

Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 50

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AN ACT to amend the Indiana Code concerning probate.

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

SECTION 1. IC 6-1.1-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 7. (a) A person to whom the title to real property has passed, either under the laws of descent of this state or by virtue of the last will of a decedent, may procure a transfer of the real property on the tax duplicate on which the real property is assessed and taxed. In order to procure the transfer, the person must ~~prepare file~~ an affidavit ~~and, except as provided in section 9 of this chapter, file it prepared under IC 29-1-7-23(b)~~ with the auditor of the county in which the real property is ~~situated~~ **located and record** the affidavit ~~shall contain the following information: with the recorder of the county in which the real property is located.~~

- (1) the decedent's date of death;
- (2) whether the decedent died testate or intestate; and
- (3) the affiant's interest in the real property.

In addition, if the decedent died testate, the affiant must attach a certified copy of the decedent's will to the affidavit. However, if the will has been probated or recorded in the county in which the real property is located, the affiant, in lieu of attaching a certified copy of the will, shall state that fact in the affidavit and indicate the volume and page of the record where the will may be found.

(b) Except as provided in section 9 of this chapter, the county auditor shall enter a transfer of the real property in the proper transfer

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book after the affidavit is filed with his office.

(e) (b) No transfer made under this section has the effect of conferring title upon the person procuring the transfer.

SECTION 2. IC 29-1-7-23, AS AMENDED BY P.L.231-2019, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 23. (a) When a person dies, the person's real and personal property passes to persons to whom it is devised by the person's last will or, in the absence of such disposition, to the persons who succeed to the person's estate as the person's heirs; but it shall be subject to the possession of the personal representative and to the election of the surviving spouse and shall be chargeable with the expenses of administering the estate, the payment of other claims and the allowance is allowances under IC 29-1-4-1, except as otherwise provided in IC 29-1.

(b) A person may sign and record an affidavit to establish prima facie evidence of the devolution of passage of real estate title to distributees under this section. An affidavit under this section may be established by an affidavit containing contain the following information:

- (1) The decedent's name and date of death.
- (2) The decedent's date of death. A statement of the affiant's relationship to the decedent.
- (3) A description of the most recent how the following deeds or other instruments vested in the decedent an ownership or leasehold interest in real property, with a cross-reference if applicable, under IC 36-2-7-10(l) to each deed or other instrument:
  - (A) Deeds or other instruments recorded in the office of the recorder of the county where the real estate property is located.
  - (B) Deeds or other instruments that disclose a title transaction (as defined in IC 32-20-2-7).
- (4) A description of the most recent instrument responsible for conveying title to the real estate.
- (5) (4) A The legal description of the conveyed real estate property as it appears in the instrument instruments described in subdivision (4); (3).
- (5) The names of all distributees known to the affiant.
- (6) Identifying information unique to An explanation of how each interest in the instrument or instruments described in subdivisions (3) and (4); as applicable, that may be used by the recorder to identify the instrument or instruments; as applicable;



in the recorder's records:

~~(7)~~ **An explanation of how title real property devolved passed upon the decedent's death to each distributee under this section, including a recitation of devolution by:**

- (A) intestate **transfer succession** under IC 29-1-2-1; or
- (B) **a the** decedent's last will and testament that has been admitted to probate under section ~~9~~ **13** of this chapter, **with references to:**

- (i) the name and location of the court that issued the order admitting the will to probate; and**
- (ii) the date when the court admitted the decedent's will to probate.**

~~(8)~~ **A statement that establishes that:**

- ~~(A)~~ **at least seven (7) months have elapsed since the decedent's death;**
- ~~(B)~~ **no letters testamentary or letters of administration have been issued to a court appointed personal representative for the decedent within the time limits specified under section 15.1(d) of this chapter; and**
- ~~(C)~~ **a probate court has not issued findings and an accompanying order preventing the limitations in section 15.1(b) of this chapter from applying to the decedent's real property.**

~~(9)~~ **The name of each distributee known to the affiant:**

~~(10)~~ **(7) An explanation of how each portion of the any fractional interest interests in the real property that may have devolved among passed to multiple distributees known to the affiant were calculated and apportioned.**

