

Second Regular Session of the 123rd General Assembly (2024)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2023 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1034

AN ACT to amend the Indiana Code concerning probate.

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

SECTION 1. IC 27-1-13-18 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2024]: **Sec. 18. (a) This section applies to a loss or damages incurred after December 31, 2024, for a policy of insurance that is described in:**

(1) Class 3 of IC 27-1-5-1; or

(2) Class 2 of IC 27-1-5-1, except for a policy of insurance that is described in Class 2(j) of IC 27-1-5-1.

(b) This section applies regardless of whether the policy of insurance was created before, on, or after January 1, 2025, unless the application of this section to the policy of insurance would:

(1) for a policy issued before January 1, 2025, give a right to a beneficiary that the beneficiary was not reasonably intended to have, other than the beneficiary's right to insurance coverage until the time limitation described in subsection (e);

or

(2) for a policy issued at any time, relieve a beneficiary from a duty or liability imposed on the insured by the terms of the policy.

(c) The following definitions apply throughout this section:

(1) "Beneficiary" has the meaning set forth in IC 32-17-14-3(1).

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(2) "Insurable interest" means an insured's interest in real or personal property, concerning which the insured is entitled to the benefits of insurance coverage under a property and casualty insurance policy or liability insurance policy.

(3) "Insured" means a person who is entitled to the benefits of insurance coverage under a property and casualty insurance policy or liability insurance policy.

(4) "Named insured" means a person identified by name as an insured under a property and casualty insurance policy or liability insurance policy.

(5) "Property and casualty insurance policy or liability insurance policy" means a policy of insurance that is described in Class 2 or Class 3 of IC 27-1-5-1.

(6) "Transfer" means an ownership change in a named insured's insurable interest in real or personal property to a beneficiary of a transfer on death transfer that occurs as a consequence of the named insured's death.

(7) "Transferee" means a person who has acquired or received a named insured's insurable interest in real or personal property through a transfer.

(8) "Transfer on death transfer" has the meaning set forth in IC 32-17-14-3(17).

(d) Subject to subsection (e), each transferee of a named insured's insurable interest in real or personal property is also an insured to the extent of the named insured's insurable interest in real or personal property that the transferee has acquired or received through a transfer.

(e) Except as provided in subsections (f) and (g) and IC 32-38-3-1, for a period of sixty (60) days immediately following the death of the insured, each transferee is an insured under a property and casualty insurance policy or liability insurance policy insuring the real or personal property the transferee acquired or received through a transfer. At the time of the insured's death, the transferee succeeds to the rights and obligations of the insured under the property and casualty insurance policy or liability insurance policy, to the extent of the insured's insurable interest in real or personal property that the transferee has acquired or received through a transfer, for the sixty (60) day period.

(f) If a property and casualty insurance policy or liability insurance policy has a policy expiration date that is less than sixty (60) days after the death of the insured, insurance coverage continues for either:



**(1) thirty (30) days; or
 (2) the policy expiration date;
 whichever is later.**

(g) If a transferee obtains a property and casualty insurance policy or liability insurance policy insuring the real or personal property the transferee acquired or received through a transfer, the transferee is not an insured on the insurance policy described in subsection (e) once the transferee's property and casualty insurance policy or liability insurance policy becomes effective.

SECTION 2. IC 32-17-14-11, AS AMENDED BY P.L.36-2011, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 11. (a) A transfer on death deed transfers the interest provided to the beneficiary if the transfer on death deed is:

- (1) executed by the owner or owner's legal representative; and
- (2) recorded with the recorder of deeds in the county in which the real property is situated before the death of the owner.

(b) A transfer on death deed is void if it is not recorded with the recorder of deeds in the county in which the real property is situated before the death of the owner.

(c) A transfer on death deed is not required to be supported by consideration or delivered to the grantee beneficiary.

(d) A transfer on death deed may be used to transfer an interest in real property to either a revocable or an irrevocable trust.

