IC 32

TITLE 32. PROPERTY

IC 32-1

ARTICLE 1. REPEALED

(Repealed by P.L.2-2002, SEC.128.)

IC 32-2

ARTICLE 2. REPEALED

(Repealed by P.L.2-2002, SEC.128.)

IC 32-3

ARTICLE 3. REPEALED

(Repealed by P.L.2-2002, SEC.128.)

IC 32-4

ARTICLE 4. REPEALED

(Repealed by P.L.2-2002, SEC.128.)

IC 32-5

ARTICLE 5. REPEALED

(Repealed by P.L.2-2002, SEC.128.)

IC 32-6

ARTICLE 6. REPEALED

(Repealed by P.L.2-2002, SEC.128.)

IC 32-7

ARTICLE 7. REPEALED

(Repealed by P.L.2-2002, SEC.128)

IC 32-8

ARTICLE 8. REPEALED

(Repealed by P.L.2-2002, SEC.128.)

IC 32-9

ARTICLE 9. REPEALED

(Repealed by P.L.2-2002, SEC.128.)

IC 32-10

ARTICLE 10. REPEALED

(Repealed by P.L.2-2002, SEC.128.)

IC 32-11

ARTICLE 11. REPEALED

(Repealed by P.L.2-2002, SEC.128.)

IC 32-12

ARTICLE 12. REPEALED

(Repealed by P.L.2-2002, SEC.128.)

IC 32-13

ARTICLE 13. REPEALED

(Repealed by P.L.2-2002, SEC.128.)

IC 32-14

ARTICLE 14. REPEALED

(Repealed by P.L.2-2002, SEC.128.)

IC 32-15

ARTICLE 15. REPEALED

(Repealed by P.L.2-2002, SEC.128.)

IC 32-16

ARTICLE 16. EFFECT OF RECODIFICATION OF TITLE 32

IC 32-16-1

Chapter 1. Effect of Recodification by the Act of the 2002 Regular Session of the General Assembly

IC 32-16-1-1

"Prior property law"

Sec.1. As used in this chapter, "prior property law" refers to the statutes that are repealed or amended in the recodification act of the 2002 regular session of the general assembly as the statutes existed before the effective date of the applicable or corresponding provision of the recodification act of the 2002 regular session of the general assembly.

As added by P.L.2-2002, SEC.1.

IC 32-16-1-2

Purpose of recodification

Sec. 2. The purpose of the recodification act of the 2002 regular session of the general assembly is to recodify prior property law in a style that is clear, concise, and easy to interpret and apply. Except to the extent that:

(1) the recodification act of the 2002 regular session of the general assembly is amended to reflect the changes made in a provision of another bill that adds to, amends, or repeals a provision in the recodification act of the 2002 regular session of the general assembly; or

(2) the minutes of meetings of the code revision commission during 2001 expressly indicate a different purpose;

the substantive operation and effect of the prior property law continue uninterrupted as if the recodification act of the 2002 regular session of the general assembly had not been enacted.

As added by P.L.2-2002, SEC.1.

IC 32-16-1-3

Statutory construction of recodification

Sec. 3. Subject to section 2 of this chapter, sections 4 through 9 of this chapter shall be applied to the statutory construction of the recodification act of the 2002 regular session of the general assembly.

As added by P.L.2-2002, SEC.1.

IC 32-16-1-4

Effect of recodification

Sec. 4. (a) The recodification act of the 2002 regular session of the general assembly does not affect:

(1) any rights or liabilities accrued;

(2) any penalties incurred;

(3) any violations committed;

(4) any proceedings begun;
(5) any bonds, notes, loans, or other forms of indebtedness issued, incurred, or made;
(6) any tax levies made or authorized;
(7) any funds established;
(8) any patents issued;
(9) the validity, continuation, or termination of any contracts, easements, or leases executed;
(10) the validity, continuation, scope, termination, suspension, or revocation of:
(A) permits;
(B) licenses;
(C) certificates of registration;
(D) grants of authority; or
(E) limitations of authority; or
(11) the validity of court decisions entered regarding the constitutionality of any provision of the prior property law;

before the effective date of the recodification act of the 2002 regular session of the general assembly (July 1, 2002). Those rights, liabilities, penalties, offenses, proceedings, bonds, notes, loans, other forms of indebtedness, tax levies, funds, patents, contracts, leases, permits, licenses, certificates of registration, grants of authority, or limitations of authority continue and shall be imposed and enforced under prior property law as if the recodification act of the 2002 regular session of the general assembly had not been enacted.

(b) The recodification act of the 2002 regular session of the general assembly does not:
(1) extend, or cause to expire, a permit, license, certificate of registration, or other grant or limitation of authority; or
(2) in any way affect the validity, scope, or status of a license, permit, certificate of registration, or other grant or limitation of authority;

issued under the prior property law.

(c) The recodification act of the 2002 regular session of the general assembly does not affect the revocation, limitation, or suspension of a permit, license, certificate of registration, or other grant or limitation of authority based in whole or in part on violations of the prior property law or the rules adopted under the prior property law.

As added by P.L.2-2002, SEC.1.

IC 32-16-1-5
Recodification of prior property law

Sec. 5. The recodification act of the 2002 regular session of the general assembly shall be construed as a recodification of prior property law. Except as provided in section 2(1) and 2(2) of this chapter, if the literal meaning of the recodification act of the 2002 regular session of the general assembly (including a literal application of an erroneous change to an internal reference) would result in a substantive change in the prior property law, the difference shall be

construed as a typographical, spelling, or other clerical error that must be corrected by:

(1) inserting, deleting, or substituting words, punctuation, or other matters of style in the recodification act of the 2002 regular session of the general assembly; or

(2) using any other rule of statutory construction;

as necessary or appropriate to apply the recodification act of the 2002 regular session of the general assembly in a manner that does not result in a substantive change in the law. The principle of statutory construction that a court must apply the literal meaning of an act if the literal meaning of the act is unambiguous does not apply to the recodification act of the 2002 regular session of the general assembly to the extent that the recodification act of the 2002 regular session of the general assembly is not substantively identical to the prior property law.

As added by P.L.2-2002, SEC.1.

IC 32-16-1-6

References to repealed statutes

Sec. 6. Subject to section 9 of this chapter, a reference in a statute or rule to a statute that is repealed and replaced in the same or a different form in the recodification act of the 2002 regular session of the general assembly shall be treated after the effective date of the new provision as a reference to the new provision.

As added by P.L.2-2002, SEC.1.

IC 32-16-1-7

References to citations

Sec. 7. A citation reference in the recodification act of the 2002 regular session of the general assembly to another provision of the recodification act of the 2002 regular session of the general assembly shall be treated as including a reference to the provision of prior property law that is substantively equivalent to the provision of the recodification act of the 2002 regular session of the general assembly that is referred to by the citation reference.

As added by P.L.2-2002, SEC.1.

IC 32-16-1-8

References to prior rules

Sec. 8. (a) As used in the recodification act of the 2002 regular session of the general assembly, a reference to rules adopted under any provision of this title or under any other provision of the recodification act of the 2002 regular session of the general assembly refers to either:

(1) rules adopted under the recodification act of the 2002 regular session of the general assembly; or

(2) rules adopted under the prior property law until those rules have been amended, repealed, or superseded.

(b) Rules adopted under the prior property law continue in effect after June 30, 2002, until the rules are amended, repealed, or

suspended.
As added by P.L.2-2002, SEC.1.

IC 32-16-1-9
References to prior property law

Sec. 9. (a) A reference in the recodification act of the 2002 regular session of the general assembly to a citation in the prior property law before its repeal is added in certain sections of the recodification act of the 2002 regular session of the general assembly only as an aid to the reader.

(b) The inclusion or omission in the recodification act of the 2002 regular session of the general assembly of a reference to a citation in the prior property law before its repeal does not affect:

(1) any rights or liabilities accrued;
(2) any penalties incurred;
(3) any violations committed;
(4) any proceedings begun;
(5) any bonds, notes, loans, or other forms of indebtedness issued, incurred, or made;
(6) any tax levies made;
(7) any funds established;
(8) any patents issued;
(9) the validity, continuation, or termination of contracts, easements, or leases executed;
(10) the validity, continuation, scope, termination, suspension, or revocation of:
    (A) permits;
    (B) licenses;
    (C) certificates of registration;
    (D) grants of authority; or
    (E) limitations of authority; or
(11) the validity of court decisions entered regarding the constitutionality of any provision of the prior property law;

before the effective date of the recodification act of the 2002 regular session of the general assembly (July 1, 2002). Those rights, liabilities, penalties, offenses, proceedings, bonds, notes, loans, other forms of indebtedness, tax levies, funds, patents, contracts, leases, licenses, permits, certificates of registration, and other grants of authority continue and shall be imposed and enforced under prior property law as if the recodification act of the 2002 regular session of the general assembly had not been enacted.

(c) The inclusion or omission in the recodification act of the 2002 regular session of the general assembly of a citation to a provision in the prior property law does not affect the use of a prior conviction, violation, or noncompliance under the prior property law as the basis for revocation of a license, permit, certificate of registration, or other grant of authority under the recodification act of the 2002 regular session of the general assembly, as necessary or appropriate to apply the recodification act of the 2002 regular session of the general assembly in a manner that does not result in a substantive change in

the law.
As added by P.L.2-2002, SEC.1.

IC 32-17

ARTICLE 17. INTERESTS IN PROPERTY

IC 32-17-1

Chapter 1. Fee Simple Interest

IC 32-17-1-1

"Grantor"

Sec. 1. As used in this chapter, "grantor" means every person by whom an estate or interest in land is:

(1) created;
(2) granted;
(3) bargained;
(4) sold;
(5) conveyed;
(6) transferred; or
(7) assigned.

As added by P.L.2-2002, SEC.2.

IC 32-17-1-2

Fee simple conveyance

Sec. 2. (a) A conveyance of land that is:

(1) worded in substance as "A.B. conveys and warrants to C.D." (insert a description of the premises) "for the sum of" (insert the consideration); and
(2) dated and signed, sealed, and acknowledged by the grantor;

is a conveyance in fee simple to the grantee and the grantee's heirs and assigns with a covenant as described in subsection (b).

(b) A conveyance in fee simple under subsection (a) includes a covenant from the grantor for the grantor and the grantor's heirs and personal representatives that the grantor:

(1) is lawfully seized of the premises;
(2) has good right to convey the premises;
(3) guarantees the quiet possession of the premises;
(4) guarantees that the premises are free from all encumbrances; and
(5) will warrant and defend the title to the premises against all lawful claims.

As added by P.L.2-2002, SEC.2.

IC 32-17-1-3

Estates tail; abolition

Sec. 3. (a) Estates tail are abolished.

(b) An estate that under common law is a fee tail:

(1) is considered a fee simple; and
(2) if the estate is not limited by a valid remainder, is considered a fee simple absolute.

As added by P.L.2-2002, SEC.2.

IC 32-17-1-4

Lineal and collateral warranties; abolition

Sec. 4. Lineal and collateral warranties with all their incidents are abolished. However, the heirs and devisees of a person who has made a covenant or agreement is answerable upon that covenant or agreement:

(1) to the extent of property descended or devised to the heirs and devisees; and

(2) in the manner prescribed by law.

As added by P.L.2-2002, SEC.2.

IC 32-17-2
Chapter 2. Estate

IC 32-17-2-1
Application; two or more persons; conveyances and devises

Sec. 1. (a) This section does not apply to:
(1) mortgages;
(2) conveyances in trust; or
(3) conveyances made to husband and wife.

(b) Every estate vested in executors or trustees as executors shall be held by them in joint tenancy.

(c) Except as provided in subsection (b), a conveyance or devise of land or of any interest in land made to two (2) or more persons creates an estate in common and not in joint tenancy unless:
(1) it is expressed in the conveyance or devise that the grantees or devisees hold the land or interest in land in joint tenancy and to the survivor of them; or
(2) the intent to create an estate in joint tenancy manifestly appears from the tenor of the instrument.

As added by P.L.2-2002, SEC.2.

IC 32-17-2-2
Deed of release or quitclaim

Sec. 2. A deed of release or quitclaim passes all the estate that the grantor (as defined in IC 32-17-1-1) may convey by a deed of bargain and sale.

As added by P.L.2-2002, SEC.2.

IC 32-17-2-3
Future estates; life estates; remainders

Sec. 3. (a) A freehold estate and a chattel real may be created to begin at a future day.

(b) An estate for life:
(1) may be created in a term of years with or without the intervention of a precedent estate; and
(2) a remainder may be limited on the estate for life.

(c) A remainder of a freehold or a chattel real, either contingent or vested, may be created, expectant on the termination of a term of years.

As added by P.L.2-2002, SEC.2.

IC 32-17-2-4
Contingent remainder

Sec. 4. A remainder may be limited on a contingency. If the contingency occurs, the contingency abridges or determines the precedent estate.

As added by P.L.2-2002, SEC.2.

IC 32-17-2-5
Conveyance by tenant for life or years

Sec. 5. A conveyance made by a tenant for life or years that purports to grant or convey a greater estate than the tenant possesses or can lawfully convey:

(1) does not result in a forfeiture of the tenants's estate; and

(2) passes to the grantee or alienee all the estate that the tenant may lawfully convey.

As added by P.L.2-2002, SEC.2.

IC 32-17-3

Chapter 3. Tenancy

IC 32-17-3-1

Husband and wife purchase or lease of real estate; rights of survivor

Sec. 1. (a) This section applies to a written contract in which a husband and wife:

(1) purchase real estate; or

(2) lease real estate with an option to purchase.

(b) Except as provided in subsection (d), a contract described in subsection (a) creates an estate by the entireties in the husband and wife. The interest of neither party is severable during the marriage.

(c) Upon the death of either party to the marriage, the survivor is considered to have owned the whole of all rights under the contract from its inception.

(d) If:

(1) a contract described in subsection (a) expressly creates a tenancy in common; or

(2) it appears from the tenor of a contract described in subsection (a) that the contract was intended to create a tenancy in common;

the contract shall be construed to create a tenancy in common.

As added by P.L.2-2002, SEC.2.

IC 32-17-3-2

Divorce

Sec. 2. If a husband and wife are divorced while a contract described in section 1(a) of this chapter is in effect, the husband and wife own the interest in the contract and the equity created by the contract in equal shares.

As added by P.L.2-2002, SEC.2.

IC 32-17-3-3

Title bond or contract for sale of land; survivorship

Sec. 3. If:

(1) a husband and wife execute a title bond or contract for the conveyance of real estate owned by them as tenants by the entireties; and

(2) one (1) of the spouses dies:

(A) during the continuance of the marriage; and

(B) before the whole of the agreed purchase price has been paid;

the interest of the deceased spouse in the unpaid part of the purchase price passes to the surviving spouse in the same right as the surviving spouse's rights of survivorship in real estate held as tenants by the entireties.

As added by P.L.2-2002, SEC.2.

IC 32-17-3-4

Husband and wife; joint deed of conveyance

Sec. 4. (a) A joint deed of conveyance by a husband and wife is sufficient to convey and pass any interest described in the deed of either or both of them in land held by them as:

(1) tenants in common;

(2) joint tenants; or

(3) tenants by the entireties.

(b) An executed and recorded power of attorney by one (1) spouse to the other spouse authorizing the conveyance by the attorney in fact of any interest owned:

(1) individually by the grantor (as defined in IC 32-17-1-1) of the power of attorney; or

(2) with the grantor's spouse;

enables the attorney in fact through the exercise of the power of attorney to effectively convey the interest in land by individually making a deed of conveyance.

As added by P.L.2-2002, SEC.2.

IC 32-17-4

Chapter 4. Partition Proceedings

IC 32-17-4-1

Compelling partition; defendants

Sec. 1. (a) The following persons may compel partition of land held in joint tenancy or tenancy in common as provided under this chapter:

(1) A person that holds an interest in the land as a joint tenant or tenant-in-common either:

(A) in the person's own right; or

(B) as executor or trustee.

(2) If the sale of the estate of a decedent who held an interest in the land as a joint tenant or tenant in common is necessary, the decedent's administrator or executor.

(b) A trustee, an administrator, or an executor may be made a defendant in an action for the partition of real estate to answer as to any interest the trustee, administrator, or executor has in the real estate.

As added by P.L.2-2002, SEC.2.

IC 32-17-4-2

Petition to partition; title search

Sec. 2. (a) A person described in section 1(a) of this chapter may file a petition to compel partition in the circuit court or court having probate jurisdiction of the county in which the land or any part of the land is located.

(b) A petition filed under subsection (a) must contain the following:

(1) A description of the premises.

(2) The rights and titles in the land of the parties interested.

(c) At the time a person files a petition under subsection (a), the person shall cause a title search to be made regarding the land that is the subject of the partition. The person shall file a copy of the results of the title search with the court.

As added by P.L.2-2002, SEC.2. Amended by P.L.41-2012, SEC.2.

IC 32-17-4-2.5

Procedure for partition actions

Sec. 2.5. (a) Not later than forty-five (45) days after the court has acquired jurisdiction over all the parties who have an interest in the property that is the subject of the action, the court shall refer the matter to mediation in accordance with the Indiana rules of alternative dispute resolution.

(b) Except as provided in subsection (c), mediation of the case may not begin until an appraiser files an appraisal report with the court.

(c) If each party waives the appraisal of the property, the case may move to mediation without the filing of an appraisal report.

(d) In its order referring the matter for mediation, the court shall

advise the parties:

(1) that the real or personal property will be sold if the parties are unable to reach an agreement not later than sixty (60) days after the order is issued; and

(2) that the parties may agree upon a method of the sale of the property, and if the parties do not agree upon a method of the sale of the property, the property may be sold at public auction or by the sheriff under subsection (g).

(e) Except if the parties agree to waive the appraisal of the property, not later than thirty (30) days after the court acquires jurisdiction under subsection (a), the court shall appoint a licensed real estate appraiser to appraise the property. The appraiser shall file the appraisal with the court.

(f) After receiving the appraisal, the court shall notify the parties of the appraised value of the property.

(g) If an agreed settlement is not reached in mediation or if the parties agree upon a method of sale, the court shall not later than thirty (30) days after the date the mediator files a report with the court that the mediation was not successful, or the parties file their agreement establishing the method of sale:

(1) order the property to be sold using the method that all the parties agree upon; or

(2) order the parties to select an auctioneer to sell the property. If the parties fail to select an auctioneer not later than thirty (30) days after the court's order to select an auctioneer, the court shall order the sheriff to sell the property in the same manner that property is sold at execution under IC 34-55-6. The manner of appraising property described in this section satisfies the appraisal requirement under IC 34-55-4 or any other statute. However, if the parties waive appraisal of the property:

(A) the court shall order the sale to proceed without relief from valuation or appraisement under IC 34-55-4 or any other statute; and

(B) IC 34-55-4-1 does not apply to the sale.

(h) At the time the court orders the property to be sold, the court shall notify all lienholders and other persons with an interest in the lien or property, as identified in the title search or lien search required under IC 29-1-17-11 or section 2 of this chapter, of the sale. The property must be sold free and clear of all liens and special assessments except prescriptive easements, easements of record, and irrevocable licenses, with any sum secured by a lien or special assessment to be satisfied from the proceeds of the sale.

(i) The person who causes a title search to be conducted under section 2 of this chapter or a title or lien search to be conducted under IC 29-1-17-11 is entitled to reimbursement from the proceeds of the sale.

(j) Any person who has paid a tax or special assessment on the property is entitled to pro rata reimbursement from the proceeds of the sale.

(k) Any person may advertise a sale under this section at the

person's own expense, but is not entitled to reimbursement for these expenses.

(l) After deduction of the amounts described in subsections (h), (i), and (j) and the reasonable expenses of the sale, the court shall divide the proceeds of the sale among the remaining property owners in proportion to their ownership interest.

(m) If a party having an ownership interest in the property becomes the successful purchaser of the property either through agreed settlement or through auction, that person shall be given a full credit based on the percentage of the person's interest in the property before the purchase.

(n) As used in this subsection, "real estate professional" has the meaning set forth in IC 23-1.5-1-13.5. If the court has ordered that some or all of the property be sold at auction and, at any time before the property is sold at auction, all parties inform the court in writing that they:

(1) wish to sell some or all of the property through a real estate professional;

(2) have jointly selected a real estate professional; and

(3) have agreed upon a listing price for the property;

the court shall rescind its order that the property, or a part of the property, be sold at auction and permit the property to be sold through a real estate professional. If some or all of the property has not been sold at the expiration of the listing agreement with the real estate professional, upon petition by any party, the court shall order the property to be sold at auction in accordance with subsection (h).

As added by P.L.41-2012, SEC.3. Amended by P.L.94-2014, SEC.4.

IC 32-17-4-3
Repealed

(Repealed by P.L.41-2012, SEC.4.)

IC 32-17-4-4
Repealed

(Repealed by P.L.41-2012, SEC.5.)

IC 32-17-4-5
Repealed

(Repealed by P.L.41-2012, SEC.6.)

IC 32-17-4-6
Repealed

(Repealed by P.L.41-2012, SEC.7.)

IC 32-17-4-7
Repealed

(Repealed by P.L.41-2012, SEC.8.)

IC 32-17-4-8
Repealed

(Repealed by P.L.41-2012, SEC.9.)

IC 32-17-4-9
Repealed
(Repealed by P.L.41-2012, SEC.10.)

IC 32-17-4-10
Repealed
(Repealed by P.L.41-2012, SEC.11.)

IC 32-17-4-11
Repealed
(Repealed by P.L.41-2012, SEC.12.)

IC 32-17-4-12
Repealed
(Repealed by P.L.41-2012, SEC.13.)

IC 32-17-4-13
Repealed
(Repealed by P.L.41-2012, SEC.14.)

IC 32-17-4-14
Repealed
(Repealed by P.L.41-2012, SEC.15.)

IC 32-17-4-15
Repealed
(Repealed by P.L.41-2012, SEC.16.)

IC 32-17-4-16
Repealed
(Repealed by P.L.41-2012, SEC.17.)

IC 32-17-4-17
Repealed
(Repealed by P.L.41-2012, SEC.18.)

IC 32-17-4-18
Repealed
(Repealed by P.L.41-2012, SEC.19.)

IC 32-17-4-19
Repealed
(Repealed by P.L.41-2012, SEC.20.)

IC 32-17-4-20
Repealed
(Repealed by P.L.41-2012, SEC.21.)

IC 32-17-4-21
Repealed
(Repealed by P.L.41-2012, SEC.22.)

IC 32-17-4-22
Repealed
(Repealed by P.L.41-2012, SEC.23.)

IC 32-17-4-23
Partition of fee and life estates
Sec. 23. A:
(1) person that owns:
(A) an undivided interest in fee simple in any lands; and
(B) a life estate in:
(i) the remaining part of the land; or
(ii) any part of the remaining portion of the land; or
(2) person that owns a fee in the land described in subdivision (1) that is subject to the undivided interest in fee and the life estate in the land;
may compel partition of the land and have the fee simple interest in the land set off and determined in the same manner as land is partitioned under Indiana law.
As added by P.L.2-2002, SEC.2.

IC 32-17-4-24
Repealed
(Repealed by P.L.41-2012, SEC.24.)

IC 32-17-5

Chapter 5. Partition Investment Limitations

IC 32-17-5-1

Application of chapter

Sec. 1. This chapter applies to a person that is entitled to:

(1) an estate in real estate for life or years;
(2) an estate tail;
(3) a fee simple;
(4) a conditional, base, or qualified fee;
(5) a particular, limited, or conditional estate in real estate; or
(6) an interest in personal property;

and any other person is entitled to a vested or contingent remainder, an executory devise, or any other vested or contingent interest in the same real estate or personal property.

As added by P.L.2-2002, SEC.2.

IC 32-17-5-2

Decree selling, exchanging, or leasing property

Sec. 2. On application of a party in interest described in section 1 of this chapter, the circuit court may, if all the parties are:

(1) parties to the proceedings and before the court; or
(2) properly served with notice as in other civil actions;

decree a sale, exchange, or lease of the real estate, or sale or exchange of the personal property, if the court considers a sale, exchange, or lease to be advantageous to the parties concerned.

As added by P.L.2-2002, SEC.2.

IC 32-17-5-3

Investment of proceeds

Sec. 3. If the court decrees a sale, exchange, or lease under section 2 of this chapter, the court shall direct the investment of the proceeds of the:

(1) sale;
(2) terms of the instrument of exchange or lease; or
(3) limitations of the reversion and rents and income;

so as to inure as by the original grant, devise, or condition to the use of the same parties who would be entitled to the property sold or leased or the income of the personal property.

As added by P.L.2-2002, SEC.2.

IC 32-17-5-4

Effect of decree

Sec. 4. If all persons in being are parties who would be entitled to the property sold or leased or the income of the personal property if the contingency had happened at the date of the commencement of the proceedings, a decree under section 2 of this chapter is binding on any person that claims an interest in the real estate or personal property:

(1) under any party to the decree;

(2) under any person from whom a party to the decree claims; or
(3) from, under, or by the original:
(A) deed;
(B) will; or
(C) instrument;
by which the particular, limited, or conditional estate with remainders or executory devisees was created.
As added by P.L.2-2002, SEC.2.