(c) Upon presentation of an affidavit described in subsection (b), the auditor of the county where the real **estate property** described in subsection (b) **the affidavit** is located must endorse the affidavit **and record the estate title transfer in the auditor's real estate ownership records as an instrument that is exempt from the requirements to file a sales disclosure form and must enter the names of the distributees shown on the affidavit on the tax duplicate on which the real property is transferred, assessed, and taxed under IC 6-1.1-5-7.**

(d) Upon presentation of an affidavit described in subsection (b), the recorder of the county where the real **estate property** described in subsection (b) **the affidavit** is located must:

- (1) record the affidavit; and
- (2) index the affidavit as the most recent instrument responsible for the transfer of the real **estate property** described in subsection



~~(b)~~: **(b)(4)**.

(e) Any person may rely upon an affidavit **recorded with the county recorder:**

- (1) made in good faith; and
- (2) under this section;

as **prima facie** evidence of an effective transfer of **the decedent's title to the real property interest under subsection (a) to the distributee described in the affidavit.**

**(f) If:**

- (1) at least seven (7) months have elapsed since the decedent's death;**
- (2) the clerk of the court described in subsection (b)(6)(B) has not issued letters testamentary or letters of administration to the court appointed personal representative for the decedent within the time limits specified under section 15.1(d) of this chapter; and**
- (3) the court described in subsection (b)(6)(B) has not issued findings and an accompanying order preventing the limitations in section 15.1(b) of this chapter from applying to the decedent's real property;**

**any person may rely upon the affidavit described in subsection (e) as evidence that the real property may not be sold by an executor or administrator of the decedent's estate to pay a debt or obligation of the decedent, which is not a lien of record (as defined in IC 32-20-3-1): in the county in which the real property is located, or to pay any costs of administration of the decedent's estate.**

SECTION 3. IC 29-1-7-24, AS AMENDED BY P.L.86-2018, SECTION 211, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 24. Except as provided in ~~IC 29-1-8-1, IC 29-1-8-2, IC 29-1-8-3, and IC 29-1-13-2~~, no will is effective for the purpose of proving title to, or the right to the possession of, any real or personal property disposed of by the will, until it has been admitted to probate.

SECTION 4. IC 29-1-8-1, AS AMENDED BY P.L.231-2019, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: 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;

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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 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 distributee and must state the following:

(1) That the value of the gross probate estate, wherever located, (less liens, encumbrances, and reasonable funeral expenses) does not exceed:

(A) twenty-five thousand dollars (\$25,000), for the estate of an individual who dies before July 1, ~~2007~~; **2006**; and

(B) fifty thousand dollars (\$50,000), for the estate of an individual who dies after June 30, ~~2007~~. **2006**.

(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 distributee that is entitled to a share of the property and the part of the property to which each distributee is entitled.

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

(6) That the affiant is entitled to payment or delivery of the property on behalf of each 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 distributee upon the presentation of an affidavit as provided in subsection (a).

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



indebted to the decedent.

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

(g) For purposes of subsection (a), a distributee has the same rights as a personal representative under IC 32-39 to access a digital asset (as defined in IC 32-39-1-10) of the decedent.

SECTION 5. IC 29-1-8-3, AS AMENDED BY P.L.231-2019, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 3. (a) As used in this section, "fiduciary" means:

- (1) the personal representative of an unsupervised estate; or
- (2) a person appointed by a court under this title to act on behalf of the decedent or the decedent's distributees.

(b) Except as otherwise provided in this section, if the value of a decedent's gross probate estate, less liens and encumbrances, does not exceed the sum of:

- (1) an amount equal to:
  - (A) twenty-five thousand dollars (\$25,000), for the estate of an individual who dies before July 1, ~~2007~~; **2006**; and
  - (B) fifty thousand dollars (\$50,000), for the estate of an individual who dies after June 30, ~~2007~~; **2006**;
- (2) the costs and expenses of administration; and
- (3) reasonable funeral expenses;

the fiduciary, without giving notice to creditors, may file a closing statement as provided in section 4 of this chapter and disburse and distribute the estate to the persons entitled to it, as provided in section 4 of this chapter.

