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Sen. Michael Delph, Chairperson
Sen. Joseph Zakas
Sen. John Broden
Rep. Eric Koch
Rep. Thomas Washburne
Rep. Ryan Dvorak
Joseph H. Davis
Kris Fruehwald
Thomas Hardin
Judge Thomas Lowe
James Martin
David Pendergast
Dan Reeves
Timothy Sendak
Jerry Withered

PROBATE CODE STUDY COMMISSION

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

Ross Hooten, Attorney for the Commission
Anne Haley, Attorney for the Commission
Mark Goodpaster, Fiscal Analyst for the Commission

Authority: IC 2-5-16-2

MEETING MINUTES[1]

Meeting Date:	**September 17, 2013**
Meeting Time:	**1:00 P.M.**
Meeting Place:	**State House, 200 W. Washington St., Room 431**
Meeting City:	**Indianapolis, Indiana**
Meeting Number:	**1**

Members Present: **Sen. Michael Delph, Chairperson; Sen. John Broden; Rep. Eric Koch; Rep. Thomas Washburne; Rep. Ryan Dvorak; Joseph H. Davis; Thomas Hardin; Judge Thomas Lowe; James Martin; David Pendergast; Jerry Withered.**

Members Absent: **Sen. Joseph Zakas; Kris Fruehwald; Dan Reeves; Timothy Sendak.**

The meeting convened at 1:05 p.m. Senator Delph announced that the second meeting of the Commission would be held on October 8 and a third meeting, if necessary, would be held on October 29. Senator Delph asked Mr. Jeff Kolb, an attorney from Vincennes, to address the Commission regarding the recommendations of the 2013 Report of the Probate Trust and Real Property Section of the Indiana State Bar Association (Report) (Exhibit 1).

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[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.

Recommendation #1/ Legacy trusts

Mr. Kolb explained that legacy trusts foster the growth of wealth and protect trust assets from creditors' claims arising after the trust's creation. Mr. Kolb said that permitting legacy trusts in Indiana would prevent Indiana from losing business to the other states that already have legacy trusts. He explained that the purpose of the following provisions is to make Indiana legacy trusts competitive with those of other states: (1) Reducing from four years to two years the time within which a creditor may file a claim under the Uniform Fraudulent Transfer Act (IC 32-18-2). (2) Providing that the rule against perpetuities does not apply to a legacy trust. (3) Requiring the removal of the trustee if the trust is sued and the court declines to apply Indiana law in determining the effect of a spendthrift provision.

Recommendation #2/ Penalties for noncompliance

Mr. Kolb said that the recommendation imposes treble damages, expenses, and attorney's fees for a third party's failure to comply with a small estate affidavit. The Commission discussed the following: (1) The time needed for third parties to process incomplete or incorrect small estate affidavits. (2) Allowing utility deposits to be recovered through a small estate affidavit which may result in a loss of utility service to a decedent's household. (3) Allowing distributees (instead of claimants) to submit a small estate affidavit.

Recommendation #3/ Consent or waiver

Mr. Kolb explained that the Report amends IC 29-1-7-4.5 providing that if a person consents to a petition filed in a probate proceeding or waives notice of the proceeding, then the petition, the consent, or the waiver must state that the personal representative has provided a copy of the petition to the person.

Recommendation #4/ Notice of will contest

Mr. Kolb explained that the proposal amends IC 29-1-7-18 to provide that a default judgment doesn't occur in the absence of proof of service on the counsel for the estate.

Recommendation #5/ Small estate affidavit

Mr. Kolb said that the recommendation limits to distributees (instead of claimants) the persons entitled to payment upon the presentation of a small estate affidavit.

Recommendation #6/ Income from a specific gift

Mr. Kolb explained that the Report amends the Indiana Principal and Income Act (IC 30-2-14) so that it coordinates with IC 29-1-17-7, which provides that an asset's income that is received during the administration of the estate is a part of the principal of the estate.

Recommendation #7/ Encumbrance on trust property

Mr. Kolb explained that in addition to making a small, technical timing change to IC 29-1-17-9, the Report amends the trust code in IC 30-4-3-3 to provide that trust property is subject to encumbrances.

Recommendation #8/ Trust information

Mr. Kolb explained that the Report creates a default rule that if a trust is silent as to which beneficiaries receive trust information, then:

(1) current income beneficiaries; and
(2) if the trust has become irrevocable, beneficiaries who will become income beneficiaries when the terms of the current income beneficiaries expire;

may receive information.

The Commission discussed whether this change would increase administration costs and fighting among beneficiaries and between beneficiaries and the trustee.

Recommendation #9/ Decanting

Mr. Kolb explained that decanting is a way to amend an irrevocable trust by pouring it into another trust that has different terms. He said that the Report recommends amending IC 30-4-3-36 to replace the trustee's "absolute power" with the trustee's "discretion", thereby giving more trusts the power to decant.

Recommendation #10/ Trust contest

Mr. Kolb said the Report amends IC 30-4-6-14 to add that the notice given to start the period for contesting a trust must include a statement of the person's interest in the trust or that the person has no interest.

Recommendation #11/ Power of attorney

Mr. Kolb explained that the Report amends IC 30-5-5-10 to define "fund" and "fiduciary" with respect to the general authority with respect to fiduciary transactions delegated to an attorney in fact.

Recommendation #12/ Delegation of authority

Mr. Kolb explained that IC 30-5-5-18 is amended to clarify that a delegation of authority by an attorney in fact survives the death of the attorney in fact or the unwillingness or inability of the attorney in fact to act, unless the delegation is revoked or the power of attorney becomes invalid or unenforceable.

Recommendation #13/ Power of attorney

Mr. Kolb explained that IC 30-5-6-4(b) provides that a child of the principal may request a trust accounting and that a corresponding provision needs to be added to IC 30-5-6-4(c) requiring delivery of the accounting to the child.

Recommendation #14/ Transfer on death affidavit

Mr. Kolb explained that the Report amends IC 32-17-14-26 to require the owner's date of death (instead of a death certificate which has the owner's Social Security number) in the affidavit filed with the recorder.

Sen. Delph said that the Commission would take public testimony regarding the Report.

Lisa Kobe, Duke Energy, testifying also for Ed Simcox, Indiana Energy Association, expressed concern about Recommendation #2, particularly with regard to making utility deposits recoverable through a small estate affidavit. She said that they will discuss this issue internally and work with the Bar Association and the Commission.

Dax Denton, Indiana Banker's Association, expressed the association's concern that Recommendation #2 puts banks of all sizes in the difficult position of complying with a small estate affidavit without fully vetting it.

Attorney R.J. McConnell, Bose, McKinney, and Evans, expressed the following concerns about Recommendation #2: (1) It is uncertain whether state law can exempt banks from the federal law concerning the disclosure of nonpublic personal information. (2) Ten days may not be sufficient time for banks to get the information to determine whether to comply with a small estate affidavit. (3) The standard should be that a bank is immune from liability in the absence of bad faith instead of being granted immunity if the bank shows good faith. (4) Banks should also be able to recover attorney's fees. (5) Penalties should not be automatically imposed but within a judge's discretion.

Sen. Delph said that he previously asked the Indiana State Bar Association and the Indiana Banker's Association to work out their differences regarding Recommendation #2 before it is considered by the Commission. Sen. Delph asked the parties to confer and, if agreement is reached, prepare language for the consideration of the Commission. Sen. Delph adjourned the meeting at 2:25 p.m..

Probate Code Study Commission
Meeting 1
September 17, 2013
Exhibit 1

REPORT FROM

PROBATE TRUST AND REAL PROPERTY SECTION

OF THE

INDIANA STATE BAR ASSOCIATION

TO THE

PROBATE CODE STUDY COMMISSION

AUGUST 1, 2013

REPORT FROM
PROBATE TRUST AND REAL PROPERTY SECTION
INDIANA STATE BAR ASSOCIATION
TO THE
PROBATE CODE STUDY COMMISSION
AUGUST 1, 2013

The Probate Trust and Real Property Section of the Indiana State Bar Association (Section) provides the following legislative changes for the 2014 legislative session. It appreciates the willingness of the Probate Code Study Commission (PCSC) to work with the Section on improving Indiana laws.

1. LEGACY TRUST. This change creates a new chapter in the Trust Code: I.C. 30-4-8. This issue was first presented to the PCSC in 2008 and was designated an Asset Protection Trust. The designation as a Legacy Trust highlights its ability to create wealth. Under current Indiana law, a person cannot create a trust where trust assets will be protected from claims of the person's creditors. As of this date, fifteen (15) states have statutes which allow the creation of a self settled trust that is protected from the settlor's creditors. One of the leading states in this area is Delaware which language was codified by Tennessee. Attached as **Tab A** is language adapted from Delaware and Tennessee for enactment in Indiana. A Legacy Trust cannot be set up to defraud creditors and the rights of a spouse and child support are protected. The statute also provides that the rule against perpetuities does not apply to a Legacy Trust. This allows Indiana estate planners to create a trust for future generations known as a dynasty trust.

