Members

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
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LSA Staff:

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

Authority: IC 2-5-16-2

MEETING MINUTES[1]

Meeting Date:	**October 8, 2013**
Meeting Time:	**1:00 P.M.**
Meeting Place:	**State House, 200 W. Washington St., Room 431**
Meeting City:	**Indianapolis, Indiana**
Meeting Number:	**2**

Members Present: **Sen. Michael Delph, Chairperson; Sen. Joseph Zakas; 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.**

Members Absent: **Sen. John Broden.**

Sen. Delph called the meeting to order at 1:10 pm.

(1) Death taxes

Sen. Delph introduced Shane Corbin, Tax Policy Director, and Don Hopper, Administrator of Inheritance Tax, of the Indiana Department of Revenue. Mr. Hopper gave a Powerpoint presentation addressing the practical effects of the 2013 repeal of Indiana

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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.

death taxes. (Exhibit 1).

(2) Preliminary Drafts

Attorney Jeff Kolb, Indiana State Bar Association (ISBA), and Legislative Services Agency (LSA) Attorneys Ross Hooten and Anne Haley summarized the Preliminary Drafts (PDs) based upon the proposals of the ISBA. Sen. Delph said that with Commission approval, all or some of the PDs could be combined into a single PD that would be presented to the Commission for final vote at the October 29 meeting. The Commission discussed the following PDs and approved combining them into a single PD for discussion and final vote at the next meeting: PD 3112, PD 3144, PD 3145, PD 3148, PD 3151, PD 3152, PD 3156, PD 3160, PD 3165, and PD 3204 (Exhibit 2).

Mr. Kolb and Mr. Hooten discussed PD 3206 (Exhibit 3), which specifies that distributees and persons acting on their behalf (instead of claimants) are entitled to the payment of a decedent's property upon the filing a small estate affidavit. The Commission discussed the following issues that may arise under current law: (1) Whether a creditor that files a small estate affidavit purporting to be a claimant is committing fraud. (2) Alternatives to filing a small estate affidavit that creditors have for collecting amounts owed by a decedent. (3) Whether the filing of a small estate affidavit by one creditor could disadvantage other creditors. Sen. Delph directed Sen. Zakas and Rep. Washburne to work with Mr. Kolb on any amendments they may have to PD 3206 for discussion at the October 29 meeting.

Mr. Kolb summarized PD 3222 (Exhibit 4), which allows for the creation of legacy trusts that are exempted from Indiana's rule against perpetuities. Mr. Kolb distributed a handout regarding the history and purpose of the rule against perpetuities (Exhibit 5). Commission member AttorneyTimothy Sendak discussed his opposition to PD 3222 and distributed a written summary of his objections (Exhibit 6). Mr. Kolb said that PD 3222 would still be beneficial to practitioners, even if it was amended to make legacy trusts subject to the rule against perpetuities. Sen. Delph directed Commission members to contact Mr. Hooten if they have any suggestions for amending PD 3222. Sen. Delph said that PD 3222 and any new PDs created as a result of Commission members' suggestions would be discussed at the October 29 meeting.

Mr. Kolb presented an update on the discussions between the ISBA and the Indiana Banker's Association to amend the ISBA's proposal to create penalties for failing to comply with fiduciary requests. Sen. Delph said that LSA would need the final language from these parties no later than October 15 to have time to prepare a PD and post it on the website by October 22.

Sen. Delph adjourned the meeting at 3:10 p.m..

Life After the Death of Indiana's Death Taxes

Michiana Estate Planning Council

November 5, 2013

Don Hopper, Administrator of Inheritance Tax, Indiana Department of Revenue

PCSC
October 8, 2013
EXHIBIT 1

TOPICS TO COVER TODAY

1) **Legislative Update**
   - Repeal of Inheritance, Estate and Generation-Skipping Transfer Taxes
   - Refund statute amendments
2) **Indiana Tax Court Update**
3) **IH Tax Section Update**
   - After-Discovered Assets
   - Taxation of Discretionary Trusts
   - Valuation Discounts
   - Gifts in Contemplation of Death

2013 Legislation Impacting Inheritance Tax

- **P.L. 205-2013 (HEA 1001)**

1) Repeal of Indiana's Inheritance Tax

2) Repeal of Indiana's State Estate and Generation- Skipping Transfer Taxes

3) Refund statute amendments

2013 Legislative Changes – Repeal of Inheritance Tax

- **P.L. 205-2013 (HEA 1001)**
- Inheritance Tax repealed <u>for decedents dying after 12/31/2012</u>
- Inheritance Tax still in effect <u>for decedents dying before 1/1/2013</u>

2013 Legislative Changes –
Impact on Practitioners, DOR and Counties

- **Returns** for decedents who die before 1/1/2013 will continue to be filed and processed likely through June 2014 and beyond
- **Consents to Transfer (Form IH-14)** for decedents dying before 1/1/2013 will still need to be filed with County Assessors
- **Refunds and after-discovered assets** for pre-2013 deaths will continue to be filed with and processed by DOR

Repeal of Indiana's State Estate and Generation- Skipping Transfer Taxes

- Phase out of federal "state death tax credit" and "generation-skipping transfer tax credit" – 2001-2005
- Effectively the federal law changes repealed Indiana's State Estate and Generation-Skipping Transfer Taxes – but they were still law
- These death taxes could return if federal law reverted to provisions in effect prior to 2001

Repeal of Indiana's State Estate and Generation- Skipping Transfer Taxes

- End of 2012 the federal law changes were made permanent
- No longer any federal "state death tax credit" or "generation-skipping transfer tax credit"
- P.L. 205 – 2013 (HEA 1001) specifically **repeals** Indiana's State Estate and Generation-Skipping Transfer Taxes

2013 Legislative Changes –
Impact on Practitioners, DOR and Counties

- **DOR** will be adequately staffed through June 2014 – gradual reduction based on workflow
- **DOR staff** will transition to other positions within DOR, other agencies or other positions in later part of 2013 through 2014
- **A few DOR staff** will be needed for several years in order to assist practitioners, process refunds and after-discovered assets for pre-2013 deaths – have other primary responsibilities within DOR

2013 Legislative Changes –
Impact on Practitioners, DOR and Counties

- **DOR** has updated our webpage to reflect these legislative changes

- **http://www.in.gov/dor/3807.htm**

- Sent letter from Administrator to attorneys, County Assessors and financial institutions informing them of these legislative changes

P.L. 205-2013 (HEA 1001) – Refund Statute Amendments

1) Requires use of DOR Refund Form **(Form IH-5)**

2) Defines **"finally determined"** in our statute

3) Corrections regarding as to **when DOR has to pay interest on a refund**

REFUNDS:

Now Required to use

Form IH-5

www.in.gov/dor/3509.htm

Form IH-5

CLAIM FOR REFUND OF INHERITANCE AND ESTATE TAXES

Name of Decedent

Social Security Number

County of Residence

Address

Date of Death (if known)

Inheritance Tax File Number (if known)

Under Ind. Code § 6-4.1-10-10, the undersigned hereby makes claim for the refund of taxes paid in the aforementioned estate in the amount of _____ for the following reason:

I hereby certify that the tax was original paid on the _____ day of _____, 20_____, that the _____ County Treasurer issued receipt number _____, and that no part of the same has been refunded, except _____

PLEASE ATTACH DOCUMENTARY EVIDENCE TO SUBSTANTIATE YOUR CLAIM.

Person Who Paid the Tax

Name of Person Making Claim

Relationship to Estate

Relationship to Estate

Address

Address

Note: Please mail completed form to: Indiana Department of Revenue, Inheritance Tax Division, 100 N. Senate Ave., Room N248, Indianapolis, Indiana 46204-2253

P.L. 205-2013 (HEA 1001) – Defines "Finally Determined"

1) When an Indiana probate court issues an order determining tax (Form IH-9) under **Ind. Code 6-4.1-5-10** for Indiana <u>resident returns</u>

2) When DOR issues an order determining tax under **Ind. Code 6-4.1-5-16** for <u>non-resident returns</u>

P.L. 205-2013 (HEA 1001) –

Clarifies When DOR Pays Interest on Refunds

- DOR pays 6% interest if we do not grant an erroneously or illegally collected tax payment **for a <u>resident return</u>** within 90 days of **<u>the later of the date</u>**:

1) When the refund claim is filed with DOR **<u>or</u>**

2) When DOR receives a resident return <u>and</u> order determining tax under **Ind. Code 6-4.1-5-10**

until the tax payment is refunded

P.L. 205-2013 (HEA 1001) –

Clarifies When DOR Pays Interest on Refunds

- DOR pays 6% interest if we do not grant an erroneously or illegally collected tax payment **for a <u>non-resident return</u>** within 90 days of **<u>the later of the date</u>**:

1) When the refund claim is filed with DOR **<u>or</u>**

2) When DOR receives a non-resident return under **Ind. Code 6-4.1-5-16**

until the tax payment is refunded

How to Claim a Refund

- Prepare and submit a Claim for a Refund **(Form IH-5)** with the IH Tax Section of DOR
  - Identify amount of refund
  - Identify reason(s) for refund

New IC §6-4.1-10-1 (effective 1/1/2013)

- **Extremely helpful** – provide revised IH-6 and computation page, worksheets, other supporting documentation

Refund Process

1) File **Claim for Refund (Form IH-5)** with IH Tax Section
2) IH Tax Section issues **Order** either approving refund, partially approving refund or denying refund to the estate's representative
3) IH Tax Section will issue **Vouchers** to the estate's representative to approve and return to IH Tax Section
4) State Auditor issues **Refund Check**

Statute of Limitations for Claiming a Refund

Ind. Code 6-4.1-10-1

A Claim for a Refund **must be filed** with the IH Tax Section of DOR <u>within the latter of</u>:

- **3 years** from the date the tax was paid **<u>or</u>**
- **1 year** from the date the tax is finally determined

Time Frames on Refunds/Denials

- Once IH Tax Section has issued Order approving a claim for a refund the refund check should be issued within **30 days** (assumes vouchers are promptly returned by the estate's representative)

- **Appeal Rights** – estate has **90 days** from the date of the IH Tax Section's Order to file appeal with the probate court

INDIANA TAX COURT UPDATE

Inheritance Tax Cases

- **Estate of Odle, 991 N.E.2d 631 (Ind. Tax Ct. 2013) – June 28, 2013**

- Estate challenged the constitutionality of IH Tax transferee classes
- Tax Court upheld the constitutionality of IH Tax transferee classes
- Estate seeking transfer to Indiana Supreme Court

Cases Pending Before Tax Court

- **Estate of Rauch**

  In Loco Parentis

- **Estate of Leighton**

  Refund of IH Tax

INHERITANCE TAX SECTION UPDATE

IH TAX SECTION UPDATE

1) After-Discovered Assets and/or Additional Allowable Deductions
2) Taxation of Discretionary Trusts
3) Valuation Discounts
4) Gifts in Contemplation of Death

After-Discovered Assets/Deductions

1) Complete a revised IH-6 that includes the additional assets (highlight those assets from the original assets) and deductions
2) Redo the Tax Computation Page of the IH-6 showing the new distribution amounts to the heirs
3) Calculate the additional tax owed plus 10% interest from the date of death until the date of payment

After-Discovered Assets/Deductions

4) Pay the tax (and any additional interest) to the County Treasurer

5) Send the revised IH-6 to DOR with a cover letter

After-Discovered Assets/Deductions

- **DOR will check the revised IH-6 for correctness** and be sure that the correct amount of tax and interest have been paid

- If everything is in order, **DOR will send you another Closing Letter** with countersigned and sealed receipt

Taxation of Discretionary Trusts

- Worked hard at communicating fair, reasonable and consistent ways of taxing various trust distribution patterns – e.g. LYB, training
- Taxing mandatory income distributions is relatively straightforward
- However, taxation of discretionary income distributions can be problematic
- Fiduciary's duty to follow terms of trust vs. taxation by IH Tax Section

P.L. 149-2012 (HEA 1258)

- Added definition of an **"entity"** – Ind. Code 6-4.1-1-3.5
- Added Ind. Code 6-4.1-2-8 - If a decedent makes a taxable transfer to an **"entity":**
  - Each individual with a beneficial (whether discretionary or not) or ownership interest in that entity is liable for the same percentage of the taxes as that individual's interest in that entity

TAXATION OF DISCRETIONARY TRUSTS

- P.L. 149-2012 (HEA 1258) shifts more of the **"decisional burden"** to DOR and the estate in allocating the percentage of interests among trust beneficiaries

- 0% to 100%

- What if DOR and the estate disagrees on the percentages?