IC 32-17-5-5
Jurisdiction; guardian ad litem
Sec. 5. (a) The circuit court:
(1) of the county in which a will, deed, or instrument:
(A) is probated or recorded; and
(B) under or from which a party claims or derives the party's interest in the real or personal property that is the subject of the will, deed, or instrument; or
(2) that has jurisdiction of a trust from which the property is derived;
has jurisdiction to hear and determine the rights of the parties under this chapter. Proceedings under this chapter are commenced by complaint as in other civil actions.
(b) For an infant defendant who is a member of the class for whom property that is the subject of a proceeding under this chapter is held:
(1) in reversion;
(2) in remainder; or
(3) upon condition;
the court shall appoint a special guardian ad litem who is not related to any of the parties interested in the property. The living members stand for and represent the whole class, and the parties stand for and represent the full title and whole interest in the property.
As added by P.L.2-2002, SEC.2.

IC 32-17-5-6
Personal property; investment in securities
Sec. 6. If the proceeds under section 3 of this chapter are invested in personal property, the court may, in the court's decree, direct additional investment:
(1) in securities; and
(2) upon terms and conditions;
that the court considers to be in the best interests of the parties.
As added by P.L.2-2002, SEC.2.

IC 32-17-6

Chapter 6. Powers of Appointment-Renunciation or Exercise

IC 32-17-6-1

Application of chapter

Sec. 1. This chapter applies to a person who holds a power of appointment under any of the following:

(1) A last will and testament of a decedent.
(2) A deed.
(3) An indenture of trust inter vivos.
(4) An insurance policy.
(5) Any other contract or instrument.

As added by P.L.2-2002, SEC.2.

IC 32-17-6-2

Execution of instruments; renouncing or exercising power

Sec. 2. A person described in section 1 of this chapter may execute an appropriate written instrument to, in whole or in part:

(1) renounce the person's right of appointment; or
(2) exercise the person's power of appointment one (1) or more times.

As added by P.L.2-2002, SEC.2.

IC 32-17-6-3

Renouncing right of appointment

Sec. 3. A renouncement of a right of appointment is final and irrevocable unless the right to revoke the renouncement or to repossess the right of appointment is expressly reserved in the instrument of renouncement.

As added by P.L.2-2002, SEC.2.

IC 32-17-6-4

Power of appointment

Sec. 4. Unless a person exercising a power of appointment expressly renounces and surrenders the right to revoke an appointment in the instrument of appointment, the person may subsequently revoke the appointment and may periodically:

(1) exercise;
(2) revoke the exercise of; and
(3) reexercise the power of appointment.

As added by P.L.2-2002, SEC.2.

IC 32-17-6-5

Effect of subsequent appointment

Sec. 5. A subsequent exercise of a right of appointment is a revocation of all prior appointments to the extent that the subsequent appointment conflicts or is inconsistent with any prior appointments.

As added by P.L.2-2002, SEC.2.

IC 32-17-6-6

Last unrevoked appointment

Sec. 6. The last unrevoked exercise of a power of appointment is effective and controlling.

As added by P.L.2-2002, SEC.2.

IC 32-17-7
Repealed

(Repealed by P.L.5-2003, SEC.2.)

IC 32-17-8

Chapter 8. Uniform Statutory Rule Against Perpetuities

IC 32-17-8-1

Application of chapter; reformation of disposition created before May 8, 1991

Sec. 1. (a) Except as provided in subsection (b), this chapter applies to a nonvested property interest or a power of appointment that is created on or after May 8, 1991. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(b) If a nonvested property interest or a power of appointment was created before May 8, 1991, and:

(1) is determined in a judicial proceeding commenced on or after May 8, 1991, to violate this state's rule against perpetuities as that rule existed before May 8, 1991; or

(2) may violate this state's rule against perpetuities as that rule existed before May 8, 1991;

a court upon the petition of an interested person shall reform the disposition by inserting a savings clause that most closely preserves the transferor's plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

As added by P.L.2-2002, SEC.2.

IC 32-17-8-2

Exclusions

Sec. 2. This chapter does not apply to the following:

(1) A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of any of the following:

(A) A premarital or postmarital agreement.

(B) A separation or divorce settlement.

(C) A spouse's election.

(D) A similar arrangement arising out of a prospective, an existing, or a previous marital relationship between the parties.

(E) A contract to make or not to revoke a will or trust.

(F) A contract to exercise or not to exercise a power of appointment.

(G) A transfer in satisfaction of a duty of support.

(H) A reciprocal transfer.

(2) A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income.

(3) A power to appoint a fiduciary.

(4) A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal.

(5) A nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision.

(6) A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, a profit sharing, a stock bonus, a health, a disability, a death benefit, an income deferral, or other current or deferred benefit plan for one (1) or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse.

(7) A property interest, power of appointment, or arrangement that was not subject to the common law rule against perpetuities or is excluded by another Indiana statute.

(8) A:

(A) provision for the accumulation of an amount of the income of a trust estate reasonably necessary for the upkeep, repair, or proper management of the subject of the estate;

(B) direction in a trust that provides for the allocation wholly or in part to the principal of the trust of stock dividends or stock rights derived from shares held in a trust;

(C) provision for a sinking or reserve fund; or

(D) statutory provision directing an accumulation.

As added by P.L.2-2002, SEC.2.

IC 32-17-8-3

Nonvested property interests; powers of appointment; validity

Sec. 3. (a) A nonvested property interest is valid if:

(1) when the interest is created, the interest is certain to vest or terminate not later than twenty-one (21) years after the death of an individual then alive; or

(2) the interest either vests or terminates within ninety (90) years after the interest's creation.

(b) A general power of appointment not presently exercisable because of a condition precedent is valid if:

(1) when the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy not later than twenty-one (21) years after the death of an individual then alive; or

(2) the condition precedent either is satisfied or becomes impossible to satisfy within ninety (90) years after the condition precedent's creation.

(c) A nongeneral power of appointment or a general testamentary power of appointment is valid if:

(1) when the power is created, the power is certain to be irrevocably exercised or otherwise to terminate not later than twenty-one (21) years after the death of an individual then alive; or

(2) the power is irrevocably exercised or otherwise terminates within ninety (90) years after the power's creation.

(d) In determining whether a nonvested property interest or a power of appointment is valid under subsection (a)(1), (b)(1), or (c)(1), the possibility that a child will be born to an individual after the individual's death is disregarded.

As added by P.L.2-2002, SEC.2.

IC 32-17-8-4

Nonvested property interests or powers of appointment; time of creation

Sec. 4. (a) Except as provided in subsections (b) and (c) and in section 1(a) of this chapter, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(b) For purposes of this chapter, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of:

(1) a nonvested property interest; or

(2) a property interest subject to a power of appointment described in section 3(b) or 3(c) of this chapter;

the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(c) For purposes of this chapter, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

As added by P.L.2-2002, SEC.2.

IC 32-17-8-5

Clauses taking effect upon the later of certain occurrences; portion invalid; construction

Sec. 5. (a) This section applies to a clause in a governing instrument that:

(1) purports to:

(A) postpone the vesting or termination of any interest or trust until;

(B) disallow the vesting or termination of any interest or trust beyond;

(C) require all interests or trusts to vest or terminate not later than; or

(D) operate in any similar fashion upon;

the occurrence of an event described in subdivision (2); and

(2) takes effect upon the later of the following occurrences:

(A) The expiration of a period that exceeds twenty-one (21) years or that might exceed twenty-one (21) years after the death of the survivor of lives in being at the creation of the trust or other property arrangement.

(B) The death of, or the expiration of a period not exceeding twenty-one (21) years after the death of, the survivor of specified lives in being at the creation of the trust or other property arrangement.

(b) If a clause described in subsection (a) appears in an instrument creating a trust or other property arrangement, then, in measuring a period from the creation of a trust or other property arrangement, the portion of the clause that pertains to the period that exceeds twenty-one (21) years or that might exceed twenty-one (21) years after the death of the survivor of lives in being at the creation of the trust or other property arrangement is not valid. The court shall construe the clause as becoming effective upon:

(1) the death of; or

(2) the expiration of the period not exceeding twenty-one (21) years after the death of;

the survivor of the specified lives in being at the creation of the trust or other property arrangement.

As added by P.L.2-2002, SEC.2.

IC 32-17-8-6

Judicial reformation of disposition

Sec. 6. Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely preserves the transferor's plan of distribution and is within the ninety (90) years allowed by section 3(a)(2), 3(b)(2), or 3(c)(2) of this chapter if:

(1) a nonvested property interest or a power of appointment becomes invalid under section 3 of this chapter;

(2) a class gift is not but might become invalid under section 3 of this chapter and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(3) a nonvested property interest that is not validated by section 3(a)(1) of this chapter can vest but not within ninety (90) years after the interest's creation.

As added by P.L.2-2002, SEC.2.

IC 32-17-9
Repealed

(Repealed by P.L.143-2009, SEC.52.)

IC 32-17-10

Chapter 10. Limitations on Possibility of Reverter or Rights of Entry for a Breach of a Condition Subsequent

IC 32-17-10-1

Application of chapter

Sec. 1. This chapter does not apply to the following:

(1) A conveyance made for the purpose of extinguishing a possibility of reverter or a right of entry.

(2) The rights of:

(A) a mortgagee based on the terms of the mortgage;

(B) a trustee or beneficiary under a trust deed in the nature of a mortgage based on the terms of the trust deed;

(C) a grantor under a vendor's lien reserved in a deed;

(D) a lessor under a lease for a term of years; or

(E) a person with a separate property interest in coal, oil, gas, or other minerals.

As added by P.L.2-2002, SEC.2.

IC 32-17-10-2

Duration of possibility of reverter or right of entry for breach of condition subsequent

Sec. 2. A possibility of reverter or right of entry for breach of a condition subsequent concerning real property is invalid after thirty (30) years from the date the possibility of reverter or right of entry is created, notwithstanding a period of creation longer than thirty (30) years:

(1) if the breach of the condition has not occurred; and

(2) despite whether the possibility of reverter or right of entry was created before, on, or after July 1, 1993.

As added by P.L.2-2002, SEC.2.

IC 32-17-10-3

Expired rights of action

Sec. 3. A person may not commence an action for recovery of any part of real property after June 30, 1994, based on a possibility of reverter or right of entry for a breach of a condition subsequent if:

(1) the breach of the condition occurred before July 1, 1993; and

(2) the possibility of reverter or right of entry was created before July 1, 1963.

As added by P.L.2-2002, SEC.2.

IC 32-17-11
Chapter 11. Multiple Party Accounts

IC 32-17-11-1
"Account" defined
Sec. 1. (a) As used in this chapter, "account" means a contract of deposit of funds between a depositor and a financial institution.
(b) The term includes a checking account, savings account, certificate of deposit, share account, and other like arrangement.
As added by P.L.2-2002, SEC.2.

IC 32-17-11-2
"Beneficiary"defined
Sec. 2. As used in this chapter, "beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee.
As added by P.L.2-2002, SEC.2.

IC 32-17-11-3
"Financial institution" defined
Sec. 3. (a) As used in this chapter, "financial institution" means any organization authorized to do business in Indiana under IC 28 or federal law relating to financial institutions.
(b) The term includes the following:
(1) Banks and trust companies.
(2) Building and loan associations.
(3) Industrial loan and investment companies.
(4) Savings banks.
(5) Credit unions.
As added by P.L.2-2002, SEC.2.

IC 32-17-11-4
"Joint account" defined
Sec. 4. As used in this chapter, "joint account" means an account payable on request to one (1) or more of two (2) or more parties whether or not mention is made of any right of survivorship.
As added by P.L.2-2002, SEC.2.

IC 32-17-11-5
"Multiple party account" defined
Sec. 5. (a) As used in this chapter, "multiple party account" means any of the following types of accounts:
(1) A joint account.
(2) A trust account.
(b) The term does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, or accounts controlled by one (1) or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization, or a regular fiduciary or trust account where the relationship is established other than by

deposit agreement.
As added by P.L.2-2002, SEC.2. Amended by P.L.143-2009, SEC.33.

IC 32-17-11-6
"Net contribution" defined

Sec. 6. As used in this chapter, "net contribution" of a party to a joint account as of any given time means the sum of:

(1) all deposits made by or for the party; minus
(2) all withdrawals made by or for the party that have not been paid to or applied to the use of any other party; plus
(3) a pro rata share of any interest or dividends included in the current balance.

The term includes any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question.
As added by P.L.2-2002, SEC.2.

IC 32-17-11-7
"Party" defined

Sec. 7. (a) As used in this chapter, "party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple party account. A beneficiary of a trust account is a party only after the account becomes payable to the payee or beneficiary by reason of the payee's or beneficiary's surviving the original payee or trustee.

(b) Unless the context otherwise requires, the term includes a guardian, conservator, personal representative, or assignee, including an attaching creditor, of a party. The term also includes a person identified as a trustee of an account for another whether or not a beneficiary is named.

(c) The term does not include:

(1) any named beneficiary unless the beneficiary has a present right of withdrawal; or
(2) a person who is merely authorized to make a request as the agent of another.

As added by P.L.2-2002, SEC.2. Amended by P.L.143-2009, SEC.34.

IC 32-17-11-8
"Payment" defined

Sec. 8. As used in this chapter, "payment" of sums on deposit includes the following:

(1) Withdrawal.
(2) Payment on check or other directive of a party.
(3) Any pledge of sums on deposit by a party.
(4) Any set-off, reduction, or other disposition of all or part of any account pursuant to a pledge.

As added by P.L.2-2002, SEC.2.

IC 32-17-11-9
"Proof of death" defined

Sec. 9. As used in this chapter, "proof of death" includes a death certificate, an affidavit of death, or a record or report that is prima facie proof of death under IC 29-2-6, IC 29-2-7 (before its repeal), or IC 29-2-14.
As added by P.L.2-2002, SEC.2.

IC 32-17-11-10
Repealed
(Repealed by P.L.143-2009, SEC.52.)

IC 32-17-11-11
Repealed
(Repealed by P.L.143-2009, SEC.52.)

IC 32-17-11-12
"Request" defined
Sec. 12. As used in this chapter, "request" means:
(1) a proper request for withdrawal; or
(2) a check or order for payment;
that complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution. If the financial institution conditions withdrawal or payment on advance notice, for purposes of this section, the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.
As added by P.L.2-2002, SEC.2.

IC 32-17-11-13
"Sums on deposit" defined
Sec. 13. As used in this chapter, "sums on deposit" means the balance payable on a multiple party account, including interest, dividends, and any deposit life insurance proceeds added to the account by reason of the death of a party.
As added by P.L.2-2002, SEC.2.

IC 32-17-11-14
"Trust account" defined
Sec. 14. (a) As used in this chapter, "trust account" means an account in the name of at least one (1) party as trustee for at least one (1) beneficiary if:
(1) the relationship is established by the form of the account and the deposit agreement with the financial institution; and
(2) there is no subject of the trust other than the sums on deposit in the account.
It is not essential that payment to the beneficiary be mentioned in the deposit agreement.
(b) The term does not include the following:
(1) A regular trust account under a testamentary trust.
(2) A trust agreement that has significance apart from the

account.

(3) A fiduciary account arising from a fiduciary relation such as attorney-client.

As added by P.L.2-2002, SEC.2.

IC 32-17-11-15
"Withdrawal" defined

Sec. 15. As used in this chapter, "withdrawal" includes payment to a third person pursuant to a check or other directive of a party.

As added by P.L.2-2002, SEC.2.

IC 32-17-11-16
Application of certain sections

Sec. 16. (a) The provisions of sections 17, 18, and 19 of this chapter concerning beneficial ownership as between parties, or as between parties and beneficiaries of multiple party accounts:

(1) apply only to controversies between:

(A) the parties or the beneficiaries of multiple party accounts; and

(B) creditors and other successors of:

(i) the parties; or

(ii) the beneficiaries of multiple party accounts; and

(2) do not affect the power of withdrawal of the parties or the beneficiaries of multiple party accounts as determined by the terms of account contracts.

(b) The provisions of sections 22 through 27 of this chapter govern the liability and set-off rights of financial institutions that make payments under sections 22 through 27 of this chapter.

As added by P.L.2-2002, SEC.2. Amended by P.L.143-2009, SEC.35.

IC 32-17-11-17
Ownership of accounts

Sec. 17. (a) Unless there is clear and convincing evidence of a different intent, during the lifetime of all parties, a joint account belongs to the parties in proportion to the net contributions by each party to the sums on deposit.

(b) Unless:

(1) a contrary intent is manifested by the terms of the account or the deposit agreement; or

(2) there is other clear and convincing evidence of an irrevocable trust;

a trust account belongs beneficially to the trustee during the trustee's lifetime. If at least two (2) parties are named as trustee on the account, subsection (a) governs the beneficial rights of the trustees during their lifetimes. If there is an irrevocable trust, the account belongs beneficially to the beneficiary.

As added by P.L.2-2002, SEC.2. Amended by P.L.143-2009, SEC.36.

IC 32-17-11-18
Ownership of accounts at death of party, original payee, or trustee

Sec. 18. (a) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created. If there are at least two (2) surviving parties, their respective ownerships during lifetime are:

(1) in proportion to their previous ownership interests under section 17 of this chapter; and

(2) augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before the person's death.

The right of survivorship continues between the surviving parties.

(b) If the account is a trust account, on death of the trustee or the survivor of at least two (2) trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries who survive the trustee, unless there is clear and convincing evidence of a contrary intent. If at least two (2) beneficiaries survive, there is no right of survivorship between the beneficiaries unless the terms of the account or deposit agreement expressly provide for survivorship.

(c) Except as provided in subsections (a) and (b), the death of any party to a multiple party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of the decedent's estate.

(d) A right of survivorship arising:

(1) from the express terms of the account; or

(2) under:

(A) this section; or

(B) a beneficiary designation in a trust account;

cannot be changed by will.

As added by P.L.2-2002, SEC.2. Amended by P.L.143-2009, SEC.37.

IC 32-17-11-19

Rights of survivorship

Sec. 19. (a) The provisions of section 18 of this chapter as to rights of survivorship are determined by the form of the account at the death of a party.

(b) The form of an account may be altered by written order given by a party to the financial institution to:

(1) change the form of the account; or

(2) stop or vary payment under the terms of the account.

(c) An order or request described in subsection (b) must be:

(1) signed by a party;

(2) received by the financial institution during the party's lifetime; and

(3) not countermanded by another written order of the same party during the party's lifetime.

As added by P.L.2-2002, SEC.2.

IC 32-17-11-20

Certain transfers not testamentary

Sec. 20. Any transfers resulting from the application of section 18 of this chapter are:

(1) effective by reason of:

(A) the account contracts involved; and

(B) this chapter; and

(2) not to be considered as:

(A) testamentary; or

(B) subject to IC 29.

As added by P.L.2-2002, SEC.2.

IC 32-17-11-21
Repealed

(Repealed by P.L.165-2002, SEC.15.)

IC 32-17-11-21.1
Liability for creditor claims and statutory allowances; applicable law

Sec. 21.1. The liability of a surviving party or beneficiary for creditor claims and statutory allowances is determined under IC 32-17-13.

As added by P.L.165-2002, SEC.12. Amended by P.L.143-2009, SEC.38.

IC 32-17-11-22
Payments; multiple party accounts

Sec. 22. (a) Financial institutions may enter into multiple party accounts to the same extent that they may enter into single party accounts.

(b) Any multiple party account may be paid, on request, to any one (1) or more of the parties.

(c) For purposes of establishing net contributions, a financial institution is not required to inquire as to:

(1) the source of funds received for deposit to a multiple party account; or

(2) the proposed application of any sum withdrawn from an account.

As added by P.L.2-2002, SEC.2.

IC 32-17-11-23
Payments; joint accounts

Sec. 23. (a) Except as provided in subsection (b), any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded.

(b) Payment may not be made to the personal representative or heirs of a deceased party unless:

(1) proofs of death are presented to the financial institution showing that the decedent was the last surviving party; or

(2) there is no right of survivorship under section 18 of this chapter.

As added by P.L.2-2002, SEC.2.

IC 32-17-11-24
Repealed
(Repealed by P.L.143-2009, SEC.52.)

IC 32-17-11-25
Payments; trust accounts
Sec. 25. A trust account may be paid, on request:
(1) to any trustee;
(2) unless the financial institution has received written notice that the beneficiary has a vested interest not dependent upon the beneficiary surviving the trustee, if proof of death is presented to the financial institution showing that the decedent was the survivor of all other persons named on the account either as trustee or beneficiary, to the personal representative or heirs of a deceased trustee; and
(3) upon presentation to the financial institution of proof of death showing that the beneficiary or beneficiaries survived all persons named as trustee, to the beneficiary or beneficiaries.
As added by P.L.2-2002, SEC.2.

IC 32-17-11-26
Payments; discharge of financial institutions from all claims
Sec. 26. (a) Payment made under section 22, 23, or 25 of this chapter discharges the financial institution from all claims for amounts paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, beneficiaries, or their successors.
(b) The protection provided under this section does not extend to payments made after a financial institution has received written notice from any party able to request present payment to the effect that withdrawals in accordance with the terms of the account should not be permitted.
(c) Unless a notice described in subsection (b) is withdrawn by the person giving it, the successor of any deceased party must concur in any demand for withdrawal if the financial institution is to be protected under this section.
(d) No other notice or any other information shown to have been available to a financial institution affects the institution's right to the protection provided under this section.
(e) The protection provided under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of funds in or withdrawn from multiple party accounts.
As added by P.L.2-2002, SEC.2. Amended by P.L.143-2009, SEC.39.

IC 32-17-11-27
Right of financial institutions to set off against accounts
Sec. 27. (a) Without qualifying any other statutory right to set off

or lien and subject to any contractual provision, if a party to a multiple party account is indebted to a financial institution, the financial institution has a right to set off against the account in which the party has, or had immediately before the party's death, a present right of withdrawal.

(b) The amount of the account subject to set off as described in subsection (a) is that proportion to which the debtor is, or was immediately before the debtor's death, beneficially entitled.

(c) In the absence of proof of net contributions, the amount of the account subject to set off as described in subsection (a) is an equal share with all parties having present rights of withdrawal.

As added by P.L.2-2002, SEC.2.

IC 32-17-11-28

Provisions in certain agreements nontestamentary; creditors' rights

Sec. 28. (a) Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, pension plan, trust agreement, conveyance, or any other written instrument effective as a contract, gift, conveyance, or trust is considered to be nontestamentary, and this title and IC 29 do not invalidate the instrument or any provision:

(1) That money or other benefits due to, controlled, or owned by a decedent before the person's death shall be paid after the person's death to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.

(2) That any money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promisor before payment or demand.

(3) That any property that is the subject of the instrument shall pass to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.

(b) This section does not limit the rights of creditors under other Indiana laws.

As added by P.L.2-2002, SEC.2.

IC 32-17-11-29

Personal property owned as tenants in common; exceptions

Sec. 29. (a) This section does not apply to an account.

(b) Except as provided in subsection (c), personal property that is owned by two (2) or more persons is owned by them as tenants in common unless expressed otherwise in a written instrument.

(c) Upon the death of either husband or wife:

(1) household goods:

(A) acquired during marriage; and

(B) in possession of both husband and wife; and

(2) any:

(A) promissory note;

(B) bond;

(C) certificate of title to a motor vehicle; or

(D) other written or printed instrument;

evidencing an interest in tangible or intangible personal property in the name of both husband and wife;

becomes the sole property of the surviving spouse unless a clear contrary intention is expressed in a written instrument.

As added by P.L.2-2002, SEC.2.

IC 32-17-12

Chapter 12. Contracts Concerning United States Lands

IC 32-17-12-1

Voidance of contracts

Sec. 1. A contract for valid consideration:

(1) to sell any interest, real or supposed, in any land belonging to the United States;

(2) for the occupancy of land belonging to the United States; or

(3) for any improvement made on land belonging to the United States;

may not be voided by either party or the party's heirs, executors, administrators, or assigns if the nature and extent of the interest were, at the time of contract, known to the party, and the party's consent to the interest was obtained without fraud, conspiracy, or misrepresentation.

As added by P.L.2-2002, SEC.2.

IC 32-17-13

Chapter 13. Liability of Nonprobate Transferees for Creditor Claims and Statutory Allowances

IC 32-17-13-1

"Nonprobate transfer"; transfers involving multiple party accounts, motor vehicles, and watercraft

Sec. 1. (a) As used in this chapter, "nonprobate transfer" means a valid transfer, effective at death, by a transferor:

(1) whose last domicile was in Indiana; and

(2) who immediately before death had the power, acting alone, to prevent transfer of the property by revocation or withdrawal and:

(A) use the property for the benefit of the transferor; or

(B) apply the property to discharge claims against the transferor's probate estate.

(b) The term does not include a transfer at death (other than a transfer to or from the decedent's probate estate) of:

(1) a survivorship interest in a tenancy by the entireties real estate;

(2) a life insurance policy or annuity;

(3) the death proceeds of a life insurance policy or annuity;

(4) an individual retirement account or a similar account or plan; or

(5) benefits under an employee benefit plan.

