b) The named attorney in fact **or a person holding authority**
 16 **delegated by a named attorney in fact** may furnish an **affidavit a**
 17 **certification** to a person that states, to the best knowledge of the
 18 attorney in fact **or the person holding authority delegated by a**
 19 **named attorney in fact:**

20 (1) that the instrument relied on by the person is a true copy of the
 21 power of attorney;

22 (2) that the named principal is alive;

23 (3) that the power of attorney was validly granted and executed;

24 (4) that the relevant powers granted to the attorney in fact have
 25 not been altered or terminated;

26 (5) in the case of a successor attorney in fact, that the original
 27 attorney in fact has failed or ceased to serve and the successor
 28 attorney in fact is empowered to act on behalf of the principal;

29 **and**

30 **(6) in the case of a certification signed by a person holding**
 31 **delegated authority, that the authority was validly delegated**
 32 **and has not been revoked; and**

33 ~~(6)~~ (7) if the effective date of the power of attorney begins upon
 34 the occurrence of a certain event, that the event has occurred and
 35 the attorney in fact is authorized to act under the power of
 36 attorney.

37 (c) A person who:

38 (1) relies on an **affidavit certification** described in subsection (b);
 39 and

40 (2) acts in good faith;

41 is immune from liability that might otherwise arise from the person's
 42 action in reliance on the power of attorney that is the subject of the
 43 **affidavit certification.**

44 (d) A certification given under subsection (b) must:

45 (1) be acknowledged by the signer in the presence of a notary;
 46 or



1 (2) state that the signer swears or affirms under the penalties
2 of perjury to the truth of the statements in the certification.

3 (e) As a condition to complying with instructions by an attorney
4 in fact or a person holding delegated authority, a person receiving
5 a certification under subsection (b) may require the certification to
6 be dated and signed within sixty (60) days before the person
7 receives the instructions. However, a person receiving a
8 certification under subsection (b) may not refuse to comply with an
9 instruction on the grounds that the power of attorney itself is more
10 than sixty (60) days old.

11 SECTION 8. IC 30-5-9-9 IS AMENDED TO READ AS FOLLOWS
12 [EFFECTIVE JULY 1, 2013]: Sec. 9. (a) Except as provided in
13 subsection (b), a person who, not more than ~~three (3)~~ **ten (10)** business
14 days after receiving:

- 15 (1) an original of a power of attorney; or
16 (2) a true copy of a power of attorney and a certification
17 under IC 30-5-8-7;

18 refuses to accept the authority of an attorney in fact to exercise a power
19 granted under a power of attorney is liable to the principal and to the
20 principal's heirs, assigns, and the personal representative of the estate
21 of the principal in the same manner as the person would be liable had
22 the person refused to accept the authority of the principal to act on the
23 principal's own behalf.

24 **(b) A person who:**
25 (1) receives a document specified in subsection (a) and an
26 instruction from an attorney in fact or a person holding
27 authority delegated by an attorney in fact; and
28 (2) refers the document to legal counsel for review;
29 **is not entitled to an extension of the ten (10) business day period in**
30 **which the person must accept the authority of the attorney in fact**
31 **or the person holding authority delegated by an attorney in fact.**

32 (c) In any action brought in court to either force the acceptance of
33 the authority of the attorney in fact or pursue damages as a result of the
34 person's refusal to accept the authority of an attorney in fact, the person
35 found liable for refusing to accept the authority of an attorney in fact
36 shall pay the following:

- 37 (1) Three (3) times the amount of the actual damages.
38 (2) The attorney's fees of the person bringing the action to court.
39 (3) Prejudgment interest on the actual damages from the date the
40 person refused to accept the authority of the attorney in fact.
41 (4) **To the extent not included and reimbursed as part of the**
42 **actual damages, the actual travel expenses incurred by the**
43 **person bringing the action to court.**
44 (5) The costs of the action.

45 **(b) (d)** A person refusing to accept the authority of an attorney in
46 fact to exercise a power granted under a power of attorney is not liable



- 1 under subsection (a) if:
- 2 (1) the person has actual notice of the revocation of the power of
- 3 attorney before the exercise of the power;
- 4 (2) the duration of the power of attorney specified in the power of
- 5 attorney has expired;
- 6 (3) the person has actual knowledge of the death of the principal;
- 7 (4) the person reasonably believes that the power of attorney is
- 8 not valid under Indiana law and provides the attorney in fact with
- 9 a written statement not more than ten (10) business days after the
- 10 refusal, describing the reason that the power of attorney is not
- 11 valid under Indiana law; or
- 12 (5) the person reasonably believes that the power of attorney does
- 13 not grant the attorney in fact with authority to perform the
- 14 transaction requested and provides the attorney in fact with a
- 15 written statement not more than ten (10) business days after the
- 16 refusal, describing the reason the person believes the power of
- 17 attorney is deficient under Indiana law.
- 18 (c) (e) This section does not negate the liability a person would have
- 19 to the principal or the attorney in fact under another form of power of
- 20 attorney, under the common law, or otherwise.
- 21 SECTION 9. IC 34-30-2-123.3 IS ADDED TO THE INDIANA
- 22 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 23 [EFFECTIVE JULY 1, 2013]: **Sec. 123.3. IC 29-1-13-10.5**
- 24 **(Concerning a person who relies on a fiduciary's instruction).**
- 25 SECTION 10. IC 34-30-2-132.8, AS ADDED BY P.L.238-2005,
- 26 SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 27 JULY 1, 2013]: **Sec. 132.8. IC 30-5-8-7 (Concerning a person who**
- 28 **relies on a power of attorney or an affidavit a certification concerning**
- 29 **a power of attorney).**