TAXATION OF DISCRETIONARY TRUSTS

- **Normal process** – file IH-6, let court issue order (IH-9), then wait on response from DOR

- **Statute of limitations** – 120 days from date of order

- **If DOR disagrees with IH-9** – sends Estate a **Tax Due Letter** on how we believe the trust beneficiaries are to be taxed

Recommendation

- **Estate contact DOR prior to filing of IH-6**
- Provide documentation – e.g. copy of trust, pertinent information on beneficiaries, etc.
- Estate and DOR work together to see if we can agree on a fair and reasonable way to tax the trust beneficiaries

Agreements to Compute Tax Ind. Code 6-4.1-6-3

- Estate and IH Tax Section can enter into agreement to compute tax if:
  1) Impossible to compute the present value of the property interest(s) transferred, <u>or</u>
  2) Tax imposed on the transfer cannot be computed because a contingency makes it impossible to determine who will take the property
- Don't need court's authorization

Valuation Discounts

- Valuation discounts may be appropriate for less than full ownership of real estate and business interests – e.g. lack of control, marketability
- <u>However</u>, **they need to taken by an expert** who is trained in applying valuation discounts
- Expert has to **provide written explanation** (several pages) **as to why a particular valuation discount is appropriate** in valuing a decedent's ownership interests in that asset

Valuation Discounts

- ***Estate of Neterer***, 956 N.E.2d 1214 (Ind. Tax Ct. 2011)
- IH -6 included ½ interest in real estate
- Appraisal - $427,625

"Valuation of Decedent's Interest in Real Estate" – applied 30% lack of marketability and control valuation discount - $300,000 listed on IH-6

Estate of Neterer

- **DOR** challenged valuation discounts taken
- **Tax Court** agreed with DOR's contention that the Personal Representatives didn't establish that they were qualified to apply a 30% valuation discount
- Under Indiana's case law "Litigants typically present the analyses, quantifications, and testimony of experts when the propriety of adjustments due to lack of marketability or lack of control is at issue."

Neterer

- Tax Court affirmed probate court's grant of summary judgment in favor of DOR
- Evidence showed that the real estate should be valued at $427,625 (1/2 of appraised value of $855,250)

Valuation Discounts

- **DOR** doesn't consider PRs, attorneys and most CPAs as "experts" in applying appropriate valuation discounts – don't have the appropriate training
- If **an Estate** believes that valuation discounts are appropriate in valuing a decedent's partial ownership interests, the Estate will have to pay an expert to do write a detailed valuation
- Weigh cost of valuation <u>and</u> additional tax if no valuation discounts are taken

Gifts in Contemplation of Death

Ind. Code 6-4.1-2-4

- Transfers that are made "in contemplation of death" are includable on the transferor's inheritance tax return

- Rebuttable presumption that a transfer made in the last year of a person's life are gifts made in contemplation of death

Gifts in Contemplation of Death

45 Ind. Admin. Code 4.1-2-6

- A transfer of a property interest is made "in contemplation of death" if it is made primarily due to <u>any of the following reasons</u>:

1) To avoid death taxes
2) As a substitute for a testamentary disposition
3) For any other motive associated with death

Gifts in Contemplation of Death

45 Ind. Admin. Code 4.1-2-6

- "In contemplation of death" does not mean the general expectation of death which a person entertains
- **"Gift in contemplation of death"** is <u>not</u> the same as **"gift causa mortis"**
- **"Gift causa mortis"** – made in contemplation of the donor's imminent death
- Any **"Gift causa mortis"** would be considered a gift in contemplation of death and includable

Gifts in Contemplation of Death

45 Ind. Admin. Code 4.1-2-6

Sets out factors to consider whether a gift was made in contemplation of death:

1) Mental and physical condition
2) Cause of death
3) Whether condition was known to transferor
4) Age of transferor
5) Length of time between the transfer and death

Gifts in Contemplation of Death

45 Ind. Admin. Code 4.1-2-6

6) Existence of a pattern of making gifts
7) Portion of the transferor's estate transferred
8) Whether property interest was transferred to a transferee who would have otherwise received the property on the transferor's death

Gifts in Contemplation of Death

- Need to attach affidavit(s) and other documentation (e.g. death certificate, medical records) to IH-6 that gift(s) in last 12 months of individual's life was not in contemplation of death which address the factors in 45 Ind. Admin. Code 4.1-2-6
- **DOR** can go after gifts made more than 1 year prior to death if we believe that the gifts were made in contemplation of death, but the burden is on us

Worksheet

Gifts in Contemplation of Death 45 IAC 4.1-2-6 Estate/IH# -	Evidence Provided	Date of Analysis/Rating - Analysis/Rating
GIC for any of the following reasons:		1 (Very Favorable to Estate) to 5 (Very Favorable to DOR)
1 - To avoid death taxes		
2 - Substitute for a testamentary/trust transfer		
3 - Any other motive associated with death		
Consider all relevant circumstances surrounding the gifts including:		
Mental and physical condition of the transferor		
Cause of death		
Whether condition was known to the transferor on the date of transfer		
Age of the transferor		
Length of time between the transfer and death		
Existence of a pattern of making gifts		
Portion of the transferor's estate transferred		
Whether the property interest was transferred to a transferee who would have otherwise received the property on the transferor's death		
Other Factors		

Questions?

PRELIMINARY DRAFT
No. 3112

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 29-1-7-4.5.

Synopsis: Probate administration. Provides that a petition or other document filed in court by a personal representative in an estate proceeding with a written consent to the petition or other document or a written waiver of notice of the proceedings in the estate is not required to include a statement that the personal representative delivered a copy of the petition or other document to each person whose written consent or waiver of notice of proceedings was presented to the court, if the petition or other document contains a statement by the person whose signature appears on the consent or waiver: (1) identifying the petition or other document; and (2) affirming that the person has received a copy of the petition or other document and had a reasonable time to read and understand the petition or other document before signing the consent or waiver.

Effective: July 1, 2014.

PCSC
OCTOBER 8, 2013
EXHIBIT 2

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 29-1-7-4.5, AS ADDED BY P.L.6-2010, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4.5. **(a)** Except as provided in **subsection (b) and** section 4 of this chapter, 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 described in subsection (a) is not required to contain the statement of delivery otherwise required by subsection (a) if the written consent or written waiver filed with the petition or other document contains a statement by the person whose signature appears on the consent or waiver:

(1) identifying the petition or other document; and

(2) affirming that the person has:

(A) received a copy of the petition or other document; and

(B) 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 an agent (who is not an interested person) to do the following under this section:

(1) Consent to petitions and other documents.

(2) Receive or waive notice of proceedings.

PRELIMINARY DRAFT
No. 3144

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 30-4-6-14.

Synopsis: Contesting a trust. Provides that the notice given to a person by a trustee that starts the period within which to contest the validity of a trust must state: (1) the person's interest in the trust, as described in the trust document; or (2) that the person has no interest in the trust.

Effective: July 1, 2014.

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

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

SECTION 1. IC 30-4-6-14, AS ADDED BY P.L.238-2005, SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: 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 IC 30-4-4-5** and a notice that: ~~informing the person of:~~

(A) **informs the person of** the trust's existence;

(B) **states** the trustee's name and address; ~~and~~

(C) states:

(i) the person's interest in the trust, as described in the trust document; or

(ii) that the person has no interest in the trust; and

~~(C)~~ (D) **states** 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.

PRELIMINARY DRAFT
No. 3145

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 32-17-14-26.

Synopsis: Transfer on death affidavit. Requires, upon the death of an owner whose transfer on death deed has been recorded, that the beneficiary file an affidavit in the office of the recorder that includes the date of the owner's death (instead of a certified copy of the owner's death certificate).

Effective: July 1, 2014.

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

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

SECTION 1. IC 32-17-14-26, AS AMENDED BY P.L.149-2012, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 26. (a) If an agreement between the owner and a transferring entity is required to carry out a transfer on death transfer as described in section 7 of this chapter, a transferring entity may not adopt rules for the making, execution, acceptance, and revocation of a beneficiary designation that are inconsistent with this chapter.

(b) The following rules apply to a beneficiary designation:

(1) A beneficiary designation or a request for registration of property in beneficiary form must be made in writing, signed by the owner, dated, and, in the case of a transfer on death deed, compliant with all requirements for the recording of deeds.

(2) A security that is not registered in the name of the owner may be registered in beneficiary form on instructions given by a broker or person delivering the security.

(3) A beneficiary designation may designate one (1) or more primary beneficiaries and one (1) or more contingent beneficiaries.

(4) On property registered in beneficiary form, a primary beneficiary is the person shown immediately following the transfer on death direction. Words indicating that the person is a primary beneficiary are not required. The name of a contingent beneficiary in the registration must have the words "contingent beneficiary" or words of similar meaning to indicate the contingent nature of the interest being transferred.

(5) Multiple surviving beneficiaries share equally in the property being transferred unless a different percentage or fractional share is stated for each beneficiary. If a percentage or fractional share is designated for multiple beneficiaries, the surviving beneficiaries share in the proportion that their designated shares bear to each other.

(6) A transfer of unequal shares to multiple beneficiaries for property registered in beneficiary form may be expressed in numerical form following the name of the beneficiary in the registration.

(7) A transfer on death transfer of property also transfers any interest, rent, royalties, earnings, dividends, or credits earned or declared on the property but not paid or credited before the owner's death.

(8) If a distribution by a transferring entity under a transfer on death transfer results in fractional shares in a security or other property that is not divisible, the transferring entity may distribute the fractional shares in the name of all beneficiaries as tenants in common or as the beneficiaries may direct, or the transferring entity may sell the property that is not divisible and distribute the proceeds to the beneficiaries in the proportions to which they are entitled.

(9) On the death of the owner, the property, minus all amounts and charges owed by the owner to the transferring entity, belongs to the surviving beneficiaries and, in the case of substitute beneficiaries permitted under section 22 of this chapter, the lineal descendants of designated beneficiaries who did not survive the owner are entitled to the property as follows:

(A) If there are multiple primary beneficiaries and a primary beneficiary does not survive the owner and does not have a substitute under section 22 of this chapter, the share of the nonsurviving beneficiary is allocated among the surviving beneficiaries in the proportion that their shares bear to each other.

(B) If there are no surviving primary beneficiaries and there are no substitutes for the nonsurviving primary beneficiaries under section 22 of this chapter, the property belongs to the surviving contingent beneficiaries in equal shares or according to the percentages or fractional shares stated in the registration.