(c) With respect to a nonprobate transfer involving a multiple party account, a nonprobate transfer occurs if the last domicile of the depositor whose interest is transferred under IC 32-17-11 was in Indiana.

(d) With respect to a motor vehicle or a watercraft, a nonprobate transfer occurs if the transferee obtains a certificate of title in Indiana for:

(1) the motor vehicle under IC 9-17-2-2(b); or

(2) the watercraft as required by IC 9-31-2-16(a).

(e) A transfer on death transfer completed under IC 32-17-14 is a nonprobate transfer.

As added by P.L.165-2002, SEC.11. Amended by P.L.143-2009, SEC.40; P.L.6-2010, SEC.22; P.L.36-2011, SEC.10; P.L.125-2012, SEC.408.

IC 32-17-13-2

Insufficiency of estate to pay claims and statutory allowances; liability of nonprobate transferee

Sec. 2. (a) Except as otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability to a decedent's probate estate for:

(1) allowed claims against the decedent's probate estate; and

(2) statutory allowances to the decedent's spouse and children;

to the extent the decedent's probate estate is insufficient to satisfy those claims and allowances.

(b) The liability of the nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by the nonprobate transferee.

(c) The liability of the nonprobate transferee does not include the net contributions of the nonprobate transferee.

As added by P.L.165-2002, SEC.11.

IC 32-17-13-3

Priority of liability to probate estate

Sec. 3. Nonprobate transferees are liable for the insufficiency described in section 2 of this chapter in the following order:

(1) As provided in the decedent's will or other governing instrument.

(2) To the extent of the value of the nonprobate transfer received or controlled by the trustee of trusts that can be amended, modified, or revoked by the decedent during the decedent's lifetime. If there is more than one (1) such trust, in proportion to the relative value of the trusts.

(3) Other nonprobate transferees in proportion to the values received.

As added by P.L.165-2002, SEC.11.

IC 32-17-13-4

Beneficiary interests in trusts

Sec. 4. Unless otherwise provided by the trust instrument, interest of beneficiaries in all trusts incurring liabilities under this chapter shall abate as necessary to satisfy the liability as if all of the trust instruments were a single trust.

As added by P.L.165-2002, SEC.11. Amended by P.L.101-2008, SEC.11.

IC 32-17-13-5

Apportionment of liability by instrument

Sec. 5. (a) A provision made in an instrument may direct the apportionment of the liability among the nonprobate transferees taking under that or any other governing instrument.

(b) If a provision in an instrument conflicts with a provision in another instrument, the later provision prevails.

As added by P.L.165-2002, SEC.11.

IC 32-17-13-6

Enforcement proceedings; jurisdiction

Sec. 6. Upon due notice to a nonprobate transferee, the liability imposed by this chapter is enforceable in proceedings in Indiana in the county where:

(1) the transfer occurred;

(2) the transferee is located; or

(3) the probate action is pending.

As added by P.L.165-2002, SEC.11.

IC 32-17-13-7

Commencement of proceedings; immunity of personal representative

Sec. 7. (a) A proceeding under this chapter may not be commenced unless the personal representative of the decedent's estate has received a written demand for the proceeding from the surviving spouse or a surviving child, to the extent that statutory allowances are affected, or a creditor.

(b) 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 and not of the estate.

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

As added by P.L.165-2002, SEC.11. Amended by P.L.6-2010, SEC.23.

IC 32-17-13-8

Deadline for commencement of proceedings

Sec. 8. A proceeding under this chapter must be commenced not later than nine (9) months after the person's death, but a proceeding on behalf of a creditor whose claim was timely filed may be commenced within:

(1) sixty (60) days after final allowance of the claim; or

(2) ninety (90) days after demand is made under section 7 of this chapter if the personal representative declines or fails to commence a proceeding after receiving the demand.

As added by P.L.165-2002, SEC.11. Amended by P.L.6-2010, SEC.24.

IC 32-17-13-9

Release of obligor or trustee from liability for transfer of assets to nonprobate transferee

Sec. 9. Unless written notice asserting that a decedent's probate estate is insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, the following rules apply:

(1) Payment or delivery of assets by a financial institution, registrar, or another obligor to a nonprobate transferee under the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered.

(2) A trustee receiving or controlling a nonprobate transfer is released from liability under this section on any assets distributed to the trust's beneficiaries. Each beneficiary, to the extent of the distribution received, becomes liable for the amount of the trustee's liability attributable to that asset imposed by sections 2 and 3 of this chapter.

As added by P.L.165-2002, SEC.11.

IC 32-17-14

Chapter 14. Transfer on Death Property Act

IC 32-17-14-0.2

Application of prior law

Sec. 0.2. The addition of IC 32-4-1.6 ("Uniform Act on Transfer on Death Securities" before its repeal, codified at IC 32-17-9, before its repeal) does not apply to an individual whose death occurs before July 1, 1997.

As added by P.L.220-2011, SEC.518.

IC 32-17-14-1

Citation

Sec. 1. This chapter may be cited as the Transfer on Death Property Act.

As added by P.L.143-2009, SEC.41.

IC 32-17-14-2

Applicability

Sec. 2. (a) Except as provided elsewhere in this chapter, this chapter applies to a transfer on death security, transfer on death securities account, and pay on death account created before July 1, 2009, unless the application of this chapter would:

(1) adversely affect a right given to an owner or beneficiary;

(2) give a right to any owner or beneficiary that the owner or beneficiary was not intended to have when the transfer on death security, transfer on death securities account, or pay on death account was created;

(3) impose a duty or liability on any person that was not intended to be imposed when the transfer on death security, transfer on death securities account, or pay on death account was created; or

(4) relieve any person from any duty or liability imposed:

(A) by the terms of the transfer on death security, transfer on death securities account, or pay on death account; or

(B) under prior law.

(b) Subject to section 32 of this chapter, this chapter applies to a transfer on death transfer if at the time the owner designated the beneficiary:

(1) the owner was a resident of Indiana;

(2) the property subject to the beneficiary designation was situated in Indiana;

(3) the obligation to pay or deliver arose in Indiana;

(4) the transferring entity was a resident of Indiana or had a place of business in Indiana; or

(5) the transferring entity's obligation to make the transfer was accepted in Indiana.

(c) This chapter does not apply to property, money, or benefits paid or transferred at death under a life or accidental death insurance policy, annuity, contract, plan, or other product sold or issued by a

life insurance company unless the provisions of this chapter are incorporated into the policy or beneficiary designation in whole or in part by express reference.

(d) This chapter does not apply to a transfer on death transfer if the beneficiary designation or an applicable law expressly provides that this chapter does not apply to the transfer.

(e) Subject to IC 9-17-3-9(h) and IC 9-31-2-30(h), this chapter applies to a beneficiary designation for the transfer on death of a motor vehicle or a watercraft.

(f) The provisions of:

(1) section 22 of this chapter; and

(2) section 26(b)(9) of this chapter;

relating to distributions to lineal descendants per stirpes apply to a transfer on death or payable on death transfer created before July 1, 2009.

As added by P.L.143-2009, SEC.41. Amended by P.L.6-2010, SEC.25.

IC 32-17-14-2.1

Application of chapter to preexisting transfer on death transfers

Sec. 2.1. An amendment to the rules of law contained in this chapter applies to all transfer on death transfers created prior to the effective date of the applicable amendment.

As added by P.L.149-2012, SEC.13.

IC 32-17-14-2.5

Applicability

Sec. 2.5. This chapter does not apply to property, money, or benefits paid or transferred at death under:

(1) an employee benefit plan governed by the Employees Retirement Income Security Act of 1974;

(2) an individual retirement account; or

(3) a similar account or plan intended to qualify for a tax exemption or deferral under the Internal Revenue Code;

unless the provisions of this chapter are incorporated into the governing instrument or beneficiary designation in whole or in part by express reference.

As added by P.L.36-2011, SEC.11.

IC 32-17-14-3

Definitions

Sec. 3. The following definitions apply throughout this chapter:

(1) "Beneficiary" means a person designated or entitled to receive property because of another person's death under a transfer on death transfer.

(2) "Beneficiary designation" means a written instrument other than a will or trust that designates the beneficiary of a transfer on death transfer.

(3) "Governing instrument" refers to a written instrument agreed to by an owner that establishes the terms and conditions of an

ownership in beneficiary form.
(4) "Joint owners" refers to persons who hold property as joint tenants with a right of survivorship. However, the term does not include a husband and wife who hold property as tenants by the entirety.
(5) "LDPS" means an abbreviation of lineal descendants per stirpes, which may be used in a beneficiary designation to designate a substitute beneficiary as provided in section 22 of this chapter.
(6) "Owner" refers to a person or persons who have a right to designate the beneficiary of a transfer on death transfer.
(7) "Ownership in beneficiary form" means holding property under a registration in beneficiary form or other written instrument that:
(A) names the owner of the property;
(B) directs ownership of the property to be transferred upon the death of the owner to the designated beneficiary; and
(C) designates the beneficiary.
(8) "Person" means an individual, a sole proprietorship, a partnership, an association, a fiduciary, a trustee, a corporation, a limited liability company, or any other business entity.
(9) "Proof of death" means a death certificate or a record or report that is prima facie proof or evidence of an individual's death.
(10) "Property" means any present or future interest in real property, intangible personal property (as defined in IC 6-4.1-1-5), or tangible personal property (as defined in IC 6-4.1-1-13). The term includes:
(A) a right to direct or receive payment of a debt;
(B) a right to direct or receive payment of money or other benefits due under a contract, account agreement, deposit agreement, employment contract, or trust or by operation of law;
(C) a right to receive performance remaining due under a contract;
(D) a right to receive payment under a promissory note or a debt maintained in a written account record;
(E) rights under a certificated or uncertificated security;
(F) rights under an instrument evidencing ownership of property issued by a governmental agency; and
(G) rights under a document of title (as defined in IC 26-1-1-201).
(11) "Registration in beneficiary form" means titling of an account record, certificate, or other written instrument that:
(A) provides evidence of ownership of property in the name of the owner;
(B) directs ownership of the property to be transferred upon the death of the owner to the designated beneficiary; and
(C) designates the beneficiary.
(12) "Security" means a share, participation, or other interest in

property, in a business, or in an obligation of an enterprise or other issuer. The term includes a certificated security, an uncertificated security, and a security account.

(13) "Transfer on death deed" means a deed that conveys an interest in real property to a grantee by beneficiary designation.

(14) "Transfer on death transfer" refers to a transfer of property that takes effect upon the death of the owner under a beneficiary designation made under this chapter.

(15) "Transferring entity" means a person who:

(A) owes a debt or is obligated to pay money or benefits;

(B) renders contract performance;

(C) delivers or conveys property; or

(D) changes the record of ownership of property on the books, records, and accounts of an enterprise or on a certificate or document of title that evidences property rights.

The term includes a governmental agency, business entity, or transfer agent that issues certificates of ownership or title to property and a person acting as a custodial agent for an owner's property. However, the term does not include a governmental office charged with endorsing, entering, or recording the transfer of real property in the public records.

As added by P.L.143-2009, SEC.41. Amended by P.L.6-2010, SEC.26; P.L.36-2011, SEC.12.

IC 32-17-14-4

Transfers that are not considered transfer on death transfers; beneficiary designation requirements and form

Sec. 4. (a) The following transfers of ownership are not considered transfer on death transfers for purposes of this chapter:

(1) Transfers by rights of survivorship in property held as joint tenants or tenants by the entirety.

(2) A transfer to a remainderman on the termination of a life tenancy.

(3) An inter vivos or a testamentary transfer under a trust established by an individual.

(4) A transfer made under the exercise or nonexercise of a power of appointment.

(5) A transfer made on the death of a person who did not have the right to designate the person's estate as the beneficiary of the transfer.

(b) A beneficiary designation made under this chapter must do the following:

(1) Designate the beneficiary of a transfer on death transfer.

(2) Make the transfer effective upon the death of the owner of the property being transferred.

(3) Comply with this chapter, the conditions of any governing instrument, and any other applicable law.

(c) For purposes of construing this chapter or a beneficiary designation made under this chapter, the death of the last surviving owner of property held by joint owners is considered the death of the

owner.

(d) Except as otherwise provided in this chapter, a transfer on death direction is accomplished in a form substantially similar to the following:

(1) Insert Name of the Owner or Owners.

(2) Insert "Transfer on death to" or "TOD" or "Pay on death to" or "POD".

(3) Insert the Name of the Beneficiary or Beneficiaries.

(e) An owner may revoke or change a beneficiary designation at any time before the owner's death.

As added by P.L.143-2009, SEC.41.

IC 32-17-14-5

General rules concerning transfer on death transfers

Sec. 5. A transfer on death transfer:

(1) is effective with or without consideration;

(2) is not considered testamentary;

(3) is not subject to the requirements for a will or for probating a will under IC 29-1; and

(4) may be subject to an agreement between the owner and a transferring entity to carry out the owner's intent to transfer the property under this chapter.

As added by P.L.143-2009, SEC.41.

IC 32-17-14-6

Authority of a transferring entity

Sec. 6. For the purpose of discharging its duties under this chapter, the authority of a transferring entity acting as agent for an owner of property subject to a transfer on death transfer does not cease at the death of the owner. The transferring entity shall transfer the property to the designated beneficiary in accordance with the beneficiary designation and this chapter.

As added by P.L.143-2009, SEC.41.

IC 32-17-14-7

Agreement between owner and transferring entity

Sec. 7. (a) If any of the following are required by the transferring entity, an agreement between the owner and the transferring entity is necessary to carry out a transfer on death transfer, which may be made in accordance with the rules, terms, and conditions set forth in the agreement:

(1) The submission to the transferring entity of a beneficiary designation under a governing instrument.

(2) Registration by a transferring entity of a transfer on death direction on any certificate or record evidencing ownership of property.

(3) Consent of a contract obligor for a transfer of performance due under the contract.

(4) Consent of a financial institution for a transfer of an obligation of the financial institution.

(5) Consent of a transferring entity for a transfer of an interest in the transferring entity.

(b) When subsection (a) applies, a transferring entity is not required to accept an owner's request to assist the owner in carrying out a transfer on death transfer.

(c) If a beneficiary designation, revocation, or change is subject to acceptance by a transferring entity, the transferring entity's acceptance of the beneficiary designation, revocation, or change relates back to and is effective as of the time the request was received by the transferring entity.

As added by P.L.143-2009, SEC.41. Amended by P.L.6-2010, SEC.27.

IC 32-17-14-8

Transferring entity's acceptance of a beneficiary designation

Sec. 8. (a) If a transferring entity accepts a beneficiary designation or beneficiary assignment or registers property in beneficiary form, the acceptance or registration constitutes the agreement of the owner and the transferring entity that, subject to this section, the owner's property will be transferred to and placed in the name and control of the beneficiary in accordance with the beneficiary designation or transfer on death direction, the agreement between the parties, and this chapter.

(b) An agreement described in subsection (a) is subject to the owner's power to revoke or change a beneficiary designation before the owner's death.

(c) A transferring entity's duties under an agreement described in subsection (a) are subject to the following:

(1) Receiving proof of the owner's death.

(2) Complying with the transferring entity's requirements for proof that the beneficiary is entitled to receive the property.

As added by P.L.143-2009, SEC.41.

IC 32-17-14-9

Beneficiary designation; effects; requirements

Sec. 9. (a) Except as provided in subsection (c), a beneficiary designation that satisfies the requirements of subsection (b):

(1) authorizes a transfer of property under this chapter;

(2) is effective on the death of the owner of the property; and

(3) transfers the right to receive the property to the designated beneficiary who survives the death of the owner.

(b) A beneficiary designation is effective under subsection (a) if the beneficiary designation is:

(1) executed; and

(2) delivered;

to the transferring entity before the death of the owner.

(c) A transferring entity shall make a transfer described in subsection (a)(3) unless there is clear and convincing evidence of the owner's different intention at the time the beneficiary designation was created.

As added by P.L.143-2009, SEC.41. Amended by P.L.6-2010, SEC.28.

IC 32-17-14-10
Assignment of contract rights

Sec. 10. (a) A written assignment of a contract right that:

(1) assigns the right to receive any performance remaining due under the contract to an assignee designated by the owner; and

(2) expressly states that the assignment does not take effect until the death of the owner;

transfers the right to receive performance due under the contract to the designated assignee beneficiary if the assignment satisfies the requirements of subsection (b).

(b) A written assignment described in subsection (a) is effective upon the death of the owner if the assignment is:

(1) executed; and

(2) delivered;

to the contract obligor before the death of the owner.

(c) A beneficiary assignment described in this section is not required to be supported by consideration or delivered to the assignee beneficiary.

(d) This section does not preclude other methods of assignment that are permitted by law and have the effect of postponing the enjoyment of the contract right until after the death of the owner.

As added by P.L.143-2009, SEC.41. Amended by P.L.6-2010, SEC.29.

IC 32-17-14-11
Transfer on death deeds

Sec. 11. (a) A transfer on death deed transfers the interest provided to the beneficiary if the transfer on death deed is:

(1) executed by the owner or owner's legal representative; and

(2) recorded with the recorder of deeds in the county in which the real property is situated before the death of the owner.

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

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

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

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

(1) If the owner's interest in the real property is as a tenant by the entirety, the conveyance is inoperable and void unless the other spouse joins in the conveyance.

(2) If the owner's interest in the real property is as a joint tenant with rights of survivorship, the conveyance severs the joint tenancy and the cotenancy becomes a tenancy in common.

(3) If the owner's interest in the real property is as a joint tenant

with rights of survivorship and the property is subject to a beneficiary designation, a conveyance of any joint owner's interest has no effect on the original beneficiary designation for the nonsevering joint tenant.

(4) If the owner's interest is as a tenant in common, the owner's interest passes to the beneficiary as a transfer on death transfer.

(5) If the owner's interest is a life estate determined by the owner's life, the conveyance is inoperable and void.

(6) If the owner's interest is any other interest, the interest passes in accordance with this chapter and the terms and conditions of the conveyance establishing the interest. If a conflict exists between the conveyance establishing the interest and this chapter, the terms and conditions of the conveyance establishing the interest prevail.

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

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

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

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

As added by P.L.143-2009, SEC.41. Amended by P.L.6-2010, SEC.30; P.L.36-2011, SEC.13.

IC 32-17-14-12

Transfer on death transfers of tangible personal property

Sec. 12. (a) A deed of gift, bill of sale, or other writing intended to transfer an interest in tangible personal property is effective on the death of the owner and transfers ownership to the designated transferee beneficiary if the document:

(1) expressly creates ownership in beneficiary form;

(2) is in other respects sufficient to transfer the type of property involved; and

(3) is executed by the owner and acknowledged before a notary public or other person authorized to administer oaths.

(b) A beneficiary transfer document described in this section is not required to be supported by consideration or delivered to the transferee beneficiary.

(c) This section does not preclude other methods of transferring ownership of tangible personal property that are permitted by law and have the effect of postponing enjoyment of the property until after the death of the owner.

As added by P.L.143-2009, SEC.41.

IC 32-17-14-13
Direct transfer to a transferee to hold as owner in beneficiary form

Sec. 13. (a) A transferor of property, with or without consideration, may execute a written instrument directly transferring the property to a transferee to hold as owner in beneficiary form.

(b) A transferee under an instrument described in subsection (a) is considered the owner of the property for all purposes and has all the rights to the property provided by law to the owner of the property, including the right to revoke or change the beneficiary designation.

(c) A direct transfer of property to a transferee to hold as owner in beneficiary form is effective when the written instrument perfecting the transfer becomes effective to make the transferee the owner.

As added by P.L.143-2009, SEC.41.

IC 32-17-14-14
Registration in beneficiary form

Sec. 14. (a) Property may be held or registered in beneficiary form by including in the name in which the property is held or registered a direction to transfer the property on the death of the owner to a beneficiary designated by the owner.

(b) Property is registered in beneficiary form by showing on the account record, security certificate, or instrument evidencing ownership of the property:

(1) the name of the owner and, if applicable, the estate by which two (2) or more joint owners hold the property; and

(2) an instruction substantially similar in form to "transfer on death to (insert name of beneficiary)".

An instruction to "pay on death to (insert name of the beneficiary)" and the use of the abbreviations "TOD" and "POD" are also permitted by this section.

(c) Only a transferring entity or a person authorized by the transferring entity may place a transfer on death direction described by this section on an account record, a security certificate, or an instrument evidencing ownership of property.

(d) A transfer on death direction described by this section is effective on the death of the owner and transfers the owner's interest in the property to the designated beneficiary if:

(1) the property is registered in beneficiary form before the death of the owner; or

(2) the transfer on death direction is delivered to the transferring entity before the owner's death.

(e) An account record, security certificate, or instrument evidencing ownership of property that contains a transfer on death direction written as part of the name in which the property is held or registered is conclusive evidence, in the absence of fraud, duress, undue influence, lack of capacity, or mistake, that the direction was:

(1) regularly made by the owner;

(2) accepted by the transferring entity; and

(3) not revoked or changed before the owner's death.

As added by P.L.143-2009, SEC.41. Amended by P.L.6-2010, SEC.31.

IC 32-17-14-15

Beneficiary's rights before the death of the owner; effect of the death of a joint owner

Sec. 15. (a) Before the death of the owner, a beneficiary has no rights in the property because of the beneficiary designation. The signature or agreement of the beneficiary is not required for any transaction relating to property transferred under this chapter. If a lienholder takes action to enforce a lien, by foreclosure or otherwise through a court proceeding, it is not necessary to join the beneficiary as a party defendant in the action unless the beneficiary has another interest in the real property that has vested.

(b) On the death of one (1) of two (2) or more joint owners, property with respect to which a beneficiary designation has been made belongs to the surviving joint owner or owners. If at least two (2) joint owners survive, the right of survivorship continues as between the surviving owners.

(c) On the death of a tenant by the entireties, property with respect to which a beneficiary designation has been made belongs to the surviving tenant.

(d) On the death of the owner, property with respect to which a beneficiary designation has been made passes by operation of law to the beneficiary.

(e) If two (2) or more beneficiaries survive, there is no right of survivorship among the beneficiaries when the death of a beneficiary occurs after the death of the owner unless the beneficiary designation expressly provides for survivorship among the beneficiaries. Except as expressly provided otherwise, the surviving beneficiaries hold their separate interest in the property as tenants in common. The share of any beneficiary who dies after the owner dies belongs to the deceased beneficiary's estate.

(f) If no beneficiary survives the owner, the property belongs to the estate of the owner unless the beneficiary designation directs the transfer to a substitute beneficiary in the manner required by section 22 of this chapter.

As added by P.L.143-2009, SEC.41.

IC 32-17-14-16

Changing or revoking a beneficiary designation

Sec. 16. (a) A beneficiary designation may be revoked or changed during the lifetime of the owner.

(b) A revocation or change of a beneficiary designation involving property owned as tenants by the entirety must be made with the agreement of both tenants for so long as both tenants are alive. After an individual dies owning as a tenant by the entirety property that is subject to a beneficiary designation, the individual's surviving spouse

may revoke or change the beneficiary designation.

(c) A revocation or change of a beneficiary designation involving property owned in a form of ownership (other than as tenants by the entirety) that restricts conveyance of the interest unless another person joins in the conveyance must be made with the agreement of each living owner required to join in a conveyance.

(d) A revocation or change of a beneficiary designation involving property owned by joint owners with a right of survivorship must be made with the agreement of each living owner.

(e) A subsequent beneficiary designation revokes a prior beneficiary designation unless the subsequent beneficiary designation expressly provides otherwise.

(f) A revocation or change in a beneficiary designation must comply with the terms of any governing instrument, this chapter, and any other applicable law.

(g) A beneficiary designation may not be revoked or changed by a will or trust unless the beneficiary designation expressly grants the owner the right to revoke or change the beneficiary designation by a will or trust.

(h) A transfer during the owner's lifetime of the owner's interest in the property, with or without consideration, terminates the beneficiary designation with respect to the property transferred.

(i) The effective date of a revocation or change in a beneficiary designation is determined in the same manner as the effective date of a beneficiary designation.

(j) An owner may revoke a beneficiary designation made in a transfer on death deed by executing and recording before the death of the owner with the recorder of deeds in the county in which the real property is situated either:

(1) a subsequent deed of conveyance revoking, omitting, or changing the beneficiary designation; or

(2) an affidavit acknowledged or proved under IC 32-21-2-3 that revokes or changes the beneficiary designation.

(k) A physical act, such as a written modification on or the destruction of a transfer on death deed after the transfer on death deed has been recorded, has no effect on the beneficiary designation.

(l) A transfer on death deed may not be revoked or modified by will or trust.

As added by P.L.143-2009, SEC.41. Amended by P.L.6-2010, SEC.32.

IC 32-17-14-17

Powers of an attorney in fact, a guardian, a conservator, or an agent

Sec. 17. (a) An attorney in fact, guardian, conservator, or other agent acting on the behalf of the owner of property may make, revoke, or change a beneficiary designation if:

(1) the action complies with the terms of this chapter and any other applicable law; and

(2) the action is not expressly forbidden by the document

establishing the agent's right to act on behalf of the owner.