(c) If an estate described in subsection (a) includes real property, an affidavit may be recorded in the office of the recorder in the county in which the real property is located. The affidavit must contain the following:

- (1) The legal description of the real property.
- (2) The following ~~statement~~: **statements**:
  - (A) If the individual dies after June 30, ~~2007~~ **2006**, the following statement: "It appears that the decedent's gross probate estate, less liens and encumbrances, does not exceed the sum of the following: fifty thousand dollars (\$50,000), the costs and expenses of administration, and reasonable funeral expenses.".
  - (B) If the individual dies before July 1, ~~2007~~; **2006**, the



following statement: "It appears that the decedent's gross probate estate, less liens and encumbrances, does not exceed the sum of the following: twenty-five thousand dollars (\$25,000), the costs and expenses of administration, and reasonable funeral expenses."

(3) The name of each person entitled to at least a part interest in the real property as a result of a decedent's death, the share to which each person is entitled, and whether the share is a divided or undivided interest.

(4) A statement which explains how each person's share has been determined.

SECTION 6. IC 29-1-8-4, AS AMENDED BY P.L.231-2019, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 4. (a) As used in this section, "fiduciary" means:

- (1) the personal representative of an unsupervised estate; or
- (2) a person appointed by a court under this title to act on behalf of the decedent or the decedent's distributees.

(b) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a fiduciary may close an estate administered under the summary procedures of section 3 of this chapter by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(1) to the best knowledge of the fiduciary, the value of the gross probate estate, less liens and encumbrances, did not exceed the sum of:

- (A) twenty-five thousand dollars (\$25,000), for the estate of an individual who dies before July 1, ~~2007~~, **2006**, and fifty thousand dollars (\$50,000), for the estate of an individual who dies after June 30, ~~2007~~, **2006**;
- (B) the costs and expenses of administration; and
- (C) reasonable funeral expenses;

(2) the fiduciary has fully administered the estate by disbursing and distributing it to the persons entitled to it; and

(3) the fiduciary has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom the fiduciary is aware and has furnished a full accounting in writing of the administration to the distributees whose interests are affected.

(c) If no actions, claims, objections, or proceedings involving the fiduciary are filed in the court within two (2) months after the closing statement is filed, the fiduciary may immediately disburse and

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distribute the estate free from claims to the persons entitled to the disbursement and distribution. After disbursing and distributing an estate, the fiduciary must file a report in the court of the disbursement and distribution. The appointment of the personal representative or the duties of the fiduciary, as applicable, shall terminate upon the filing of the report.

(d) A closing statement filed under this section has the same effect as one (1) filed under IC 29-1-7.5-4.

(e) A copy of any affidavit recorded under section 3(c) of this chapter must be attached to the closing statement filed under this section.

SECTION 7. IC 29-3-9-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 7. (a) Whenever it is proposed to compromise any claim by or against a protected person or the protected person's property, the court, on petition of the guardian, may enter an order authorizing the compromise to be made if satisfied that the compromise will be in the best interest of the protected person.

(b) Whenever a minor has a disputed claim against another person, whether arising in contract, tort, or otherwise, and a guardian for the minor and the minor's property has not been appointed, the parents of the minor may compromise the claim. However, before the compromise is valid, it must be approved by the court upon filing of a petition requesting the court's approval. If the court approves the compromise, it may direct that the settlement be paid in accordance with IC 29-3-3-1. If IC 29-3-3-1 is not applicable, the court shall require that a guardian be appointed and that the settlement be delivered to the guardian upon the terms that the court directs.

**(c) Any exhibit demonstrating a compromise on behalf of a protected person or a minor and any testimony related to such compromise that is offered or admitted into evidence in a legal proceeding commenced under this section shall be maintained by the court as a confidential court record. The confidential exhibits and record may not be used in any other proceeding or for any other person.**

**(d) Subsection (c) does not prohibit the following persons from having access to the confidential exhibits and record for the purpose of learning, confirming, and enforcing the economic terms of the compromise, for the purpose of enforcing or modifying any trust that is funded under the compromise, or for the purpose of obtaining a qualified order with respect to a structured settlement under IC 34-50-2 and 26 U.S.C. 5891(b):**

**(1) The attorney of record for the incapacitated person or**





minor.