(C) If there are multiple contingent beneficiaries and a contingent beneficiary does not survive the owner and does not have a substitute under section 22 of this chapter, the share of the nonsurviving contingent beneficiary is allocated among the surviving contingent beneficiaries in the proportion that their shares bear to each other.

(10) If a trustee designated as a beneficiary:

(A) does not survive the owner;

(B) resigns; or

(C) is unable or unwilling to execute the trust as trustee and no successor trustee is appointed in the twelve (12) months following the owner's death;

the transferring entity may make the distribution as if the trust did not survive the owner.

(11) If a trustee is designated as a beneficiary and no affidavit of certification of trust or probated will creating an express trust is presented to the transferring entity within the twelve (12) months after the owner's death, the transferring entity may make the distribution as if the trust did not survive the owner.

(12) If the transferring entity is not presented evidence during the twelve (12) months after the owner's death that there are lineal descendants of a nonsurviving beneficiary for whom LDPS distribution applies who survived the owner, the transferring entity may make the transfer as if the nonsurviving beneficiary's descendants also failed to survive the owner.

(13) If a beneficiary cannot be located at the time the transfer is made to located beneficiaries, the transferring entity shall hold the missing beneficiary's share. If the missing beneficiary's share is not claimed by the beneficiary or by the beneficiary's personal representative or successor during the twelve (12) months after the owner's death, the transferring entity shall transfer the share as if the beneficiary did not survive the owner.

(14) A transferring entity has no obligation to attempt to locate a missing beneficiary, to pay interest on the share held for a missing beneficiary, or to invest the share in any different property.

(15) Cash, interest, rent, royalties, earnings, or dividends payable to a missing beneficiary may be held by the transferring entity at interest or reinvested by the transferring entity in the account or in a dividend reinvestment account associated with a security held for the missing beneficiary.

(16) If a transferring entity is required to make a transfer on death transfer to a minor or an incapacitated adult, the transfer may be made under the Indiana Uniform Transfers to Minors Act, the Indiana Uniform Custodial Trust Act, or a similar law of another state.

(17) A written request for the execution of a transfer on death transfer may be made by any beneficiary, a beneficiary's legal representative or attorney in fact, or the owner's personal representative.

(18) A transfer under a transfer on death deed occurs automatically upon the owner's death subject to the requirements of subdivision (20) and does not require a request for the execution of the transfer.

(19) A written request for the execution of a transfer on death transfer must be accompanied by the following:

(A) A certificate or instrument evidencing ownership of the contract, account, security, or property.

(B) Proof of the deaths of the owner and any nonsurviving

beneficiary.

(C) An inheritance tax waiver from states that require it.

(D) In the case of a request by a legal representative, a copy of the instrument creating the legal authority or a certified copy of the court order appointing the legal representative.

(E) Any other proof of the person's entitlement that the transferring entity may require.

(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.~~

(B) 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.

(c) A beneficiary designation is presumed to be valid. A party may rely on the presumption of validity unless the party has actual knowledge that the beneficiary designation was not validly executed. A person who acts in good faith reliance on a transfer on death deed is immune from liability to the same extent as if the person had dealt directly with the named owner and the named owner had been competent and not incapacitated.

PRELIMINARY DRAFT
No. 3148

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 30-2-14.

Synopsis: Uniform principal and income act. Makes changes to the uniform principal and income act (act). Provides that a personal representative is a fiduciary under the act if provided for: (1) by the will; or (2) by a law allowing the personal representative to account for and distribute income received during the estate administration separately from the corpus of the estate. Provides the following with regard to distributions to beneficiaries after an income interest in a trust ends: (1) Upon the death of the settlor of a revocable living trust, the settlor's trust interest becomes a terminating income interest and the property transferred upon the settlor's death becomes a part of the trust when the property is received by the trust. (2) A decedent's estate is not a terminating income interest. Provides that an asset becomes subject to a trust on the date the asset is distributed to the trust from the decedent's estate: (1) if the income received during the administration of the estate was accounted for and distributed by the estate as part of the corpus of the estate; and (2) unless the will or other applicable law provides that income received during the estate administration is accounted for and distributed by the estate as income and not as part of the corpus of the estate. Specifies that provisions that determine the period in which an income beneficiary is entitled or eligible to receive net income of a trust do not control how receipts and disbursements are

(Continued next page)

Effective: July 1, 2014.

allocated to or between principal and income during that period. Specifies that provisions regarding 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 do not control the initial classification of receipts and disbursements as between principal and income.

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

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

SECTION 1. IC 30-2-14-0.1, AS ADDED BY P.L.220-2011, SECTION 486, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 0.1. (a) This chapter applies to **the following:**

(1) 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.**

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

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

~~(3) in this chapter.~~

(2) Every decedent's estate existing on or created after January 1, 2003, to the extent that 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 the corpus.

(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) The amendments made to this section and to sections 3, 12, 14, 18, 19, 20, 21, and 38 of this chapter and the addition of section 13.5 of this chapter by legislation enacted in the 2014 regular session of the general assembly apply to the following:

(1) The estate of a decedent dying on or after July 1, 2013.

(2) In the case of a trust existing on or created after January

1, 2003:

(A) to the principal and income receipts of the trust; and

(B) to distributions received and made by the trust, before, on, or after July 1, 2013.

SECTION 2. IC 30-2-14-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. As used in this chapter, "fiduciary" means **the following:**

(1) A personal representative, **including an executor, an administrator, a successor personal representative, a special administrator, or a person performing substantially the same function with respect to a decedent's estate that meets the requirements of section 13.5 of this chapter.** ~~or~~

(2) A trustee.

~~The term includes an executor, an administrator, a successor personal representative, a special administrator, and a person performing substantially the same function.~~

SECTION 3. IC 30-2-14-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 12. As used in this chapter, "terms of a trust" means the manifestation of the intent of:

(1) a settlor **with respect to a trust;** or

(2) 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.

SECTION 4. IC 30-2-14-13.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 13.5. A personal representative, including an executor, an administrator, a successor personal representative, a special administrator, or a person performing substantially the same function with respect to a decedent's estate, is a fiduciary for purposes of this chapter if:**

(1) under the terms of a decedent's will this chapter applies to the administration of the estate; or

(2) 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.

SECTION 5. IC 30-2-14-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: 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.

SECTION 6. IC 30-2-14-18, AS AMENDED BY P.L.61-2006, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 18. **(a)** 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

(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.

(b) For purposes of this section, the interest of a settlor in a revocable living trust ends and becomes a terminating income interest when the settlor dies. Property that:

(1) becomes part of the trust by reason of the settlor's death; or

(2) is distributed to the trust from the settlor's estate;

becomes part of the terminating income interest when the property is received by the trust.

(c) For purposes of this section, a decedent's estate is not a terminating income interest.

SECTION 7. IC 30-2-14-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 19. (a) Each beneficiary described in section ~~18(4)~~ **18(a)(4)** of this chapter is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one (1) distribution of assets to beneficiaries to whom this section applies, each beneficiary, including a beneficiary who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(b) In determining a beneficiary's share of net income, the following rules apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(2) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(3) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(c) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(d) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

SECTION 8. IC 30-2-14-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: 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 **on the following dates:**

(1) On the date ~~it~~ **the asset** 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 the asset is distributed to the trust from the decedent's estate, if the income received during the administration of the estate was accounted for and distributed by the estate as part of the corpus of the estate in accordance with IC 29-1-17-7.

~~(2)~~ **(3)** On the date of ~~a testator's~~ **the decedent's** death ~~in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of~~ **if, under the terms of the decedent's will or other applicable law, income received during** administration of the ~~testator's~~ **decedent's** estate ~~or~~ **was accounted for and distributed by the estate as income, and not as part of the corpus of the estate.**

~~(3)~~ **(4)** On the date of an individual's death, in the case of an asset **that is not part of the probate estate (as defined in IC 29-1-1-3) and** that is transferred to a ~~fiduciary by a third party~~ **trust or becomes a part of a trust** because of the individual's death.

(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 the period in which an income beneficiary is entitled or eligible to receive any net income of a trust. This section does not control how receipts and disbursements are allocated to or between principal and income during that period. Amounts received by a trust from a decedent's estate or another trust as a distribution of principal may be allocable to principal under section 24 of this chapter even to the extent the amounts received include income of the distributing estate or trust received or accrued after the beneficiary's income interest begins.

SECTION 9. IC 30-2-14-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 21. (a) A trustee shall allocate an income receipt or disbursement other than one to which section ~~18(1)~~ **18(a)(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 this section provides for certain income receipts and disbursements to be allocated to principal, this section does not control the initial classification of receipts and disbursements as between principal and income. Amounts received by a trust from a decedent's estate or another trust as a distribution of principal may be allocable to principal under section 24 of this chapter, even to the extent the amounts received include income receipts of the distributing estate or trust received or accrued after the beneficiary's income interest begins.

SECTION 10. IC 30-2-14-38 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 38. A trustee shall make the following disbursements from income to the extent that they are not disbursements to which section ~~18(2)(B) or 18(2)(C)~~ **18(a)(2)(B) or 18(a)(2)(C)** of this chapter applies:

(1) one-half (1/2) of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(2) one-half (1/2) of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(3) all of the other ordinary expenses incurred in connection with

1 the administration, management, or preservation of trust property
2 and the distribution of income, including:
3 (A) interest;
4 (B) ordinary repairs;
5 (C) regularly recurring taxes assessed against principal; and
6 (D) expenses of a proceeding or other matter that concerns
7 primarily the income interest; and
8 (4) recurring premiums on insurance covering the loss of a
9 principal asset or the loss of income from or use of the asset.

PRELIMINARY DRAFT
No. 3151

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 30-4-3-36.

Synopsis: Trust administration. Provides that a trustee's power under certain circumstances to appoint all or part of the principal of a trust into a second trust is available when the trustee has discretion to invade the principal of the first trust to make distributions to or for the benefit of at least one person. (Current law grants the power of appointment to a trustee who has absolute power to invade the principal of the first trust to make such distributions.)

Effective: July 1, 2014.

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

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

SECTION 1. IC 30-4-3-36, AS ADDED BY P.L.6-2010, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 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.~~

~~(c)~~ **(b)** The exercise of a power to invade principal under subsection (a) must be by an instrument that is:

(1) in writing;

(2) signed and acknowledged by the trustee; and

(3) filed with the records of the first trust.

~~(d)~~ **(c)** The exercise of a power to invade principal under subsection (a) is considered the exercise of a power of appointment, other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate. The exercise of the power does not extend the time at which the permissible period of the rule against perpetuities begins and the law that determines the permissible period of the rule against perpetuities of the first trust.

~~(e)~~ **(d)** The trustee shall notify in writing all qualified beneficiaries of the first trust at least sixty (60) days before the effective date of the trustee's exercise of the power to invade principal under subsection (a) of the manner in which the trustee intends to exercise the power. A copy of the proposed instrument exercising the power satisfies the trustee's notice obligation under this subsection. If all qualified beneficiaries waive the notice period by signed written instrument delivered to the trustee, the trustee's power to invade principal may be exercised immediately. The trustee's notice under this subsection does not limit the right of any beneficiary to object to the exercise of the trustee's power to invade principal, except as otherwise provided by this article.

~~(f)~~ **(e)** The exercise of the power to invade principal under subsection (a) is not prohibited by a spendthrift clause or by a provision in the trust instrument that prohibits amending or revoking the trust.

~~(g)~~ **(f)** This section is not intended to create or imply a duty to exercise a power to invade principal. No inference of impropriety may be made as a result of a trustee not exercising the power to invade principal conferred under subsection (a).