2. FIDUCIARY REQUEST – PENALTIES. **Tab B** includes a series of changes, both new provisions and amendments to existing provisions, to provide penalties for failure to comply with the statutes in the Probate Code, Guardianship Code and Power of Attorney Act. Generally speaking, the damages are three times the amount of actual damages, plus cost of collection and attorney fees. This was approved by the PCSC last year and a Preliminary Draft No. 3363 was created. However, the draft was never introduced into the legislature.

3. WAIVER OF NOTICE – DELIVERY OF DOCUMENTS. **Tab C** contains a proposed new I.C. 29-1-7-4.5 to require that any written consent to a petition or other document or waiver of notice filed in an estate, must contain a statement that a copy of the document was delivered to the person either consenting or waiving. It also allows the consent or waiver to be done by an agent for the person consenting or waiving.

4. WILLS – CONTEST – NOTICE. **Tab D** contains amendments to I.C. 29-1-7-18 that address concerns raised by recent Court of Appeals decision requiring an answer to a will contest complaint. Specifically, it provides for no default in the absence of proof of service on the counsel for the estate.

5. SMALL ESTATE AFFIDAVIT – CLAIMANT. **Tab E** provides a new I.C. 29-1-8-0.2 that defines who the person is claiming to be entitled to payment or delivery under a small estate affidavit. Specifically, it limits that reference to decedent's distributees as that term is defined in I.C. 29-1-1-3(a)(8).

6. WILL – SPECIFIC GIFT – INCOME. Indiana has long had a provision classifying income received during administration as being part of the residue of the estate. This is important with regard to final distribution. The Uniform Principal Income Act adopted by Indiana confuses this issue. Attached as **Tab F** are changes to the Uniform Principal Income Act to coordinate it with long standing Indiana law treating income from a specific gift under a will as part of the residue.

7. TRUST – DISTRIBUTION OF PROPERTY SUBJECT TO ENCUMBRANCE. **Tab G** contains an amendment to I.C. 29-1-17-9 that deals with a small technical timing change. More importantly, it amends I.C. 30-4-3-3 to add a new subsection "e" specifying that trust property is distributed subject to the encumbrances.

8. TRUST – INFORMATION – BENEFICIARIES. **Tab H** amends I.C. 30-4-3-6 to specify the beneficiaries who are entitled to information from the trust and the information to which they are entitled.

9. TRUST – DECANTING. **Tab I** amends I.C. 30-4-3-36 to update Indiana's decanting making it more flexible.

10. TRUST – CONTEST – NOTICE. **Tab J** amends I.C. 30-4-6-14 to clarify the information that must be provided to a person in order to start the ninety (90) day period in which to contest the trust. Most importantly the document must describe the person's interest in the trust or whether or not they have any interest.

11. POWER OF ATTORNEY – FIDUCIARY POWERS. **Tab K** contains amendments to I.C. 30-5-5-10 providing a definition of the reference to "fund". A fund means any assets which includes real or personal property in which the principal has an interest as a fiduciary.

12. POWER OF ATTORNEY – DELEGATION. **Tab L** amends I.C. 30-5-5-18 to make it clear that a delegation by an attorney-in-fact outlives the attorney-in-fact unless an exception set out in the change applies.

13. POWER OF ATTORNEY – ACCOUNTING – TECHNICAL CHANGES. **Tab M** contains changes to I.C. 30-5-6-4 which are of a technical corrections nature. The statute had previously been amended to allow a child of the principal to request an accounting. This requires a coordinative change under subsection (c) as well.

14. TRANSFER ON DEATH – DEATH CERTIFICATE. **Tab N** amends I.C. 32-17-14-26(b)(20)(B) to remove the requirement of a death certificate because the death certificate contains the social security number of the decedent.

IC 30-4-8 INDIANA LEGACY TRUST

30-4-8-1 APPLICABLE DATE. This chapter shall apply to Qualified Dispositions to Legacy Trusts and Dispositions by Transferors who are trustees made on or after June 30, 2014.

30-4-8-2 DEFINITIONS. Unless the context otherwise requires, the following definitions apply in this chapter.

(1) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, continent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

(2) "Creditor" means, with respect to a Transferor, a Person who has a Claim.

(3) "Debt" means liability on a Claim.

(4) "Disposition" means a transfer, conveyance or assignment of Property including a change in the legal ownership of Property occurring upon the substitution of one (1) trustee for another or the addition of one (1) or more new trustees. "Disposition" also includes the exercise of a power so as to cause a transfer of Property to a trustee or trustees, but shall not include the release or relinquishment of an interest in Property that until the release or relinquishment was the subject of a Qualified Disposition.

(5) "Investment Decision" means the retention, purchase, sale, exchange, tender or other transaction affecting the ownership of or rights in investments.

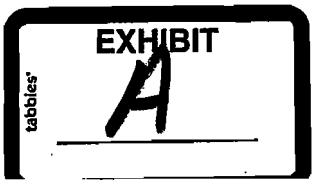
(6) "Legacy Trust" means a trust that:

(A) Appoints at least one or more Qualified Trustees for the Property that is the subject of a Qualified Disposition;

(B) Expressly incorporates the law of Indiana to govern the validity, construction and administration of the trust;

(C) Is irrevocable; and

(D) Provides that the interest of the Transferor or beneficiary in the trust Property or the trust income may not be transferred, assigned, pledged or mortgaged, whether voluntarily or involuntarily, before the trustee actually distributes the Property or income to the beneficiary.



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

(8) "Property" includes real property, personal property, and interests in real or personal property.

(9) "Qualified Affidavit" means a sworn affidavit signed by the Transferor before a Disposition of Property to a Legacy Trust that meets the requirements of IC 30-4-8-3(a). In the event of a Disposition by a Transferor who is a trustee, the Qualified Affidavit shall be signed by the Transferor who made the original Disposition to the trustee, or a predecessor trustee, in a form that meets the requirements of IC 30-4-8-2(1)(C) and (D) and shall state facts as of the time of the original Disposition.

(10) "Qualified Disposition" means a Disposition by or from a Transferor with or without consideration, to a Legacy Trust after the Transferor executes a Qualified Affidavit. A Disposition by a trustee that is not a Qualified Trustee to a trustee that is a Qualified Trustee shall not be treated as other than a Qualified Disposition solely because the trust instrument fails to meet the requirements of IC 30-4-8-2(1)(B). In the case of a disposition to more than one (1) trustee, a Disposition that is otherwise a Qualified Disposition shall not be treated as other than a Qualified Disposition solely because not all of the recipient trustees are Qualified Trustees.

(11) "Qualified Trustee" means a person who:

(A) In the case of an individual at least eighteen (18) years of age, is a resident of Indiana, or, for all other Persons, is authorized by the law of Indiana to act as a trustee and whose activities are subject to supervision by the State of Indiana, the federal deposit insurance corporation, the comptroller of the currency, or the office of thrift supervision or any successor thereto;

(B) Maintains or arranges for custody in Indiana some or all of the Property that is the subject of the Qualified Disposition, maintains records for the Legacy Trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation of required income tax returns for the Legacy Trust, or otherwise materially participates in the administration of the Legacy Trust; and

(C) Is not the Transferor.

(12) "Transferor" means a Person who, as an owner of Property, as a holder of a power of appointment which authorizes the holder to appoint in favor of the holder, the holder's Creditors, the holder's estate or the Creditors of the holder's estate, or as a trustee, directly or indirectly makes a Disposition or causes a Disposition to be made.

(13) "Trust Advisor" means a Person given authority by the terms of a Legacy Trust to direct, consent to or disapprove actual or proposed Investment Decisions, distribution decisions or other decisions related to Property in a Legacy Trust.

30-4-8-3 QUALIFIED AFFIDAVIT.

(a) A Qualified Affidavit shall identify the Property to be transferred to the Legacy Trust and state that:

(1) The Transferor has full right, title, and authority to transfer the Property to the Legacy Trust;

(2) The transfer of the Property to the Legacy Trust will not render the Transferor insolvent;

(3) The Transferor does not intend to defraud a Creditor by transferring the Property to the Legacy Trust,

(4) The Transferor does not have any pending or threatened court actions against the Transferor, except for those court actions identified by the Transferor on an attachment to the Qualified Affidavit;

(5) The Transferor is not involved in any administrative proceedings except for those administrative proceedings identified on an attachment to the Qualified Affidavit;

(6) The Transferor does not contemplate filing for relief under the provisions of the federal bankruptcy code; and

(7) The Property being transferred to the Legacy Trust is not derived from unlawful activities.

(b) If Transferor is an individual and is married at the time the Qualified Affidavit is signed, a copy of this Qualified Affidavit shall be given to the Transferor's spouse.

30-4-8-4 PROTECTION FROM CREDITORS.

(a) Except as provided in IC 30-4-8-5 and notwithstanding any provision of law to the contrary, no action of any kind, including, without limitation, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity for an attachment or other provisional remedy against Property that is the subject of a Qualified Disposition to a Legacy Trust or for the avoidance of a Qualified Disposition to a Legacy Trust.