(b) An attorney in fact, guardian, conservator, or other agent may withdraw, sell, pledge, or otherwise transfer property that is subject to a beneficiary designation notwithstanding the fact that the effect of the transaction may be to extinguish a beneficiary's right to receive a transfer of the property at the death of the owner.

(c) The rights of a beneficiary to any part of property that is subject to a beneficiary designation after the death of the owner are determined under IC 29-3-8-6.5 if:

(1) a guardian or conservator takes possession of the property;

(2) the guardian sells, transfers, encumbers, or consumes the property during the protected person's lifetime; and

(3) the owner subsequently dies.

As added by P.L.143-2009, SEC.41.

IC 32-17-14-18

Lost, destroyed, damaged, or involuntarily converted property subject to a beneficiary designation

Sec. 18. If property subject to a beneficiary designation is lost, destroyed, damaged, or involuntarily converted during the owner's lifetime, the beneficiary succeeds to any right with respect to the loss, destruction, damage, or involuntary conversion that the owner would have had if the owner had survived. However, the beneficiary has no interest in any payment or substitute property received by the owner during the owner's lifetime.

As added by P.L.143-2009, SEC.41.

IC 32-17-14-19

Effect of conveyances, assignments, contracts, set offs, licenses, easements, liens, and security interests

Sec. 19. (a) A beneficiary of a transfer on death transfer takes the owner's interest in the property at the death of the owner subject to all conveyances, assignments, contracts, set offs, licenses, easements, liens, and security interests made by the owner or to which the owner was subject during the owner's lifetime.

(b) A beneficiary of a transfer on death transfer of an account with a bank, savings and loan association, credit union, broker, or mutual fund takes the owner's interest in the property at the death of the owner subject to all requests for payment of money issued by the owner before the owner's death, whether paid by the transferring entity before or after the owner's death, or unpaid. The beneficiary is liable to the payee of an unsatisfied request for payment to the extent that the request represents an obligation that was enforceable against the owner during the owner's lifetime.

(c) Each beneficiary's liability with respect to an unsatisfied request for payment is limited to the same proportionate share of the request for payment as the beneficiary's proportionate share of the account under the beneficiary designation. Each beneficiary has the right of contribution from the other beneficiaries with respect to a request for payment that is satisfied after the owner's death, to the

extent that the request for payment would have been enforceable by the payee during the owner's lifetime.
As added by P.L.143-2009, SEC.41.

IC 32-17-14-20
Beneficiary required to survive the owner

Sec. 20. An individual who is a beneficiary of a transfer on death transfer is not entitled to a transfer unless the individual:

(1) survives the owner; and

(2) survives the owner by the time, if any, required by the terms of the beneficiary designation.

As added by P.L.143-2009, SEC.41.

IC 32-17-14-21
Trusts as designated beneficiaries

Sec. 21. (a) A trustee of a trust may be a designated beneficiary regardless of whether the trust is amendable, revocable, irrevocable, funded, unfunded, or amended after the designation is made.

(b) Unless a beneficiary designation provides otherwise, a trust that is revoked or terminated before the death of the owner is considered nonexistent at the owner's death.

(c) Unless a beneficiary designation provides otherwise, a legal entity or trust that does not:

(1) exist; or

(2) come into existence effective as of the owner's death;

is considered nonexistent at the owner's death.

(d) For purposes of this section, an owner's testamentary trust is considered to have come into existence as of the owner's death if the owner's last will and testament is admitted to probate.
As added by P.L.143-2009, SEC.41. Amended by P.L.149-2012, SEC.14.

IC 32-17-14-22
Substitution for designated beneficiaries who do not survive the owner

Sec. 22. (a) Notwithstanding sections 9 and 20 of this chapter, a designated beneficiary's rights under this chapter are not extinguished when the designated beneficiary does not survive the owner if:

(1) subsection (b) applies in the case of a designated beneficiary who is a lineal descendant of the owner; or

(2) subsection (d) applies in the case of a designated beneficiary who is not a lineal descendant of the owner.

(b) If a designated beneficiary who is a lineal descendant of the owner:

(1) is deceased at the time the beneficiary designation is made;

(2) does not survive the owner; or

(3) is treated as not surviving the owner;

the beneficiary's right to a transfer on death transfer belongs to the beneficiary's lineal descendants per stirpes who survive the owner unless the owner provides otherwise under subsection (c).

(c) An owner may execute a beneficiary designation to which subsection (b) does not apply by:

(1) making the notation "No LDPS" after a beneficiary's name; or

(2) including other words negating an intention to direct the transfer to the lineal descendant substitutes of the nonsurviving beneficiary.

(d) An owner may execute a beneficiary designation that provides that the right to a transfer on death transfer belonging to a beneficiary who is not a lineal descendant of the owner and does not survive the owner belongs to the beneficiary's lineal descendants per stirpes who survive the owner. An owner's intent to direct the transfer to the nonsurviving beneficiary's lineal descendants must be shown by either of the following on the beneficiary designation after the name of the beneficiary:

(1) The words "and lineal descendants per stirpes".

(2) The notation "LDPS".

(e) When two (2) or more individuals receive a transfer on death transfer as substitute beneficiaries under subsection (b) or (d), the individuals are entitled to equal shares of the property if they are of the same degree of kinship to the nonsurviving beneficiary. If the substitute beneficiaries are of unequal degrees of kinship, an individual of a more remote degree is entitled by representation to the share that would otherwise belong to the individual's parent.

(f) If:

(1) a designated beneficiary of a transfer on death transfer does not survive the owner;

(2) either subsection (b) or (d) applies; and

(3) no lineal descendant of the designated beneficiary survives the owner;

the right to receive the property transferred belongs to the other surviving beneficiaries. If no other beneficiary survives the owner, the property belongs to the owner's estate.

As added by P.L.143-2009, SEC.41.

IC 32-17-14-23

Effect of dissolution or annulment

Sec. 23. (a) If, after an owner makes a beneficiary designation, the owner's marriage is dissolved or annulled, any provision of the beneficiary designation in favor of the owner's former spouse is revoked on the date the marriage is dissolved or annulled. Revocation under this subsection is effective regardless of whether the beneficiary designation refers to the owner's marital status. The beneficiary designation is given effect as if the former spouse had not survived the owner.

(b) Subsection (a) does not apply to a provision of a beneficiary designation that:

(1) has been made irrevocable, or revocable only with the spouse's consent;

(2) is made after the marriage is dissolved or annulled; or

(3) expressly states that the dissolution or annulment of the marriage does not affect the designation of a spouse or a relative of the spouse as a beneficiary.

(c) A provision of a beneficiary designation that is revoked solely by subsection (a) is revived by the owner's remarriage to the former spouse or by a nullification of the dissolution or annulment of the marriage.

As added by P.L.143-2009, SEC.41. Amended by P.L.36-2011, SEC.14.

IC 32-17-14-24

Fraud, duress, undue influence, mistake, or lack of capacity

Sec. 24. (a) A beneficiary designation or a revocation of a beneficiary designation that is procured by fraud, duress, undue influence, or mistake or because the owner lacked capacity is void.

(b) A beneficiary designation made under this chapter is subject to IC 29-1-2-12.1.

As added by P.L.143-2009, SEC.41.

IC 32-17-14-25

Rights of surviving spouses and children

Sec. 25. (a) In accordance with IC 32-17-13, a transfer on death transfer may be subject to the payment of the surviving spouse and family allowances under IC 29-1-4-1.

(b) A beneficiary designation designating the children of the owner or children of any other person as a class and not by name includes all children of the person regardless of whether the child is born or adopted before or after the beneficiary designation is made.

(c) Except as provided in subsection (d), a child of the owner born or adopted after the owner makes a beneficiary designation that names another child of the owner as the beneficiary is entitled to receive a fractional share of the property that would otherwise be transferred to the named beneficiary. The share of the property to which each child of the owner is entitled to receive is expressed as a fraction in which the numerator is one (1) and the denominator is the total number of the owner's children.

(d) A beneficiary designation or a governing instrument may provide that subsection (c) does not apply to an owner's beneficiary designation. In addition, a transferring entity is not obligated to apply subsection (c) to property registered in beneficiary form.

(e) If a beneficiary designation does not name any child of the owner as the designated beneficiary with respect to a particular property interest, a child of the owner born or adopted after the owner makes the beneficiary designation is not entitled to any share of the property interest subject to the designation.

As added by P.L.143-2009, SEC.41. Amended by P.L.6-2010, SEC.33; P.L.36-2011, SEC.15.

IC 32-17-14-26

General rules applying to a beneficiary designation

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) 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.
As added by P.L.143-2009, SEC.41. Amended by P.L.6-2010, SEC.34; P.L.36-2011, SEC.16; P.L.149-2012, SEC.15; P.L.51-2014, SEC.30.

IC 32-17-14-27
Powers and duties of a transferring entity

Sec. 27. (a) An owner who makes arrangements for a transfer on death transfer under this chapter gives to the transferring entity the protections provided in this section for executing the owner's beneficiary designation.

(b) A transferring entity may execute a transfer on death transfer with or without a written request for execution.

(c) A transferring entity may rely and act on:

(1) a certified or authenticated copy of a death certificate issued by an official or an agency of the place where the death occurred as showing the fact, place, date, and time of death and the identity of the decedent; and

(2) a certified or authenticated copy of a report or record of any governmental agency that a person is missing, detained, dead, or alive, and the dates, circumstances, and places disclosed by the record or report.

(d) A transferring entity has no duty to verify the information contained within a written request for the execution of a beneficiary designation. The transferring entity may rely and act on a request made by a beneficiary or a beneficiary's attorney in fact, guardian, conservator, or other agent.

(e) A transferring entity has no duty to:

(1) except as provided in subsection (g), give notice to any person of the date, manner, and persons to whom a transfer will be made under beneficiary designation;

(2) attempt to locate any beneficiary or lineal descendant substitute;

(3) determine whether a nonsurviving beneficiary or descendant had a lineal descendant who survived the owner;

(4) locate a trustee or custodian;

(5) obtain the appointment of a successor trustee or custodian;

(6) discover the existence of a trust instrument or will that creates an express trust; or

(7) determine any fact or law that would:

(A) cause the beneficiary designation to be revoked in whole or in part as to any person because of a change in marital status or other reason; or

(B) cause a variation in the distribution provided in the beneficiary designation.

(f) A transferring entity has no duty to withhold making a transfer based on knowledge of any fact or claim adverse to the transfer to be made unless before making the transfer the transferring entity receives a written notice that:

(1) in manner, place, and time affords a reasonable opportunity

to act on the notice before making the transfer; and

(2) does the following:

(A) Asserts a claim of beneficial interest in the transfer adverse to the transfer to be made.

(B) Gives the name of the claimant and an address for communications directed to the claimant.

(C) Identifies the deceased owner.

(D) States the nature of the claim as it affects the transfer.

(g) If a transferring entity receives a timely notice meeting the requirements of subsection (f), the transferring entity may discharge any duty to the claimant by sending a notice by certified mail to the claimant at the address provided by the claimant's notice of claim. The notice must advise the claimant that a transfer adverse to the claimant's asserted claim will be made at least forty-five (45) days after the date of the mailing unless the transfer is restrained by a court order. If the transferring entity mails the notice described by this subsection to the claimant, the transferring entity shall withhold making the transfer for at least forty-five (45) days after the date of the mailing. Unless the transfer is restrained by court order, the transferring entity may make the transfer at least forty-five (45) days after the date of the mailing.

(h) Neither notice that does not comply with the requirements of subsection (f) nor any other information shown to have been available to a transferring entity, its transfer agent, or its employees affects the transferring entity's right to the protections provided by this chapter.

(i) A transferring entity is not responsible for the application or use of property transferred to a fiduciary entitled to receive the property.

(j) Notwithstanding the protections provided a transferring entity by this chapter, a transferring entity may require parties engaged in a dispute over the propriety of a transfer to:

(1) adjudicate their respective rights; or

(2) furnish an indemnity bond protecting the transferring entity.

(k) A transfer by a transferring entity made in accordance with this chapter and under the beneficiary designation in good faith and reliance on information the transferring entity reasonably believes to be accurate discharges the transferring entity from all claims for the amounts paid and the property transferred.

(l) All protections provided by this chapter to a transferring entity are in addition to the protections provided by any other applicable Indiana law.

As added by P.L.143-2009, SEC.41. Amended by P.L.149-2012, SEC.16.

IC 32-17-14-28

Effect of improper distributions

Sec. 28. (a) The protections provided to a transferring entity or to a purchaser or lender for value by this chapter do not affect the rights of beneficiaries or others involved in disputes that:

(1) are with parties other than a transferring entity or purchaser or lender for value; and

(2) concern the ownership of property transferred under this chapter.

(b) Unless the payment or transfer can no longer be challenged because of adjudication, estoppel, or limitations, a transferee of money or property under a transfer on death transfer that was improperly distributed or paid is liable for:

(1) the return of the money or property, including income earned on the money or property, to the transferring entity; or

(2) the delivery of the money or property, including income earned on the money or property, to the rightful transferee.

In addition, the transferee is liable for the amount of attorney's fees and costs incurred by the rightful transferee in bringing the action in court.

(c) If a transferee of money or property under a transfer on death transfer that was improperly distributed or paid does not have the property, the transferee is liable for an amount equal to the sum of:

(1) the value of the property as of the date of the disposition;

(2) the income and gain that the transferee received from the property and its proceeds; and

(3) the amount of attorney's fees and costs incurred by the rightful transferee in bringing the action in court.

(d) If a transferee of money or property under a transfer on death transfer that was improperly distributed or paid encumbers the property, the transferee:

(1) shall satisfy the debt incurred in an amount sufficient to release any security interest, lien, or other encumbrance on the property; and

(2) is liable for the amount of attorney's fees and costs incurred by the rightful transferee in bringing the action in court.

(e) A purchaser for value of property or a lender who acquires a security interest in the property from a beneficiary of a transfer on death transfer:

(1) in good faith; or

(2) without actual knowledge that:

(A) the transfer was improper; or

(B) information in an affidavit provided under section 26(b)(20) of this chapter was not true;

takes the property free of any claims of or liability to the owner's estate, creditors of the owner's estate, persons claiming rights as beneficiaries of the transfer on death transfer, or heirs of the owner's estate. A purchaser or lender for value has no duty to verify sworn information relating to the transfer on death transfer.

(f) The protection provided by subsection (e) applies to information that relates to the beneficiary's ownership interest in the property and the beneficiary's right to sell, encumber, and transfer good title to a purchaser or lender but does not relieve a purchaser or lender from the notice provided by instruments of record with respect to the property.

(g) A transfer on death transfer that is improper under section 22, 23, 24, or 25 of this chapter imposes no liability on the transferring entity if the transfer is made in good faith. The remedy of a rightful transferee must be obtained in an action against the improper transferee.
As added by P.L.143-2009, SEC.41. Amended by P.L.6-2010, SEC.35.

IC 32-17-14-29
Creditors of an owner
Sec. 29. (a) This chapter does not limit the rights of an owner's creditors against beneficiaries and other transferees that may be available under any other applicable Indiana law.
(b) The liability of a beneficiary for creditor claims and statutory allowances is determined under IC 32-17-13.
As added by P.L.143-2009, SEC.41.

IC 32-17-14-30
Change in the beneficiary designation, residency of the owner, or location of the transferring entity or property
Sec. 30. Except as otherwise provided by law, a transfer on death transfer and the obligation of a transferring entity to execute the transfer on death transfer that are subject to this chapter under section 2(b) of this chapter remain subject to this chapter notwithstanding a change in the:
(1) beneficiary designation;
(2) residency of the owner;
(3) residency or place of business of the transferring entity; or
(4) location of the property.
As added by P.L.143-2009, SEC.41.

IC 32-17-14-31
Duties of the probate court
Sec. 31. (a) The probate court shall hear and determine questions and issue appropriate orders concerning the determination of the beneficiary who is entitled to receive a transfer on death transfer and the proper share of each beneficiary.
(b) The probate court shall hear and determine questions and issue appropriate orders concerning any action to:
(1) obtain the distribution of any money or property from a transferring entity; or
(2) with respect to money or property that was improperly distributed to any person, obtain the return of:
(A) any money or property and income earned on the money or property; or
(B) an amount equal to the sum of the value of the money or property plus income and gain realized from the money or property.
As added by P.L.143-2009, SEC.41.

IC 32-17-14-32

Out-of-state beneficiary designations

Sec. 32. (a) Except for transfer on death deeds, a beneficiary designation that purports to have been made and is valid under:

(1) the Uniform Probate Code as enacted by another state;

(2) the Uniform TOD Security Registration Law as enacted by another state; or

(3) a similar law of another state;

is governed by the law of that state.

(b) A transfer on death transfer subject to a law described in subsection (a) may be executed and enforced in Indiana.

(c) Except for transfer on death deeds, the meaning and legal effect of a transfer on death transfer is determined by the law of the state selected in a governing instrument or beneficiary designation.

As added by P.L.143-2009, SEC.41.

IC 32-17.5

ARTICLE 17.5. UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT

IC 32-17.5-1

Chapter 1. General Provisions

IC 32-17.5-1-0.2

Application of certain amendments to prior law

Sec. 0.2. The amendments made to IC 32-3-2-1, IC 32-3-2-3, IC 32-3-2-4, IC 32-3-2-5, and IC 32-3-2-6 concerning disclaimer of interests (before their repeal, codified at IC 32-17-7, before its repeal) by P.L.276-1989 do not apply to disclaimers that are effective before July 1, 1989.

As added by P.L.220-2011, SEC.519.

IC 32-17.5-1-1

Applicability

Sec. 1. This article applies to a disclaimer of an interest in or power over property created after June 30, 2003.

As added by P.L.5-2003, SEC.1. Amended by P.L.6-2010, SEC.36.

IC 32-17.5-1-2

Effect on other statutes

Sec. 2. This chapter does not limit the right of a person to waive, release, disclaim, or renounce an interest in or power over property under a statute other than this article.

As added by P.L.5-2003, SEC.1. Amended by P.L.6-2010, SEC.37.

IC 32-17.5-1-3

Disclaiming interest in existence on July 1, 2003

Sec. 3. Except as otherwise provided in IC 32-17.5-8, an interest in or power over property existing on July 1, 2003, may be disclaimed after June 30, 2003, if the time for delivering or filing a disclaimer under IC 32-17-7 (before its repeal) has not expired.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-1-4

Construction

Sec. 4. In applying and construing this article, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-1-5

Citing article

Sec. 5. This article may be cited as the "Uniform Disclaimer of Property Interests Act (1999)".

As added by P.L.5-2003, SEC.1.

IC 32-17.5-2

Chapter 2. Definitions

IC 32-17.5-2-1

"Beneficiary designation"

Sec. 1. "Beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

(1) an annuity or insurance policy;

(2) an account with a designation for payment on death;

(3) a security registered in beneficiary form;

(4) a pension, profit sharing, retirement, or other employment related benefit plan; or

(5) any other nonprobate transfer at death, except for property held as joint tenants with rights of survivorship or as tenants by the entireties.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-2-2

"Disclaimant"

Sec. 2. "Disclaimant" means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-2-3

"Disclaimed interest"

Sec. 3. "Disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-2-4

"Disclaimer"

Sec. 4. "Disclaimer" means a refusal to accept an interest in or power over property.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-2-5

"Fiduciary"

Sec. 5. "Fiduciary" means:

(1) a personal representative, a trustee, or an agent acting under a power of attorney; or

(2) a person authorized to act as a fiduciary with respect to the property of another person.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-2-6

"Future interest"

Sec. 6. "Future interest" means an interest that, if it takes effect in possession or enjoyment, takes effect later than the time of its creation.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-2-7
"Jointly held property"

Sec. 7. "Jointly held property" means property held in the name of at least two (2) persons under an arrangement in which:

(1) all holders have concurrent interests; and

(2) the last surviving holder is entitled to the whole of the property.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-2-8
"Person"

Sec. 8. "Person" means an individual, a corporation, a business trust, an estate, a trust, a partnership, a limited liability company, an association, a joint venture, a government, a governmental subdivision, an agency, or instrumentality, a public corporation, or any other legal or commercial entity.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-2-9
"State"

Sec. 9. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band or Alaskan native village recognized by federal law or formally acknowledged by a state.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-2-10
"Time of distribution"

Sec. 10. "Time of distribution" means the time when a disclaimed interest would otherwise have taken effect in possession or enjoyment.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-2-11
"Trust"

Sec. 11. "Trust" means:

(1) a charitable or noncharitable express trust and any additions to the trust, regardless of when or how the trust is created; and

(2) a trust created under a statute, judgment, or decree which requires the trust to be administered in the manner of an express trust.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-3

Chapter 3. Power to Disclaim; Irrevocability of Disclaimer

IC 32-17.5-3-1

Disclaiming power or interest in property

Sec. 1. A person may disclaim, in whole or part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if the creator of the interest or power imposed:

(1) a spendthrift provision or similar restriction on transfer; or

(2) a restriction or limitation on the right to disclaim.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-3-2

Fiduciary's right to disclaim

Sec. 2. Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if:

(1) the creator of the power or interest imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim; or

(2) an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-3-3

Disclaimer requirements

Sec. 3. (a) As used in this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(b) A disclaimer must:

(1) be in a writing or other record;

(2) state that it is a disclaimer;

(3) describe the interest or power disclaimed;

(4) be signed by the person making the disclaimer; and

(5) be delivered or filed in the manner provided in IC 32-17.5-7.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-3-4

Partial disclaimer

Sec. 4. A partial disclaimer may be expressed as:

(1) a fraction;

(2) a percentage;

(3) a monetary amount;

(4) a term of years;

(5) a limitation of a power; or

(6) any other interest or estate in the property.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-3-5

When irrevocable

Sec. 5. A disclaimer becomes irrevocable upon the occurrence of the later of the following to occur:

(1) The disclaimer is delivered or filed as set forth in IC 32-17.5-7.

(2) The disclaimer becomes effective as set forth in IC 32-17.5-4 through IC 32-17.5-6.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-3-6

Disclaimer not a transaction, assignment, or release

Sec. 6. A disclaimer made under this article is not a transfer, an assignment, or a release.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-4

Chapter 4. Disclaimer of Interest in Property

IC 32-17.5-4-1

General provisions

Sec. 1. Except for a disclaimer under IC 32-17.5-5 or IC 32-17.5-6-1, the following rules apply to a disclaimer of an interest in property:

(1) A disclaimer takes effect:

(A) when the instrument creating the interest becomes irrevocable; or

(B) upon the intestate's death if the interest arose under the law of intestate succession.

(2) A disclaimed interest passes according to any provision in the instrument creating the interest:

(A) that provides for the disposition of the interest should the interest be disclaimed; or

(B) that concerns disclaimed interests in general.

(3) If the instrument creating the disclaimed interest does not contain a provision described in subdivision (2), the following rules apply:

(A) If the disclaimant is an individual, the following rules apply:

(i) Except as provided in items (ii) and (iii), the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

(ii) If, by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive at the time of distribution.

(iii) If the disclaimed interest would have passed to the disclaimant's estate had the disclaimant died before the time of distribution, the disclaimed interest passes by representation to the descendants of the disclaimant who survive at the time of distribution. If no descendant of the disclaimant survives the time of distribution, the disclaimed interest becomes part of the residue under the instrument creating the disclaimed interest.

(B) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

(4) If the disclaimed interest arose under the law of intestate succession, the disclaimed interest passes as if the disclaimant had died immediately before the intestate's death.

(5) Upon the disclaimer of a preceding interest:

(A) a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution; and

(B) a future interest held by the disclaimant is not accelerated in possession or enjoyment.

As added by P.L.5-2003, SEC.1. Amended by P.L.238-2005, SEC.54; P.L.6-2010, SEC.38.

IC 32-17.5-5

Chapter 5. Disclaimer of Rights of Survivorship in Jointly Held Property

IC 32-17.5-5-1

Disclaimer by surviving joint holder

Sec. 1. (a) This subsection applies upon the death of a holder of jointly held property only if, during the deceased holder's lifetime, the deceased holder could have unilaterally regained a part of the property attributable to the deceased holder's contribution without consent of any other holder. Another holder may disclaim an amount that may not exceed the amount determined in STEP THREE of the following formula:

STEP ONE: Determine the amount of the property attributable to the deceased holder's contributions.

STEP TWO: Determine the quotient of:

(A) one (1); divided by

(B) the number of joint holders alive immediately after the death of the holder to whose death the disclaimer relates.

STEP THREE: Determine the product of:

(A) the STEP ONE amount; multiplied by

(B) the STEP TWO quotient.

(b) This subsection applies in the case of the death of a holder of jointly held property that is not subject to subsection (a). Another holder may disclaim an amount that may not exceed the amount determined in STEP FOUR of the following formula:

STEP ONE: Determine the value of the total amount of the jointly held property.

STEP TWO: Determine the product of:

(A) the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; multiplied by

(B) the number of joint holders alive immediately after the death of the holder to whose death the disclaimer relates.

STEP THREE: Determine the quotient of:

(A) one (1); divided by

(B) the STEP TWO result.

STEP FOUR: Determine the product of:

(A) the value determined in STEP ONE; multiplied by

(B) the quotient determined in STEP THREE.