~~(h)~~ **(g)** This section may not be construed to abridge the right of any trustee who has a power of invasion to appoint property in further trust that arises under the terms of the first trust, under any other provision of this article or any other statute, or under common law.

PRELIMINARY DRAFT
No. 3152

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 30-5-6-4.

Synopsis: Power of attorney administration. Specifies that a child of the principal who requests an accounting from an attorney in fact is entitled to delivery of the requested accounting. Specifies that the 60 day delivery deadline set forth in current law for requested accountings applies to court ordered accountings. Provides that in the case of a principal who has died: (1) the court may order an accounting at any time; and (2) the 60 day delivery deadline applies to a written request for an accounting that is submitted to the attorney in fact not later than nine months after the date of the principal's death.

Effective: July 1, 2014.

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

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

SECTION 1. IC 30-5-6-4, AS AMENDED BY P.L.42-2012, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: 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:

(1) stated in the power of attorney; **or**

(2) required by subsection (c);

the attorney in fact is not required to render an accounting.

(c) Except as provided in subsection (f), 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)~~ **(d) Except as provided in subsection (f),** an attorney in fact shall deliver an accounting requested under subsection ~~(b)~~ **(c)** 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; **or**

(6) a child of the principal.

~~not later than sixty (60) days after the date the attorney in fact receives the written request for an 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.~~

(e) Except as provided in subsection (f)(2), an attorney in fact

shall deliver an accounting ordered or requested under subsection (c) to the court or the person requesting the accounting not later than sixty (60) days after the date the attorney in fact receives the court order or written request for an accounting.

(f) In the case of a principal who has died, the following apply:

(1) The court may order an accounting under subsection (c) at any time.

(2) In the absence of a court ordered accounting, an attorney in fact is not required to deliver an accounting to a person described in subsection (d)(2) through (d)(6) unless the person requests the accounting not later than nine (9) months after the date of the principal's death.

(3) The delivery deadline set forth in subsection (e) applies to a written request for an accounting that is timely submitted under subdivision (2).

~~(d)~~ **(g)** 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)~~ **(h)** If an attorney in fact fails to deliver an accounting as required under ~~subsection (c),~~ **this section,** 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.

PRELIMINARY DRAFT
No. 3156

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 30-4.

Synopsis: Trust administration. Defines the following for purposes of the trust code: (1) "Trust instrument". (2) "Terms of a trust", "terms of the trust", or "terms of a charitable trust". Provides that unless the trust provides otherwise, a trustee has a duty to keep current income beneficiaries and, in the case of a trust that has become irrevocable, contingent income beneficiaries, reasonably informed by providing access to the trust's accounting and financial records upon written request. Provides that unless the trust provides otherwise, the trustee has a duty after the trust becomes irrevocable to provide income beneficiaries and remaindermen with a copy of the trust instrument upon written request.

Effective: July 1, 2014.

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

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

SECTION 1. IC 30-4-1-2, AS AMENDED BY P.L.61-2008, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. As used in this article:

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) "Qualified beneficiary" means:

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

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

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

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

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

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

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

~~(vii)~~ **(vi)** 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) "Terms of a trust", "terms of the trust", or "terms of a charitable trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

~~(17)~~ **(18)** "Trust estate" means the trust property and the income derived from its use.

~~(18)~~ **(19)** "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.

(20) "Trust instrument" means an instrument, agreement, or other written document executed by the settlor that contains the terms of the trust, including any amendments to the terms of the trust.

~~(19)~~ **(21)** "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)~~ **(22)** "Trustee" has the meaning set forth in IC 30-2-14-13.

SECTION 2. IC 30-4-2-1, AS AMENDED BY P.L.238-2005, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. (a) A trust in either real or personal property is enforceable only if there is written evidence of **the** terms **of the trust** bearing the signature of the settlor or the settlor's authorized agent.

(b) Except as required in the applicable probate law for the execution of wills, no formal language is required to create a trust, but ~~its~~ **the** terms **of the trust** must be sufficiently definite so that the trust property, the identity of the trustee, the nature of the trustee's interest, the identity of the beneficiary, the nature of the beneficiary's interest and the purpose of the trust may be ascertained with reasonable certainty.

(c) It is not necessary to the validity of a trust that the trust be funded with or have a corpus that includes property other than the present or future, vested or contingent right of the trustee to receive proceeds or property, including:

(1) as beneficiary of an estate under IC 29-1-6-1;
(2) life insurance benefits under section 5 of this chapter;
(3) retirement plan benefits; or
(4) the proceeds of an individual retirement account.

(d) A trust created under:

(1) section 18 of this chapter for the care of an animal; or
(2) section 19 of this chapter for a noncharitable purpose;

has a beneficiary.

(e) A trust has a beneficiary if the beneficiary can be presently ascertained or ascertained in the future, subject to any applicable rule against perpetuities.

(f) A power of a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons

who would have taken the property had the power not been conferred.

(g) A trust may be created by exercise of a power of appointment in favor of a trustee.

SECTION 3. IC 30-4-3-6, AS AMENDED BY P.L.238-2005, SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. (a) The trustee has a duty to administer a trust according to ~~its terms.~~ **the terms of the trust.**

(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) ~~Upon reasonable request, give the beneficiary complete and accurate information concerning any matter related to the administration of the trust and permit the beneficiary or the beneficiary's agent to inspect the trust property, the trustee's accounts, and any other documents concerning the administration of the trust.~~ **Keep the following beneficiaries reasonably informed about the administration of the trust and of the material facts necessary for the beneficiaries to protect their interests:**

(A) A current income beneficiary.

(B) A beneficiary who will become an income beneficiary upon the expiration of the term of the current income beneficiary, if the trust has become irrevocable by:

(i) the terms of the trust instrument; or

(ii) the death of the settlor.

A trustee satisfies the requirements of this subdivision by providing a beneficiary described in clause (A) or (B), upon the beneficiary's written request, access to the trust's accounting and financial records concerning the administration of trust property and the administration of the trust.

(8) Upon:

(A) the trust becoming irrevocable:

(i) by the terms of the trust instrument; or

(ii) the death of the settlor; and

(B) the written request of an income beneficiary or remainderman;

promptly provide a copy of the complete trust instrument to the income beneficiary or remainderman.

~~(8)~~ **(9)** Take whatever action is reasonable to realize on claims constituting part of the trust property.

~~(9)~~ **(10)** Defend actions involving the trust estate.

~~(10)~~ **(11)** Supervise any person to whom authority has been delegated.

~~(11)~~ **(12)** 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.

SECTION 4. IC 30-4-3.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. (a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms **of the trust,** distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are those of the following that are relevant to the trust or its beneficiaries:

(1) General economic conditions.

(2) The possible effect of inflation or deflation.

(3) The expected tax consequences of investment decisions or strategies.

(4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property.

(5) The expected total return from income and the appreciation of capital.

(6) Other resources of the beneficiaries.

(7) Needs for liquidity, regularity of income, and preservation or appreciation of capital.

(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one (1) or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of

investment consistent with the standards of this chapter.

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use the special skills or expertise.

SECTION 5. IC 30-4-3.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms **of the trust,** distribution requirements, and other circumstances of the trust, and with the requirements of this chapter.

SECTION 6. IC 30-4-5-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 13. ~~(Content of Written Statements of Account Filed with the Court)~~

(a) A verified written statement of accounts filed with the court under 30-4-5-12 or by the trustee under 30-4-3-18(b) shall show:

(1) the period covered by the account;

(2) the total principal with which the trustee is chargeable according to the last preceding written statement of accounts or the original inventory if there is no preceding statement;

(3) an itemized schedule of all principal cash and property received and disbursed, distributed, or otherwise disposed of during the period;

(4) an itemized schedule of income received and disbursed, distributed, or otherwise disposed of during the period;

(5) the balance of principal and income remaining at the close of the period, how invested, and both the inventory and current market values of all investments;

(6) a statement that the trust has been administered according to ~~its terms;~~ **the terms of the trust;**

(7) the names and addresses of all living beneficiaries and a statement identifying any beneficiary known to be under a legal disability;

(8) a description of any possible unborn or unascertained beneficiary and ~~his~~ **the possible beneficiary's** interest in the trust estate; and

(9) the business addresses, if any, or the residence addresses of all the trustees.

(b) The court may, either on petition or on its own motion, require the trustee to submit such proof as it deems necessary to support ~~his~~ **the trustee's** verified written statement of accounts. The court may accept the unqualified certificate of a certified public accountant in lieu of other proof.

PRELIMINARY DRAFT
No. 3160

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 29-1-17-9; IC 30-4-3-3.

Synopsis: Probate and trust administration. Provides that payments on liens paid with respect to a probate distribution are charged to the beneficiaries of the distribution unless the will provides expressly or by necessary implication that the payment be charged against the residue of the estate. Provides that a general directive in a will to pay debts does not imply an intent that a devise of property subject to a lien be distributed free from the lien. Provides that if trust property subject to a lien is specifically distributable, the distributee shall take the property subject to the lien unless the terms of the trust provide expressly or by necessary implication that the lien be otherwise paid. Provides that payments on liens paid with respect to a trust distribution are charged to the beneficiaries of the distribution unless the trust provides expressly or by necessary implication that the payment be charged against the residue of the trust estate. Provides that a general directive in a trust to pay debts does not imply an intent that a distribution of property subject to a lien be distributed free from the lien.

Effective: July 1, 2014.

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

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

SECTION 1. IC 29-1-17-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 9. **(a) As used in this section, "lien" refers to a mortgage, pledge, security interest, or other lien.**

(b) When any real or personal property subject to a ~~mortgage, pledge, or other~~ lien is specifically devised, the devisee shall take ~~such property so~~ **the** devised **property** subject to ~~such mortgage~~ **the lien** unless the will provides expressly or by necessary implication that ~~such mortgage~~ **the 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,~~ **the lien,** the devise which was subject to ~~such mortgage~~ **the lien** shall be charged with the reimbursement to the estate of the amount of ~~such~~ **the** payment for the benefit of the distributees entitled ~~thereto.~~ **to the devise, unless the will provides expressly or by necessary implication that the payment be charged against the residue of the estate.**

(c) For purposes of this section, a general directive in a will to pay debts does not imply an intent that a devise of property subject to a lien be distributed free from the lien.

SECTION 2. IC 30-4-3-3, AS AMENDED BY P.L.238-2005, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: 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:

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) 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).

(f) When any real or personal property subject to a lien (as defined by IC 29-1-17-9(a)) is specifically distributable, the distributee shall take the property subject to the lien unless the terms of the trust provide expressly or by necessary implication that the lien be otherwise paid. If:

(1) an event occurs that makes the property distributable; and

(2) the holder of a lien on the property receives payment on a claim based upon the obligation secured by the lien;

the property subject to the lien shall be charged with the reimbursement to the trust of the amount of the payment for the benefit of the beneficiaries entitled to the distribution, unless the terms of the trust provide expressly or by necessary implication that the payment be charged against the residue of the trust estate.

(g) For purposes of subsection (f), a general directive or authority in the trust for payment of debts does not imply an intent that the distribution of property subject to a lien be made free from the lien.

PRELIMINARY DRAFT
No. 3165

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 30-5-5-10.

Synopsis: Power of attorney. Defines the terms "fiduciary" and "fund" for purposes of a statute concerning powers granted to an attorney in fact with respect to fiduciary transactions of the principal. Provides that the powers granted to an attorney in fact apply: (1) to a fund existing at the time the power of attorney is executed; (2) to a fund created after the power of attorney is executed; and (3) whether or not the fund is located in Indiana.

Effective: July 1, 2014.