(b) If, in any action brought against a Legacy Trust, a court takes any action where the court declines to apply the law of Indiana in determining the effect of a spendthrift provision

in the Legacy Trust, the trustee of the Legacy Trust shall immediately upon such court's action and without the further order of any court, cease in all respect to be trustee of the Legacy Trust and a successor trustee shall thereupon succeed as trustee in accordance with the terms of the trust or, if the trust does not provide for a successor trustee and the trust would otherwise be without a trustee, a court of this state, upon the application of any beneficiary of the Legacy Trust, shall appoint a successor trustee upon such terms and conditions as it determines to be consistent with the purposes of the trust and this Act. Upon the trustee's ceasing to be trustee, that trustee shall have no power or authority other than to convey the trust Property to the successor trustee named in the trust in accordance with this section.

(c) A Legacy Trust and its Property shall be protected under this section whether or not the Transferor retains any or all of the powers and rights described in IC 30-4-8-10 or serves as a Trust Advisor pursuant to IC 30-4-8-9.

IC 30-4-8-5 CREDITOR EXCEPTIONS.

(a) The only Claims that are exceptions to IC 30-4-8-4 are:

(1) Actions brought in this state pursuant to the provisions of the Uniform Fraudulent Transfer Act, IC 32-18-2, where the requirements for recovery under the Uniform Fraudulent Transfer Act are met by clear and convincing evidence;

(2) Payments, both past and future, due under a court judgment or order for child support against the Transferor in existence at the time of the Qualified Disposition to the Legacy Trust; or

(3) A court judgment or order of division of property in a dissolution of marriage or legal separation of the Transferor if the Qualified Disposition to the Legacy Trust was:

(A) After the date of the Transferor's marriage that is being dissolved or separated; or

(B) Within thirty (30) days before the date of the Transferor's marriage that is being dissolved or separated unless Transferor gives written notice to the other party to the marriage three (3) days before the Qualified Disposition

(b) A Creditor's Claim under subsection (a)(1) of this section shall be extinguished unless:

(1) The Creditor's Claim arose before the Qualified Disposition to a Legacy Trust was made, and the action is brought within the later of:

(A) Two (2) years after the Transfer was made; or

(B) Six (6) months after the Transfer was recorded or made a public record or, if not recorded or made a public record, was or could have reasonably be discovered by the Creditor.

(2) Notwithstanding the provisions of IC 32-18-2-19, the Creditor's Claim arose concurrent with or subsequent to the Qualified Disposition and the action is brought within two (2) years after the Qualified Disposition is made.

(c) For purpose of this chapter, a Qualified Disposition that is made by means of a Disposition by a Transferor who is a trustee shall be deemed to have been made as of the time, whether before, on or after July 1, 2013, the Property that is the subject of the Qualified Disposition was originally transferred to the Transferor acting in the capacity of trustee, or any predecessor trustee, in a form that meets the requirements of IC 30-4-8-2(1)(C) and (D).

(d) In circumstances where more than one (1) Qualified Disposition is made by means of the same Legacy Trust, then:

(1) The making of a subsequent Qualified Disposition shall be disregarded in determining whether a Creditor's Claim with respect to a prior Qualified Disposition is extinguished as provided in subsection (b); and

(2) Any distribution to a beneficiary shall be deemed to have been made from the latest Qualified Disposition.

IC 30-4-8-6 LIMITATIONS ON CREDITOR'S CLAIM.

(a) If a Creditor's Claim is allowed under IC 30-4-8-5 (a), the Qualified Disposition to a Legacy Trust shall be subject to that Claim only to the extent necessary to satisfy the Transferor's Debt to the Creditor whose Claim was allowed.

(b) In the event any Creditor's Claim is allowed as provided in subsection (a), then:

(1) If the court is satisfied that a Qualified Trustee has not acted in bad faith in accepting or administering the Property that is the subject of the Qualified Disposition:

(A) The Qualified Trustee shall have a first and paramount lien against the Property that is the subject of the Qualified Disposition in an amount equal to the entire cost, including attorneys' fees, properly incurred by the Qualified Trustee in the defense of the action or proceedings filed by the Creditor;

(B) The Creditor's Claim shall be allowed subject to the proper fees, costs, preexisting rights, claims and interests of the Qualified Trustee and of any predecessor Qualified Trustee that has not acted in bad faith;

(C) For the purposes of this subdivision, it shall be presumed that the Qualified Trustee did not act in bad faith merely by accepting the Property; and

(D) If the court is satisfied that a beneficiary of a Legacy Trust has not acted in bad faith, the Creditor's Claim shall be subject to the right of the beneficiary to retain any distribution made upon the exercise of a trust power or discretion vested in the Qualified Trustee or Qualified Trustees of the Legacy Trust, which power or discretion was properly exercised prior to the Creditor's commencement of an action. For purposes of this subdivision, it shall be presumed that the beneficiary, including a beneficiary who is also a Transferor of the trust, did not act in bad faith merely by creating the trust or by accepting a distribution made in accordance with the terms of the Legacy Trust.

IC 30-4-8-7 BANKRUPTCY PROVISION. A spendthrift provision as described in IC 30-4-8-2(1)(D) shall be deemed to be a restriction on the transfer of the Transferor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of § 541(c)(2) of the Bankruptcy Code (11 U.S.C. § 541(c)(2)) or any successor provision thereto.

IC 30-4-8-8 TRANSFEROR'S LIMITATIONS. Except as permitted by the provisions of the Legacy Trust and by IC 30-4-8-9 and 10, the Transferor shall have no rights or authority with respect to the principal or income of the Legacy Trust and any agreement or understanding purporting to grant or permit the retention of any greater rights or authority shall be void.

IC 30-4-8-9 TRANSFEROR AS ADVISOR. A Person may serve as a investment advisor even if that Person is the Transferor of the Qualified Disposition, but that Person may not otherwise serve as an advisor to a Legacy Trust except with respect to the retention of the veto right permitted by IC 30-4-8-10(1).

IC 30-4-8-10 TRANSFEROR RETAINED POWERS. A Legacy Trust shall not be deemed revocable on account of its inclusion of one (1) or more of the following:

(1) A Transferor's power to veto a distribution from the trust;

(2) A power of appointment other than a power to appoint to the Transferor, the Transferor's Creditors, the Transferor's estate or the Creditors of the Transferor's estate exercisable by will or other written instrument of the Transferor effective only upon the Transferor's death;

(3) The Transferor's potential or actual receipt of income or principal, including rights to income retained in the trust;

(4) The Transferor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust as such terms are defined

in § 664 of the Internal Revenue Code of 1986 (26 U.S.C. § 664) and any successor provision thereto;

(5) The Transferor's potential or actual receipt of income or principal from a grantor retained annuity trust or grantor retained unitrust that is allowed under 26 U.S.C 2702 of the Internal Revenue Code as that section exists on the date this Act is effective and as amended;

(6) The Transferor's potential or actual receipt or use of principal if such potential or actual receipt or use of principal would be the result of a Qualified Trustee or Qualified Trustees acting:

(A) In the Qualified Trustee's or Qualified Trustees' discretion. For purposes of this section, a Qualified Trustee is presumed to have discretion with respect to the distribution of principal unless such discretion is expressly denied to the Qualified Trustee by the terms of the trust;

(B) Pursuant to a standard that governs the distribution of principal and does not confer upon the Transferor a power to consume, invade or appropriate property for the benefit of the Transferor, unless such power of the Transferor is limited by an ascertainable standard relating to the health, education, maintenance or support within the meaning of § 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on July 1, 2007, or as later amended; or

(C) At the direction of an advisor described in IC 30-4-8-11 acting:

(i) In such advisor's discretion; or

(ii) Pursuant to a standard that governs the distribution of principal and does not confer upon the Transferor a power to consume, invade, or appropriate Property for the benefit of the Transferor, unless such power of the Transferor is limited by an ascertainable standard relating to the health, education, maintenance or support within the meaning of § 2041(b)(1)(A) or 2414(c)(1) of the Internal Revenue Code of 1986, as in effect on July 1, 2007, or as later amended.

(7) The Transferor's right to remove a trustee or advisor and to appoint a new trustee or advisor; provided, however, that such right shall not include the appointment of a Person who is a related or subordinate party with respect to the Transferor within the meaning of § 672(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 672(c)) and any successor provision thereto;

(8) The Transferor's potential or actual use of real property held under a qualified personal residence trust within the meaning of such term as described in § 2702(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 2702(c)) and any successor provision thereto.

IC 30-4-8-11 ADVISORS

(a) For purposes of this chapter, neither the Transferor nor any other individual who is a nonresident of this state nor an entity that is not authorized by the law of Indiana to act as a trustee or whose activities are not subject to supervision as provided in IC 30-4-8-2 (11)(A) shall be considered a Qualified Trustee; however, nothing in this chapter shall preclude a Transferor from appointing one (1) or more advisors, including but not limited to:

(1) Advisors who have authority under the terms of the trust instrument to remove and appoint Qualified Trustees or Trust Advisors;

(2) Advisors who have authority under the terms of the trust instrument to direct, consent to or disapprove distributions from the trust; and

(3) Advisors who do not meet the requirements imposed by IC 30-4-8-2 (11).