(2) A guardian or guardian ad litem appointed for the incapacitated person or minor by a court of competent jurisdiction, and the attorney, if any, for the guardian or guardian ad litem.

(3) Each current trustee or trust director that participates in the administration of a trust funded under the compromise and the attorneys of record for each current trustee or trust director.

(4) A prospective successor trustee or successor trust director that is proposed to serve in the administration of a trust funded under the compromise.

SECTION 8. IC 30-4-1.5-4, AS ADDED BY P.L.40-2018, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 4. (a) Any of the following persons may create a valid inter vivos trust by electronically signing an electronic trust instrument, **with no witness requirement or acknowledgment before any notary public, that if the electronic trust instrument** sufficiently states the terms of the trust in compliance with IC 30-4-2-1(b):

(1) A settlor.

(2) An agent of a settlor who is an attorney in fact.

(3) A person who holds a power of appointment that is exercisable by appointing money or property to the trustee of a trust.

(4) An adult who:

(A) is not a trustee named in the electronic trust instrument; and

(B) electronically signs the electronic trust instrument:

(i) at the settlor's direction; and

(ii) in the direct physical presence of the settlor.

If an adult electronically signs the trust instrument under subdivision (4), the trust instrument must indicate that the adult signer is signing at the direction of the settlor and in the settlor's direct physical presence. For all purposes under this article, a trust instrument electronically signed under subdivisions (1), (2), or (4) is the creation of the named settlor.

The electronic signature of the settlor or other person creating the trust is not required to be acknowledged or witnessed by a notary.

(b) The following persons may use the electronic record associated with an electronic trust instrument to make a complete converted copy of an electronic trust instrument immediately after its execution or at a later time when a complete and intact electronic record is available:



- (1) The settlor.
- (2) A trustee who accepts appointment under the electronic trust instrument.
- (3) An attorney representing the settlor or the trustee.
- (4) Any other person authorized by the settlor.

If a complete converted copy is generated from a complete and intact electronic record associated with an electronic trust instrument, the person who generates the complete converted copy is not required to sign the affidavit described in subsection (d).

(c) If:

- (1) a person discovers an accurate but incomplete copy of an electronic trust instrument;
- (2) the electronic record for the electronic trust instrument becomes:
  - (A) lost; or
  - (B) corrupted; or
- (3) freedom from tampering or unauthorized alteration cannot be authenticated or verified;

a living settlor, attorney, custodian, or person responsible for the discovery of the incomplete electronic trust instrument may prepare a complete converted copy of the electronic trust instrument using all available information if the person creating the complete converted copy of the electronic trust instrument has access to a substantially complete, nonelectronic copy of the electronic trust instrument.

(d) A person who creates a complete converted copy of an electronic trust instrument under subsection (c) shall sign an affidavit that affirms or specifies, as applicable, the following:

- (1) The date the electronic trust instrument was created.
- (2) The time the electronic trust instrument was created.
- (3) How the incomplete electronic trust instrument was discovered.
- (4) The method and format used to store the original electronic record associated with the electronic trust instrument.
- (5) The methods used, if any, to prevent tampering or the making of unauthorized alterations to the electronic record or electronic trust instrument.
- (6) Whether the electronic trust instrument has been altered since its creation.
- (7) Confirmation that an electronic record, including the document integrity evidence, if any, was created at the time the settlor made the electronic trust instrument.
- (8) Confirmation that the electronic record has not been altered



while in the custody of the current custodian or any prior custodian.

(9) Confirmation that the complete converted copy is a complete and correct duplication of the electronic trust instrument and the date, place, and time of its execution by the settlor or the settlor's authorized agent.