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

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

SECTION 1. IC 30-5-5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 10. (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) As used in this section, "fiduciary" means a trustee, personal representative, guardian, attorney in fact, custodian, escrow agent, or person similarly authorized to act primarily for the benefit of another person.

(d) As used in this section, "fund" means any asset, including real or personal property, in which a principal has an interest as a fiduciary.

(e) The powers granted in this section apply:

(1) to a fund existing at the time the power of attorney is executed;

(2) to a fund created after the power of attorney is executed; and

(3) whether or not the fund is located in Indiana.

PRELIMINARY DRAFT
No. 3204

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 29-1-7-18.

Synopsis: Notice of will contest. Requires a party contesting the validity of a will to serve a copy of the complaint on the counsel for the personal representative. Provides that the court may not enter a default judgment for the contesting party unless proof of service on the counsel for the personal representative is made to the court.

Effective: July 1, 2014.

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

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

1 SECTION 1. IC 29-1-7-18 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 18. **(a)** When an action
3 is brought to contest the validity of any will as provided in this article,
4 notice is served upon the defendants in the same manner as required by
5 the Indiana Rules of Trial Procedure.
6 **(b) A contesting party shall also serve a copy of the complaint**
7 **on the counsel of record, if any, for the personal representative.**
8 **The court may not enter a default judgment for the contesting**
9 **party unless proof of service on the counsel for the personal**
10 **representative is made to the court.**

PRELIMINARY DRAFT
No. 3205

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 30-5-5-18.

Synopsis: Power of attorney. Provides that a delegation of authority by an attorney in fact survives even if the attorney in fact who delegated the authority fails or ceases to serve unless: (1) the delegation of authority by its terms terminates under these circumstances; (2) the delegation of authority is revoked; or (3) the power of attorney expires or becomes otherwise invalid or unenforceable.

Effective: July 1, 2014.

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

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

SECTION 1. IC 30-5-5-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: 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 the attorney in fact who delegated the authority fails to serve or ceases to serve as provided under IC 30-5-4-4 unless:**

(1) the principal revokes the delegation of authority;

(2) the delegation of authority by the attorney in fact is revoked by another attorney in fact who:

(A) is named in the power of attorney; and

(B) currently has authority and priority to act for the principal;

(3) the power of attorney expires or is otherwise invalid or unenforceable; or

(4) the power of attorney or the document in which the attorney delegates authority specifically provides that the delegation of authority is terminated when the attorney in fact who delegated the authority fails to serve or ceases to serve as provided under IC 30-5-4-4.

PRELIMINARY DRAFT
No. 3206

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 29-1-8.

Synopsis: Probate administration. Specifies that the procedures for dispensing with the administration of small estates are available to distributees and persons acting on behalf of distributees rather than persons claiming to be entitled to payment from the decedent's estate.

Effective: July 1, 2014.

PCSC
OCTOBER 8, 2013
EXHIBIT 3

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, 2014]: 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~~ **distributee** claiming to be entitled to payment or delivery of property of the decedent **as alleged in the affidavit.**

(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~~ **distributee** is entitled.

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

(6) That the ~~claimant~~ **affiant** 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.

SECTION 2. IC 29-1-8-4.5, AS AMENDED BY P.L.61-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4.5. ~~The person claiming to be~~ **A distributee** entitled to payment or delivery of the property belonging to the decedent **or someone acting on a distributee's behalf** may present to the court having jurisdiction over the decedent's estate an affidavit containing a statement of the conditions required under ~~section (1)(b)~~ **section 1(b)** of this chapter. Upon receipt of the affidavit, the court may, without notice and hearing, enter an order that the ~~claimant is~~ **distributees identified in the affidavit are** entitled to payment or delivery of the property.

PRELIMINARY DRAFT
No. 3222

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2014 GENERAL ASSEMBLY

DIGEST

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

Synopsis: Legacy trust. Provides that a protective provision in a legacy trust prevents a creditor of the settlor from satisfying a claim from the settlor's interest in the trust estate when the settlor is also a beneficiary of the trust. Authorizes the establishment of legacy trusts. Prescribes the procedures for establishing a legacy trust. Bars most claims against a legacy trust. Permits claims for certain fraudulent transfers, to enforce certain child support orders, and to enforce certain orders for the division of property with respect to a dissolution of marriage or a legal separation. Provides immunity to the trustees and advisers of legacy trusts and the professionals involved in establishing legacy trusts. Provides that the rule against perpetuities does not apply to legacy trusts.

Effective: July 1, 2014.

PCSC
OCTOBER 8, 2013
EXHIBIT 4

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

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

SECTION 1. IC 30-4-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. (a) The settlor may provide in the terms of the trust that the interest of a beneficiary may not be either voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.

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

(c) ~~Subsection (a) applies to a trust that meets both of the following requirements, regardless of whether or not the~~ **A protective provision similar to that authorized by subsection (a) prevents a creditor of the settlor from satisfying a claim from the settlor's interest in the trust estate when the** settlor is also a beneficiary of the trust **if the trust is one (1) of the following:**

(1) A trust that meets both of the following requirements:

~~(1)~~ **(A)** The trust is a qualified trust under 26 U.S.C. 401(a).

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

(2) A legacy trust established under IC 30-4-8.

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

SECTION 2. IC 30-4-8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]:

Chapter 8. Legacy Trusts

Sec. 1. This chapter applies to:

(1) qualified dispositions to legacy trusts; and

(2) dispositions by transferors who are trustees;

that are made after June 30, 2014.

Sec. 2. Unless the context requires otherwise, the following definitions apply throughout this chapter:

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

(2) "Creditor" means a person who has a claim against the transferor.

(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 that occurs when a trustee is substituted for another trustee or when at least one (1) trustee is added. The term also includes the exercise of a power that causes a transfer of property to a trustee. However, the term does 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 an investment.

(6) "Legacy trust" means an irrevocable trust established under section 3 of this chapter.

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

(8) "Property" means real property, personal property, or an interest in real or personal property.

(9) "Qualified affidavit" means a sworn affidavit executed under section 5 of this chapter.

(10) "Qualified disposition" means a disposition by a transferor to a legacy trust established under section 3 of this chapter.

(11) "Qualified trustee" means a person qualified to serve as the trustee of a legacy trust under section 6 of this chapter.

(12) "Transferor" is a person who as:

(A) an owner of property;

(B) a holder of a power of appointment that 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

(C) a trustee;

directly or indirectly makes a disposition or causes a disposition to be made.

(13) "Trust adviser" 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.

Sec. 3. A legacy trust is established by:

(1) designating in writing in the trust that the trust is a legacy trust established under this chapter;

(2) including the terms required by section 4 of this chapter in the legacy trust; and

(3) delivering a qualified affidavit containing the statements required by section 5 of this chapter to the qualified trustee.

Sec. 4. A legacy trust must do the following:

(1) Provide for the appointment of at least one (1) qualified trustee for the property that is the subject of a qualified disposition.

(2) Expressly incorporate Indiana law to govern the validity, construction, and administration of the trust.

(3) Be irrevocable.

(4) Provide that the interests of the transferor or beneficiary in the trust property or the income from the trust property may not voluntarily or involuntarily be transferred, assigned, pledged, or mortgaged before the qualified trustee actually distributes the property or income to the beneficiary.

Sec. 5. (a) A qualified affidavit must state the following:

(1) That the transferor has full right, title, and authority to transfer the property to the legacy trust.

(2) That the transfer of the property to the legacy trust will not render the transferor insolvent.

(3) That the transferor does not intend to defraud a creditor by transferring the property to the legacy trust.

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

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

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

(7) That the property transferred to the legacy trust is not derived from unlawful activities.

(b) Except as provided in subsection (c), a qualified affidavit must be signed by the transferor.

(c) In the case of a disposition by a transferor who is a trustee, the qualified affidavit must be signed by the transferor who made

the original disposition to the trustee. A qualified affidavit signed under this subsection must state the facts as of the time of the original disposition.

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

Sec. 6. (a) A person may serve as a qualified trustee of a legacy trust if the person is not the transferor and satisfies either of the following requirements:

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

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

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

(B) subject to the supervision of:

(i) the department of financial institutions; or

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

(b) A qualified trustee shall do the following:

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

(2) Maintain complete and accurate records for the legacy trust on an exclusive or nonexclusive basis.

(3) Prepare or arrange for the preparation of all required tax returns for the legacy trust.

(4) Materially participate in the administration of the legacy trust.

Sec. 7. (a) Except as provided in section 8 of this chapter, no cause of action of any kind, including a cause of action to enforce a judgment, may be brought for:

(1) an attachment or other provisional remedy against property that is the subject of a qualified disposition to a legacy trust; or

(2) the avoidance of a qualified disposition to a legacy trust.

The protections provided to a qualified disposition by this subsection apply notwithstanding any law to the contrary set forth outside of this chapter.

(b) If a court declines to apply Indiana law in determining the effect of a spendthrift provision in a legacy trust in an action brought against a legacy trust, the trustee of the legacy trust shall immediately resign and, without further order of any court, cease to be the trustee of the legacy trust. When a trustee resigns under this section, the trustee has only the power to convey the trust property to a successor trustee appointed under this section. A successor trustee shall succeed the resigning trustee in accordance

with the terms of the legacy trust. If the trust does not provide for a successor trustee and the trust would otherwise be without a trustee, any beneficiary of the trust may petition an Indiana court to appoint a successor trustee. The Indiana court receiving the petition shall appoint a successor trustee to serve in accordance with the terms and conditions that the court determines are consistent with the purposes of the trust and this chapter.

(c) A legacy trust and its property are protected under this section regardless of whether or not the transferor:

(1) serves as a trust adviser under section 12 of this chapter; or

(2) retains a power described in section 13 of this chapter.

Sec. 8. (a) A claim against property that is the subject of a qualified disposition to a legacy trust is barred by section 7 of this chapter unless the claim is one (1) of the following:

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

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

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

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

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

(4) An action to enforce an obligation that is:

(A) incurred or entered into by the legacy trust or by the trustee of the legacy trust in the trustee's fiduciary capacity as a lender, a borrower, a guarantor, or a party to a contract, lease, or other transaction; and

(b) consistent with the terms of the legacy trust, the trustee's powers, and the purposes of the legacy trust.

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

(1) the creditor's claim arose before the qualified disposition to a legacy trust was made and the action is brought not later

than the later of:

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

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

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

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

(2) notwithstanding IC 32-18-2-19, the creditor's claim arose concurrent with or after the qualified disposition and the action is brought not more than two (2) years after the date of the qualified disposition.

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

(d) If more than one (1) qualified disposition is made by means of the same legacy trust:

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

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

Sec. 9. (a) If a creditor's claim is allowed under section 8 of this chapter, the transferor's qualified disposition to a legacy trust is subject to the claim only to the extent necessary to satisfy the transferor's debt to the creditor making the allowed claim.

(b) If a creditor's claim is allowed under section 8 of this chapter, the claim is limited as follows:

(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 has 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 attorney's 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 had not acted in bad faith; and

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

(2) If the court is satisfied that a beneficiary of a legacy trust has not acted in bad faith:

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

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

Sec. 10. A spendthrift provision described in section 4(4) of this chapter is considered 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 Section 541(c)(2) of the federal Bankruptcy Code (11 U.S.C. 541(c)(2)) or any successor provision of the federal Bankruptcy Code.

Sec. 11. Except as permitted by the terms of a legacy trust and by sections 12 and 13 of this chapter, the transferor may not have any rights or authority with respect to the principal or income of the legacy trust. An agreement or understanding purporting to grant or permit the retention of any greater rights or authority is void.

