

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

## SENATE ENROLLED ACT No. 36

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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 29-1-7-4.5, 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.**

SECTION 2. IC 29-1-7-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 18. **(a)** When an action is brought to contest the validity of any will as provided in this article, notice is served upon the defendants in the same manner as required by the Indiana Rules of Trial Procedure.

**(b) A contesting party shall also serve a copy of the complaint on the counsel of record, if any, for the personal representative. 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.**

SECTION 3. 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 4. 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. **(a) 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.

**(b) A court may, upon notice and hearing, award attorney's fees and costs to a person bringing an action under subsection (a) if the**



person indebted to the decedent or holding property of the decedent, other than an insurer regulated under IC 27:

- (1) acted in bad faith in refusing to pay or deliver the property belonging to the decedent; or
- (2) refused to respond within thirty (30) business days after receiving an affidavit from the person bringing an action under this section, if the affidavit is consistent with section 1 of this chapter.

(c) A court may, upon notice and hearing, award attorney's fees and costs to a person bringing an action under subsection (a) against an insurer regulated under IC 27 if:

- (1) the insurer failed to respond pursuant to IC 27 after receiving an affidavit from the person; and
- (2) the affidavit is consistent with section 1 of this chapter.

SECTION 5. IC 29-1-13-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 17. (a) If a person fails to comply with a personal representative's written demand or instruction that is consistent with this article regarding the property of the decedent, the personal representative may bring an enforcement proceeding to compel compliance with the written demand or instruction.

(b) A court may award attorney's fees and costs to the estate in an enforcement proceeding under subsection (a) if the person indebted to the decedent or holding property of the decedent, other than an insurer regulated under IC 27:

- (1) acted in bad faith in failing to comply with the written demand or instruction; or
- (2) refused to respond to the written demand or instruction within thirty (30) business days after receiving the demand or instruction, if the demand or instruction is consistent with this article.

(c) A court may, upon notice and hearing, award attorney's fees and costs to an estate bringing an enforcement proceeding under subsection (a) against an insurer regulated under IC 27 if:

- (1) the insurer failed to respond pursuant to IC 27 after receiving a written demand or instruction from the personal representative; and
- (2) the written demand or instruction is consistent with this article.

SECTION 6. 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 7. IC 29-3-9-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 12. (a)** This section applies only to a guardianship of the property of a minor or an incapacitated adult.

**(b)** If a third party fails to comply with a guardian's written demand or instruction that:

**(1)** was issued within the scope of the guardian's authority; and

**(2)** is consistent with this article;

the guardian may bring an enforcement proceeding to compel compliance in the court having jurisdiction over the guardianship.

**(c)** A court may award attorney's fees and costs to the guardian in an enforcement proceeding under subsection (b), if the person indebted to the guardianship estate or holding property of the guardianship estate:

**(1)** acted in bad faith in failing to comply with the guardian's written demand or instruction; or

**(2)** refused to respond within ten (10) business days after receiving the guardian's written demand or instruction, if the demand or instruction is consistent with this article.

SECTION 8. 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 9. 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 10. 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 11. 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 12. 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 13. 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 14. 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 15. 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 16. 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 17. 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:

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

SECTION 18. 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 19. 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 **its 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:

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- (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 20. 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:
- (A) pay or contest any claim;
  - (B) settle a claim by or against the trust by compromise or arbitration; and
  - (C) abandon or release, totally or partially, any claim belonging to the trust.
- (13) The power to insure the:
- (A) trust estate against damage or loss; and
  - (B) trustee against liability with respect to third persons.
- (14) The power to pay taxes, assessments, and other expenses



incurred in the:

- (A) acquisition, retention, and maintenance of the trust property; and
  - (B) administration of the trust.
- (15) The power to:
- (A) vote securities, in person or by a general or special proxy;
  - (B) hold the securities in the name of a nominee if the trustee is a corporate trustee; and
  - (C) effect or approve, and deposit securities in connection with, any change in the form of the corporation, including:
    - (i) dissolution;
    - (ii) liquidation;
    - (iii) reorganization;
    - (iv) acquisition; and
    - (v) merger.
- (16) The power to employ persons, including:
- (A) attorneys;
  - (B) accountants;
  - (C) investment advisors; and
  - (D) agents;
- to advise and assist the trustee in the performance of the trustee's duties.
- (17) The power to effect distribution of property in cash, in kind, or partly in cash and partly in kind, in divided or undivided interests.
- (18) The power to execute and deliver all instruments necessary or appropriate to accomplishing or facilitating the exercise of the trustee's powers.
- (19) With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or another form of business or enterprise, the power to:
- (A) continue the business or enterprise; and
  - (B) take any action that may be taken by shareholders, members, or property owners, including:
    - (i) merging;
    - (ii) dissolving; or
    - (iii) changing the form of business organization or contributing additional capital.
- (20) With respect to possible liability for violation of environmental law, the power to:
- (A) inspect or investigate property:
    - (i) the trustee holds or has been asked to hold; or



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

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

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

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

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

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

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

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

(A) indemnification:

(i) for expenses; and

(ii) against liabilities; and

(B) take appropriate action to collect the proceeds.

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

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

(25) The power to:

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

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



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

(D) remove the appointed trustee.

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

(A) paying the amount directly to the beneficiary;

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

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

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

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

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

(27) The power to:

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

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

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

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

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



to purchase back previously sold covered security options.

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

- (1) distribute to each beneficiary a pro rata share of the total fair market value of all of the particular assets as of the date of distribution; and
- (2) cause the distribution to result in a fair and equitable division among the beneficiaries of capital gain or loss on the assets.

(e) 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.**

SECTION 21. 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. **(7) 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.**

~~(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 22. 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.

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~~(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.

SECTION 23. 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 24. 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 25. 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.

SECTION 26. 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 ~~informing the person of:~~ **that:**

(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**

~~(D)~~ **(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.

SECTION 27. 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

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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.**

SECTION 28. 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.**



SECTION 29. 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.

~~(e)~~ **(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 (e)~~, **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.

SECTION 30. 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.



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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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