(b) For purposes of this subsection, the term "advisor" includes a "trust protector" or any other person who, in addition to a Qualified Trustee, holds one (1) or more trust powers.

IC 30-4-8-12 QUALIFIED TRUSTEE VACANCY. In the event that a Qualified Trustee of a Legacy Trust ceases to meet the requirements of IC 30-4-8-2 (11)(A), and there remains no trustee that meets such requirements, that Qualified Trustee shall be deemed to have resigned as of the time of cessation, and the successor Qualified trustee provided for in the Legacy Trust shall become a Qualified Trustee of the Legacy Trust or in the absence of any successor Qualified Trustee provided for in the Legacy Trust, then a court of this state shall, upon application of any interested party, appoint a successor Qualified Trustee.

IC 30-4-8-13 IMMUNITY

(a) Notwithstanding any provision of law to the contrary, a Creditor, including a Creditor whose Claim arose before or after a Qualified Disposition, or any other Person shall have only those rights with respect to a Qualified Disposition as are provided in this chapter, and that Creditor or any other Person shall not have any Claim or cause of action against the trustee, or an advisor of a Legacy Trust, or against any person involved in the counseling, drafting, preparation, execution or funding of a Legacy Trust. For purposes of this section, counseling, drafting, preparation, execution or funding of a Legacy Trust includes the counseling, drafting, preparation, execution and funding of a limited partnership or a limited liability company if interests in the limited partnership or limited liability company are subsequently transferred to the Legacy Trust.

(b) Notwithstanding any provision of law to the contrary, no action of any kind, including, without limitation, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity against a trustee or an advisor of a Legacy Trust, or against any Person involved in the counseling, drafting,

preparation, execution or funding of a Legacy Trust, if, as of the date such action is brought, an action by a Creditor with respect to the Legacy Trust would be barred under this section.

IC 30-4-8-14 RULE AGAINST PERPETUITIES EXCLUSION. The common law rule against perpetuities and the Uniform Statutory Rule Against Perpetuities, IC 32-17-8, shall not apply to Property or Property interests in a Legacy Trust or the terms and provisions of a Legacy Trust.

PRELIMINARY DRAFT
No. 3363

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.

EXHIBIT
B

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

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

SECTION 1. IC 29-1-8-1, AS AMENDED BY P.L.61-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. (a) Forty-five (45) days after the death of a decedent and upon being presented an affidavit that complies with subsection (b), a person:

(1) indebted to the decedent; or

(2) having possession of personal property or an instrument evidencing a debt, an obligation, a stock, or a chose in action belonging to the decedent;

shall make payment of the indebtedness or deliver the personal property or the instrument evidencing a debt, an obligation, a stock, or a chose in action to a person claiming to be entitled to payment or delivery of property of the decedent. ^a distributee

(b) The affidavit required by subsection (a) must be an affidavit made by or on behalf of the ~~claimant~~ ^distributee and must state the following:

(1) That the value of the gross probate estate, wherever located (less liens and encumbrances), does not exceed fifty thousand dollars ($50,000).

(2) That forty-five (45) days have elapsed since the death of the decedent.

(3) That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction.

(4) The name and address of each other ~~person~~ ^distributee that is entitled to a share of the property and the part of the property to which each person is entitled.

(5) That the ~~claimant~~ ^distributee has notified each ~~person~~ ^distributee identified in the affidavit of the claimant's ^distributee intention to present an affidavit under this section. ^distributee

(6) That the ~~claimant~~ ^distributee is entitled to payment or delivery of the property on behalf of each ~~person~~ ^distributee identified in the affidavit.

(c) If a motor vehicle or watercraft (as defined in IC 9-13-2-198.5) is part of the estate, nothing in this section shall prohibit a transfer of the certificate of title to the motor vehicle if five (5) days have elapsed since the death of the decedent and no appointment of a personal representative is contemplated. A transfer under this subsection shall be made by the bureau of motor vehicles upon receipt of an affidavit containing a statement of the conditions required by subsection (b)(1) and (b)(6). The affidavit must be duly executed by the distributees of the estate.

(d) A transfer agent of a security shall change the registered ownership on the books of a corporation from the decedent to a ~~claimant~~ ^distributee upon the presentation of an affidavit as provided in subsection (a).

(e) For the purposes of subsection (a), an insurance company that, by reason of the death of the decedent, becomes obligated to pay a death benefit to the estate of the decedent is considered a person indebted to the decedent.

(f) For purposes of subsection (a), property in a safe deposit box rented by a decedent from a financial institution organized or reorganized under the law of any state (as defined in IC 28-2-17-19) or the United States is considered personal property belonging to the decedent in the possession of the financial institution.

(g) For purposes of subsection (a), a deposit originally paid by a decedent or a previously deceased member of that decedent's household to a public or private utility company and held by the utility company in connection with the utility company's provision of water, sewer, gas, electricity, telephone, telecommunications, or other utility services on or to real property owned or rented by the decedent, is considered personal property of the decedent in possession of a utility company.

(h) If a person in possession of personal property belonging to a decedent receives an affidavit that complies with the requirements of subsections (a) and (b) and does not have actual knowledge that one (1) or more of the statements in the affidavit are false or are disputed by other individuals who could sign affidavits as ~~claimants~~ ^distributees under this section, the person receiving the affidavit:

(1) has neither the right nor the obligation to make a further investigation or inquiry about the accuracy or completeness of the contents of the affidavit; and

(2) may not refuse to comply with the affidavit ^if it includes each kind of information required in subsection (b) or deliver the decedent's property because fewer than all of the ~~persons~~ ^distributees claiming interests in the property have signed the affidavit.

(i) If a person receives an affidavit that is otherwise compliant with subsection (b) before forty-five (45) days elapse after the date of the decedent's death, the person may delay complying with the

affidavit until after forty-five (45) days have elapsed.

(j) Nothing in this chapter prohibits a person who possesses personal property of a decedent from commencing an interpleader action or seeking other relief from a court under other applicable law if the person has actual knowledge of two (2) or more competing or conflicting claims for the release or delivery of that personal property.

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

(1) Real property owned by a decedent.

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

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

(1) indebted to the decedent; or

(2) having possession of:

(A) personal property;

(B) an instrument evidencing a debt;

(C) an obligation;

(D) a chose in action;

(E) a life insurance policy;

(F) a bank account; or

(G) intangible property, including annuities, fixed income investments, mutual funds, cash, money market accounts, or stocks;

belonging to the decedent;

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

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

(1) the name, address, Social Security number, and date of death of the decedent;

(2) the name and address of the affiant, and the relationship of the affiant to the decedent;

(3) that the disclosure of the date of death value is necessary to determine whether the decedent's estate can be administered under the summary procedures set forth in this chapter; and

(4) that the affiant is answerable and accountable for the information received to the decedent's personal representative, if any, or to any other person having a superior right to the property or indebtedness.

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

being presented with the affidavit.

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

(f) **If** a person: ~~who:~~

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

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

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

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

~~(1) Three (3) times the amount of the actual damages.~~

~~(2) Attorney's fees and court costs.~~

~~(3) Prejudgment interest on the actual damages from the date the affidavit was presented to the person.~~

SECTION 3. IC 29-1-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. **(a)** The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if ~~he~~ **the person** dealt with a personal representative of the decedent. ~~He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit.~~ **The person has neither the obligation nor the right to audit or supervise the division, application, or other disposition of the personal property that is paid, delivered, transferred, or issued to a ~~claimant~~ distributee who presents an affidavit that complies with section 1(b) of this chapter.**

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

(c) Any person to whom payment, delivery, transfer, or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right.

SECTION 4. IC 29-1-13-10 IS AMENDED TO READ AS

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

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

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

SECTION 5. IC 29-1-13-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 10.5. (a) This section applies to transactions or dealings between third parties and:**

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

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

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

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

(b) This section does not apply to claims, demands, or requests for distributions from trusts. If a trust beneficiary or the representative of a deceased or incapacitated trust beneficiary contends that a trustee has failed or refused to make a required distribution, the beneficiary's available procedures and remedies are governed by the terms of the trust, the applicable provisions of

IC 30-2 and IC 30-4, and the common law.

(c) The following definitions apply throughout this section:

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

(A) is delivered to a third party;

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

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

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

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

(2) "Property owner" means:

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

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

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

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

(3) "Requesting party" means a ~~claimant~~, affiant, ^distributee, personal representative, or guardian who:

(A) signs a fiduciary's instruction; and

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

(4) "Third party" means an individual, a bank, a regulated investment company, a trust company, a life insurance company, a securities transfer agent, a stock registrar, a retirement plan administrator, a custodian of an individual retirement account, a financial institution, or another person that:

^, but it does not mean a person claiming as a creditor of the decedent

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

(B) is indebted to a property owner.

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

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

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

(e) A third party may impose commercially reasonable conditions on its compliance with a fiduciary's instruction. Conditions that are commercially reasonable will vary according to the specific facts and circumstances and may include a requirement by the third party that the requesting party provide one (1) or more of the following:

(1) An affidavit of domicile for the deceased property owner.