Sec. 12. A transferor who makes a qualified disposition may also serve as an investment adviser to the trust. However, the transferor may not serve as a trust adviser to a legacy trust except with respect to the retention of a veto right permitted by section 13(a)(1) of this chapter.

Sec. 13. (a) A legacy trust is not considered revocable because of the 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 the power to appoint to the transferor, the transferor's creditors, the transferor's estate, or the creditors of the transferor's estate) that may be exercised by will or other written instrument of the transferor that is effective only upon the transferor's death.

(3) The transferor's potential or actual receipt of income or principal, including right 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 those terms are defined in Section 664 of the Internal Revenue Code).

(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 Section 2702 of the

Internal Revenue Code.

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

(A) in the qualified trustee's discretion;

(B) under 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 the power of the transferor is limited by an ascertainable standard relating to health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or Section 2514(c)(1) of the Internal Revenue Code; or

(C) at the direction of an adviser described in section 14 of this chapter who acts:

(i) in the adviser's discretion; or

(ii) under 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 the power of the transferor is limited by an ascertainable standard relating to health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or Section 2514(c)(1) of the Internal Revenue Code.

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

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

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

Sec. 14. (a) A transferor may appoint one (1) or more advisers who may have authority under the terms of the trust:

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

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

(b) Trust advisers are not required to satisfy the requirements imposed upon trustees by section 6 of this chapter.

Sec. 15. If:

(1) a qualified trustee of a legacy trust ceases to meet the

requirements of section 6 of this chapter; and

(2) there remains no trustee of the legacy trust that meets the requirements of section 6 of this chapter;

the qualified trustee described in subdivision (1) is considered to have resigned when the qualified trustee ceased to meet the requirements of section 6 of this chapter, and a successor trustee provided for in the legacy trust shall become a qualified trustee. If the legacy trust does not provide for a successor qualified trustee, a court shall appoint a successor qualified trustee upon the application of any interested party.

Sec. 16. (a) Notwithstanding any provision of law to the contrary, a person is entitled to only the rights with respect to a qualified disposition that are provided by this chapter. No person, including a creditor whose claim arises before or after a qualified disposition, may bring a claim or a cause of action against:

(1) a trustee or an adviser of a legacy trust; or

(2) any person involved in the counseling, drafting, preparation, execution, or funding of a legacy trust.

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

(1) a trustee or adviser of a legacy trust; or

(2) any person involved in the counseling, drafting, preparation, execution, or funding of a legacy trust;

if, as of the date of the cause of action, a cause of action by a creditor with respect to the legacy trust would be barred by this section.

(c) For purposes of this section, the counseling, drafting, preparation, execution, and funding of a legacy trust include 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.

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

(1) the property or property interests in a legacy trust; or

(2) the terms and provisions of a legacy trust.

Sec. 18. (a) A provision of the trust code (IC 30-4) set forth outside of this chapter applies to a legacy trust established under this chapter unless the provision:

(1) conflicts with a statute set forth in this chapter; or

(2) would jeopardize the protection from creditors provided by this chapter to the legacy trust.

(b) The provisions and protections set forth in this chapter

control whenever a provision of the trust code (IC 30-4) set forth outside of this chapter:

(1) conflicts with a statute set forth in this chapter; or

(2) would jeopardize the protection from creditors provided by this chapter to a legacy trust.

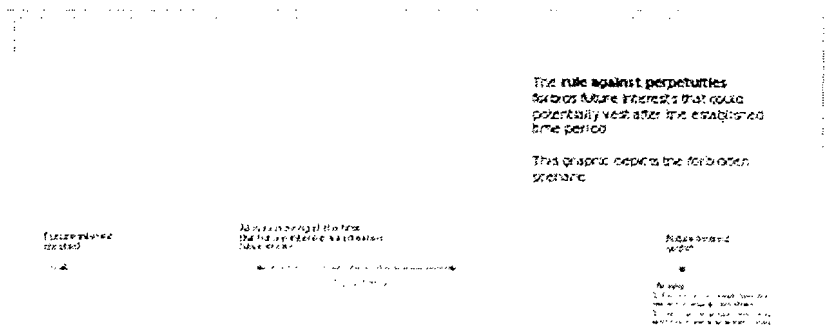
SECTION 3. IC 34-30-2-132.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 132.7. IC 30-4-8-16 (Concerning legacy trusts).**

Rule against perpetuities

From Wikipedia, the free encyclopedia

The common law **rule against perpetuities** forbids some future interests (traditionally contingent remainders and executory interests) that may not vest within the time permitted; the rule "limit[s] the testator's power to earmark gifts for remote descendants".[1] In essence, the rule prevents a person from putting qualifications and criteria in his/her will that will continue to control or affect the distribution of assets long after he or she has died, a concept often referred to as control by the "dead hand" or "mortmain".

The rule is often stated as follows: "No interest is good unless it must vest, if at all, not later than twenty-one years after the death of some life in being at the creation of the interest."[2] For the purposes of the rule, a life is "in being" at conception. Although most discussions and analysis relating to the rule revolve around wills and trusts, the rule applies to any future dispositions of property, including options. When a part of a grant or will violates the rule, only that portion of the grant or devise is removed. All other parts that do not violate the rule are still valid. The perpetuities period under the common law rule is not a fixed term of years. By its terms, the rule limits the period to at the latest 21 years after the death of the last identifiable individual living at the time the interest was created ("life in being"). This "measuring" or "validating" life need not have been a purchaser or taker in the conveyance or devise. The measuring life could be the grantor, a life tenant, a tenant for a term of years, or in the case of a contingent remainder or executory devise to a class of unascertained individuals, the person capable of producing members of that class.



The rule against perpetuities forbids future interests that could potentially vest after the established time period.

The rule against perpetuities at common law has been amended by various statutes. In England, the Statute of Uses (1536) and the Statute of Wills (1540) and the consequent rise of flexible future interests made the rule a significant judicial tool in defeating the intent of landowners to impose limitations on remote future owners in grants and devises. Major alterations to the common law rule in the United Kingdom came into effect under the Perpetuities and Accumulations Act 1964, including the application of the traditional 21-year limitation period to options.[3]

The rule is notoriously difficult to properly apply, as pointed out by a 1961 decision of the Supreme Court of California which held that it was not legal malpractice for an attorney to draft a will that inadvertently violated the rule against perpetuities.[4] Therefore, in the United States it has been abolished by statute in Alaska, Idaho, New Jersey, Pennsylvania,[5] Kentucky,[6] and South Dakota.[7] The Uniform Statutory Rule Against Perpetuities validates non-vested interests that would otherwise be void as violating the common law rule if that interest actually vests within 90 years of its creation;[8] it has been enacted in 29 states (Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii,

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Indiana, Kansas, Massachusetts, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia), the District of Columbia, and the U.S. Virgin Islands, and is currently under consideration in New York.[9] Other jurisdictions apply the "wait and see" or "cy-près doctrine" that validates contingent remainders and executory interests that would be void under the traditional rule in certain circumstances.[7] These doctrines have also been codified in the United Kingdom by the 1964 statute.[3]

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Historical background

The rule has its origin in the Duke of Norfolk's Case of 1682.[10] That case concerned Henry, 22nd Earl of Arundel, who had tried to create a shifting executory limitation so that one of his titles would pass to his eldest son (who was mentally deficient) and then to his second son, and another title would pass to his second son, but then to his fourth son. The estate plan also included provisions for shifting the titles many generations later if certain conditions should occur.

When his second son, Henry, succeeded to one title, he did not want to pass the other to his younger brother, Charles. Charles sued to enforce his interest, and the court (in this instance, the House of Lords) held that such a shifting condition could not exist indefinitely. The judges believed that tying up property too long beyond the lives of people living at the time was wrong, although the exact period was not determined until another case, *Cadell v. Palmer*, 150 years later.[11]

The rule against perpetuities is closely related to another doctrine in the common law of property, the rule against unreasonable restraints on alienation. Both stem from an underlying principle or reference in the common law disapproving of restraints on property rights.[12] However, while a violation of the rule against perpetuities is also a violation of the rule against unreasonable restraints on alienation, the reciprocal is not true.[13] As one has stated, "The rule against perpetuities is an ancient, but still vital, rule of property law intended to enhance marketability of property interests by limiting remoteness of vesting."[14] For this reason, another court has declared that the provisions of the rule are predicated upon "public policy" and thus "constitute non-waivable, legal prohibitions.[15]

Common law

Black's Law Dictionary defines the rule against perpetuities as "[t]he common-law rule prohibiting a grant of an estate unless the interest must vest, if at all, no later than 21 years (plus a period of gestation to cover a posthumous birth) after the death of some person alive when the interest was created."[16]

At common law, the length of time was fixed at 21 years after the death of an identifiable person alive at the time the interest was created. This is often expressed as "lives in being plus twenty-one years." Under the common-law rule, one does not look to whether an interest actually will vest more than 21 years after the lives in being. Instead, if there exists any possibility at the time of the grant, however unlikely or remote, that an interest will vest outside of the perpetuities period, the interest is void and is stricken from the grant.

The rule does not apply to interests in the grantor himself. For example, the grant "For A so long as alcohol is not sold on the premises, then to B" would violate the rule as to B. However, the conveyance to B would be stricken, leaving "To A so long as alcohol is not sold on the premises." This would create a *fee simple determinable* in A, with a possibility of *reverter* in the grantor (or the grantor's heirs). The grant to B would be void as it is possible alcohol would be sold on the premises more than 21 years after the deaths of A, B, and the grantor. However, as the rule does not apply to grantors, the possibility of reverter in the grantor (or his heirs) would be valid.

Statutory modification

Many jurisdictions have statutes that either cancel out the rule entirely or clarify it as to the period of time and persons affected.

- In the **United Kingdom**, dispositions of property subject to the rule before 14 July 1964 remain subject to the rule.[3] The Perpetuities and Accumulations Act 1964 provides for the effect of the rule of interests created thereafter. This act codifies the "wait and see" doctrine developed by courts.

See also: Perpetuities and Accumulations Act 2009

- In the **Republic of Ireland**,[17] the rule was abolished as of 1 December 2009.[18]
- The states of the **United States** have differing approaches.
  - Some states follow the "wait-and-see approach," or "second look doctrine," and/or apply the "cy pres doctrine." Under the wait and see approach, the validity of a suspect future interest is determined on the basis of facts as they now exist at the end of the measuring life, and not at the time the interest was created.[19] Under the cy pres doctrine, if the interest does violate the rule against perpetuities, the court may reform the grant in a way that does not violate the rule and reduce any offensive age contingency to 21 years.[20]
  - Other states have adopted the **Uniform Statutory Rule Against Perpetuities** (or some variant of it) which extends the waiting period typically to **90 years** after creation of the interest.[21]
  - At least six states have **repealed** the rule in its entirety, and many have **extended the vesting period** of the wait-and-see approach for an extremely long period of time (in Florida, for example, up to 360 years for trusts).[22]

Illustrations

Main article: Illustrations of the rule against perpetuities

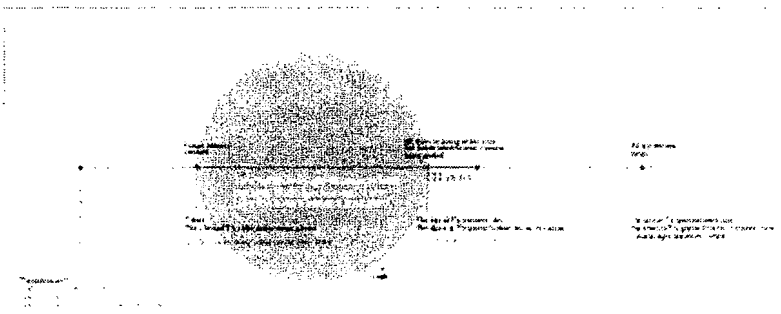
Several famous illustrations reflect some of the bizarre outcomes possible under the rule against perpetuities including the "fertile octogenarian," the "unborn widow," and the "precocious toddler."