(e) A complete converted copy derived from a complete and correct electronic trust instrument may be docketed under IC 30-4-6-7 or, absent any objection, offered and admitted as evidence of the trust's terms in the same manner as the original and traditional paper trust instrument of the settlor. Whenever this article permits or requires the trustee of a trust to provide a copy of a trust instrument to a beneficiary or other interested person, the trustee may provide a complete converted copy of the electronic trust instrument. A complete and converted copy is conclusive evidence of the trust's terms unless otherwise determined by a court in an order entered upon notice to all interested persons and after an opportunity for a hearing.

SECTION 9. IC 30-4-2-1, AS AMENDED BY P.L.51-2014, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: 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 **any of the following persons:**

(1) The settlor. or

(2) The settlor's authorized agent.

(3) **An adult who:**

(A) **is not a trustee named in the trust's written terms; and**

(B) **signs the trust's written terms:**

(i) **at the settlor's direction; and**

(ii) **in the direct physical presence of the settlor.**

**If an adult signs at the settlor's direction under subdivision (3), the written evidence of the trust's terms must identify that adult signer and must state that the adult is signing at the direction of the settlor and in the settlor's direct physical presence.**

(b) Except as required in the applicable probate law for the execution of wills, no formal language is required to create a trust, but 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 10. IC 30-4-3-6, AS AMENDED BY P.L.231-2019, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 6. (a) The trustee has a duty to administer a trust according to the terms of the trust.

(b) Unless the terms of the trust or the provisions of section 1.3 of this chapter 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) Except as provided in subsection (c), 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) by 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. This subdivision does not prohibit the terms of the trust from requiring the trustee to separately provide each beneficiary only the portions of the trust instrument that describe or pertain to that beneficiary's interest in the trust and the administrative ~~provision~~ **provisions** of the trust instrument that ~~pertains~~ **pertain** to all beneficiaries of the trust.

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

(10) Defend actions involving the trust estate.

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

(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.

(c) The terms of a trust may expand, restrict, eliminate, or otherwise vary the right of a beneficiary to be informed of the beneficiary's interest in a trust for a period of time, including a period of time related to:

- (1) the age of the beneficiary;
- (2) the lifetime of a settlor or the spouse of a settlor;
- (3) a term of years or a period of time ending on a specific date;
- or
- (4) a specific event that is certain to occur.

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(d) During any period of time that the trust instrument restricts or eliminates the right of a beneficiary to be informed of the beneficiary's interest in a trust, a designated representative for the beneficiary:

(1) shall represent that beneficiary and bind that beneficiary's interests for purposes of any judiciary proceeding or nonjudicial matter involving the trust unless the court finds, after a hearing upon notice, that a conflict of interest exists between the beneficiary and the designated representative; **and**

(2) has the authority to initiate or defend and participate in any proceeding relating to the trust under this article or under IC 30-2 on behalf of the beneficiary; **and**

**(3) shall not disclose to the beneficiary the information provided by the trustee unless the court orders disclosure or the trustee agrees to the disclosure.**

An alleged conflict of interest between a beneficiary and the beneficiary's designated representative may be asserted to the court by the beneficiary whose right to be informed of the beneficiary's interest in a trust is restricted or eliminated in the trust instrument or by any other person authorized to represent and bind that beneficiary's interest under IC 30-4-6-10.5.

(e) If:

(1) a beneficiary is an adult and has not been adjudicated to be an incapacitated person;

(2) the trust instrument restricts or eliminates the right of the beneficiary to be informed of the beneficiary's interest in a trust; **and**

(3) the beneficiary discovers **material** information about the beneficiary's interest in the trust from sources other than the trustee;

subsections (c) and (d) do not prohibit the beneficiary from demanding **or petitioning for an accounting or statement regarding the trust under IC 30-4-5-12(c), from receiving a copy of all relevant portions of the trust instrument, or from demanding and receiving, under subsection (b)(7), other information about the trust and its administration under subsection (b)(7), including a copy of all relevant portions of the trust instrument, or an accounting or statement regarding the trust under IC 30-4-5-12(c); that is consistent with the content and scope of the information that the beneficiary received from sources other than the trustee.** The beneficiary may also initiate and participate in any proceeding against or with the trustee under this chapter.