(c) A disclaimer under subsection (a) or (b) takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

(d) An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

As added by P.L.5-2003, SEC.1. Amended by P.L.6-2010, SEC.39; P.L.42-2011, SEC.64; P.L.178-2011, SEC.11.

IC 32-17.5-6

Chapter 6. Disclaimer of Certain Powers or Interests

IC 32-17.5-6-1

Disclaimer by trustee

Sec. 1. If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-6-2

Disclaiming power of appointment

Sec. 2. If the holder of a power of appointment or other power not held in a fiduciary capacity disclaims the power, the following rules apply:

(1) If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(2) If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

(3) The instrument creating the power is construed as if the power expired when the disclaimer became effective.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-6-3

Disclaimer by appointee of power of appointment

Sec. 3. (a) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(b) A disclaimer of an interest in property by:

(1) persons eligible to receive property upon exercise of the power of appointment; or

(2) a taker in default of an exercise of a power of appointment;

takes effect as of the time the instrument creating the power becomes irrevocable.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-6-4

Disclaiming power held in fiduciary capacity

Sec. 4. (a) If a fiduciary disclaims a power held in a fiduciary capacity that has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(b) If a fiduciary disclaims a power held in a fiduciary capacity that has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(c) A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom

the fiduciary is acting.
As added by P.L.5-2003, SEC.1.

IC 32-17.5-7

Chapter 7. Delivery or Filing of Disclaimer

IC 32-17.5-7-1

Delivery; in general

Sec. 1. Subject to sections 2 through 11 of this chapter, a disclaimer may be delivered by:

(1) personal delivery;

(2) first class mail; or

(3) any other method likely to result in receipt of the disclaimer.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-7-2

Interest created by intestate succession or will

Sec. 2. A disclaimer of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust, must be:

(1) delivered to the personal representative of the decedent's estate; or

(2) filed with a court having jurisdiction to appoint the personal representative if no personal representative is then serving.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-7-3

Interest in testamentary trust

Sec. 3. A disclaimer of an interest in a testamentary trust must be:

(1) delivered to the trustee then serving;

(2) delivered to the personal representative of the decedent's estate if no trustee is then serving; or

(3) filed with a court having jurisdiction to enforce the trust if no personal representative is then serving.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-7-4

Interest in an intervivos trust

Sec. 4. A disclaimer of an interest in an inter vivos trust must be:

(1) delivered to the trustee then serving;

(2) filed with a court having jurisdiction to enforce the trust if no trustee is then serving; or

(3) delivered to the settlor of a revocable trust or the transferor of the interest if the disclaimer is made before the time the instrument creating the trust becomes irrevocable.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-7-5

Interest created by beneficiary designation

Sec. 5. A disclaimer of an interest created by a beneficiary designation made before the time the designation becomes irrevocable must be delivered to the person making the beneficiary designation.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-7-6
Disclaiming after beneficiary designation irrevocable

Sec. 6. A disclaimer of an interest created by a beneficiary designation made after the time the designation becomes irrevocable must be delivered to the person obligated to distribute the interest.
As added by P.L.5-2003, SEC.1.

IC 32-17.5-7-7
Jointly held property

Sec. 7. A disclaimer by a surviving holder of jointly held property must be delivered to the person to whom the disclaimed interest passes.
As added by P.L.5-2003, SEC.1.

IC 32-17.5-7-8
Disclaimer by object or taker in default of exercise of power of appointment

Sec. 8. (a) This section applies to a disclaimer of an interest in property by:

(1) an object; or
(2) a taker in default;

of exercise of a power of appointment.

(b) At any time after the power was created, the disclaimer must be:

(1) delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or
(2) filed with a court having authority to appoint a fiduciary if no fiduciary is then serving.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-7-9
Appointee of nonfiduciary power of appointment

Sec. 9. A disclaimer by an appointee of a nonfiduciary power of appointment must be:

(1) delivered to:
    (A) the holder;
    (B) the personal representative of the holder's estate; or
    (C) the fiduciary under the instrument that created the power; or
(2) filed with a court having authority to appoint the fiduciary if no fiduciary is then serving.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-7-10
Fiduciary of a power over a trust or estate

Sec. 10. A disclaimer by a fiduciary of a power over a trust or estate must be delivered as provided in section 2, 3, or 4 of this chapter as if the power disclaimed were an interest in property.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-7-11
Disclaimer by agent

Sec. 11. In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-8

Chapter 8. Limitation or Bar of Disclaimer

IC 32-17.5-8-1

Waiver

Sec. 1. A disclaimer is barred by a written waiver of the right to disclaim if the waiver is:

(1) executed before the date of the disclaimer;

(2) executed by the person having the right to disclaim; and

(3) delivered or filed in the same manner that a disclaimer would be delivered or filed under IC 32-17.5-7.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-8-2

Events barring disclaimer

Sec. 2. A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

(1) The disclaimant accepts the interest sought to be disclaimed.

(2) The disclaimant voluntarily:

(A) assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed; or

(B) contracts to take an action described in clause (A).

(3) A judicial sale of the interest sought to be disclaimed occurs.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-8-2.5

Disclaimer barred in amount of child support arrearage

Sec. 2.5. (a) This section applies to a disclaimer of an interest in property by a disclaimant who is delinquent (as defined in IC 31-9-2-36(b)) before the disclaimer becomes effective.

(b) A disclaimer of an interest in property is barred up to the amount of the disclaimant's child support arrearage.

As added by P.L.80-2010, SEC.52.

IC 32-17.5-8-3

Power held in fiduciary capacity

Sec. 3. A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by the previous exercise of the power.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-8-4

Power not held in fiduciary capacity

Sec. 4. A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by the previous exercise of the power unless the power is exercisable in favor of the disclaimant.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-8-5

Other law

Sec. 5. A disclaimer is barred or limited if the disclaimer is barred or limited by Indiana law other than this article.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-8-6

Effect of disclaimer

Sec. 6. (a) A disclaimer of a power over property that is barred by this article is ineffective.

(b) A disclaimer of an interest in property that is barred by this article takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this article had the disclaimer not been barred.

As added by P.L.5-2003, SEC.1.

IC 32-17.5-9

Chapter 9. Tax Qualified Disclaimer

IC 32-17.5-9-1

Disclaimer for estate and gift tax purposes

Sec. 1. Notwithstanding any other provision of this article, if, as a result of a disclaimer or transfer, the disclaimed or transferred interest is treated under:

(1) Title 26 of the United States Code, in effect on July 1, 2003, or later amended or a successor statute; and

(2) the regulations promulgated under the statute referred to in subdivision (1);

as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under this article.

As added by P.L.5-2003, SEC.1.

IC 32-18

ARTICLE 18. INTERESTS OF CREDITORS IN PROPERTY

IC 32-18-1

Chapter 1. Assignment of Real and Personal Property for the Benefit of Creditors

IC 32-18-1-1

Assignment of all debtor's property in trust for creditors; fraudulent and void assignments; trustees

Sec. 1. (a) A debtor who is in embarrassed or failing circumstances may make a general assignment of all the debtor's property in trust for the benefit of all the debtor's bona fide creditors.

(b) Except as provided in this chapter, an assignment described in subsection (a) that is made after March 19, 1859, is considered fraudulent and void.

(c) A debtor who is:

(1) in embarrassed or failing circumstances; and

(2) making a general assignment of all the debtor's property as provided in this chapter;

may select the debtor's trustee. The trustee shall serve and qualify, unless creditors representing an amount of at least one-half (1/2) of the liabilities of the debtor petition the court for the removal of the trustee and the appointment of another trustee. If the petition is filed, the judge of the circuit or superior court in which the debtor resides shall immediately remove the trustee and appoint a suitable disinterested party to act as trustee in place of the removed trustee.

(d) This chapter may not be construed to prevent a debtor from preferring a particular creditor by an assignment not made under this chapter that:

(1) conveys less than all of the debtor's property;

(2) is made for the benefit of less than all of the debtor's creditors; or

(3) is made by other means;

if the action is taken in good faith and not as a part of, or in connection with, a general assignment made under this chapter. However, a corporation may not prefer any creditor if a director of the corporation is a surety on the indebtedness preferred or has been a surety on the indebtedness within four (4) months before the preference.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-2

Filing indenture of assignment with county recorder; description of property; oaths of assignor

Sec. 2. (a) An assignment under this chapter must be:

(1) by indenture; and

(2) signed and acknowledged before a person who is authorized to take the acknowledgment of deeds.

(b) The indenture must, within ten (10) days after the execution, be filed with the recorder of the county in which the assignor resides. The recorder shall record the indenture of assignment the same as deeds are recorded.

(c) The indenture of assignment must:

(1) contain a full description of all real estate assigned; and

(2) be accompanied by a schedule containing a particular enumeration and description of all the personal property assigned.

(d) The assignor shall make oath before a person authorized to administer oaths. The oath must:

(1) verify the indenture and schedule and contain a statement of all the property, rights, and credits belonging to the assignor, or of which the assignor has knowledge, and that the assignor has not, directly or indirectly, transferred or reserved a sum of money or article of property for the assignor's own use or the benefit of another person; and

(2) indicate the assignor has not acknowledged a debt or confessed a judgment to a person for a sum greater than was justly owing to the person, or with the intention of delaying or defrauding the assignor's creditors.

(e) An assignment under this chapter may not convey to the assignee an interest in property assigned until the assignment is recorded as provided in this section.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-3

Trustee; duties on execution of assignment; bond

Sec. 3. (a) Not later than fifteen (15) days after the execution of the assignment, the trustee shall file a copy of the assignment and schedule in the office of the clerk of the circuit court of the county in which the debtor resides. The trustee shall state under oath, before execution of the trust:

(1) that the trustee will faithfully execute the trust, and the property assigned has been actually delivered into the trustee's possession for the uses declared in the assignment; and

(2) what the probable value of the assigned property is.

(b) The trustee shall, at the time the assignment and schedule is filed under subsection (a), file with the clerk a written undertaking to the state with at least one (1) sufficient surety. The bond to be approved by the clerk:

(1) must be in a sum double the amount of the value of the property assigned; and

(2) conditioned for the faithful discharge of the duties of the trustee's trust.

The bond must be for the use of a person injured by the action of the trustee.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-4

Circuit court clerk's recording of filing of indenture, schedule, and undertaking

Sec. 4. The clerk of the circuit court shall minute the filing of the copy of indenture, schedule, and undertaking in the proper book under section 3 of this chapter.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-5

Trustee; removal upon petition of assignor or creditor

Sec. 5. (a) If the trustee fails to comply with the provisions of sections 1 through 4 of this chapter, the judge of the circuit court or the clerk of the circuit court may, at the instance of the assignor or a creditor, by petition:

(1) remove the trustee; and

(2) appoint another suitable person as trustee.

(b) A replacement trustee shall:

(1) comply with the requirements specified in this chapter;

(2) immediately take possession and control of the property assigned; and

(3) enter upon the execution of the trust, as provided in this chapter.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-6

Trustee; notice of appointment; inventory of property

Sec. 6. (a) Immediately after complying with the requirements set forth in this chapter, the trustee shall give notice of the trustee's appointment by publication, three (3) weeks successively, in a newspaper printed and published in the county. If a newspaper is not printed and published in the county, the trustee shall:

(1) place written notice in at least five (5) of the most public places in the county; and

(2) publish notice in a newspaper printed and published in the nearest county, for the time and in the manner mentioned in reference to publication in the county where the assignor resides.

(b) The trustee shall, within thirty (30) days after beginning the duties of the trust, make and file, under oath, a full and complete inventory of all the property, real and personal, the rights, credits, interests, profits, and collaterals that the trustee obtains, or of which the trustee may have obtained knowledge as belonging to the assignor. If:

(1) any property not mentioned in an inventory comes into the trustee's hands; or

(2) the trustee obtains satisfactory information of the existence of property not mentioned in an inventory;

the trustee shall file an additional inventory of the property as described in this section.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-7
Appraisers; oath required

Sec. 7. The trustee, not more than twenty (20) days after filing the inventory mentioned in section 6 of this chapter, shall cause the property mentioned in the inventory to be appraised by two (2) reputable householders of the neighborhood. The appraisers, before proceeding to discharge their duty, must take and subscribe an oath that they will honestly appraise the property mentioned in the inventory filed by the trustee. The oath must be filed, together with the appraisement, with the clerk of the circuit court.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-8
Appraisal of property

Sec. 8. The appraisers shall, in the presence of the trustee:

(1) appraise each article mentioned in the inventory at its true value; and

(2) set down opposite each article respectively the value fixed by them in dollars and cents.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-9
Appraisal; set off to resident household assignor

Sec. 9. (a) If the assignor is a resident householder of Indiana, the appraisers shall set off to the assignor articles of property or so much of the real estate mentioned in the inventory as the assignor may select, not to exceed three hundred dollars ($300).

(b) The appraisers shall, in an appraisement, specify what articles of property and the value of the property, or what part of the real estate and its value, they have set apart to the assignor.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-10
Sale of property; partition of land

Sec. 10. (a) The trustee, as soon as possible after an appraisement is filed, shall collect the rights and credits of the assignor. Except for property set off by the assignor as exempt, the trustee shall sell at public auction the appraised property after giving thirty (30) days notice of the time and place of sale:

(1) by publication in a newspaper printed and published in the county; or

(2) if a newspaper is not printed and published in the county, by posting written or printed notices in at least five (5) of the most public places in the county.

(b) The trustee shall sell the appraised property to the highest bidder for cash, or upon credit, the trustee taking notes with security to be approved by the trustee, waiving relief from valuation or appraisement laws, payable not more than twelve (12) months after the date, with interest.

(c) The trustee must make a full return, under oath, of the sale to

the clerk of the circuit court. The clerk shall file the return with the other papers in the case. However, a court may, upon the sworn petition of the trustee, a creditor, or the assignor, for good cause shown, extend the time for selling the property, or any part of the property, for as much time as the court determines will serve the best interests of the creditors. The court may extend the credit on sales for not more than two (2) years.

(d) The court may, upon the sworn petition of the trustee or of a majority of the creditors showing that the property may deteriorate in value by delay or that it will be beneficial to the creditors to have an early sale order the property sold upon notice of the time, place, and terms of sale, and in a manner the court determines is best.

(e) The court may authorize the property sold at private sale at not less than its appraised value if it is shown that a private sale would be beneficial to the creditors of the assignor. The court shall supervise the estate of the assignor and may make all necessary orders in the interest of the creditors for its control and management by the trustee before the sale. In the interest of all parties, the court may upon petition of the assignee, if the wife of the assignor is a party to the petition, order partition of the land of the assignor, before sale, between the assignee and wife of the assignor. The court shall set off to the wife her inchoate one-third (1/3) in the land before sale. If the court finds that the land cannot be partitioned without detriment to the interest of the creditors of the assignor, the court may make an order directing the sale of all the land conveyed to the assignee by the assignor, including the wife's one-third (1/3) inchoate interest. The one-third (1/3) of the money for which the land is sold shall be paid to the wife of the assignor when collected. The assignee shall, after sale, compel the trustee to report the money in the trustee's hands for distribution, and shall compel the money to be paid into court for distribution if the assets are shown to be sufficient to pay a ten percent (10%) dividend upon the indebtedness. The distribution may be ordered from time to time when, on application of any person interested, it is shown to the court that there is sufficient funds in the hands of the trustee to pay the dividend of ten percent (10%).

As added by P.L.2-2002, SEC.3.

IC 32-18-1-11

Report of trustee

Sec. 11. The trustee shall, within six (6) months after beginning the duties of the trust, report to the judge of the circuit court, under oath:

(1) the amount of money in the trustee's hands from:
  (A) the sale of property; and
  (B) collections; and
(2) the amount still uncollected.

The trustee shall also, in the report, list all claims of creditors that have been presented to the trustee against the assignor. The trustee shall denote the claims that the trustee concludes should be allowed and those that the trustee determines not to allow.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-12
Trial of disallowed claims

Sec. 12. The clerk of the court shall spread the report and list upon the appearance docket of the court. The clerk shall distinguish between the claims the trustee has determined to allow and the claims the trustee has refused to allow. In all cases in which the trustee has refused to allow a claim, and in which a creditor objects to the allowance of the claim of another creditor, the judge may order the case to stand for trial at the next term of the court. The trial shall be governed by the rules regulating the trials of similar actions in the circuit court. If, after trial of the claim, the court is satisfied that the claim is valid and just, the court shall order the claim to be allowed and paid as other similar claims are paid. The court shall also make an order with respect to costs as the court considers just.
As added by P.L.2-2002, SEC.3.

IC 32-18-1-13
Lien or encumbrance on property sold

Sec. 13. (a) A part of the property assigned on which there are liens or encumbrances may be sold by the trustee subject to the liens or encumbrances.

(b) However, if the trustee is satisfied that the general fund would be materially increased by the payment of the liens or encumbrances, the trustee shall make application, by petition, to the judge of the circuit court for an order to pay the liens and encumbrances before selling the property. Before the holder of any lien or encumbrance is entitled to receive any part of the holder's debt from the general fund, the holder shall proceed to enforce the payment of the debt by sale, or otherwise, of the property on which the lien or encumbrance exists. For the residue of the claim, the holder of the lien or encumbrance shall share pro rata with the other creditors, if entitled to do so under Indiana law.
As added by P.L.2-2002, SEC.3.

IC 32-18-1-14
Distribution of money in possession of trustee

Sec. 14. If the court confirms the report made as provided under section 11 of this chapter and if no contested claims are standing on the docket as provided under section 12 of this chapter, the court shall order the trustee to pay all money in the trustee's hands to the clerk of the court. The clerk, after deducting the costs incident to the execution of the trust, including an allowance to the trustee as the court considers just, shall:

(1) distribute the money among the creditors according to this chapter; and

(2) take receipts from each creditor.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-15
Examination of assignor or transferee

Sec. 15. (a) If a creditor or the trustee, by verified petition, asks the court for the examination of the assignor or any person to whom any part of the person's property has been transferred within six (6) months before the assignment, the circuit or superior court may issue an order for the examination of:

(1) the assignor;
(2) a person or officer of a corporation to whom a transfer is believed to have been fraudulently made;
(3) a a person or officer of an association to whom a transfer is believed to have been fraudulently made; and
(4) a person alleged to have been concerned in the transfer.

(b) A person described in subsection (a) may be brought before the court and, on oath, be compelled to answer all questions put to the person pertinent to the alleged transaction. The court may stay further transfers and subject property that has been fraudulently withheld or transferred to the operation of the general trust. The assignor or person shall be interrogated or be compelled to answer all questions concerning the disposition of the property of the assignor. The assignor may be interrogated and compelled to answer all questions concerning the management of the assignor's business and affairs for the six (6) months before the assignment. The assignor shall be compelled to produce all books, papers, and accounts in reference to the assignor's business affairs during the six (6) months preceding the assignment.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-16
Oath of persons filing claims

Sec. 16. A person who files a claim with the trustee must make oath that the claim is just and lawful and no part of the claim is for usurious interest. If a claim or part of a claim is for usurious interest, it must be deducted from the claims before they are allowed. The trustee may administer an oath to a creditor in reference to the validity and justice of a claim.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-17
Debt or claim belonging to assignor; compounding or compromising

Sec. 17. A trustee may compound or compromise a debt or claim belonging to the assignor that cannot be otherwise recovered without endangering the recovery of the claim or debt.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-18
Trustee; final report; discharge from trust

Sec. 18. (a) The trustee shall, at the expiration of one (1) year after entering upon the duties of the trust or at the next term of the court

after the expiration of one (1) year after entering upon the duties of the trust, make a final report to the court.

(b) After a hearing and determination, if the judge is satisfied with and approves the report, the judge shall order the trustee to be discharged from the trust. However, the judge may, for good cause shown, grant further time to the trustee to file a final account.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-19

Trustee; removal; vacancy

Sec. 19. (a) The judge of the circuit court may, upon the petition of a creditor or the assignor, remove a trustee under this chapter for good cause shown and appoint a successor.

(b) If a vacancy occurs by death, resignation, or removal of a trustee from Indiana, the judge may fill the vacancy and shall order a trustee who is removed to surrender all property in the trustee's hands belonging to the trust to the successor. The court may require a trustee removed under this section to pay to the clerk of the court all money in the trustee's hands, and on or before the next term, the trustee shall make and file a full and final report showing the condition of the trust and the trustee's management of the trust while under the trustee's control. If the court is satisfied with the report and the trustee has fully complied with this chapter and paid all money in the trustee's hands to the clerk of the court, the court may discharge the trustee.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-20

Right to appeal

Sec. 20. This chapter may not be construed to prevent a party aggrieved by an order or decree of the court under this chapter from having an appeal as in other civil actions.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-21

Fees allowed clerk of court; compensation of appraisers and trustee

Sec. 21. (a) For whatever services the clerk of the circuit court is required to perform under this chapter, the clerk is allowed the same fees as are allowed the clerk by law for similar services in other civil proceedings.

(b) The appraisers under this chapter are entitled to one dollar ($1) per day each for their services.

(c) The judge shall remunerate the trustee for the trustee's services in executing the trust out of the general fund as the judge considers just and proper.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-22

Power of surviving partner to make assignments

Sec. 22. A surviving partner of a firm doing business in Indiana

has full power to make assignments under this chapter.
As added by P.L.2-2002, SEC.3. Amended by P.L.1-2003, SEC.80.

IC 32-18-2

Chapter 2. Uniform Fraudulent Transfer Act

IC 32-18-2-0.2

Application of prior law to transfers and obligations

Sec. 0.2. To the extent applicable, the following statutes (before their repeal by P.L.144-1994) apply to a transfer made or an obligation incurred before July 1, 1994:

(1) IC 30-1-9-7.
(2) IC 32-2-1-7.
(3) IC 32-2-1-8.
(4) IC 32-2-1-9.
(5) IC 32-2-1-10.
(6) IC 32-2-1-14.
(7) IC 32-2-1-15.
(8) IC 32-2-1-16.
(9) IC 32-2-1-17.
(10) IC 32-2-1-18.

As added by P.L.220-2011, SEC.520.

IC 32-18-2-1

Applicability of chapter

Sec. 1. (a) This chapter applies to all transfers made and obligations incurred after June 30, 1994.

(b) This chapter does not apply to a transfer made or an obligation incurred before July 1, 1994.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-2

"Asset" defined

Sec. 2. (a) As used in this chapter, "asset" means property of a debtor.

(b) The term does not include any of the following:

(1) Property, to the extent the property is encumbered by a valid lien.
(2) Property, to the extent the property is generally exempt under law other than federal bankruptcy law.
(3) An interest in property held in tenancy by the entireties to the extent the interest is not subject to process by a creditor holding a claim against only one (1) tenant.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-3

"Claim" defined

Sec. 3. As used in this chapter, "claim" means a right to payment, whether the right is:

(1) reduced to judgment or not;
(2) liquidated or unliquidated;
(3) fixed or contingent;
(4) matured or unmatured;

(5) disputed or undisputed;
(6) legal or not;
(7) equitable or not; or
(8) secured or unsecured.
As added by P.L.2-2002, SEC.3.

IC 32-18-2-4
"Creditor" defined
Sec. 4. As used in this chapter, "creditor" means a person who has a claim.
As added by P.L.2-2002, SEC.3.

IC 32-18-2-5
"Debt" defined
Sec. 5. As used in this chapter, "debt" means liability on a claim.
As added by P.L.2-2002, SEC.3.

IC 32-18-2-6
"Debtor" defined
Sec. 6. As used in this chapter, "debtor" means a person who is liable on a claim.
As added by P.L.2-2002, SEC.3.

IC 32-18-2-7
"Lien" defined
Sec. 7. (a) As used in this chapter, "lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation.
(b) The term includes any of the following:
(1) A security interest created by agreement.
(2) A judicial lien obtained by legal or equitable process or proceedings.
(3) A common law lien.
(4) A statutory lien.
As added by P.L.2-2002, SEC.3.

IC 32-18-2-8
"Person" defined
Sec. 8. As used in this chapter, "person" means an individual, a partnership, a corporation, a limited liability company, an association, an organization, a government, a governmental subdivision or agency, a business trust, an estate, a trust, or any other legal or commercial entity.
As added by P.L.2-2002, SEC.3.

IC 32-18-2-9
"Property" defined
Sec. 9. As used in this chapter, "property" means anything that can be the subject of ownership.
As added by P.L.2-2002, SEC.3.

IC 32-18-2-10
"Transfer" defined

Sec. 10. (a) As used in this chapter, "transfer" means any mode of disposing of or parting with an asset or an interest in an asset, whether the mode is direct or indirect, absolute or conditional, or voluntary or involuntary.

(b) The term includes payment of money, release, lease, and creation of a lien or other encumbrance.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-11
"Valid lien" defined

Sec. 11. As used in this chapter, "valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-12
Insolvency

Sec. 12. (a) For purposes of this section, assets do not include property that has been:

(1) transferred, concealed, or removed with intent to hinder, delay, or defraud creditors; or

(2) transferred in a manner making the transfer voidable under this chapter.

(b) For purposes of this section, debts do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset under this section.

(c) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.