(2) A death certificate for the deceased property owner.

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

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

(5) Satisfactory proof of the identity of the requesting party who has presented or submitted the instruction to the third party.

(6) Compliance with other federal or state laws or regulations that apply to living customers of the third party or to fiduciaries of deceased customers with respect to the type of property for which the delivery, release, or transfer is sought in the fiduciary's instruction.

(7) Compliance with regular and uniform written policies that the third party applies to living customers of the third party

with respect to the type of property for which the delivery, release, or transfer is sought in the fiduciary's instruction.

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

(g) For purposes of this section, a third party will not be considered to be in noncompliance with a fiduciary's instruction that is a small estate affidavit under IC 29-1-8-1, IC 29-1-8-1.5, or IC 29-1-8-3, and the requesting party will not be entitled to recover damages under subsection (o)(1) and (o)(2), if the third party states in writing a good faith basis for its actual knowledge of:

(1) a dispute between two (2) or more competing ~~claimants~~ ^ requesting parties regarding the personal property described in the small estate affidavit; or

(2) the falsity or material inaccuracy of a statement in the small estate affidavit.

(h) If:

(1) a third party asserts a defense under subsection (g);

(2) the requesting party and the third party do not resolve the dispute; and

(3) the fiduciary brings an enforcement proceeding under subsection (k);

the court has the discretion, but not the obligation, to award reasonable attorney fees, disbursements, and costs to the requesting party, according to the court's findings about whether the third party had a good faith basis for the defense asserted under subsection (g).

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

(j) To the extent that a third party's compliance with a fiduciary's instruction would involve disclosure of nonpublic personal information about the property or debts of a deceased or incapacitated individual who is the property owner, this section is a state law authorizing the third party to make disclosure for purposes of the federal Gramm-Leach-Bliley Financial

Modernization Act (15 U.S.C. 6801 et seq).

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

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

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

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

(A) the property owner is deceased;

(B) no letters have been issued; and

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

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

(m) The following apply to an enforcement proceeding brought under subsection (k):

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

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

(n) After a hearing in an enforcement proceeding brought under subsection (k) or following the nonappearance or default of the third party on the hearing date, the court may issue an order requiring the third party to comply with the fiduciary's instruction, with or without supplementation or modification in the court's order. Continued noncompliance by the third party is punishable as contempt of court.

(o) If the requesting party prevails in an enforcement proceeding brought under subsection (k), the third party shall pay the following to the requesting party:

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

(2) To the extent not already included in and reimbursed as part of the requesting party's actual damages, the actual

travel expenses incurred by the requesting party in attending the hearing.

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

(4) The costs of the proceeding.

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

(q) A third party who:

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

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

(3) complies with the fiduciary's instruction;

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

SECTION 6. IC 29-3-9-12 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 12. (a) This section applies only to a guardianship of the property of a minor or an incapacitated adult.**

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

SECTION 7. IC 30-5-8-5, AS AMENDED BY P.L.42-2012, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5. A copy of the power of attorney has the same force and effect as the original power of attorney if the attorney in fact or the person granting the power of attorney certifies that the copy is a true and correct copy **in a certification that:**

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

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

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

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

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

(2) that the named principal is alive;

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

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

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

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

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

(c) A person who:

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

(2) acts in good faith;

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

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

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

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

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

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

(1) an original of a power of attorney; **or**

(2) a true copy of a power of attorney and a certification under IC 30-5-8-7;

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

(b) A person who:

(1) receives a document specified in subsection (a) and an instruction from an attorney in fact or a person holding authority delegated by an attorney in fact; and

(2) refers the document to legal counsel for review;

is not entitled to an extension of the ten (10) business day period in which the person must accept the authority of the attorney in fact or the person holding authority delegated by an attorney in fact.

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

(1) Three (3) times the amount of the actual damages.

(2) The attorney's fees of the person bringing the action to court.

(3) Prejudgment interest on the actual damages from the date the person refused to accept the authority of the attorney in fact.

(4) To the extent not included and reimbursed as part of the actual damages, the actual travel expenses incurred by the person bringing the action to court.

(5) The costs of the action.

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

(1) the person has actual notice of the revocation of the power of attorney before the exercise of the power;

(2) the duration of the power of attorney specified in the power of attorney has expired;

(3) the person has actual knowledge of the death of the principal;

(4) the person reasonably believes that the power of attorney is not valid under Indiana law and provides the attorney in fact with a written statement not more than ten (10) business days after the refusal, describing the reason that the power of attorney is not valid under Indiana law; or

(5) the person reasonably believes that the power of attorney does not grant the attorney in fact with authority to perform the transaction requested and provides the attorney in fact with a

written statement not more than ten (10) business days after the refusal, describing the reason the person believes the power of attorney is deficient under Indiana law.

~~(c)~~ **(e)** This section does not negate the liability a person would have to the principal or the attorney in fact under another form of power of attorney, under the common law, or otherwise.

SECTION 10. IC 34-30-2-123.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 123.3. IC 29-1-13-10.5 (Concerning a person who relies on a fiduciary's instruction).**

SECTION 11. IC 34-30-2-132.8, AS ADDED BY P.L.238-2005, SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 132.8. IC 30-5-8-7 (Concerning a person who relies on a power of attorney or ~~an affidavit~~ **a certification** concerning a power of attorney).

29-1-7-4.5. NEW

Filing of petition of document containing written consent or written waiver -- Statement that copy of petition has been delivered to person whose consent or waiver is presented.

(a) Except as provided in section 4 of this chapter and subsection (b) of this section, each petition or other document that a personal representative files in the court with:

(1) a written consent to the petition or other document; or

(2) a written waiver of notice of proceedings in the estate; must >contain a statement that the personal representative has delivered a copy of the petition or other document to each person whose written consent or waiver of notice of proceedings is presented to the court in support of the petition or other document.

(b) A petition or other document may omit the statement otherwise required in subsection (a) if the consent or waiver described subsection (a) contains a statement by the person whose signature appears on the consent or waiver that identifies the petition or other document and affirms that the person has received a copy of the petition or other document and has had a reasonable time to read and understand the nature of the petition or other document before signing the consent or waiver.

(c) A person may appoint in writing another person other than an interested person (as defined in IC 29-1-1-3(a)(13)) to serve as agent for purposes of consenting to petitions and other documents and receiving or waiving notice of proceedings under this section.

EXHIBIT
C

29-1-7-18 Contest of wills; notice AMEND

Sec. 18. When an action is brought to contest the validity of any will as provided in this article, notice is served upon the defendants in the same manner as required by the Indiana Rules of Trial Procedure. In addition, the contesting party shall serve a copy of the complaint on counsel of record, if any, for the personal representative and no default shall issue in the absence of proof of service on such counsel.

NEW

29-1-8-0.2. Personal entitled to payment or delivery of property of the decedent. For purposes of this chapter, references to "a person claiming to be entitled to payment or delivery of property of the decedent" and "claimant" refer to a decedent's distributees as that term is defined in IC 29-1-1-3(a)(8).

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30-2-14-0.1 Application of chapter and of certain P.L.143-2009 amendments

Sec. 0.1. (a) This chapter applies to every trust ~~or decedent's estate~~ existing on or created after January 1, 2003, except as otherwise expressly provided~~:~~ in this chapter or by the terms of the trust. It applies to every decedent's estate existing on or created after January 1, 2003, but only to the extent, under other applicable law or the decedent's will, the personal representative of the estate is required or allowed to account for and distribute income received during administration of the estate separately from corpus.

~~(1) in the decedent's will;~~

~~(2) by the terms of the trust; or~~

~~(3) in this chapter.~~

(b) The amendments made to section 31 of this chapter by P.L.143-2009 apply to a trust described in section 31(h) of this chapter, on and after the following dates:

(1) If the trust is not funded as of July 1, 2009, the date of the decedent's death.

(2) If the trust is initially funded in the calendar year beginning January 1, 2009, the date of the decedent's death.

(3) If the trust is not described in subdivision (1) or (2), January 1, 2009.

(c) If and to the extent they are determined to change prior law, the amendments made to this section and to sections 3, 12, 14, 18, 20 and 21 of this chapter by P.L. _____ apply to the estates of decedents dying on or after July 1, 2013, and, in the case of trusts existing or created after January 1, 2003, to the principal and income receipts of such trusts, and distributions received and made by such trusts, as of or after July 1, 2013.

30-2-14-3 **"Fiduciary" defined**

Sec. 3. As used in this chapter, "fiduciary" means a trustee. It includes the personal representative ~~or a trustee. The term~~ of a decedent's estate only to the extent, (i) under the decedent's will, the provisions of this chapter apply to the administration of the estate or (ii) under other applicable law, the personal representative is required or allowed to account for and distribute income received during administration of the estate separately from the corpus of the estate. As used in the preceding sentence, "personal representative" includes, without limitation, an executor, an administrator, a successor personal representative, a special administrator~~,~~ and a person performing substantially the same function in respect of a decedent's estate.