SECTION 11. IC 30-4-5-14.5, AS AMENDED BY P.L.231-2019,

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SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 14.5. (a) A trustee may obtain a nonjudicial settlement of its accounts in accordance with subsection (b) when:

- (1) a trust terminates pursuant to the terms of the trust;
- (2) a trust terminates early pursuant to IC 30-4-3-24.5;
- (3) a trustee resigns or is removed; or
- (4) a trustee seeks discharge of an interim accounting period when the trust is continuing.

(b) A trustee who elects to proceed under this section shall provide the following to the qualified beneficiaries of the trust and a successor trustee, if applicable, within a reasonable time after termination of the trust pursuant to its terms, the resignation or removal of the trustee, or the end of the period for which the trustee is seeking discharge:

- (1) A statement showing the fair market value of the ~~new~~ net assets to be distributed from a terminating trust or to a successor trustee.
- (2) A trust accounting for the prior three (3) years showing all receipts and disbursements and inventory value of the net assets.
- (3) An estimate for any items reasonably anticipated to be received or disbursed.
- (4) The amount of any fees, including trustee fees, remaining to be paid.
- (5) Notice that the trust is terminating, or that the trustee has resigned or been removed, the time period for which the trustee seeks discharge of its accounts, and a statement providing that claims against a trustee under IC 30-4-6-12 and IC 30-4-6-14, if applicable, shall be barred if no objections are received within the time period described in subsection (c).
- (6) The name and mailing address of the trustee.
- (7) The name and telephone number of a person who may be contacted for additional information.

The trustee may also provide the statement and notice described in this subsection to any other person who the trustee reasonably believes may have an interest in the trust.

(c) If, after receiving the notice and trust information described in subsection (b), a qualified beneficiary objects to a disclosed act or omission, the qualified beneficiary shall provide written notice of the objection to the trustee not later than sixty (60) days after the notice was sent by the trustee. If no written objection is provided in the sixty (60) day time period, the information provided under subsection (b) shall be considered approved by the recipient. The trustee shall, in the case of a trust terminating pursuant to the terms of the trust or the



trustee's resignation or removal, within a reasonable period of time following the expiration of the sixty (60) day time period, distribute the assets as provided in the trust or to the successor trustee. If a qualified beneficiary gives the trustee a written objection within the applicable sixty (60) day time period, the trustee or the qualified beneficiary may:

- (1) submit the written objection to the court for resolution and charge the expense of commencing a proceeding to the trust; or
- (2) resolve the objection by a nonjudicial settlement agreement under section 25 of this chapter, or otherwise.

Any agreement entered into pursuant to subdivision (2) may include a release, an indemnity clause, or both, on the part of the beneficiary against the trustee relating to the trust. If the parties agree to a nonjudicial settlement agreement under section 25 of this chapter, any related expenses shall be charged to the trust. Upon a resolution of an objection under this subsection, within a reasonable period of time, the trustee shall distribute the remaining trust assets as provided in the trust or to the successor trustee.

(d) The trustee may rely upon the written statement of a person receiving notice that the person does not object.

(e) When a trustee distributes assets of a terminating trust or to a successor trustee after complying with the provisions of this article and having received no objections, each person who received notice and either consented or failed to object pursuant to this section is barred from:

- (1) bringing a claim against the trustee or challenging the validity of the trust to the same extent and with the same preclusive effect as if the court had entered a final order approving the trustee's final account; or
- (2) bringing a claim against the trustee for the period of such interim accounts to the same extent and with the same preclusive effect as if the court had entered a final order approving the trustee's interim accounts.

(f) A trustee may not request that a beneficiary indemnify the trustee against loss in exchange for the trustee forgoing a request to the court to approve its accounts at the time that the trust terminates, or at the time the trustee resigns or is removed, except as agreed upon by the parties pursuant to subsection (c).

(g) The court that exercises probate jurisdiction shall have exclusive jurisdiction over matters under this section.

(h) IC 30-4-6-10.5 shall apply to this section.

(i) Nothing in this section shall preclude a trustee from proceeding under IC 30-4-3-18(b) to have the trustee's accounts reviewed and





settled by the court.