(d) A debtor who is generally not paying the debtor's debts as they become due is presumed to be insolvent. This presumption imposes upon the party against whom the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

(e) A partnership is insolvent if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over each general partner's nonpartnership debts.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-13
Value

Sec. 13. (a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied. Value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For purposes of sections 14(2) and 15 of this chapter, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset through a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by the debtor and transferee to be contemporaneous and is in fact substantially contemporaneous.
As added by P.L.2-2002, SEC.3.

IC 32-18-2-14
Transfers fraudulent as to present and future creditors

Sec. 14. A transfer made or an obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(B) intended to incur or believed or reasonably should have believed that the debtor would incur debts beyond the debtor's ability to pay as the debts became due.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-15
Transfers fraudulent as to present creditors

Sec. 15. A transfer made or an obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if:

(1) the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and

(2) the debtor:

(A) was insolvent at that time; or

(B) became insolvent as a result of the transfer or obligation.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-16
When transfer is made or obligation incurred

Sec. 16. The following apply for purposes of this chapter:

(1) A transfer is made:

(A) with respect to an asset that is real property other than a fixture (but including the interest of a seller or purchaser under a contract for the sale of the asset), when the transfer

is so far perfected that a good faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(B) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien (other than under this chapter) that is superior to the interest of the transferee.

(2) If applicable law permits a transfer to be perfected under subdivision (1) and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is considered made immediately before the commencement of the action.

(3) If applicable law does not permit a transfer to be perfected under subdivision (1), the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

(5) An obligation is incurred:

(A) if oral, when it becomes effective between the parties; or

(B) if evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-17

Remedies of creditor

Sec. 17. (a) In an action for relief against a transfer or an obligation under this chapter, a creditor, subject to the limitations in section 18 of this chapter, may obtain any of the following:

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim.

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by IC 34-25-2-1 or any other applicable statute providing for attachment or other provisional remedy against debtors generally.

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure, any of the following:

(A) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred, its proceeds, or of other property.

(B) Appointment of a receiver to take charge of the asset transferred or of the property of the transferee.

(C) Any other relief the circumstances require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court orders, may levy execution on the asset transferred or its proceeds.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-18
Transferee's defenses, liability, and protections

Sec. 18. (a) A transfer or an obligation is not voidable under section 14(1) of this chapter against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this chapter, to the extent a transfer is voidable in an action by a creditor under section 17(a)(1) of this chapter, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(1) the first transferee of the asset or the person for whose benefit the transfer was made; or

(2) any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

(c) If the judgment under subsection (b) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this chapter, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(1) a lien on or a right to retain any interest in the asset transferred;

(2) enforcement of any obligation incurred; or

(3) a reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under section 14(2) or section 15 of this chapter if the transfer results from:

(1) termination of a lease upon default by the debtor when the termination is permitted by the lease and applicable law; or

(2) enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-19
Statute of limitations; extinguishment of cause of action

Sec. 19. A cause of action with respect to a fraudulent transfer or obligation under this chapter is extinguished unless brought as follows:

(1) If brought under section 14(1) of this chapter, an action is extinguished unless brought not later than the later of the following:

(A) Four (4) years after the transfer was made or the obligation was incurred.

(B) One (1) year after the transfer or obligation was or could reasonably have been discovered by the claimant.

(2) If brought under section 14(2) or 15(1) of this chapter, an action is extinguished unless it is brought not later than four (4) years after the transfer was made or the obligation was incurred.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-20
Supplementary provisions

Sec. 20. Unless superseded by this chapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, equitable subordination, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement this chapter.
As added by P.L.2-2002, SEC.3.

IC 32-18-2-21
Uniformity of application and construction

Sec. 21. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.
As added by P.L.2-2002, SEC.3.

IC 32-18-3

Chapter 3. Resale of Insolvent Debtors' Real Estate

IC 32-18-3-1

Sale of real estate by receiver, assignee, or trustee under IC 32-18-1; filing bond to secure sale

Sec. 1. In a sale of real estate by:

(1) a receiver; or

(2) an assignee or trustee under IC 32-18-1;

a person may, before the confirmation of the sale by the proper court, file with the clerk of the court, or in open court, a bond in the sum sufficient to secure the sale. The surety for the bond must be approved by the clerk or the court.

As added by P.L.2-2002, SEC.3.

IC 32-18-3-2

Resale of property; liability for amount above bid at previous sale

Sec. 2. If on resale of the real estate, or any part of the real estate, the real estate sells for ten percent (10%) more than the amount bid at the previous sale, the court may not confirm the sale but order the real estate resold. If on resale the additional sum is not realized, the person posting the bond is liable for the difference. It is the duty of the receiver, assignee, or trustee to institute and prosecute the suit, which is for the use and benefit of the trust.

As added by P.L.2-2002, SEC.3.

IC 32-19

ARTICLE 19. DESCRIBING REAL PROPERTY; INDIANA COORDINATE SYSTEM

IC 32-19-1

Chapter 1. Designation of Indiana Coordinate System; Zones

IC 32-19-1-1

Designation of systems

Sec. 1. The systems of plane coordinates that have been established by the National Ocean Survey/National Geodetic Survey (formerly the United States Coast and Geodetic Survey) or its successors for defining and stating the positions or locations of points on the surface of the earth within Indiana are known and designated as the "Indiana coordinate system of 1927" and the "Indiana coordinate system of 1983".

As added by P.L.2-2002, SEC.4.

IC 32-19-1-2

Division of Indiana into east and west zones; counties in each zone

Sec. 2. (a) For the purpose of the use of the systems described in section 1 of this chapter, Indiana is divided into an east zone and a west zone.

(b) The area included in the following counties constitutes the east zone:

Adams
Allen
Bartholomew
Blackford
Brown
Cass
Clark
Dearborn
Decatur
DeKalb
Delaware
Elkhart
Fayette
Floyd
Franklin
Fulton
Grant
Hamilton
Hancock
Harrison
Henry
Howard
Huntington
Jackson
Jay

Jefferson
Jennings
Johnson
Kosciusko
LaGrange
Madison
Marion
Marshall
Miami
Noble
Ohio
Randolph
Ripley
Rush
St. Joseph
Scott
Shelby
Steuben
Switzerland
Tipton
Union
Wabash
Washington
Wayne
Wells
Whitley.

(c) The area included in the following counties constitutes the west zone:

Benton
Boone
Carroll
Clay
Clinton
Crawford
Daviess
Dubois
Fountain
Gibson
Greene
Hendricks
Jasper
Knox
Lake
LaPorte
Lawrence
Martin
Monroe
Montgomery
Morgan
Newton

Orange
Owen
Parke
Perry
Pike
Porter
Posey
Pulaski
Putnam
Spencer
Starke
Sullivan
Tippecanoe
Vanderburgh
Vermillion
Vigo
Warren
Warrick
White.

As added by P.L.2-2002, SEC.4.

IC 32-19-1-3

Descriptions of systems; locating position of systems

Sec. 3. (a) To more precisely describe the Indiana coordinate system of 1927, the following descriptions by the National Ocean Survey/National Geodetic Survey are adopted:

(1) The "Indiana coordinate system of 1927, east zone" is a transverse Mercator projection of the Clarke spheroid of 1866, having a central meridian 85 degrees 40 minutes west of Greenwich, on which meridian the scale is set at one part in 30,000 too small. The origin of coordinates is at the intersection of the meridian 85 degrees 40 minutes west of Greenwich and the parallel 37 degrees 30 minutes north latitude. This origin is given the coordinates: x = 500,000 feet and y = 0 feet.

(2) The "Indiana coordinate system of 1927, west zone" is a transverse Mercator projection of the Clarke spheroid of 1866, having a central meridian 87 degrees 05 minutes west of Greenwich, on which meridian the scale is set at one part in 30,000 too small. The origin of coordinates is at the intersection of the meridian 87 degrees 05 minutes west of Greenwich and the parallel 37 degrees 30 minutes north latitude. This origin is given the coordinates: x = 500,000 feet and y = 0 feet.

(b) To more precisely describe the Indiana coordinate system of 1983, the following description by the National Ocean Survey/National Geodetic Survey is adopted:

(1) The "Indiana coordinate system of 1983, east zone" is a transverse Mercator projection of the North American Datum of 1983, having a central meridian 85 degrees 40 minutes west of Greenwich, on which meridian the scale is set at one part in 30,000 too small. The origin of coordinates is at the intersection

of the meridian 85 degrees 40 minutes west of Greenwich and the parallel 37 degrees 30 minutes north latitude. This origin is given the coordinates: x = 100,000 meters and y = 250,000 meters.

(2) The "Indiana coordinate system of 1983, west zone" is a transverse Mercator projection of the North American Datum of 1983, having a central meridian 87 degrees 05 minutes west of Greenwich, on which meridian the scale is set at one part in 30,000 too small. The origin of coordinates is at the intersection of the meridian 87 degrees 05 minutes west of Greenwich and the parallel 37 degrees 30 minutes north latitude. This origin is given the coordinates: x = 900,000 meters and y = 250,000 meters.

(c) To locate the position of the coordinate systems on the surface of the earth in Indiana, the following shall be used:

(1) The position of the Indiana coordinate system of 1927 shall be determined from horizontal geodetic control points established throughout Indiana in conformity with the standards of accuracy and specifications for first-order and second-order geodetic surveying as prepared and published by the Federal Geodetic Control Committee (FGCC) of the United States Department of Commerce, whose geodetic positions have been rigidly adjusted on the North American Datum of 1927, and whose coordinates have been computed on the Indiana coordinate system of 1927. Standards and specifications of the FGCC (or its successors) in force on the date of the survey apply.

(2) The position of the Indiana coordinate system 1983 shall be determined from horizontal geodetic control points established throughout Indiana in conformity with the standards of accuracy and specifications for first-order and second-order geodetic surveying as prepared and published by the Federal Geodetic Control Committee (FGCC) of the United States Department of Commerce, whose geodetic positions have been rigidly adjusted on the North American Datum of 1983, and whose coordinates have been computed on the Indiana coordinate system of 1983. Standards and specifications of the FGCC (or its successors) in force on the date of the survey apply.

As added by P.L.2-2002, SEC.4.

IC 32-19-1-4

Naming and designation of system in land descriptions

Sec. 4. (a) As established for use in the east zone, the Indiana coordinate system of 1927 or the Indiana coordinate system of 1983:

(1) shall be named; and

(2) in any land description in which it is used, shall be designated the:

(A) "Indiana coordinate system of 1927, east zone"; or

(B) "Indiana coordinate system of 1983, east zone".

(b) As established for use in the west zone, the Indiana coordinate

system of 1927 or the Indiana coordinate system of 1983:

(1) shall be named; and

(2) in any land description in which it is used. shall be designated, the:

(A) "Indiana coordinate system of 1927, west zone"; or

(B) "Indiana coordinate system of 1983, west zone".

As added by P.L.2-2002, SEC.4.

IC 32-19-1-5

Tract located in both zones

Sec. 5. If a tract of land to be defined by a single description extends from one (1) into the other of the east zone or the west zone:

(1) the positions of all points on the boundaries of the tract may be referred to as either the east zone or the west zone; and

(2) the zone that is used must be specifically named in the description.

As added by P.L.2-2002, SEC.4.

IC 32-19-1-6

Use of terms; limits on use of system

Sec. 6. (a) The use of the term "Indiana coordinate system of 1927" or "Indiana coordinate system of 1983" on any map, report of survey, or other document shall be limited to coordinates based on the Indiana coordinate system described in this chapter.

(b) Beginning January 1, 1990, the Indiana coordinate system of 1927 may not be used, and only the Indiana coordinate system of 1983 may be used.

As added by P.L.2-2002, SEC.4.

IC 32-19-2

Chapter 2. Coordinates; Geodetic Control Monuments

IC 32-19-2-1

Positions expressed by x-coordinate and y-coordinate

Sec. 1. (a) The plane coordinates of a point on the earth's surface, used to express the position or location of that point in the appropriate zone of the Indiana coordinate system described in IC 32-19-1, must consist of two (2) distances expressed in:

(1) U.S. Survey feet (1 meter = 39.37/12 feet) and decimals of a foot when using the Indiana coordinate system of 1927; and

(2) meters and decimals of a meter and United States Survey feet and decimals of a foot when using the Indiana coordinate system of 1983.

(b) The distance described in subsection (a) that gives the position in an east-and-west direction is called the "x-coordinate". The distance described in subsection (a) that gives the position in a north-and-south direction is called the "y-coordinate". These coordinates must be made to depend upon and conform to plane rectangular coordinate values for the monumented points of the North American Horizontal Geodetic Control Network as published by the National Ocean Survey/National Geodetic Survey or its successors, if the successor's plane coordinates have been computed on the Indiana coordinate system of 1927 or the Indiana coordinate system of 1983. Any station may be used for establishing a survey connection to the Indiana coordinate system of 1927 or the Indiana coordinate system of 1983.

As added by P.L.2-2002, SEC.4.

IC 32-19-2-2

Coordinates; reporting requirements

Sec. 2. (a) Coordinates based on the Indiana coordinate system of 1927 or the Indiana coordinate system of 1983 purporting to define the position of a point on a land boundary may not be presented to be recorded in any public land records or deed records unless the recording document also contains:

(1) a description of the nearest first-order or second-order horizontal geodetic control monument from which the coordinates being recorded were determined; and

(2) the method of survey for the determination.

(b) If the position of the described first-order or second-order geodetic control monument is not published by the National Geodetic Survey (or its successors), the recording document must contain a certification signed by a professional surveyor registered under IC 25-21.5 stating that the subject control monument and its coordinates were established and determined in conformance with the specifications given in IC 32-19-1-3.

(c) The publishing of the existing control stations or the acceptance with intent to publish the newly established control stations by the National Geodetic Survey constitutes evidence of

adherence to the FGCC specifications. Horizontal geodetic control monuments shall be permanently monumented and control data sheets prepared and filed so that a densification of the control network is accomplished.

(d) The surveying techniques and positioning systems used to produce first-order or second-order geodetic precision shall be identified. Annotation must accompany state plane coordinate values when they are used to less than second-order precision.

As added by P.L.2-2002, SEC.4. Amended by P.L.57-2013, SEC.87.

IC 32-19-3

Chapter 3. Descriptions of Land Using the Indiana Coordinate System

IC 32-19-3-1

Reference to United States public land surveys; coordinate description as supplemental; conflicts

Sec. 1. If coordinates based on the Indiana coordinate system are used to describe any tract of land, which in the same document is also described by reference to any subdivision, line, or corner of the United States public land surveys:

(1) the description by coordinates shall be construed as supplemental to the basic description of the subdivision, line, or corner contained in the official plats and field notes filed of record; and

(2) in the event of any conflict, the description by reference to the subdivision, line, or corner of the United States public land surveys prevails over the description by coordinates.

As added by P.L.2-2002, SEC.4.

IC 32-19-3-2

Description depending exclusively on coordinate system

Sec. 2. This article does not require a purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the Indiana coordinate system.

As added by P.L.2-2002, SEC.4.

IC 32-19-4
Repealed

(Repealed by P.L.2-2007, SEC.390.)

IC 32-20

ARTICLE 20. MARKETABLE TITLE FOR REAL PROPERTY

IC 32-20-1

Chapter 1. Purpose and Application

IC 32-20-1-1

Construction of law

Sec. 1. (a) This article shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title as described in IC 32-20-3-1, subject only to the limitations that are described in IC 32-20-3-2.

(b) However, this article does not change the law affecting the capacity to own land of a person claiming a marketable record title under this article.

As added by P.L.2-2002, SEC.5.

IC 32-20-1-2

Limitation of actions; recording instruments

Sec. 2. This article may not be construed to do the following:

(1) Extend the period to bring an action or to do any other required act under any statutes of limitations.

(2) Except as specifically provided in this article, affect the operation of any statutes governing the effect of the recording or the failure to record any instrument affecting land.

As added by P.L.2-2002, SEC.5.

IC 32-20-2
Chapter 2. Definitions

IC 32-20-2-1
Application
Sec. 1. The definitions in this chapter apply throughout this article.
As added by P.L.2-2002, SEC.5.

IC 32-20-2-2
"Marketable record title" defined
Sec. 2. "Marketable record title" means a title of record, as described in IC 32-20-3-1, that operates to extinguish interests and claims existing before the effective date of the root of title, as provided in IC 32-20-3-3.
As added by P.L.2-2002, SEC.5.

IC 32-20-2-3
"Muniments" defined
Sec. 3. "Muniments" means the records of title transactions in the chain of title of a person that:
(1) purport to create the interest in land claimed by the person; and
(2) upon which the person relies as a basis for the marketability of the person's title;
commencing with the root of title and including all subsequent transactions.
As added by P.L.2-2002, SEC.5.

IC 32-20-2-4
"Person dealing with land" defined
Sec. 4. "Person dealing with land" includes:
(1) a purchaser of an estate or interest in an estate;
(2) a mortgagee;
(3) a levying or attaching creditor;
(4) a land contract vendee; or
(5) a person seeking to:
(A) acquire an estate or interest in an estate; or
(B) impose a lien on an estate.
As added by P.L.2-2002, SEC.5.

IC 32-20-2-5
"Records" defined
Sec. 5. "Records" includes all official public records that affect title to land.
As added by P.L.2-2002, SEC.5.

IC 32-20-2-6
"Root of title" defined
Sec. 6. "Root of title" means that title transaction in the chain of title of a person:

(1) that purports to create the interest claimed by the person;
(2) upon which the person relies as a basis for the marketability of the person's title; and
(3) that is the most recent to be recorded as of a date at least fifty (50) years before the time when marketability is being determined.

The effective date of the root of title is the date on which it is recorded.

As added by P.L.2-2002, SEC.5.

IC 32-20-2-7
"Title transaction" defined

Sec. 7. "Title transaction" means any transaction affecting title to any interest in land, including the following:

(1) Title by will or descent.
(2) Title by tax deed.
(3) Title by trustee's, referee's, guardian's, executor's, administrator's, commissioner's, or sheriff's deed.
(4) Title by decree of a court.
(5) Title by warranty deed, quitclaim deed, or mortgage.

As added by P.L.2-2002, SEC.5.

IC 32-20-3

Chapter 3. Interests in Title

IC 32-20-3-0.1

Application of certain amendments to chapter

Sec. 0.1. The amendments made to section 2 of this chapter by P.L.18-2008 apply only to determinations of marketable record title after June 30, 2008.

As added by P.L.220-2011, SEC.521.

IC 32-20-3-1

Unbroken chain of title; definition

Sec. 1. A person who has an unbroken chain of title of record to an interest in land for at least fifty (50) years has a marketable record title to that interest, subject to section 2 of this chapter. A person is considered to have this unbroken chain of title when:

(1) the official public records disclose a title transaction of record that occurred at least fifty (50) years before the time the marketability is determined; and

(2) the title transaction purports to create an interest in:

(A) the person claiming the interest; or

(B) a person from whom, by one (1) or more title transactions of record, the purported interest has become vested in the person claiming the interest;

with nothing appearing of record purporting to divest the claimant of the purported interest.

As added by P.L.2-2002, SEC.5.

IC 32-20-3-2

Interests and defects affecting marketable record title

Sec. 2. Marketable record title is subject to the following:

(1) All interests and defects that are inherent in the muniments of which the chain of record title is formed. However, a general reference in the muniments, or any one (1) of them, to:

(A) easements;

(B) use restrictions; or

(C) other interests created before the root of title;

is not sufficient to preserve them, unless specific identification is made in the muniments of a recorded title transaction that creates the easement, use restriction, or other interest.

(2) All interests preserved by:

(A) the filing of proper notice; or

(B) possession by the same owner continuously for at least fifty (50) years, in accordance with IC 32-20-4-1.

(3) The rights of any person arising from adverse possession or adverse user, if the period of adverse possession or adverse user was wholly or partly subsequent to the effective date of the root of title.

(4) Any interest arising out of a title transaction recorded after the effective date of the root of title from which the unbroken

chain of title of record is started. However, the recording shall not revive or give validity to any interest that has been extinguished before the time of the recording by the operation of section 3 of this chapter.

(5) The exceptions stated in IC 32-20-4-3 concerning:

(A) rights of reversioners in leases;

(B) rights of any lessee in and to any lease; and

(C) easements and interests in the nature of easements.

(6) All interests of the department of environmental management arising from the recording of a restrictive covenant under IC 13, regardless of whether the recording occurred before July 1, 2008.

As added by P.L.2-2002, SEC.5. Amended by P.L.18-2008, SEC.2; P.L.220-2011, SEC.522.

IC 32-20-3-3

Transactions before root of title

Sec. 3. Subject to section 2 of this chapter, marketable record title is held by its owner and is taken by a person dealing with the land free and clear of all interests, claims, or charges whose existence depends upon any act, transaction, event, or omission that occurred before the effective date of the root of title. All the interests, claims, or charges, however denominated, whether:

(1) legal or equitable;

(2) present or future; or

(3) asserted by a person who is:

(A) sui juris or under a disability;

(B) within or outside Indiana;

(C) natural or corporate; or

(D) private or governmental;

are void.

As added by P.L.2-2002, SEC.5.

IC 32-20-4

Chapter 4. Notice of Claim

IC 32-20-4-1

Notice of claim; filing

Sec. 1. (a) A person claiming an interest in land may preserve and keep effective that interest by filing for record during the fifty (50) year period immediately following the effective date of the root of title of the person whose record title would otherwise be marketable, a notice in writing, verified by oath, setting forth the nature of the claim. A disability or lack of knowledge of any kind on the part of anyone does not suspend the running of the fifty (50) year period. Notice may be filed for record by the claimant or by a person acting on behalf of any claimant who is:

(1) under a disability;

(2) unable to assert a claim on the claimant's behalf; or

(3) one (1) of a class whose identity cannot be established or is uncertain at the time of filing the notice of claim for record.

(b) If the same record owner of any possessory interest in land has been in possession of the land continuously for a period of at least fifty (50) years, during which period:

(1) title transaction with respect to the interest does not appear of record in the record owner's chain of title;

(2) notice has not been filed by the record owner or on behalf of the record owner as provided in subsection (a); and

(3) possession continues to the time when marketability is being determined;

the period of possession is considered equivalent to the filing of the notice immediately preceding the termination of the fifty (50) year period described in subsection (a).

(c) If:

(1) a person claims the benefit of an equitable restriction or servitude that is one (1) of a number of substantially identical mutual restrictions on the use of tracts in a platted subdivision, the plat of which is recorded as provided by law; and

(2) the subdivision plan provides for an association, corporation, committee, or other similar group that is empowered to determine whether the restrictions are to be terminated or continued at the expiration of a stated period not exceeding fifty (50) years, and, by the terms of this provision, it is determined that:

(A) the restrictions are not to be terminated; or

(B) the restrictions are to be continued because no determination to terminate has been made;

then the officer or other person authorized to represent the association, corporation, committee, or other similar group may preserve and keep in effect all the restrictions by filing a notice as provided in subsection (a) on behalf of all owners of land in the subdivision for the benefit of whom the restrictions exist.

As added by P.L.2-2002, SEC.5.

IC 32-20-4-2
Notice of claim; contents; indexing by county recorder

Sec. 2. (a) To be effective and to be entitled to be recorded, the notice referred to in section 1 of this chapter must contain the following:

(1) An accurate and full description of all land affected by the notice in specific terms. However, if the claim is founded upon a recorded instrument, then the description in the notice may be the same as that contained in the recorded instrument.

(2) The name and address of the claimant.

(3) The name and address of the person preparing the notice if other than the claimant.

This notice must be filed for record in the office of the recorder of a county where the land described is situated.

(b) A county recorder shall accept all notices presented to the recorder that describe land located in the county that the recorder serves. The recorder shall enter and record full copies of the notice in the same way that deeds are recorded. Each recorder shall charge the same fees for recording a notice as are charged for recording deeds.

(c) Each recorder shall index the notices in the same manner that deeds are indexed. Until the notice is recorded and correctly indexed, a notice does not comply with section 1 of this chapter regarding notice.

As added by P.L.2-2002, SEC.5.

IC 32-20-4-3
Notice of claim; effect of failure to file on lease or easement

Sec. 3. (a) Failure to file the notice required under this chapter does not bar:

(1) a lessor or the lessor's successor as a reversioner of the lessor's right to possession on the expiration of any lease; or

(2) a lessee or the lessee's successor of the lessee's rights in and to any lease.

(b) Failure to file the notice required under this chapter does not bar or extinguish any easement, interest in the nature of an easement, or any rights appurtenant to an easement granted, excepted, or reserved by the instrument creating the easement or interest, including any rights for future use, if the existence of the easement or interest is evidenced by the location beneath, upon, or above any part of the land described in the instrument of any pipe, valve, road, wire, cable, conduit, duct, sewer, track, pole, tower, or other physical facility and whether or not the existence of the facility is observable. However, equitable restrictions or servitudes on the use of land are not considered easements or interests in the nature of easements as that phrase is used in this section.

As added by P.L.2-2002, SEC.5.

IC 32-20-5

Chapter 5. Slander of Title

IC 32-20-5-1

Filing notices to slander title prohibited

Sec. 1. A person may not use the privilege of filing notices under this article to slander the title to land.