30-2-14-12 **"Terms of a trust" defined**

Sec. 12. As used in this chapter, "terms of a trust" means the manifestation of the intent of a settlor with respect to a trust (or a decedent with respect to ~~the~~a trust established under the decedent's will), expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

30-2-14-14 **General duties of fiduciary**

Sec. 14. (a) The following applies to a fiduciary in allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of this chapter:

(1) A fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter.

(2) A fiduciary may administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this chapter. An inference that the fiduciary has improperly exercised the discretion does not arise from the fact that the fiduciary has made or has not made an allocation contrary to a provision of this chapter.

(3) A fiduciary shall administer a trust ~~or an estate~~ in accordance with this chapter if the terms of the trust ~~or the will~~ do not contain a different provision or do not give the fiduciary a discretionary power of administration.

(4) A fiduciary shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust or the will and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust under section 15 of this chapter or a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, or this chapter, a fiduciary shall administer a trust or an estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one (1) or more of the beneficiaries. A determination in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

30-2-14-18 **Determination and distribution of net income**

Sec. 18. After an income interest in a trust ends, the following rules apply:

(1) A fiduciary of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in sections 20 through 43 of this chapter that apply to trustees and the rules in subdivision (5). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who

is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a terminating income interest under the rules in sections 20 through 43 of this chapter that apply to trustees and by:

(A) including in net income all income from property used to discharge liabilities;

(B) paying from income or principal, in the fiduciary's discretion:

(i) fees of attorneys, accountants, and fiduciaries;

(ii) court costs and other expenses of administration; and

(iii) interest on death taxes;

but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

(C) paying from principal all other disbursements made or incurred in connection with the winding up of a terminating income interest, including debts; funeral expenses; disposition of remains; family allowances; and death taxes and related penalties that are apportioned to the terminating income interest by the terms of the trust or applicable law.

(3) If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(4) A fiduciary shall distribute the net income remaining after distributions required by subdivision (3) in the manner described in section 19 of this chapter to all residuary beneficiaries, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property described in subdivision (1) because of a payment described in section 38 or 39 of this chapter to the extent that the ~~will, the~~ terms of the trust~~,~~ or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by~~:~~

~~(A)~~ including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts~~:~~

~~(i)~~ accrued or became due before, on, or after the date of an ~~individual's death; or~~

~~(ii) an~~ income interest's terminating event~~;~~, and

by

~~(B)~~ making a reasonable provision for amounts that the fiduciary believes the terminating income interest may become obligated to pay after the property is distributed.

(6) For purposes of this section, the interest of the settlor in a revocable living trust ends and becomes a terminating income interest when the settlor dies. Property that becomes part of the trust by reason of the settlor's death or that is distributed to the trust from the settlor's estate becomes part of such terminating income interest when it is received by the trust. A decedent's estate is not a terminating income interest for purposes of this section

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30-2-14-20 **When right to income begins and ends**

Sec. 20. (a) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(b) An asset becomes subject to a trust:

(1) on the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

(2) on the date it is distributed to the trust in the case of an asset that is distributed to a trust from a decedent's estate, except to the extent, pursuant to other applicable law or the decedent's will, income therefrom received during the administration of such estate was accounted for and distributed by the estate as income, and not as part of the corpus of the estate;

(~~2~~3) on the date of ~~a testator's~~the decedent's death in the case of an asset that ~~becomes subject~~is distributed to a trust ~~by reason of a will, even if there is an intervening period of~~from a decedent's estate, to the extent, pursuant to other applicable law or the decedent's will, income therefrom received during administration of the ~~testator's~~ estate was accounted for and distributed by the estate as income; or

(~~3~~4) on the date of an individual's death in the case of an asset that is transferred to ~~a fiduciary by a third party~~or becomes part of a trust because of the individual's death, except to the extent section subdivision (2) applies.

(c) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (d), even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest ends on the day before an income beneficiary dies or another terminating

event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

(e) This section applies only for purposes of determining of the period in respect of which the income beneficiary is entitled or eligible to receive any net income of a trust. It does not control how receipts and disbursements are allocated to or between principal and income during that period. Thus, amounts received by a trust from a decedent's estate or another trust as a distribution of principal may be allocable to principal pursuant to section 24 of this chapter, even to the extent they include income of the distributing estate or trust received or accrued after the beneficiary's income interest begins.

30-2-14-21 **Apportionment of receipts and disbursements when decedent dies or income interest begins**

Sec. 21. (a) A trustee shall allocate an income receipt or disbursement other than one to which section 18(1) of this chapter applies to principal if its due date occurs before:

(1) an individual dies in the case of an estate; or

(2) an income interest begins in the case of a trust or successive income interest.

(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which an individual dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which an individual dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which section 23 of this chapter applies are considered to be due on:

(1) the date fixed by the entity for determining who is entitled to receive the distribution; or

(2) if no date is fixed, the declaration date for the distribution.

A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

(d) This section applies only for purposes of determining which income receipts and disbursements of a trust are to be taken into account in determining the net income of the trust for the period after the beginning and before the end of a beneficiary's income interest. Although

it provides for certain income receipts and disbursements to be allocated to principal, it does not control the initial classification of receipts and disbursements as between principal and income. Thus, amounts received by a trust from a decedent's estate or another trust as a distribution of principal may be allocable to principal pursuant to section 24 of this chapter, even to the extent they include income receipts of the distributing estate or trust received or accrued after the beneficiary's income interest begins.

IC 29-1-17-9

Specific devise; ~~mortgage; pledge;~~ lien

Sec. 9. When any real or personal property subject to a mortgage, pledge, security interest or other lien (collectively "lien") is specifically devised, the devisee shall take such property so devised subject to such ~~mortgage~~ lien unless the will provides expressly or by necessary implication that such ~~mortgage~~ lien be otherwise paid. If ~~a mortgagee~~the holder of a lien receives payment on a claim based upon the obligation secured by such ~~mortgage~~lien, the devise which was subject to such ~~mortgage~~ lien shall be charged with the reimbursement to the estate of the amount of such payment for the benefit of the distributees entitled thereto, unless the will provides expressly or by necessary implication that such payment be charged against the residue of the estate. For purposes of this section, a general directive in the will to pay debts shall not imply an intent that the devise be distributed free from the lien.

(Formerly: Acts 1953, c.112, s.1709.)

IC 30-4-3-3

Powers of trustees

Sec. 3. (a) Except as provided in the terms of the trust and subject to subsection (c), a trustee has the power to perform without court authorization, except as provided in sections 4(b) and 5(a) of this chapter, every act necessary or appropriate for the purposes of the trust including, by way of illustration and not of limitation, the following powers:

(1) The power to:

(A) deal with the trust estate;

(B) buy, sell, or exchange and convey or transfer all property (real, personal, or mixed) for cash or on credit and at public or private sale with or without notice; and

(C) invest and reinvest the trust estate.

(2) The power to receive additions to the assets of the trust.

(3) The power to acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest.

(4) The power to manage real property in every way, including:

(A) the adjusting of boundaries;

(B) erecting, altering, or demolishing buildings;

(C) dedicating of streets, alleys, or other public uses;

(D) subdividing;

(E) developing;

(F) obtaining vacation of plats;

(G) granting of easements and rights-of-way;

(H) partitioning;

(I) entering into party wall agreements; and

(J) obtaining title insurance for trust property.

(5) The power to:

(A) grant options concerning disposition of trust property, including the sale of covered security options; and

(B) take options for acquisition of trust property, including the purchase back of previously sold covered security options.

(6) The power to enter into a lease as lessor or lessee, with or without option to renew.

(7) The power to enter into arrangements for exploration and removal of minerals or other

natural resources and enter into a pooling or unitization agreement.

(8) The power to continue the operation or management of any business or other enterprise placed in trust.

(9) The power to:

(A) borrow money, to be repaid from trust property or otherwise; and

(B) encumber, mortgage, pledge, or grant a security interest in trust property in connection with the exercise of any power.

(10) The power to:

(A) advance money for the benefit of the trust estate and for all expenses or losses sustained in the administration of the trust; and

(B) collect any money advanced, without interest or with interest, at no more than the lowest rate prevailing when advanced.

(11) The power to prosecute or defend actions, claims, or proceedings for the protection of:

(A) trust property; and

(B) the trustee in the performance of the trustee's duties.

(12) The power to:

(A) pay or contest any claim;

(B) settle a claim by or against the trust by compromise or arbitration; and

(C) abandon or release, totally or partially, any claim belonging to the trust.

(13) The power to insure the:

(A) trust estate against damage or loss; and

(B) trustee against liability with respect to third persons.

(14) The power to pay taxes, assessments, and other expenses incurred in the:

(A) acquisition, retention, and maintenance of the trust property; and

(B) administration of the trust.

(15) The power to:

(A) vote securities, in person or by a general or special proxy;

(B) hold the securities in the name of a nominee if the trustee is a corporate trustee; and

(C) effect or approve, and deposit securities in connection with, any change in the form of the corporation, including:

(i) dissolution;

(ii) liquidation;

(iii) reorganization;

(iv) acquisition; and

(v) merger.