SECTION 12. IC 30-4-8-1, AS ADDED BY P.L.221-2019, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 1. (a) Subject to the limitations set forth in subsection (b), this chapter applies to:

- (1) qualified dispositions to legacy trusts; and
- (2) dispositions by transferors who are trustees;

that are made after June 30, 2019.

(b) This chapter does not apply to:

- (1) any assets that are listed on an application or financial statement completed by the transferor and which is submitted to a lender in connection with a request to obtain or maintain credit from the lender; or
- (2) any assets of a legacy trust that are listed on an application or financial statement completed on behalf of the legacy trust and which is submitted to a lender in connection with a request to obtain or maintain credit from the lender on behalf of the legacy trust.

In the event that assets described in subsection (b)(1) are later transferred to a legacy trust and a default occurs under the loan or extension of credit, either before or after the transfer or disposition under the legacy trust, the lender shall be entitled to proceed against any assets listed on the applications or financial statements which were submitted in connection with the loan, or any modifications, amendments, or renewals of the loan. Nothing in this chapter shall prohibit such action. A change in the character, form, or ownership of the assets described in subsection (b)(1) shall in no way make subsection (b)(1) inapplicable. **This subsection shall apply only to the lender that extended credit based on the application or financial statement submitted to the lender and the indebtedness or any portion of the indebtedness owed to the lender remains unpaid.**

SECTION 13. IC 30-4-8-8, AS AMENDED BY P.L.231-2019, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 8. (a) Except as provided in subsection (e), 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) in which 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.

(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 **qualified** 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.

(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 and the condition set forth in section 4(3) of this chapter is satisfied.

(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.

(e) If the state of Indiana is a creditor of a transferor, then notwithstanding subsection (a)(1) and subsection (b), the state of Indiana may bring an action against a qualified trustee to assert a claim



against or to recover property that is the subject of a qualified disposition by proceeding under the Indiana Uniform Fraudulent Transfer Act, subject to the standard of evidence in IC 32-18-2-14 and IC 32-18-2-15, and the limitation periods in IC 32-18-2-19.

SECTION 14. IC 30-4-8-16, AS AMENDED BY P.L.231-2019, SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 16. (a) Nothing in this chapter shall be construed to prohibit a lender from enforcing its rights in property identified in section 1(b) of this chapter and, to the extent necessary, naming the legacy trust or trustee of the trust as a defendant to the action or proceeding.

(b) If an asset described in section 1(b)(1) of this chapter is transferred to a legacy trust or trustee of a legacy trust, the transferor of that asset must send written notice of the transfer to the pertinent lender within fifteen (15) days after that transfer. The transferor must send the notice by certified mail, return receipt requested, to the registered agent for the lender. If there is no registered agent for the lender, the transferor must send notice to one (1) of the following:

- (1) The last known address of the lender.
- (2) The last address specified by the lender for mailing payments on the obligations.
- (3) The address specified by the lender for general inquiries by customers.

The notice must include the name of the transferor, a description of the asset transferred, the name of the trustee, and the date that the transfer was completed. Upon request, the transferor or trustee shall provide the lender with a certification of the trust under IC 30-4-4-5, the names and addresses of the qualified beneficiaries of the trust, and copies of the pages from the trust instrument that identify the current trustee and describe the trustee's administrative powers and duties.

(c) Nothing in this chapter shall be construed to authorize any disposition that is prohibited by the terms of any agreements, notes, guaranties, mortgages, indentures, instruments, undertakings, or other documents. Any provisions that prohibit such transfer or disposition shall be binding and shall make this chapter inapplicable, **so long as any indebtedness remains outstanding in connection with such agreements, notes, guaranties, mortgages, indentures, instruments, undertakes, or other similar documents.**

(d) In the event of a conflict between this section and any other provision of this chapter, this section shall control.