A common example of the rule in application would be as follows. T writes a will. T already has great-grandchildren, has met them, and likes them. T also has an estate home called Blackacre. It is T's desire to leave Blackacre for her family to enjoy, and to ensure that her great-grandchildren, whom she knows, will get to enjoy Blackacre as well without the great-grandchildren's elders, such as T's children and grandchildren, selling Blackacre. After her great-grandchildren, T really has no interest in who enjoys Blackacre, as she does not know them.

T goes to her lawyer and explains her desire. T's lawyer drafts a will with the following clause:

> “ Blackacre to my children for their lives, then to their children for their lives, then to their children their heirs and assigns. ”

What the lawyer has created is a life estate in Blackacre to T's children, a successive life estate in Blackacre to T's grandchildren, followed by a Fee Simple future interest in T's great-grandchildren. However, the Rule Against Perpetuities would void the interest to T's great-grandchildren, and leave the will creating the successive life estates with a reversionary interest in T's estate.



The rule against perpetuities voids the interest to T's great-grandchildren.

Why? The rules states that any interest must vest, if at all, within 21 years of a life in being at the time of the instrument. The instrument here is a will, so the time of the instrument is T's death, not when the will was drafted. Next, we need to find every possible person, whether named in the instrument or not, who could, regardless how remote the possibility, affect the instrument. T's children, grandchildren etc. are our possible measuring lives because they control who will take Blackacre. For a measuring life to be valid, it must be a life in being at the time of the interest. For a class, such as children or grandchildren, to be valid measuring lives, it must be a closed class, meaning it must be impossible, not merely highly unlikely, for another class member to come into existence after the time of the instrument.

In the above example, T's children are a valid measuring life. T's children are a class, so the class must be closed at the time of the instrument for T's children to be valid measuring lives. Here, the class that consists of T's children would be closed at the time of the instrument as it is impossible for T to have any children after T dies and after the applicable period of gestation. The class that consists of T's grandchildren is NOT a valid measuring life as T's children are free to reproduce after T dies, meaning the class is not closed at

the time of the instrument. Obviously, the same goes for T's great-grandchildren for the same reason.

Now that we know our valid measuring lives, we can see which interests in Blackacre are valid. Obviously, the life estate to T's children is valid as they are the measuring lives. The life estate to T's grandchildren is also valid. Why? Because all of T's grandchildren must be born within 21 years of a measuring life. T's children are our measuring lives, all of T's grandchildren must be born before the last of T's children dies (or, at least be in the womb, which counts as being alive for rule against perpetuities purposes), meaning their interest would vest within 21 years of a measuring life. T's great-grandchildren's interest is invalidated by the rule. Why? Because T's grandchildren are free to reproduce after all of T's children have died. It is possible that one of T's grandchildren could have a child more than 21 years after T's last child dies, meaning the interest might not vest within 21 years of a life in being and thus the gift is to that extent void under the rule.

Applications

In 1919, Wellington R. Burt died, leaving a will that specified that apart from small allowances, his estate was not to be distributed until 21 years after the death of the last of his grandchildren to be born in his lifetime. This condition was met in 2010, 21 years after his granddaughter Marion Landsill died in November 1989. After the heirs reached an agreement, the estate, which had reached an estimated value of $100 million to $110 million, was finally distributed in May, 2011, 92 years after his death.[23]

Charity-to-charity exception

The Rule never applies to conditions placed on a conveyance to a charity that, if violated, would convey the property to another charity. For example, a conveyance "to the Red Cross, so long as it operates an office on the property, but if it does not, then to the Roman Catholic Church" would be void under the Rule, *except* that both parties are charities. Even though the interest of the Church might not vest for hundreds of years, the conveyance would nonetheless be held valid. The exception, however, does not apply if the conveyance, upon violation of the condition, is not from one charity to another charity. Thus, a devise "to John Smith, so long as no one operates a liquor store on the premises, but if someone does operate a liquor store on the premises, then to the Roman Catholic Church" would violate the rule. The exception would not apply to the transfer from John Smith to the Roman Catholic Church because John Smith is not a charity. However, if the original conveyance was "to John Smith and his heirs for as long as John Smith does not use the premises to sell liquor, but if he does, then to the Red Cross" the rule would not be violated, because it would necessarily vest or expire within the life of John Smith (since the restriction was on him alone).

Saving clause

To avoid problems caused by incorrectly drafted legal instruments, practitioners in some jurisdictions include a "saving clause" almost universally as a form of disclaimer. This standard clause is commonly called the "Kennedy clause" or the "Rockefeller clause" because the determinable "lives in being" are designated as the descendants of Joseph P. Kennedy (the father of John F. Kennedy), or John D. Rockefeller. Both designate well-known families with many descendants, and are consequently suitable for named, identifiable lives in being.

In order to satisfy the rule against perpetuities, the class of people must be limited and determinable. Thus, one cannot say in a deed "until the last of the people in the world now living dies, plus 21 years." For a time, it was popular to use a Royal lives clause, and make the term of a deed run until the last of the descendants of (for example) Queen Victoria now living dies plus 21 years. This was grudgingly upheld by the courts.[*citation needed*]

Related rules

Jurisdictions may limit usufruct periods. For example, if a corporation builds a ski slope, and gives rights of use (usufruct) as gifts to corporate partners, these cannot last in perpetuity, but must terminate after a period that must be specified, e.g. 10 years. A perpetual usufruct is thus forbidden and "perpetual" might mean a long, but finite period, such as 99 years. Here usufruct is distinct from a share, which may be held in perpetuity.

See also

- Cestui que
- Cy-près doctrine
- Executory contract
- Executory interest
- Statutes of Mortmain
- *Thellusson v Woodford*

Notes

1. ^ Posner, Richard A. (1977). "section 18.7". *Economic Analysis of the Law* (2nd ed.). Boston, Massachusetts: Little, Brown. p. 394.
2. ^ Gray, John Chipman; Gray, Roland (1942). "Section 201". *The Rule Against Perpetuities* (4th ed.). OCLC 1738415 (//www.worldcat.org/oclc/1738415).
3. ^ [a] [b] [c] "The Rules Against Perpetuities and Excessive Accumulations (LC251)" (http://www.lawcom.gov.uk/docs/lc251.pdf). Sixth Program of Law Reform: The Law of Trusts. Law Commission. 1998-03-31.
4. ^ *Lucas v. Hamm*, 56 Cal. 2d 583, 15 Cal. Rptr. 821, 364 P.2d 685 (1961).
5. ^ For interests created on, or after, January 1, 2007. (20 Pa. Cons. Stat. § 6104)
6. ^ KRS 381.224
7. ^ [a] [b] Moynihan, Cornelius J.; Kurtz, Sheldon F. (2002). *Introduction to the Law of Real Property* (3rd ed.). Saint Paul, Minnesota: West Group. p. 248. ISBN 978-0-314-26031-4. OCLC 49800778 (//www.worldcat.org/oclc/49800778).
8. ^ Uniform Law Commissioners, Uniform Statutory Rule Against Perpetuities (http://www.nccusl.org/Update/uniformact_summaries/uniformacts-s-usrap.asp)
9. ^ Uniform Law Commissioners, Legislative Fact Sheet - Statutory Rule Against Perpetuities (http://uniformlaws.org/LegislativeFactSheet.aspx?title=Statutory%20Rule%20Against%20Perpetuities)
10. ^ 3 Ch. Cas. 1, 22 Eng. Rep. 931 (Ch. 1682)
11. ^ 1 Cl. & Fin. 372, 6 Eng. Rep. 936 (H.L. 1832, 1833)
12. ^ Cole v. Peters, 3 S.W.3d 846 (Mo. Ct. App. W.D. 1999).
13. ^ Cole, 3 S.W.3d 846.
14. ^ Wedel v. American Elec. Power Service Corp., 681 N.E.2d 1122 (Ind.App. 1997). See also Matter of Estate of Kreuzer, 243 A.D.2d 207, 674 N.Y.S.2d 505 (N.Y.A.D. 3d Dept. 1998) (the law favors the vesting of estates as early as possibility).
15. ^ Symphony Space, Inc. v. Pergola Properties,

Inc., 88 N.Y.2d 466, 669 N.E.2d 799 (N.Y. 1996).
16. ^ Black's Law Dictionary, Deluxe 8th Ed.
17. ^ Land and Conveyancing Law Reform Act, No. 27 of 2009, section 16 (http://www.attorneygeneral.ie/eAct/2009/a2709.pdf#page=25)
18. ^ "Land and Conveyancing Law Reform Act 2009" (http://www.algoodbody.ie/en_nl/legal-news-2009.aspx?article=6a3aab47-8a7b-4a54-b22a-e026436a9bd2). Dublin: A&L Goodbody. 2009-07-22. Retrieved 2009-12-14.
19. ^ http://legal-dictionary.thefreedictionary.com/Wait-And-See+Doctrine
20. ^ http://legal-dictionary.thefreedictionary.com/cy+pres+doctrine
21. ^ Statutory Rule Against Perpetuities Summary (http://www.nccusl.org/ActSummary.aspx?title=Statutory%20Rule%20Against%20Perpetuities)
22. ^ Fla. Stat. § 689.225(2)(f) (2008) (http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=perpetuities&URL=CH0689/Sec225.HTM)
23. ^ "Millionaire's heirs get inheritance after 92 yrs: Lumber baron Wellington R. Burt finally parts with his fortune, 21 years after his last grandkid died" (http://www.cbsnews.com/stories/2011/05/08/main20060958.shtml). *CBS News* (Saginaw, Michigan). Associated Press. May 8, 2011. Retrieved May 13, 2011.

External links

- Schurig, Elizabeth M.; Jetel, Amy P. (2007). "Summary of State Rule Against Perpetuities Laws" (http://apps.americanbar.org/rppt/meetings_cle/2007/jointfall/Joint07/JointEstateandGiftTax/50-statecomparisonofRuleAgainstPerpetuitieslaws.pdf). American Bar Association. Retrieved 2011-08-02.
- Baker, Thomas A.; Carbone, June R. (1990). "The Rule Against Perpetuities" (http://www1.law.umkc.edu/faculty/carbone/rap/title.htm). Retrieved 2011-08-02.