(16) The power to employ persons, including:

(A) attorneys;

(B) accountants;

(C) investment advisors; and

(D) agents;

to advise and assist the trustee in the performance of the trustee's duties.

(17) The power to effect distribution of property in cash, in kind, or partly in cash and partly in kind, in divided or undivided interests.

(18) The power to execute and deliver all instruments necessary or appropriate to accomplishing or facilitating the exercise of the trustee's powers.

(19) With respect to an interest in a proprietorship, partnership, limited liability company,

business trust, corporation, or another form of business or enterprise, the power to:

(A) continue the business or enterprise; and

(B) take any action that may be taken by shareholders, members, or property owners, including:

(i) merging;

(ii) dissolving; or

(iii) changing the form of business organization or contributing additional capital.

(20) With respect to possible liability for violation of environmental law, the power to:

(A) inspect or investigate property:

(i) the trustee holds or has been asked to hold; or

(ii) owned or operated by an organization in which the trustee holds an interest or has been asked to hold an interest;

to determine the application of environmental law with respect to the property;

(B) take action to prevent, abate, or remedy an actual or potential violation of an environmental law affecting property held directly or indirectly by the trustee before or after the assertion of a claim or the initiation of governmental enforcement;

(C) decline to accept property into the trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(D) compromise claims against the trust that may be asserted for an alleged violation of environmental law; and

(E) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law.

(21) The power to exercise elections with respect to federal, state, and local taxes.

(22) The power to select a mode of payment under any employee benefit plan or retirement plan, annuity, or life insurance payable to the trustee and exercise rights under the plan, annuity, or insurance, including the right to:

(A) indemnification:

(i) for expenses; and

(ii) against liabilities; and

(B) take appropriate action to collect the proceeds.

(23) The power to make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee determines fair and reasonable under the circumstances. The trustee has a lien on future distributions for repayment of the loans.

(24) The power to pledge trust property to guarantee loans made by others to the beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances. The trustee has a lien on future distributions for repayment of the loans.

(25) The power to:

(A) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction;

(B) confer on the appointed trustee all the appointing trustee's powers and duties;

(C) require the appointed trustee to furnish security; and

(D) remove the appointed trustee.

(26) With regard to a beneficiary who is under a legal disability or whom the trustee reasonably believes is incapacitated, the power to pay an amount distributable to the beneficiary by:

(A) paying the amount directly to the beneficiary;

(B) applying the amount for the beneficiary's benefit;

(C) paying the amount to the beneficiary's guardian;

(D) paying the amount to the beneficiary's custodian under IC 30-2-8.5 to create a custodianship or custodial trust;

(E) paying the amount to an adult relative or another person having legal or physical care or custody of the beneficiary to be expended on the beneficiary's behalf, if the trustee does not know of a guardian, custodian, or custodial trustee; or

(F) managing the amount as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution.

(27) The power to:

(A) combine at least two (2) trusts into one (1) trust; or

(B) divide one (1) trust into at least two (2) trusts;

after notice to the qualified beneficiaries, if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the trust.

(b) Any act under subsection (a)(4), an option under subsection (a)(5), a lease under subsection (a)(6), an arrangement under subsection (a)(7), and an encumbrance, mortgage, pledge, or security interest under subsection (a)(9) may be for a term either within or extending beyond the term of the trust.

(c) In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for any trust, the trustee thereof shall exercise the judgment and care required by IC 30-4-3.5. Within the limitations of the foregoing standard, the trustee is authorized to acquire and retain every kind of property, real, personal, or mixed, and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing, bonds, debentures, and other corporate obligations, stocks, preferred or common, and real estate mortgages, which persons of prudence, discretion, and intelligence acquire or retain for their own account, and within the limitations of the foregoing standard, the trustee is authorized to retain property properly acquired, without limitation as to time and without regard to its suitability for original purchase. Within the limitations of the foregoing standard, the trustee is authorized to sell covered security options and to purchase back previously sold covered security options.

(d) If a distribution of particular trust assets is to be made to two (2) or more beneficiaries entitled to receive fractional shares in those assets, the trustee may distribute the particular assets without distributing to each beneficiary a pro rata share of each asset. However, the trustee shall:

(1) distribute to each beneficiary a pro rata share of the total fair market value of all of the particular assets as of the date of distribution; and

(2) cause the distribution to result in a fair and equitable division among the beneficiaries of capital gain or loss on the assets.

(e) When any real or personal property subject to a mortgage, pledge, security interest or other lien (collectively "lien") is specifically distributable, the distributee shall take such property subject to such lien unless the terms of the trust provide expressly or by necessary implication that such lien be otherwise paid. If, following the occurrence of the event that makes the property distributable, the holder of a lien receives payment on a claim based upon the obligation secured by such lien, the property which was subject to such lien shall be charged

with the reimbursement to the trust of the amount of such payment for the benefit of the beneficiaries entitled thereto, unless the terms of the trust provide expressly or by necessary implication that such payment be charged against the residue of the estate. For purposes of this subsection, a general directive or authority in the trust for the payment of debts shall not imply an intent that the distribution be made free from the lien.

(~~e~~f) If the trust is terminated or partially terminated, the trustee may send to the beneficiaries a proposal for distribution. If the proposal for distribution informs the beneficiary that the beneficiary:

(1) has a right to object to the proposed distribution; and

(2) must object not later than thirty (30) days after the proposal for distribution was sent; the right of the beneficiary to object to the proposed distribution terminates if the beneficiary fails to notify the trustee of an objection within the time limit set forth in subdivision (2). *(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by Acts 1977, P.L.300, SEC.1; P.L.277-1983, SEC.1; P.L.137-1999, SEC.1; P.L.238-2005, SEC.31.*

Proposed language:

(7) **30-4-3-6. Duties of the trustee.**

(a) The trustee has a duty to administer a trust according to its terms.

(b) Unless the terms of the trust provide otherwise, the trustee also has a duty to do the following:

(1) Administer the trust in a manner consistent with IC 30-4-3.5.

(2) Take possession of and maintain control over the trust property.

(3) Preserve the trust property.

(4) Make the trust property productive for both the income and remainder beneficiary. As used in this subdivision, "productive" includes the production of income or investment for potential appreciation.

(5) Keep the trust property separate from the trustee's individual property and separate from or clearly identifiable from property subject to another trust.

(6) Maintain clear and accurate accounts with respect to the trust estate.

(7)Unless the trust instrument instructs otherwise, keep the current income beneficiary(ies) reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests by providing, upon written request, access to the trust's accounting and financial records concerning the administration of trust property and the administration of the trust.

(8) Unless the trust instrument instructs otherwise, and upon the trust becoming irrevocable, whether by the terms of the trust instrument or as a result of the death of the settlor(s), *keep the beneficiary(ies) who will be the income beneficiary upon the expiration of the term of the current income beneficiary(ies)*reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests by providing, upon written request, access to the trust's accounting and financial records concerning the administration of trust property and the administration of the trust..

(9) Upon the trust becoming irrevocable, whether by the terms of the trust instrument or as a result of the death of the settlor(s) and upon written request, promptly provide a copy of the complete trust instrument to an income beneficiary or a remainderman.

(10) Take whatever action is reasonable to realize on claims constituting part of the trust property.

(11) Defend actions involving the trust estate.

(12) Supervise any person to whom authority has been delegated.

(13) Determine the trust beneficiaries by acting on information:

(A) the trustee, by reasonable inquiry, considers reliable; and

(B) with respect to heirship, relationship, survivorship, or any other issue relative to determining a trust beneficiary.

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IC 30-4-1-2. Other definitions

As used in this article:

(1) "Adult" means any person eighteen (18) years of age or older.

(2) "Affiliate" means a parent, descendant, spouse, spouse of a descendant, brother, sister, spouse of a brother or sister, employee, director, officer, partner, joint venturer, a corporation subject to common control with the trustee, a shareholder, or corporation who controls the trustee or a corporation controlled by the trustee other than as a fiduciary, an attorney, or an agent.

(3) "Beneficiary" has the meaning set forth in IC 30-2-14-2.

(4) "Breach of trust" means a violation by the trustee of any duty which is owed to the settlor or beneficiary.

(5) "Charitable trust" means a trust in which all the beneficiaries are the general public or organizations, including trusts, corporations, and associations, and that is organized and operated wholly for religious, charitable, scientific, public safety testing, literary, or educational purposes. The term does not include charitable remainder trusts, charitable lead trusts, pooled income funds, or any other form of split-interest charitable trust that has at least one (1) noncharitable beneficiary.

(6) "Court" means a court having jurisdiction over trust matters.

(7) "Income", except as otherwise stated in a trust agreement, has the meaning set forth in IC 30-2-14-4.

(8) "Income beneficiary" has the meaning set forth in IC 30-2-14-5.

(9) "Inventory value" means the cost of property to the settlor or the trustee at the time of acquisition or the market value of the property at the time it is delivered to the trustee, or the value of the property as finally determined for purposes of an estate or inheritance tax.