SECTION 15. IC 32-17-13-7, AS AMENDED BY P.L.231-2019, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



JULY 1, 2020]: Sec. 7. (a) This subsection applies to a proceeding commenced under this chapter and a deceased transferor who died before July 1, 2018, if the personal representative or claimant commences the proceeding before January 1, 2020. A proceeding under this chapter may not be commenced unless the personal representative of the deceased transferor's estate has received a written demand for the proceeding from ~~the surviving spouse or a surviving child to the extent that statutory allowances or a creditor are affected:~~ **a claimant.**

(b) This subsection applies to a proceeding commenced under this chapter and a deceased transferor who died before July 1, 2018, if the personal representative or claimant commences the proceeding before January 1, 2020, and the claimant files a timely claim in the deceased transferor's estate before July 1, 2018. If the personal representative declines or fails to commence a proceeding within sixty (60) days after receiving the demand, a person making the demand may commence the proceeding in the name of the decedent's estate at the expense of the person making the demand.

(c) This subsection applies to a proceeding commenced under this chapter and a deceased transferor who died before July 1, 2018, if the personal representative or claimant commences the proceeding before January 1, 2020, and the claimant files a timely claim in the deceased transferor's estate before July 1, 2018. A personal representative who declines, in good faith, to commence a requested proceeding incurs no personal liability for declining to commence a proceeding.

(d) This subsection applies to a proceeding commenced under this chapter with respect to a deceased transferor who dies ~~on or~~ after June 30, 2018. A proceeding under this chapter may not be commenced unless:

- (1) the claimant files a claim in the deceased transferor's estate and delivers a copy of the claim to each nonprobate transferee known by the claimant not later than five (5) months after the deceased transferor's death;
- (2) the claimant delivers a written demand for the proceeding to:
  - (A) the personal representative of the deceased transferor's estate; and
  - (B) each known nonprobate transferee; and
- (3) except as provided in subsection (j), the written demand has been filed in the estate not later than seven (7) months after the deceased transferor's death.

(e) This subsection applies to a proceeding commenced under this chapter and concerning a deceased transferor who dies ~~on or~~ after June



30, 2018. The written demand must include the following information:

- (1) The cause number of the deceased transferor's estate.
- (2) A statement of the claimant's interest in the deceased transferor's estate and nonprobate transfers, including the date on which the claimant filed a claim in the deceased transferor's estate.
- (3) A copy of the claim attached as an exhibit to the written demand.
- (4) A description of the nonprobate transfer, including:
  - (A) a description of the transferred asset, as the asset would be described under IC 29-1-12-1, regardless of whether the asset is part of the decedent's probate estate, subject to the redaction requirements of the Indiana administrative rules, established by the Indiana supreme court;
  - (B) a description or copy of the instrument by which the deceased transferor established the nonprobate transfer, subject to the redaction requirements of the Indiana administrative rules, established by the Indiana supreme court; and
  - (C) the name and mailing address of each nonprobate transferee known by the claimant.

(f) This subsection applies to a proceeding commenced under this chapter and concerning a deceased transferor who dies ~~on or~~ after June 30, 2018. A proceeding under this chapter may not be commenced on behalf of a claimant if the personal representative has neither allowed nor disallowed the claimant's claim within the deadlines in IC 29-1-14-10(a) and IC 29-1-14-10(b), unless the claimant's petition to set the claim for trial in the probate court under IC 29-1-14-10(e) has been filed within thirty (30) days after the expiration of the deadlines applicable to the allowance or disallowance of claims under IC 29-1-14-10(a) and IC 29-1-14-10(b).

(g) If the personal representative declines or fails to commence a proceeding under this chapter within thirty (30) days after receiving the written demand required under subsection (a) or (d), a person making the demand may commence the proceeding in the name of the deceased transferor's estate at the expense of the person making the demand and not of the estate.

(h) A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

(i) Nothing in this section shall affect or prevent any action or proceeding to enforce a valid and otherwise enforceable lien, warrant,

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mortgage, pledge, security interest, or other comparable interest against property included in a nonprobate transfer.

(j) This subsection applies to a proceeding commenced under this chapter and concerning a deceased transferor who dies ~~on~~ ~~or~~ after June 30, 2018. A claimant may file the written demand required in subsection (a) or (d) concurrently with the claimant's filing of a claim in the deceased transferor's estate, but the claimant shall deliver the written demand not later than the later of:

- (1) seven (7) months after the deceased transferor's death; or
- (2) thirty (30) days after the final allowance of the claimant's claim.



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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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