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Categories: Property law | Equity (law) | Wills and trusts | Common law rules

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2007

Summary of State Rule Against Perpetuities Laws

State	Rule Against Perpetuities	Statutory Citation
Alabama	Common-law Rule	Ala. St. §35-4-4
✓ Alaska	Powers of alienation cannot be suspended for more than 30 years after the death of an individual alive at the time when the power was suspended. **However, a power of alienation is not considered "suspended" if the trustee has the power to sell the trust property.**	AK ST §34.27.100
	A general or nongeneral power of appointment not presently exercisable because of a condition precedent is invalid unless, within a period of 1,000 years after its creation, either the power is irrevocably exercised or the power terminates.	AK ST §34.27.051
✓ Arizona	Common-law Rule generally applicable	ARS §33-261
	The common-law Rule does not apply to a non-vested interest under a trust whose trustee has the expressed or implied power to sell the trust assets and at one or more times after the creation of the interest one or more persons who are living when the trust is created have an unlimited power to terminate the interest.	ARS §14-2901(A)(3)
Arkansas	Uniform Statutory Rule Against Perpetuities	A.C.A. § 18-3-101
California	Uniform Statutory Rule Against Perpetuities	Cal. Prob. Code §21200
✓ Colorado	A nonvested property interest is invalid unless it either vests or terminates within 1,000 years after its creation.	CRS §15-11-1102.5
Connecticut	Uniform Statutory Rule Against Perpetuities	Conn. Gen. Stat. §45a-491

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State	Rule Against Perpetuities	Statutory Citation
Delaware	**Rule Against Perpetuities does not apply to personal property in trust.** Real property in trust must vest within 110 years; "real property" does not include any intangible personal property, such as an interest in a corporation, limited liability company, partnership, statutory trust, business trust, or other entity, regardless of whether such entity is the owner of real property or any interest in real property.	25 Del. C. §503
District of Columbia	Uniform Statutory Rule Against Perpetuities	DC ST §19-901
Florida	Uniform Statutory Rule Against Perpetuities	FL ST §689.225
Georgia	Uniform Statutory Rule Against Perpetuities	OCGA §44-6-200
Hawaii	Uniform Statutory Rule Against Perpetuities	HRS §525-1
Idaho	**Rule abolished as to personal property**; modified as to real property: The absolute power of alienation of real property cannot be suspended by any limitation or condition whatever, for a longer period than during the continuance of the lives of the persons in being at the creation of the limitation or condition, and 25 years thereafter; there shall be no Rule Against Perpetuities applicable to real or personal property, nor any rule prohibiting the placing of restraints on the alienation of personal property; no trust heretofore or hereafter created, either testamentary or inter vivos, shall be declared void, but shall be so construed as to eliminate parts violating the above provisions, and in such a way that the testators or trustors wishes are carried out to the greatest extent permitted by this act; that there shall be no presumption that a person is capable of having children at any stage of adult life.	ID Code §55-111
Illinois	**Rule does not apply to "qualified perpetual trusts" (any trust created on or after January 1, 1998, expressly states that the Rule doesn't apply, and the trustee has the unlimited power to sell assets).**	IL ST Ch. 765, §305/4

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State	Rule Against Perpetuities	Statutory Citation
Indiana	Uniform Statutory Rule Against Perpetuities	Ind. Code §§32-17-8-1
Iowa	Common-law Rule codified	Iowa Code §558.68
Kansas	Uniform Statutory Rule Against Perpetuities	KSA §59-3401
Kentucky	Common-law Rule codified	KRS §381.215
Louisiana	The Rule Against Perpetuities is not known to the laws of Louisiana; laws only provide that a beneficiary must be in being and ascertainable on the date of the creation of the trust.	LA RS §9:1803
Maine	**Rule does not apply to trusts created after September 18, 1999 if trust expressly states that the Rule doesn't apply, and the trustee has the power to sell, mortgage, or lease property for any period of time beyond the period that is required for an interest created under the governing instrument to vest in order to be valid under the Rule Against Perpetuities.**	33 ME RSA §101-A
Maryland	**Rule does not apply if trust expressly states that the Rule doesn't apply, and the trustee has the power to sell, mortgage, or lease property for any period of time beyond the period that is required for an interest created under the instrument to vest in order to be valid under the Rule Against Perpetuities.**	MD Est. & Trust §11-102(5)
Massachusetts	Common-law Rule codified	MGLA c. 184A §1
Michigan	Uniform Statutory Rule Against Perpetuities **(Legislation has been introduced to abolish the Rule with respect to personal property. 2007 MI H.B. 4602.)**	MCLA §554.71
Minnesota	Uniform Statutory Rule Against Perpetuities	Minn. Stat. §501A.01
Mississippi	Mississippi has not codified the Rule Against Perpetuities, but the common-law Rule is mentioned in other statutes and in case law	N/A

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State	Rule Against Perpetuities	Statutory Citation
Missouri	**The Rule Against Perpetuities will not apply to a trust created after August 28, 2001, if a trustee has the power pursuant to the terms of the trust or applicable law to sell the trust property during the period of time the trust continues beyond the period of the Rule Against Perpetuities that would apply to the trust but for this subsection**	V.A.M.S. §456.025(1)
Montana	Uniform Statutory Rule Against Perpetuities	Mont. Code Ann. §72-2-1001
Nebraska	Uniform Statutory Rule Against Perpetuities	Neb. Rev. Stat. §76-2001
Nevada	Uniform Statutory Rule Against Perpetuities	NRS §111.103
New Hampshire	The common law Rule Against Perpetuities shall not apply to any trust created after January 1, 2004 if: (1) the trust instrument contains a provision which expressly exempts the instrument from the application of the Rule Against Perpetuities; and (2) the trustee has the power under the governing instrument, applicable statute, or common law, to sell, mortgage, or lease property for any period of time beyond the period that is required for an interest created under the governing instrument to vest in order to be valid under the Rule Against Perpetuities	N.H. Rev. Stat. §564:24
New Jersey	**No interest created in real or personal property shall be void by reason of any Rule Against Perpetuities, whether the common law Rule or otherwise. The common law Rule Against Perpetuities shall not be in force in this State.**	NJSA §46:2F-9
New Mexico	Uniform Statutory Rule Against Perpetuities	NMSA §45-2-901
New York	Common-law Rule codified	NY Est. Pow. & Trust §9-1.1
North Carolina	Uniform Statutory Rule Against Perpetuities **(Legislation is currently pending that is similar to Alaska's statute, which provides that a power of alienation is not considered "suspended" if the trustee has the power to sell the trust property, or if there is an unlimited power to terminate in one or more persons in being. 2007 NC H.B. 1384.)**	NC Gen. Stat. §§41-15

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State	Rule Against Perpetuities	Statutory Citation
North Dakota	Uniform Statutory Rule Against Perpetuities	NDCC §47-02-27.1
Ohio	Common-law Rule codified	OH ST §2131.08
Oklahoma	Common-law Rule codified	OK Const. Art. 2, Sec. 32; 60 OS Sec. 175.47
Oregon	Uniform Statutory Rule Against Perpetuities	ORS §105.950
Pennsylvania	Common-law Rule codified	20 Pa.C.S. §6104
Rhode Island	**The common law rule against perpetuities shall no longer be deemed to be in force and/or of any effect in this state, provided, the provisions of this section shall not be construed to invalidate or modify the terms of any interest which would have been valid prior to the effective date of this act, and, provided further, that the provisions of this section shall apply to both legal and equitable interests.**	RIGL §34-11-38
South Carolina	Uniform Statutory Rule Against Perpetuities	SC ST §27-6-10
South Dakota	**The common-law Rule Against Perpetuities is not in force in this state**	SDCL §43-5-8
Tennessee	Common-law Rule generally applicable, but as to any trust created after June 30, 2007, or that becomes irrevocable after June 30, 2007, the terms of the trust may require that all beneficial interests in the trust vest or terminate or the power of appointment is exercised within three hundred sixty (360) years. Provided, however, this section (f) shall only apply to trusts that grant a power of appointment at death to at least one member of each generation of beneficiaries who are beneficiaries of the trust more than ninety (90) years after the creation of the interest. The permissible appointees of each such power of appointment must at least include all descendants of the beneficiary, yet may include other persons	TCA §66-1-202(f)
Texas	Common-law Rule codified	TX Prop. Code §112.036
Utah	A nonvested property interest is invalid unless within 1,000 years after the interest's creation the interest vests or terminates	UT ST §75-2-1203(1)

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State	Rule Against Perpetuities	Statutory Citation
Vermont	Vermont has not codified the Rule Against Perpetuities, but the common-law Rule is mentioned in other statutes and in case law	N/A
Virginia	Uniform Statutory Rule Against Perpetuities	Va Code §55-12.1
Washington	No provision of an instrument creating a trust, including the provisions of any further trust created, and no other disposition of property made pursuant to exercise of a power of appointment granted in or created through authority under such instrument is invalid under the Rule Against Perpetuities, or any similar statute or common law, during the 150 years following the effective date of the instrument. Thereafter, unless the trust assets have previously become distributable or vested, the provision or other disposition of property is deemed to have been rendered invalid under the Rule Against Perpetuities.	RCW §11.98.130
West Virginia	Uniform Statutory Rule Against Perpetuities	W.Va. ST §36-1A-1
Wisconsin	A future interest or trust is void if it suspends the power of alienation for longer than lives in being plus 30 years. **However, an interest is not considered "suspended" if the trustee has power to sell the trust property, or if there is an unlimited power to terminate in one or more persons in being.**	Wis. Stat. §700.16(5) *No RAP problem as long as the trustee has the power to sell trust assets.
Wyoming	The Rule will not apply to a trust created after July 1, 2003 if: (1) the trust instrument states that the Rule Against Perpetuities shall not apply to the trust; (2) the trust instrument states that the trust shall terminate no later than 1,000 years after the trust's creation; and (3) the trust is governed by the laws of this state and the trustee maintains a place of business, administers the trust in this state, or is a resident of this state.	WY ST §34-1-139(b)

Note: This chart does not specify whether a state that has a Rule Against Perpetuities has adopted a "wait and see" approach.

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LEGACY (DYNASTY) TRUST PROPOSAL

October 7, 2013

This proposal has been brought to the Commission for five consecutive years (emanating from the Probate & Real Property section of the Indiana State Bar Association), and has not been recommended by the Commission in each of those years. The proposed legislation was formerly known as the "Dynasty Trust" bill, but has been re-branded this year, I suppose due to someone's realization that dynasties helped create and perpetuate significant economic truncations and distortions, thus midwifing the feudal system of the Middle Ages, by perpetuating tremendous fortunes (much of those consisting of vast real estate tracts) in a few European families (the Medici's, the Carolingian's, and the more recent: the Windsors, the Stuarts, the Romanovs, and the Hapsburgs, to name a few of the more notorious) which, in essence, controlled much of society, government, and religion because of this wealth, which they were able to preserve "in perpetuity".

In reaction to and to aid in curbing the domination of the European dynastic families, "The Rule Against Perpetuities" (also sometimes referred to as "The Rule") developed, and became a part of the English Common Law (it is codified in Indiana statutes at IC 32-17-8). The Rule requires, in essence, that "all interests must vest within twenty-one years of a life in being at the creation of the interest". Although simply stated, it is a very complex rule of law about which many volumes have been written and many cases litigated over a great number of years. It acts, nevertheless, to bolster the right of ownership and alienation of property (of all types) in a free society. It assures that, eventually, all property must be owned by ("vest in") someone within an ascertainable period of time, and cannot be owned in theoretical family lines which do not vest, "in perpetuity". Thus, please note the very last provision of the proposed bill, labeled "IC 30-4-8-14", which purports to abrogate the Rule at Common Law and its statutory codification. This is at the core of the proposal.

PCSC
OCTOBER 8, 2013
EXHIBIT 6

The proponents of the legislation argue 1) that only a few wealthy people will be able to take advantage of this type of trust, so it shouldn't really matter; 2) that fourteen other states have enacted similar legislation, so that if Indiana doesn't allow it, Indiana would lose the business to other states; and 3) that it would create more legal business for Indiana lawyers. I submit that all of these arguments are antithetical to proper motivations for the enactment of legislation.

I cannot imagine why anyone (other than, perhaps, a monarchist) would want to open such a legal floodgate with such potentially disastrous consequences for the law of property and for American society in general.

The proposed legislation is ill-conceived. I ask you to join in defeating this proposal.

Thank you.

Tim Sendak

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