(e) If the owner records a transfer on death deed, the effect of the recording the transfer on death deed is determined as follows:

- (1) If the owner's interest in the real property is as a tenant by the entirety, the conveyance is inoperable and void unless the other spouse joins in the conveyance.
- (2) If the owner's interest in the real property is as a joint tenant with rights of survivorship, the conveyance severs the joint tenancy and the cotenancy becomes a tenancy in common.
- (3) If the owner's interest in the real property is as a joint tenant with rights of survivorship and the property is subject to a beneficiary designation, a conveyance of any joint owner's interest has no effect on the original beneficiary designation for the nonsevering joint tenant.
- (4) If the owner's interest is as a tenant in common, the owner's interest passes to the beneficiary as a transfer on death transfer.
- (5) If the owner's interest is a life estate determined by the owner's life, the conveyance is inoperable and void.
- (6) If the owner's interest is any other interest, the interest passes in accordance with this chapter and the terms and conditions of



the conveyance establishing the interest. If a conflict exists between the conveyance establishing the interest and this chapter, the terms and conditions of the conveyance establishing the interest prevail.

(f) A beneficiary designation in a transfer on death deed may be worded in substance as "(insert owner's name) conveys and warrants (or quitclaims) to (insert owner's name), TOD to (insert beneficiary's name)". This example is not intended to be exhaustive.

(g) A transfer on death deed using the phrase "pay on death to" or the abbreviation "POD" may not be construed to require the liquidation of the real property being transferred.

(h) This section does not preclude other methods of conveying real property that are permitted by law and have the effect of postponing enjoyment of an interest in real property until after the death of the owner. This section applies only to transfer on death deeds and does not invalidate any deed that is otherwise effective by law to convey title to the interest and estates provided in the deed.

(i) The endorsement of the auditor under IC 36-2-11-14 is not necessary to record a transfer on death deed.

(j) For a transfer on death deed executed after December 31, 2024, the transfer on death deed may include the following warning:

"WARNING: After the death of the owner, the owner's insurance policy is required by IC 27-1-13-18 to cover the real property transferred for a period of time as set forth in IC 27-1-13-18(e) and IC 27-1-13-18(f). Once the period of time as set forth in IC 27-1-13-18(e) and IC 27-1-13-18(f) expires, the insurance policy may no longer cover the real property and the beneficiary of a transfer on death deed and the real property may become uninsured."

A transfer on death deed is not invalid due to the failure to include the warning described in this subsection, or due to a defect in the wording of the warning described in this subsection.

SECTION 3. IC 32-17-14-26, AS AMENDED BY P.L.51-2014, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: 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) **For purposes of providing notice to the county**, 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) 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.

A failure by the beneficiary to file the affidavit under this subdivision or a delay by the county recorder in recording the affidavit does not affect the validity of the transfer on death transfer to the beneficiary under this chapter. However, until the affidavit is recorded, the transfer on death beneficiary or beneficiaries named in the transfer on death deed and the estate of the deceased owner are jointly and severally liable for property taxes assessed with respect to the real property under IC 6-1.1 for assessment years beginning with the assessment year in which the owner's death occurs.

(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.

SECTION 4. IC 32-38-3-1, AS ADDED BY P.L.95-2007, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 1. **Notwithstanding any other law**, the trustee of a trust is considered to be the insured owner under a policy or commitment that insures or proposes to insure an interest in real property that is transferred to the trust if:

- (1) the transferee of the interest in real property is the trustee of the trust, the trust was established by the named insured owner, and the transferor is the named insured owner;
- (2) the named insured owner reserves the right to amend or revoke the trust during the named insured owner's lifetime;
- (3) the named insured owner is a natural person; and
- (4) the transfer of the interest in real property is made by the named insured owner personally or by:



- (A) the named insured owner's attorney in fact;
 - (B) the named insured owner's guardian or other similar person in a guardianship or protective proceeding in which the named insured owner is an incapacitated or a protected person;
- or
- (C) the personal representative of the deceased named insured owner's estate under the terms and conditions of the named insured owner's last will and testament;

even if the named insured owner transfers the interest in real property to the trustee described in this section after the effective date of the policy or commitment.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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