As added by P.L.2-2002, SEC.5.

IC 32-20-5-2

Filing claim to slander title; claimant's liability for costs and damages

Sec. 2. In any action to quiet title to land, if the court finds that a person has filed a claim only to slander title to land, the court shall:

(1) award the plaintiff all the costs of the action, including attorney's fees that the court allows to the plaintiff; and

(2) decree that the defendant asserting the claim shall pay to the plaintiff all damages that the plaintiff may have sustained as the result of the notice of claims having been filed for record.

As added by P.L.2-2002, SEC.5.

IC 32-21

ARTICLE 21. CONVEYANCE PROCEDURES FOR REAL PROPERTY

IC 32-21-1

Chapter 1. Statute of Frauds; Writing Requirements

IC 32-21-1-1

Requirement of written agreement; agreements or promises covered

Sec. 1. (a) This section does not apply to a lease for a term of not more than three (3) years.

(b) A person may not bring any of the following actions unless the promise, contract, or agreement on which the action is based, or a memorandum or note describing the promise, contract, or agreement on which the action is based, is in writing and signed by the party against whom the action is brought or by the party's authorized agent:

(1) An action charging an executor or administrator, upon any special promise, to answer damages out of the executor's or administrator's own estate.

(2) An action charging any person, upon any special promise, to answer for the debt, default, or miscarriage of another.

(3) An action charging any person upon any agreement or promise made in consideration of marriage.

(4) An action involving any contract for the sale of land.

(5) An action involving any agreement that is not to be performed within one (1) year from the making of the agreement.

(6) An action involving an agreement, promise, contract, or warranty of cure concerning medical care or treatment. However, this subdivision does not affect the right to sue for malpractice or negligence.

As added by P.L.2-2002, SEC.6.

IC 32-21-1-2

Consideration for agreement; writing not required

Sec. 2. The consideration that is the basis of a promise, contract, or agreement described in section 1 of this chapter does not need to be in writing but may be proved.

As added by P.L.2-2002, SEC.6.

IC 32-21-1-3

Conveyance; trust in lands; goods; things in action

Sec. 3. A conveyance of an existing trust in land, goods, or things in action is void unless the conveyance is in writing and signed by the party making the conveyance or by the party's lawful agent.

As added by P.L.2-2002, SEC.6.

IC 32-21-1-4

Trust arising from or extinguished by implication of law

Sec. 4. Nothing contained in any Indiana law may be construed to prevent any trust from arising or being extinguished by implication of law.
As added by P.L.2-2002, SEC.6.

IC 32-21-1-5
Compelling specific performance in cases of part performance
Sec. 5. Nothing contained in any Indiana statute may be construed to abridge the powers of courts to compel the specific performance of agreements in cases of part performance of the agreements.
As added by P.L.2-2002, SEC.6.

IC 32-21-1-6
Representations concerning other persons
Sec. 6. An action may not be brought against a person for a representation made by the person concerning the character, conduct, credit, ability, trade, or dealings of any other person, unless the representation is in writing and signed by the person or by the person's lawful agent.
As added by P.L.2-2002, SEC.6.

IC 32-21-1-7
Conveyance revocable at will of grantor; provision void as to subsequent purchaser
Sec. 7. If a conveyance of or charge upon an estate contains a provision for revocation at the will of the grantor, the provision is void as to subsequent purchasers from the grantor, for a valuable consideration, of the estate or interest subject to the provision, even though the provision is not expressly revoked.
As added by P.L.2-2002, SEC.6.

IC 32-21-1-8
Revocation and reconveyance power; person other than grantor
Sec. 8. If the power to revoke a conveyance of any interest in land, and to reconvey the interest, is given to any person other than the grantor in the conveyance, and the person given the power conveys the interest to a purchaser for a valuable consideration, the subsequent conveyance is valid.
As added by P.L.2-2002, SEC.6.

IC 32-21-1-9
Conveyance before vesting of power of revocation
Sec. 9. If a conveyance to a purchaser under either section 7 or 8 of this chapter is made before the person making the conveyance is entitled to execute the person's power of revocation, the conveyance is valid from the time the power of revocation vests in the person.
As added by P.L.2-2002, SEC.6.

IC 32-21-1-10
Commission for finding purchaser of real estate

Sec. 10. A contract for the payment of any sum of money or thing of value, as a commission or reward for the finding or procuring by one (1) person of a purchaser for the real estate of another, is not valid unless the contract is in writing and signed by the owner of the real estate or the owner's legally appointed and duly qualified representative. For purposes of this section, any general reference to the real estate that is sufficient to identify the real estate is a sufficient description of the real estate.
As added by P.L.2-2002, SEC.6.

IC 32-21-1-11
Instruments executed in foreign country; acknowledgment before diplomatic or consular officer

Sec. 11. If executed in a foreign country, conveyances, mortgages, and other instruments in writing that would be admitted to record under the recording laws of this state must be acknowledged by the grantor or person executing the instrument and proved before any diplomatic or consular officer of the United States, duly accredited, or before any officer of the foreign country who, by the laws of that country, is authorized to take acknowledgments or proof of conveyances. If the acknowledgment or proof is in the English language and attested by the official seal of the officer acknowledging it, the instrument may be admitted to record. However, if the acknowledgment or proof is in a language other than English or is not attested by an official seal, then the instrument must be accompanied by a certificate of a diplomatic or consular officer of the United States attesting:

(1) that the instrument is duly executed according to the laws of the foreign country;
(2) that the officer certifying the acknowledgment or proof had legal authority to do so; and
(3) to the meaning of the instrument, if the instrument is made in a foreign language.

As added by P.L.2-2002, SEC.6.

IC 32-21-1-12
Validation of conveyance or acknowledgment; seal or ink scroll not required

Sec. 12. It is not necessary to affix a private seal or ink scroll necessary to validate a conveyance of land or an interest in land executed by a natural person, business trust, or corporation. It is not necessary for the officer taking the acknowledgment of the conveyance to use an ink scroll or seal unless the officer is required by law to keep an official seal.
As added by P.L.2-2002, SEC.6.

IC 32-21-1-13
Conveyance of land; written deed required

Sec. 13. Except for a bona fide lease for a term not exceeding three (3) years, a conveyance of land or of any interest in land shall

be made by a deed that is:

(1) written; and

(2) subscribed, sealed, and acknowledged by the grantor (as defined in IC 32-17-1-1) or by the grantor's attorney.

As added by P.L.2-2002, SEC.6.

IC 32-21-1-14

Conveyances by attorney; power of attorney

Sec. 14. A conveyance of land by attorney is not good unless the attorney is empowered by a written instrument that is subscribed, sealed, and acknowledged by the attorney's principal in the same manner that is required for a conveyance by the attorney's principal.

As added by P.L.2-2002, SEC.6.

IC 32-21-1-15

Conveyances by quitclaim

Sec. 15. A conveyance of land that is:

(1) worded in substance as "A.B. quitclaims to C.D." (here describe the premises) "for the sum of" (here insert the consideration); and

(2) signed, sealed, and acknowledged by the grantor (as defined in IC 32-17-1-1);

is a good and sufficient conveyance in quitclaim to the grantee and the grantee's heirs and assigns.

As added by P.L.2-2002, SEC.6.

IC 32-21-1-16

Estate of inheritance; expression of intent required to create lesser estate

Sec. 16. It is not necessary to use the words "heirs and assigns of the grantee" to create in the grantee an estate of inheritance. If it is the intention of the grantor (as defined in IC 32-17-1-1) to convey any lesser estate, the grantor shall express that intention in the deed.

As added by P.L.2-2002, SEC.6.

IC 32-21-1-17

Incorporating by reference recorded encumberances

Sec. 17. A conveyance of land may incorporate by reference a recorded covenant, restriction, easement, or other encumbrance on the use of the land with a clause that is substantially similar to either of the following:

(1) "Subject to the _____ (insert the type of encumbrance) recorded on _____ (insert the date of recording) in _____ (insert the book and page number on which the encumbrance is recorded or the instrument number in which the encumbrance is recorded).".

(2) "Subject to _____ (insert the type of encumbrance) of record.".

As added by P.L.171-2006, SEC.6.

IC 32-21-2
Chapter 2. Recording Process

IC 32-21-2-1
"Grantor" defined
Sec. 1. As used in this chapter, "grantor" has the meaning set forth in IC 32-17-1-1.
As added by P.L.2-2002, SEC.6.

IC 32-21-2-1.2
"Homeowners association"
Sec. 1.2. As used in this chapter, "homeowners association" means a corporation or another entity that:
(1) is organized and operated exclusively for the benefit of two
(2) or more persons who each own a dwelling in fee simple;
(2) acts, in accordance with bylaws governing the corporation or entity, to:
(A) acquire, transfer, manage, repair, maintain, or engage in construction on or in the land and improvements on the land related to the use of the dwellings owned by the members of the corporation or entity;
(B) purchase insurance to cover a casualty or an activity on or in the land and improvements on the land;
(C) engage in an activity incidental to an activity described in clause (A) or (B); or
(D) engage in more than one (1) of the activities described in clauses (A) through (C); and
(3) may be governed by a board that serves the purpose of setting policy and controlling or otherwise overseeing the activities or functional responsibilities of the corporation or entity.
As added by P.L.43-2013, SEC.1.

IC 32-21-2-2
"Tract" defined
Sec. 2. As used in this chapter, "tract" means an area of land that is:
(1) under common fee simple ownership;
(2) contained within a continuous border; and
(3) a separately identified parcel for property tax purposes.
As added by P.L.2-2002, SEC.6.

IC 32-21-2-3
Recording requirements; acknowledgment and proof; address of grantee
Sec. 3. (a) For a conveyance, a mortgage, or an instrument of writing to be recorded, it must be:
(1) acknowledged by the grantor; or
(2) proved before a:
(A) judge;

(B) clerk of a court of record;
(C) county auditor;
(D) county recorder;
(E) notary public;
(F) mayor of a city in Indiana or any other state;
(G) commissioner appointed in a state other than Indiana by the governor of Indiana;
(H) minister, charge d'affaires, or consul of the United States in any foreign country;
(I) clerk of the city county council for a consolidated city, city clerk for a second class city, or clerk-treasurer for a third class city;
(J) clerk-treasurer for a town; or
(K) person authorized under IC 2-3-4-1.

(b) In addition to the requirements under subsection (a), a conveyance may not be recorded after June 30, 2007, unless it meets the requirements of this subsection. The conveyance must include the mailing address to which statements should be mailed under IC 6-1.1-22-8.1. If the mailing address for statements under IC 6-1.1-22-8.1 is not a street address or a rural route address of the grantee, the conveyance must also include a street address or rural route address of the grantee after the mailing address for statements mailed under IC 6-1.1-22-8.1. A conveyance complies with this subsection if it contains the address or addresses required by this subsection at the end of the conveyance and immediately preceding or following the statements required by IC 36-2-11-15.

As added by P.L.2-2002, SEC.6. Amended by P.L.135-2007, SEC.1; P.L.194-2007, SEC.7; P.L.143-2009, SEC.42.

IC 32-21-2-3.5

Homeowners association covenants

Sec. 3.5. (a) This section applies only to land developments that include:

(1) at least two hundred fifty (250) single family homes; and
(2) at least two (2) different sections of lots:
(A) whose titles have all been conveyed from the land developer;
(B) whose first plat and covenants have been recorded in the office of the county recorder for at least fifteen (15) years;
(C) that are all governed by one (1) homeowners association; and
(D) that are not all subject to the same homeowners association covenants.

(b) Except as provided in subsection (c), if the lots included as part of one (1) homeowners association are not all subject to the same homeowners association covenants, new replacement covenants may be recorded by the homeowners association using one (1) of the following methods:

(1) The homeowners association covenants may be recorded in accordance with section 3 of this chapter.

(2) Notwithstanding any covenant provisions or bylaws of the homeowners association concerning amendments or revisions to homeowners association covenants, the homeowners association may:

(A) distribute to the owner of each lot included as part of the homeowners association:

(i) a proposed set of homeowners association covenants that would apply to all lots included as part of the homeowners association; and

(ii) a petition to be signed by each lot owner on which the owner indicates whether the owner approves or disapproves of applying the proposed covenants to all lots included as part of the homeowners association; and

(B) submit the petitions and covenants to the county recorder if:

(i) the lesser of a percentage of lot owners specified in the covenants or two-thirds (2/3) of all lot owners approve of applying the covenants to all lots included as part of the homeowners association, as indicated by the petitions signed by the lot owners; and

(ii) notwithstanding section 3 of this chapter, the signature of each lot owner has been affirmed before a notary public or an officer of the homeowners association submits an affidavit with the covenants and the petitions that verifies and certifies the signatures on the petitions.

Homeowners association covenants submitted to a county recorder in accordance with this subdivision are considered to be in effect on the date the covenants are recorded.

(c) A new replacement covenant described in subsection (b) does not apply to and is not binding on property in one (1) section of lots to the extent that the new replacement covenant:

(1) changes an existing covenant that pertains to minimum lot area or minimum home size; or

(2) adds a new covenant that pertains to minimum lot area or minimum home size.

(d) A new replacement covenant described in subsection (b) applies only prospectively, beginning on the date the covenant is recorded. The adoption of a new replacement covenant does not require a person to alter the person's home or lot to comply with the new replacement covenant if the condition of the person's home or lot was permissible or authorized under the previous covenant.

As added by P.L.43-2013, SEC.2. Amended by P.L.122-2014, SEC.1.

IC 32-21-2-4

Acknowledgment in another county

Sec. 4. (a) This section applies when a conveyance, mortgage, or other instrument that is required to be recorded is acknowledged in any county in Indiana other than the county in which the instrument is required to be recorded.

(b) The acknowledgment must be:

(1) certified by the clerk of the circuit court of the county in which the officer resides; and
(2) attested by the seal of that court.

However, an acknowledgment before an officer having an official seal, if the acknowledgment is attested by that official seal, is sufficient without a certificate.

As added by P.L.2-2002, SEC.6.

IC 32-21-2-5

Acknowledgment in another state

Sec. 5. To record in Indiana a conveyance that is acknowledged outside Indiana but within the United States, the conveyance must be:

(1) certified by the clerk of any court of record of the county in which the officer receiving the acknowledgment resides; and
(2) attested by the seal of that court.

However, an acknowledgment before an officer having an official seal that is attested by the officer's official seal is sufficient without a certificate.

As added by P.L.2-2002, SEC.6.

IC 32-21-2-6

Proving deeds

Sec. 6. A deed may be proved according to the rules of common law before any officer who is authorized to take acknowledgments. A deed that is proved in the manner provided in this section is entitled to be recorded.

As added by P.L.2-2002, SEC.6.

IC 32-21-2-7

Acknowledgment of deed or mortgage; form

Sec. 7. The following or any other form substantially the same is a good or sufficient form of acknowledgment of a deed or mortgage:

"Before me, E.F. (judge or justice, as the case may be) this _____ day of _____, A.B. acknowledged the execution of the annexed deed, (or mortgage, as the case may be.)"

As added by P.L.2-2002, SEC.6.

IC 32-21-2-8

Duty of officer to explain deed to grantor

Sec. 8. (a) If before a public officer authorized to receive acknowledgment of deeds:

(1) the grantor of a deed intends to sign the deed with the grantor's mark; and
(2) in all other cases when the public officer has good cause to believe that the contents and purport of the deed are not fully known to the grantor;

it is the duty of the public officer before signature to fully explain to the grantor the contents and purport of the deed.

(b) The failure of the public officer to comply with subsection (a) does not affect the validity of a deed.

As added by P.L.2-2002, SEC.6.

IC 32-21-2-9
Certificate of acknowledgment; attaching to instrument; contents

Sec. 9. A certificate of the acknowledgment of a conveyance or other instrument in writing that is required to be recorded, signed, and sealed by the officer taking the acknowledgment shall be written on or attached to the deed. When by law the certificate of the clerk of the proper county is required to accompany the acknowledgment, the certificate shall state that:

(1) the officer before whom the acknowledgment was taken was, at the time of the acknowledgment, acting lawfully; and

(2) the clerk's signature to the certificate of acknowledgment is genuine.

As added by P.L.2-2002, SEC.6.

IC 32-21-2-10
Recorder of deeds; keeping book; recording time

Sec. 10. A recorder of deeds shall keep a book having each page divided into five (5) columns that are headed as follows:

Date of Reception.	Names of Grantors.	Names of Grantees.	Description of Land.	Vol. and Page Where Recorded.

The recorder shall enter in this book all deeds and other instruments left with the recorder to be recorded. The recorder shall note in the first column the day and hour of receiving the deed or instrument and shall note the other particulars in the appropriate columns. A deed or instrument is considered recorded at the time the date of reception is noted by the recorder.

As added by P.L.2-2002, SEC.6.

IC 32-21-2-11
Certificate of acknowledgment; recording with deed or instrument

Sec. 11. (a) This section applies to a conveyance or other instrument entitled by law to be recorded.

(b) The recorder of the county in which the land included in a conveyance or other instrument is situated shall record the deed or other instrument together with the requisite certificate of acknowledgment or proof endorsed on the deed or other instrument or annexed to the deed or other instrument.

(c) Unless a certificate of acknowledgment is recorded with a deed, the record of the conveyance or other instrument or a transcript may not be read or received in evidence.

As added by P.L.2-2002, SEC.6.

IC 32-21-2-12
Certificate of acknowledgment or record; conclusiveness

Sec. 12. The:

(1) certificate of the acknowledgment of a conveyance or instrument of writing;

(2) the record; or

(3) the transcript of the record;

is not conclusive and may be rebutted and the force and effect of it contested by a party affected by the conveyance or instrument.

As added by P.L.2-2002, SEC.6.

IC 32-21-2-13

Conveyances dividing single property tax tracts into multiple parcels; requirements for recording

Sec. 13. (a) Except as provided in subsection (c), if the auditor of the county or the township assessor (if any) under IC 6-1.1-5-9 and IC 6-1.1-5-9.1 determines it necessary, an instrument transferring fee simple title to less than the whole of a tract that will result in the division of the tract into at least two (2) parcels for property tax purposes may not be recorded unless the auditor or township assessor is furnished a drawing or other reliable evidence of the following:

(1) The number of acres in each new tax parcel being created.

(2) The existence or absence of improvements on each new tax parcel being created.

(3) The location within the original tract of each new tax parcel being created.

(b) Any instrument that is accepted for recording and placed of record that bears the endorsement required by IC 36-2-11-14 is presumed to comply with this section.

(c) If the duties of the township assessor have been transferred to the county assessor as described in IC 6-1.1-1-24, a reference to the township assessor in this section is considered to be a reference to the county assessor.

As added by P.L.2-2002, SEC.6. Amended by P.L.219-2007, SEC.100; P.L.146-2008, SEC.673.

IC 32-21-3

Chapter 3. Effect of Recording

IC 32-21-3-1

"Conveyance" defined

Sec. 1. As used in this chapter, "conveyance" means:

(1) an instrument of writing concerning land or an interest in land, except a last will and testament;

(2) a lease for a term not exceeding three (3) years; or

(3) an executory contract for the sale and purchase of land;

for purposes of the acknowledgment or proof of the instrument, lease, or contract, the recording of the instrument, lease, or contract, and the force and effect of that recording.

As added by P.L.2-2002, SEC.6.

IC 32-21-3-2

"Grantor" defined

Sec. 2. As used in this chapter, "grantor" has the meaning set forth in IC 32-17-1-1.

As added by P.L.2-2002, SEC.6.

IC 32-21-3-3

Conveyances requiring recording

Sec. 3. A conveyance of any real estate in fee simple or for life, a conveyance of any future estate, or a lease for more than three (3) years after the making of the lease is not valid and effectual against any person other than:

(1) the grantor;

(2) the grantor's heirs and devisees; and

(3) persons having notice of the conveyance or lease;

unless the conveyance or lease is made by a deed recorded within the time and in the manner provided in this chapter.

As added by P.L.2-2002, SEC.6.

IC 32-21-3-4

Letters of attorney; executory contracts for sale or purchase of land; recording

Sec. 4. The following may be recorded in the county where the land to which the letter or contract relates is situated:

(1) Letters of attorney containing a power to a person to:

(A) sell or convey land; or

(B) sell and convey land as the agent of the owner of the land.

(2) An executory contract for the sale or purchase of land when proved or acknowledged in the manner prescribed in this chapter for the proof or acknowledgment of conveyances.

The record when recorded and the certified transcript of the record may be read in evidence in the same manner and with the same effect as a conveyance.

As added by P.L.2-2002, SEC.6.

IC 32-21-4

Chapter 4. Priority of Recorded Transactions

IC 32-21-4-1

Recording in county where land situated; priority based on time of filing

Sec. 1. (a) The following must be recorded in the recorder's office of the county where the land is situated:

(1) A conveyance or mortgage of land or of any interest in land.

(2) A lease for more than three (3) years.

(b) A conveyance, mortgage, or lease takes priority according to the time of its filing. The conveyance, mortgage, or lease is fraudulent and void as against any subsequent purchaser, lessee, or mortgagee in good faith and for a valuable consideration if the purchaser's, lessee's, or mortgagee's deed, mortgage, or lease is first recorded.

(c) If:

(1) an instrument referred to in subsection (a) is recorded; and

(2) the instrument does not comply with the:

(A) requirements of:

(i) IC 32-21-2-3; or

(ii) IC 32-21-2-7; or

(B) technical requirements of IC 36-2-11-16(c);

the instrument is validly recorded and provides constructive notice of the contents of the instrument as of the date of filing.

As added by P.L.2-2002, SEC.6. Amended by P.L.1-2003, SEC.81; P.L.135-2007, SEC.2; P.L.129-2008, SEC.1; P.L.94-2014, SEC.5.

IC 32-21-4-2

Assignment, mortgage, or pledge of rents and profits as security; recording; immediate perfection

Sec. 2. (a) This section applies to an instrument regardless of when the instrument was recorded, except that this section does not divest rights that vested before May 1, 1993.

(b) An assignment, a mortgage, or a pledge of rents and profits arising from real estate that is intended as security, whether contained in a separate instrument or otherwise, must be recorded under section 1 of this chapter.

(c) When an assignment, a mortgage, or a pledge of rents and profits is recorded under subsection (b), the security interest of the assignee, mortgagee, or pledgee is immediately perfected as to the assignor, mortgagor, pledgor, and any third parties:

(1) regardless of whether the assignment, mortgage, or pledge is operative:

(A) immediately;

(B) upon the occurrence of a default; or

(C) under any other circumstances; and

(2) without the holder of the security interest taking any further action.

(d) This section does not apply to security interests in:

(1) farm products;
(2) accounts or general intangibles arising from or relating to the sale of farm products by a farmer;
(3) timber to be cut; or
(4) minerals or the like (including oil and gas);

that may be perfected under IC 26-1-9.1.

As added by P.L.2-2002, SEC.6.

IC 32-21-4-3

Instrument of defeasance

Sec. 3. (a) This section applies when a deed:
(1) purports to contain an absolute conveyance of any estate in land; and
(2) is made or intended to be made defeasible by:
(A) a deed of defeasance;
(B) a bond; or
(C) another instrument.

(b) The original conveyance is not defeated or affected against any person other than the maker of the defeasance, the heirs or devisees of the maker of the defeasance, or persons having actual notice of the defeasance unless the instrument of defeasance is:
(1) a deed of defeasance or bond that is recorded in the manner provided by law within ninety (90) days after the date of the deed; or
(2) another instrument that:
(A) is in a form required by the deed;
(B) contains an accurate legal description of the estate in land;
(C) is dated;
(D) has been acknowledged before a notary public;
(E) has been made for consideration; and
(F) is recorded in the manner provided by law within ninety (90) days after the date of the deed.

As added by P.L.2-2002, SEC.6. Amended by P.L.1-2003, SEC.82; P.L.156-2005, SEC.1.

IC 32-21-5

Chapter 5. Residential Real Estate Sales Disclosure

IC 32-21-5-1

Applicability of chapter

Sec. 1. (a) This chapter applies only to a sale of, an exchange of, an installment sales contract for, or a lease with option to buy residential real estate that contains not more than four (4) residential dwelling units.

(b) This chapter does not apply to the following:

(1) Transfers ordered by a court, including transfers:

(A) in the administration of an estate;

(B) by foreclosure sale;

(C) by a trustee in bankruptcy;

(D) by eminent domain;

(E) from a decree of specific performance;

(F) from a decree of divorce; or

(G) from a property settlement agreement.

(2) Transfers by a mortgagee who has acquired the real estate at a sale conducted under a foreclosure decree or who has acquired the real estate by a deed in lieu of foreclosure.

(3) Transfers by a fiduciary in the course of the administration of the decedent's estate, guardianship, conservatorship, or trust.

(4) Transfers made from at least one (1) co-owner solely to at least one (1) other co-owner.

(5) Transfers made solely to any combination of a spouse or an individual in the lineal line of consanguinity of at least one (1) of the transferors.

(6) Transfers made because of the record owner's failure to pay any federal, state, or local taxes.

(7) Transfers to or from any governmental entity.

(8) Transfers involving the first sale of a dwelling that has not been inhabited.