(10) "Minor" means any person under the age of eighteen (18) years.

(11) "Person" has the meaning set forth in IC 30-2-14-9.

(12) "Personal representative" means an executor or administrator of a decedent's or absentee's estate, guardian of the person or estate, guardian ad litem or other court appointed representative, next friend, parent or custodian of a minor, attorney in fact, or custodian of an incapacitated person (as defined in IC 29-3-1-7.5).

(13) "Principal" has the meaning set forth in IC 30-2-14-10.

(14) "Qualified beneficiary" means:

(A) a beneficiary who, on the date the beneficiary's qualification is determined:

(i) is a distributee or permissible distributee of trust income or principal;

(ii) would be a distributee or permissible distributee of trust income or principal if the interest of the distributee described in item (i) terminated on that date;

(iii) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date;

~~(iv) has sent the trustee a request for notice;~~

(iv) ~~(v)~~ is a charitable organization expressly designated to receive distributions under the terms of a charitable trust;

(v) ~~(vi)~~ is a person appointed to enforce a trust for the care of an animal under IC 30-4-2-18; or

(vi) ~~(vii)~~ is a person appointed to enforce a trust for a noncharitable purpose under IC 30-4-2-19; or

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

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

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

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

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

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

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

(21) "Trust instrument" means an instrument, agreement or other written document executed by the settlor(s) which contains terms of the trust, including any amendments thereto.

I.C. 30-4-3-36

(a) Unless a trust expressly provides otherwise, a trustee who ~~has absolute power~~ discretion under the terms of a trust (referred to in this section as the "first trust") to invade the principal of the trust to make distributions to or for the benefit of one (1) or more persons may instead exercise the power by appointing all or part of the principal of the first trust in favor of a trustee of another trust (referred to in this section as the "second trust") for the benefit of one (1) or more persons under the same trust instrument or under a different trust instrument as long as:

(1) the beneficiaries of the second trust are the same as the beneficiaries of the first trust;
(2) the second trust does not reduce any income, annuity, or unitrust interest in the assets of the first trust; and
(3) if any contributions to the first trust qualified for a marital or charitable deduction for purposes of the federal income, gift, or estate taxes, the second trust does not contain any provision that, if included in the first trust, would have prevented the first trust from qualifying for a deduction or reduced the amount of a deduction.

~~(b) For purposes of this section, an absolute power to invade principal includes a power to invade principal that is not limited to specific or ascertainable purposes, such as health, education, maintenance, and support regardless of whether the term "absolute" is used.~~

IC 30-4-6-14

Contesting validity of revocable trust; time limits

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

(1) Ninety (90) days after the person receives from the trustee a copy of ~~the~~a trust certification required by I.C. 30-4-4-5 and a notice ~~informing the person of~~:

(A) informing the person of the trust's existence;

(B) identifying the trustee's name and address;

(C) stating the person's interest as described in the trust document or stating the person has no interest; and

~~(C)~~(D) describing the time allowed for commencing the proceeding.

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

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

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

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

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

30-5-5-10. General authority with respect to fiduciaries.

(a) Language conferring general authority with respect to fiduciary transactions means the principal authorizes the attorney in fact to do the following if the principal has the authority to delegate:

(1) Apply for and procure, in the name of the principal, letters of administration, letters testamentary, letters of guardianship, or any other type of judicial or administrative authority to act as a fiduciary.

(2) Represent and act for the principal in all ways and in all matters affecting a fund with respect to which the principal is a fiduciary.

(3) Initiate, participate in, and oppose a proceeding, judicial or otherwise, for the removal, substitution, or surcharge of a fiduciary, conserve, invest, or disburse anything received for the purposes of the fund for which it is received, and reimburse the attorney in fact for expenditures properly made by the attorney in fact in the execution of powers conferred on the attorney in fact.

(4) Agree and contract in any manner and on any terms with a person the attorney in fact selects to accomplish a purpose permitted under this section and perform, rescind, reform, release, or modify an agreement or contract made by or on behalf of the principal.

(5) Execute, acknowledge, verify, seal, file, and deliver a consent, a designation, a pleading, a notice, a demand, an election, a conveyance, a release, an assignment, a pledge, a check, a waiver, an admission of service, a notice of appearance, or other instrument the attorney in fact considers useful to accomplish a purpose permitted under this section.

(6) Hire, discharge, and compensate an attorney, accountant, expert witness, or other assistant when the attorney in fact considers the action to be desirable for the proper execution by the attorney in fact of a power described in this section and keep needed records.

(7) Perform any other acts with respect to a fund of which the principal is a fiduciary.

(b) The powers described in this section are exercisable equally with respect to a fund of which the principal is a fiduciary at the time of the giving of the power of attorney or becomes a fiduciary after that time, whether located in Indiana or in another jurisdiction.

(c) For purposes of this section, "fund" means any assets, including but not limited to real and personal property, in which the principal has an interest as a fiduciary. "Fiduciary" includes but is not limited to a trustee, personal representative, guardian, attorney-in-fact, custodian, escrow agent or any similar fiduciary relationship.

(d) The powers granted in this section apply to funds existing at the time the power of attorney is executed or funds created after the power of attorney is executed and apply whether or not the fund is located in Indiana.

IC 30-5-5-18

Delegation of authority

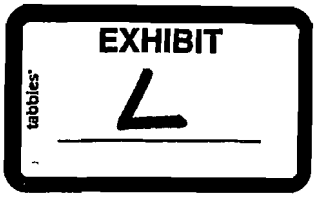
Sec. 18. Language conferring general authority with respect to delegating authority means the principal authorizes the attorney in fact to delegate in writing to one (1) or more persons any or all powers given to the attorney in fact by the power of attorney. **An action taken by a person holding delegated authority under this section binds the principal and persons who are obligated under IC 30-5-8 to obey instructions issued by the attorney in fact who delegated the authority, even if that attorney in fact dies or becomes unable or unwilling to act, unless:**

(a) The principal revokes the delegation of authority;

(b) The delegation of authority is revoked by another attorney in fact who is named in the power of attorney and who currently has authority and priority to act for the principal;

(c) The delegation expires or is otherwise invalid or unenforceable; or

(d) The power of attorney or the document that delegates authority specifically provides that the delegation of authority is terminated by the death or inability or unwillingness to act of the attorney in fact who delegated the authority.



IC 30-5-6-4
Records of transactions; accounting

Sec. 4. (a) The attorney in fact shall keep complete records of all transactions entered into by the attorney in fact on behalf of the principal:

(1) for six (6) years after the date of the transaction; or
(2) until the records are delivered to the successor attorney in fact; whichever occurs first.

(b) Except as otherwise stated in the power of attorney, the attorney in fact is not required to render an accounting. The attorney in fact shall render a written accounting if an accounting is ordered by a court, requested by the principal, a guardian appointed for the principal, a child of the principal, or, upon the death of the principal, the personal representative of the principal's estate, or an heir or legatee of the principal.

(c) An attorney in fact shall deliver an accounting requested under subsection (b) to:

(1) the principal;
(2) a guardian appointed for the principal;
(3) the personal representative of the principal's estate;
(4) an heir of the principal after the death of the principal; ~~or~~
(5) a legatee of the principal after the death of the principal; <u>or</u>
<u>(6) a child of the principal;</u>

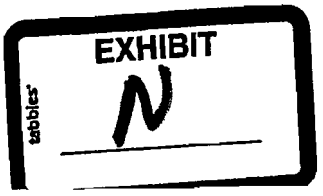
~~not later than sixty (60) days after the date the attorney in fact receives the written request for accounting. In the event of the principal's death, an accounting under this subsection must be requested not later than nine (9) months after the date of the principal's death.~~

<u>In the event of the principal's death, a court may order an accounting under subsection (b) at any time. In the absence of such a court order, the attorney in fact is not required to deliver an accounting to a person listed in this subsection unless the accounting is requested not later than nine (9) months after the date of the principal's death.</u>

(d) Not more than one (1) accounting is required under this section in each twelve (12) month period unless the court, in its discretion, orders additional accountings.

(e) If an attorney in fact fails to deliver an accounting as required under subsection (c), the person requesting the accounting may initiate an action in mandamus to compel the attorney in fact to render the accounting. The court may award the attorney's fees and court costs incurred under this subsection to the person requesting the accounting if the court finds that the attorney in fact failed to render an accounting as required under this section without just cause.

I.C. 32-17-14-26(b)(20)

On the death of an owner whose transfer on death deed has been recorded, the beneficiary shall file an affidavit in the office of the recorder of the county in which the real property is located. The affidavit must be endorsed by the county auditor under IC 36-2-11-14 in order to be recorded. The affidavit must contain the following:

(A) The legal description of the property.
(B) ~~A certified copy of the death certificate certifying the owner's death.~~ **The date of death of the owner.**
(C) The name and address of each designated beneficiary who survives the owner or is in existence on the date of the owner's death.
(D) The name of each designated beneficiary who has not survived the owner's death or is not in existence on the date of the owner's death.
(E) A cross-reference to the recorded transfer on death deed.