(9) Transfers to a living trust.

As added by P.L.2-2002, SEC.6.

IC 32-21-5-2

"Buyer" defined

Sec. 2. As used in this chapter, "buyer" means a transferee in a transaction described in section 1 of this chapter.

As added by P.L.2-2002, SEC.6.

IC 32-21-5-3

"Closing" defined

Sec. 3. As used in this chapter, "closing" means a transfer of an interest described in section 1 of this chapter by a deed, installment sales contract, or lease.

As added by P.L.2-2002, SEC.6.

IC 32-21-5-4

"Defect" defined

Sec. 4. As used in connection with disclosure forms required by this chapter, "defect" means a condition that would have a significant adverse effect on the value of the property, that would significantly impair the health or safety of future occupants of the property, or that if not repaired, removed, or replaced would significantly shorten or adversely affect the expected normal life of the premises.

As added by P.L.2-2002, SEC.6.

IC 32-21-5-5

"Disclosure form" defined

Sec. 5. As used in this chapter, "disclosure form" refers to a disclosure form prepared under section 8 of this chapter or a disclosure form that meets the requirements of section 8 of this chapter.

As added by P.L.2-2002, SEC.6.

IC 32-21-5-5.5

Repealed

(Repealed by P.L.3-2008, SEC.269.)

IC 32-21-5-6

"Owner" defined

Sec. 6. As used in this chapter, "owner" means the owner of residential real estate that is for sale, exchange, lease with an option to buy, or sale under an installment contract.

As added by P.L.2-2002, SEC.6.

IC 32-21-5-7

Disclosure form; contents

Sec. 7. The Indiana real estate commission established by IC 25-34.1-2-1 shall adopt a specific disclosure form that contains the following:

(1) Disclosure by the owner of the known condition of the following:

(A) The foundation.

(B) The mechanical systems.

(C) The roof.

(D) The structure.

(E) The water and sewer systems.

(F) Additions that may require improvements to the sewage disposal system.

(G) Other areas that the Indiana real estate commission determines are appropriate.

(2) Disclosure by the owner of known:

(A) contamination caused by the manufacture of a controlled substance on the property that has not been certified as decontaminated by an inspector approved under IC 13-14-1-15; or

(B) manufacture of methamphetamine or dumping of waste

from the manufacture of methamphetamine in a residential structure on the property.

(3) A notice to the prospective buyer that contains substantially the following language:

"The prospective buyer and the owner may wish to obtain professional advice or inspections of the property and provide for appropriate provisions in a contract between them concerning any advice, inspections, defects, or warranties obtained on the property.".

(4) A notice to the prospective buyer that contains substantially the following language:

"The representations in this form are the representations of the owner and are not the representations of the agent, if any. This information is for disclosure only and is not intended to be a part of any contract between the buyer and owner.".

(5) A disclosure by the owner that an airport is located within a geographical distance from the property as determined by the Indiana real estate commission. The commission may consider the differences between an airport serving commercial airlines and an airport that does not serve commercial airlines in determining the distance to be disclosed.

As added by P.L.2-2002, SEC.6. Amended by P.L.1-2003, SEC.83; P.L.159-2011, SEC.41; P.L.180-2014, SEC.5.

IC 32-21-5-8

Owner prepared disclosure form

Sec. 8. An owner may prepare or use a disclosure form that contains the information required in the disclosure form under section 7 of this chapter and any other information the owner determines is appropriate, including whether the subject property is located in a regional sewage district.

As added by P.L.2-2002, SEC.6. Amended by P.L.97-2012, SEC.18.

IC 32-21-5-9

Disclosure form distinguished from warranty

Sec. 9. A disclosure form is not a warranty by the owner or the owner's agent, if any, and the disclosure form may not be used as a substitute for any inspections or warranties that the prospective buyer or owner may later obtain.

As added by P.L.2-2002, SEC.6.

IC 32-21-5-10

Disclosure form; presentation required before acceptance of offer

Sec. 10. (a) An owner must complete and sign a disclosure form and submit the form to a prospective buyer before an offer for the sale of the residential real estate is accepted.

(b) An appraiser retained to appraise the residential real estate for which the disclosure form has been prepared shall be given a copy of the form upon request. This subsection applies only to appraisals made for the buyer or an entity from which the buyer is seeking

financing.

(c) Before closing, an accepted offer is not enforceable against the buyer until the owner and the prospective buyer have signed the disclosure form. After closing, the failure of the owner to deliver a disclosure statement form to the buyer does not by itself invalidate a real estate transaction. A buyer may not invalidate a real estate transaction or a contract to purchase real estate due to the buyer's failure to sign a seller's disclosure form that has been received or acknowledged by the buyer.

As added by P.L.2-2002, SEC.6. Amended by P.L.150-2013, SEC.3.

IC 32-21-5-11

Owner liability for errors in form

Sec. 11. The owner is not liable for any error, inaccuracy, or omission of any information required to be delivered to the prospective buyer under this chapter if:

(1) the error, inaccuracy, or omission was not within the actual knowledge of the owner or was based on information provided by a public agency or by another person with a professional license or special knowledge who provided a written or oral report or opinion that the owner reasonably believed to be correct; and

(2) the owner was not negligent in obtaining information from a third party and transmitting the information.

As added by P.L.2-2002, SEC.6.

IC 32-21-5-12

Matters arising after form delivered; requirement to disclose at settlement; unknown or unavailable information

Sec. 12. (a) An owner does not violate this chapter if the owner subsequently discovers that the disclosure form is inaccurate as a result of any act, circumstance, information received, or agreement subsequent to the delivery of the disclosure form. However, at or before settlement, the owner is required to disclose any material change in the physical condition of the property or certify to the purchaser at settlement that the condition of the property is substantially the same as it was when the disclosure form was provided.

(b) If at the time disclosures are required to be made under subsection (a) an item of information required to be disclosed is unknown or not available to the owner, the owner may state that the information is unknown or may use an approximation of the information if the approximation is clearly identified, is reasonable, is based on the actual knowledge of the owner, and is not used to circumvent the disclosure requirements of this chapter.

As added by P.L.2-2002, SEC.6.

IC 32-21-5-13

Disclosure of defect after offer accepted; buyer's right to nullify contract; return of deposits

Sec. 13. (a) Notwithstanding section 12 of this chapter, if a prospective buyer receives a disclosure form or an amended disclosure form after an offer has been accepted that discloses a defect, the prospective buyer may after receipt of the disclosure form and within two (2) business days nullify the contract by delivering a written rescission to the owner or the owner's agent, if any.

(b) A prospective buyer is not liable for nullifying a contract under this section and is entitled to a return of any deposits made in the transaction.

As added by P.L.2-2002, SEC.6.

IC 32-21-6

Chapter 6. Psychologically Affected Properties

IC 32-21-6-1

"Agent" defined

Sec. 1. As used in this chapter, "agent" means a real estate agent or other person acting on behalf of the owner or transferee of real estate or acting as a limited agent.

As added by P.L.2-2002, SEC.6.

IC 32-21-6-2

"Limited agent" defined

Sec. 2. As used in this chapter, "limited agent" means an agent who, with the written and informed consent of all parties to a real estate transaction, is engaged by both the seller and buyer or both the landlord and tenant.

As added by P.L.2-2002, SEC.6.

IC 32-21-6-3

"Psychologically affected property" defined

Sec. 3. As used in this chapter, "psychologically affected property" includes real estate or a dwelling that is for sale, rent, or lease and to which one (1) or more of the following facts or a reasonable suspicion of facts apply:

(1) That an occupant of the property was afflicted with or died from a disease related to the human immunodeficiency virus (HIV).

(2) That an individual died on the property.

(3) That the property was the site of:

(A) a felony under IC 35;

(B) criminal gang (as defined in IC 35-45-9-1) activity;

(C) the discharge of a firearm involving a law enforcement officer while engaged in the officer's official duties; or

(D) the illegal manufacture or distribution of a controlled substance.

As added by P.L.2-2002, SEC.6.

IC 32-21-6-4

"Transferee" defined

Sec. 4. As used in this chapter, "transferee" means a purchaser, tenant, lessee, prospective purchaser, prospective tenant, or prospective lessee of the real estate or dwelling.

As added by P.L.2-2002, SEC.6.

IC 32-21-6-5

Disclosure not required

Sec. 5. An owner or agent is not required to disclose to a transferee any knowledge of a psychologically affected property in a real estate transaction.

As added by P.L.2-2002, SEC.6.

IC 32-21-6-6

Refusal to disclose; misrepresentation

Sec. 6. An owner or agent is not liable for the refusal to disclose to a transferee:

(1) that a dwelling or real estate is a psychologically affected property; or

(2) details concerning the psychologically affected nature of the dwelling or real estate.

However, an owner or agent may not intentionally misrepresent a fact concerning a psychologically affected property in response to a direct inquiry from a transferee.

As added by P.L.2-2002, SEC.6.

IC 32-21-7

Chapter 7. Adverse Possession

IC 32-21-7-1

Establishing title; payment of taxes and special assessments by adverse possessor

Sec. 1. (a) Except as provided in subsection (b), in an action to establish title to real property, possession of the real property is not adverse to the owner in a manner as to establish title to the real property unless the adverse possessor pays all taxes and special assessments that the adverse possessor reasonably believes in good faith to be due on the real property during the period the adverse possessor claims to have adversely possessed the real property. However, this section does not relieve any adverse possessor from proving all the elements of title by adverse possession required by law.

(b) A governmental entity may claim title to real property by adverse possession without having paid all taxes and special assessments due on the real property during the period of adverse possession if the governmental entity was exempt from the payment of property taxes and special assessments during the period of adverse possession.

As added by P.L.2-2002, SEC.6. Amended by P.L.171-2006, SEC.7; P.L.94-2014, SEC.6.

IC 32-21-7-2

Property owned by state or political subdivision; adverse possession action against political subdivision barred after 6-30-1998

Sec. 2. (a) Title to real property owned by the state or a political subdivision (as defined in IC 36-1-2-13) may not be alienated by adverse possession.

(b) A cause of action based on adverse possession may not be commenced against a political subdivision (as defined in IC 36-1-2-13) after June 30, 1998.

As added by P.L.2-2002, SEC.6. Amended by P.L.16-2009, SEC.30.

IC 32-21-8

Chapter 8. Tax Sale Surplus Disclosure

IC 32-21-8-1

Applicability of chapter

Sec. 1. This chapter applies to a transfer of property made after June 30, 2001, that transfers ownership of the property from a delinquent taxpayer to another person after the property is sold at a tax sale under IC 6-1.1-24 and before the tax sale purchaser is issued a tax sale deed under IC 6-1.1-25-4.

As added by P.L.2-2002, SEC.6.

IC 32-21-8-2

Tax sale surplus fund disclosure form; filing

Sec. 2. A taxpayer must file a tax sale surplus fund disclosure form in duplicate with the county auditor before the taxpayer may transfer title to property if:

(1) the taxpayer owes delinquent taxes on the property;

(2) the property was sold at a tax sale under IC 6-1.1-24; and

(3) a part of the tax sale purchaser's bid on the property was deposited into the tax sale surplus fund under IC 6-1.1-24-7.

As added by P.L.2-2002, SEC.6.

IC 32-21-8-3

Tax sale surplus fund disclosure form; contents

Sec. 3. A tax sale surplus fund disclosure form must contain the following information:

(1) The name and address of the taxpayer transferring the property.

(2) The name and address of the person acquiring the property.

(3) The proposed date of transfer.

(4) The purchase price for the transfer.

(5) The date the property was sold at a tax sale under IC 6-1.1-24.

(6) The amount of the tax sale purchaser's bid that was deposited into the tax sale surplus fund under IC 6-1.1-24-7.

As added by P.L.2-2002, SEC.6.

IC 32-21-8-4

Signing and acknowledging of form

Sec. 4. The tax sale surplus fund disclosure form must be signed by the taxpayer transferring the property and acknowledged before an officer authorized to take acknowledgments of deeds.

As added by P.L.2-2002, SEC.6.

IC 32-21-8-5

Duties of county auditor

Sec. 5. The county auditor shall:

(1) stamp the tax sale surplus fund disclosure form to indicate the county auditor's receipt of the form; and

(2) remit the duplicate to the taxpayer.
As added by P.L.2-2002, SEC.6.

IC 32-21-8-6
State board of accounts to prescribe form

Sec. 6. The state board of accounts shall prescribe the tax sale surplus fund disclosure form required by this chapter.
As added by P.L.2-2002, SEC.6.

IC 32-21-9

Chapter 9. Written Instruments by Members of the Armed Forces

IC 32-21-9-1

Notarial acts before commissioned officers in United States armed forces

Sec. 1. (a) In addition to the acknowledgment of written instruments and the performance of other notarial acts in the manner and form otherwise authorized by the laws of this state, a person:

(1) who is serving in or with the armed forces of the United States wherever located;

(2) who is serving as a merchant seaman outside the limits of the United States included within the fifty (50) states and the District of Columbia; or

(3) who is outside the limits of the United States by permission, assignment, or direction of any department or office of the United States government in connection with any activity pertaining to the prosecution of any war in which the United States is engaged;

may acknowledge any instruments, attest documents, subscribe oaths and affirmations, give depositions, execute affidavits, and perform other notarial acts before any commissioned officer with the rank of second lieutenant or higher in the active services of the Army of the United States or the United States Marine Corps or before any commissioned officer with the rank of ensign or higher in the active service of the United States Navy or the United States Coast Guard, or with equivalent rank in any other component part of the armed forces of the United States.

(b) The commissioned officer before whom a notarial act is performed under this section shall certify the instrument with the officer's official signature and title in substantially the following form:

With the Armed Forces (or other component part of)
)ss
the armed forces) of the United States at [1]_____)

The foregoing instrument was acknowledged this _____ day of _____ 20___ by [2]_____ serving (in) the armed forces of the
(with)
United States) _____ (as a merchant seaman outside the limits of the United States) (as a person not in the armed forces, but outside the limits of the United States by permission, assignment, or direction of a department of the United States Government in connection with an activity pertaining to the prosecution of the war), before me, a commissioned officer in the active service of the (Army of the United States) (United States Marine Corps) (United States Navy) (United States Coast Guard) (or equivalent rank in any other component part of the armed forces).

(Signature of officer)

_____

Rank and Branch

Footnote 1. In the event that military considerations preclude disclosure of the place of execution or acknowledgment the words "an undisclosed place" may be supplied instead of the appropriate city or county, state, and country.

Footnote 2. If by a natural person or persons, insert name or names; if by a person acting in a representative or official capacity or as attorney-in-fact, then insert name of person acknowledging the instrument, followed by an accurate description of the capacity in which he acts including the name of the person, corporation, or other entity represented.

As added by P.L.2-2002, SEC.6.

IC 32-21-9-2

Prima facie evidence of authority to execute

Sec. 2. An acknowledgment or other notarial act made substantially in the form prescribed by section 1 of this chapter is prima facie evidence:

(1) that the person named in the instrument as having acknowledged or executed the instrument:

(A) appeared in person before the officer taking the acknowledgment;

(B) was personally known to the officer to be the person whose name was subscribed to the instrument; and

(C) acknowledged that the person signed the instrument as a free and voluntary act for the uses and purposes set forth in the instrument;

(2) if the acknowledgment or execution is by a person in a representative or official capacity, that the person acknowledging or executing the instrument acknowledged it to be the person's free and voluntary act in such capacity or the free and voluntary act of the principal, person, or entity represented; and

(3) if the acknowledgment or other notarial act is by a person as an officer of a corporation, that the person was known to the officer taking the acknowledgment or performing any other notarial act to be a corporate officer and that the instrument was executed and acknowledged for and on behalf of the corporation by the corporate officer with proper authority from the corporation, as the free and voluntary act of the corporation.

As added by P.L.2-2002, SEC.6.

IC 32-21-9-3

Place of execution or acknowledgment; failure to state

Sec. 3. An instrument acknowledged or executed as provided in this chapter is not invalid because of a failure to state in the instrument the place of execution or acknowledgment.

As added by P.L.2-2002, SEC.6.

IC 32-21-9-4

Proof of recited facts; filing and recording in Indiana

Sec. 4. An acknowledgment or other notarial act made substantially as provided in this chapter constitutes prima facie proof of the facts recited in the instrument and, without further or other authentication, entitles any document so acknowledged or executed to be filed and recorded in the proper offices of record and received in evidence before the courts of this state, to the same extent and with the same effect as documents acknowledged or executed in accordance with any other provision of law now in force or that may be enacted.

As added by P.L.2-2002, SEC.6.

IC 32-21-10

Chapter 10. Conveyances in Which the Grantor and Another Are Named as Grantees

IC 32-21-10-1

"Person" or "persons" defined

Sec. 1. As used in this chapter:

(1) "person" includes a person who may be married; and

(2) "persons" includes persons who may be married to each other.

As added by P.L.2-2002, SEC.6.

IC 32-21-10-2

Effect of conveyance by grantee to grantee and another

Sec. 2. (a) A person who owns real property or an interest in real property that the person has the power to convey may effectively convey the property or interest by a conveyance naming as grantees that person and one (1) or more other persons.

(b) Two (2) or more persons who own real property or an interest in real property that the persons have the power to convey may effectively convey the property or interest by a conveyance naming as grantees one (1) or more of those persons and one (1) or more other persons.

(c) A conveyance under subsection (a) or (b) has the same effect as to whether it creates an estate in:

(1) severalty;

(2) joint tenancy with right of survivorship;

(3) tenancy by the entirety; or

(4) tenancy in common;

as if the conveyance were a conveyance from a stranger who owned the property or interest to the persons named as grantees in the conveyance.

As added by P.L.2-2002, SEC.6.

IC 32-21-10-3

Effects of conveyance by two or more grantees to one or more grantees

Sec. 3. (a) Two (2) or more persons who own real property or an interest in real property that they have power to convey may effectively convey the property or interest by a conveyance naming as grantee or grantees one (1) or more of those persons.

(b) A conveyance under subsection (a) has the same effect, as to whether it creates an estate in:

(1) severalty;

(2) joint tenancy with right of survivorship;

(3) tenancy by the entirety; or

(4) tenancy in common;

as if the conveyance were a conveyance from a stranger who owned the property or interest to the person or persons named as grantee or grantees in the conveyance.

As added by P.L.2-2002, SEC.6.

IC 32-21-11
Repealed

(Repealed by P.L.113-2014, SEC.120.)

IC 32-21-12

Chapter 12. Deed Restrictions Regarding Industrialized Residential Structures

IC 32-21-12-1

"Industrialized residential structure"

Sec. 1. As used in this chapter, "industrialized residential structure" means a structure that is:

(1) an industrialized building system (as defined in IC 22-12-1-14) certified under IC 22-15-4-1;

(2) a Class 2 structure (as defined in IC 22-12-1-5(a)(1));

(3) intended for placement on a permanent foundation; and

(4) constructed in conformance with the applicable edition of the Indiana Residential Code (675 IAC 14).

As added by P.L.139-2007, SEC.2.

IC 32-21-12-2

Application of chapter

Sec. 2. This chapter applies only to deed restrictions or restrictive covenants that are recorded after June 30, 2007.

As added by P.L.139-2007, SEC.2.

IC 32-21-12-3

Deed restriction or restrictive covenant concerning erection of industrialized residential structure

Sec. 3. (a) Except as provided in section 4 of this chapter, a deed restriction or restrictive covenant may not prohibit or restrict the erection of an industrialized residential structure on real property.

(b) This section does not require a property owner to erect an industrialized residential structure on the owner's property.

As added by P.L.139-2007, SEC.2.

IC 32-21-12-4

Aesthetic compatibility requirement permitted

Sec. 4. A deed restriction, restrictive covenant, or agreement that applies uniformly to all homes and industrialized residential structures in a subdivision may impose the same aesthetic compatibility requirements on an industrialized residential structure in the subdivision that are applicable to all residential structures in the subdivision.

As added by P.L.139-2007, SEC.2.

IC 32-21-13

Chapter 13. Display of Political Signs on Property Subject to Restrictive Covenants or Homeowners Association Rules

IC 32-21-13-1

Application of election law definitions

Sec. 1. The definitions in IC 3-5-2 apply to this chapter.

As added by P.L.5-2010, SEC.1.

IC 32-21-13-2

"Rules"

Sec. 2. As used in this chapter, "rules" refers to any of the following:

(1) A restrictive covenant.

(2) A homeowners association rule.

As added by P.L.5-2010, SEC.1.

IC 32-21-13-3

"Sign"

Sec. 3. As used in this chapter, "sign" refers only to a sign advocating:

(1) the election or defeat of one (1) or more candidates for:

(A) nomination; or

(B) election;

to a public office;

(2) support for or opposition to:

(A) a political party; or

(B) a political party's candidates; or

(3) the approval or disapproval of a public question.

As added by P.L.5-2010, SEC.1.

IC 32-21-13-4

Prohibition on homeowner association adoption or enforcement of rules relating to display of political signs; exceptions

Sec. 4. Except as provided in section 5 of this chapter, a homeowners association may not adopt or enforce a rule that prohibits a member of the homeowners association from displaying a sign on the member's property during the period:

(1) beginning thirty (30) days before; and

(2) ending five (5) days after;

the date of the election to which the sign relates.

As added by P.L.5-2010, SEC.1.

IC 32-21-13-5

Permissible rules relating to display of political signs

Sec. 5. A homeowners association may adopt and enforce rules relating to a sign described in section 3 of this chapter if the rules do any of the following:

(1) Restrict the size of a sign if the rule permits a homeowner to display a sign that is at least as large as signs commonly

displayed during election campaigns.

(2) Restrict the number of signs that may be displayed if the rule permits a homeowner to display a reasonable number of signs.

(3) Restrict the locations where a sign may be displayed. However, a restriction under this subdivision may not prohibit the display of a sign:

(A) in a window on the homeowner's property; or

(B) on the ground that is part of the homeowner's property.

As added by P.L.5-2010, SEC.1.

IC 32-21-13-6

Homeowner association may remove sign that violates permitted rules

Sec. 6. A homeowners association may remove a sign that violates the rules permitted by this chapter.

As added by P.L.5-2010, SEC.1.

IC 32-21-13-7

Political activity on homeowners association property may not be prohibited

Sec. 7. (a) As used in this section, "homeowners association property" refers to real property owned by any of the following:

(1) A member of the homeowners association.

(2) The homeowners association.

(3) The members of the homeowners association in common.

(b) A homeowners association may not adopt or enforce a rule or covenant that prohibits, or has the effect of prohibiting:

(1) a candidate;

(2) an individual who holds an elected office;

(3) the spouse of a candidate or individual who holds an elected office; or

(4) a volunteer worker of a candidate or individual who holds an elected office;

from entering onto homeowners association property for purposes of conducting political activity.

As added by P.L.73-2014, SEC.1.

IC 32-21-14

Chapter 14. Transfer Fee Covenants

IC 32-21-14-1

"Transfer"

Sec. 1. As used in this chapter, "transfer" means the transfer of an interest in real property located in Indiana by:

(1) sale;
(2) gift;
(3) conveyance;
(4) assignment;
(5) inheritance; or
(6) other means of transfer.

As added by P.L.136-2011, SEC.1. Amended by P.L.6-2012, SEC.207.

IC 32-21-14-2

"Transfer fee"

Sec. 2. (a) As used in this chapter, "transfer fee" means a fee or charge that:

(1) is required under a transfer fee covenant; and
(2) is payable:
(A) upon the transfer of an interest in real property; or
(B) for the right to make or accept a transfer of an interest in real property;

regardless of whether the fee or charge is in a fixed amount or is determined as a percentage of the value of the property, of the purchase price of the property, or of any consideration given for the transfer of the property.

(b) The term does not include any of the following:

(1) Any consideration payable by the transferee to the transferor for the interest in the real property being transferred, including any consideration payable for a separate mineral estate and its appurtenant surface access rights.
(2) Any commission to a real estate broker licensed under IC 25-34.1 payable:
(A) in connection with the transfer of an interest in real property; and
(B) under an agreement between the real estate broker and the transferor or transferee.
(3) Any interest, charges, fees, or other amounts payable by a borrower to a lender under a loan secured by a mortgage against an interest in real property, including the following:
(A) Any fee payable to the lender for consenting to an assumption of the loan or to a transfer of the property interest subject to the mortgage.
(B) Any fees or charges payable to the lender for estoppel letters or certificates.
(C) Any other consideration allowed by law and payable to the lender in connection with the loan.

(4) Any rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor under a lease, including any fee payable to the lessor for consenting to an assignment, subletting, encumbrance, or transfer of the lease.

(5) Any consideration payable to the holder of:

(A) an option to purchase an interest in real property; or

(B) a right of first refusal or first offer to purchase an interest in real property;

for waiving, releasing, or not exercising the option or right upon the transfer of the property interest to another person.

(6) Any tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental entity.

(7) Any fee, charge, assessment, fine, or other amount payable to:

(A) a homeowners association;

(B) a condominium association;

(C) a cooperative association;

(D) a mobile home association;

(E) another property owners association; or

(F) an agent representing an association described in clauses (A) through (E);

under a covenant, law, or contract applicable to the association.

As added by P.L.136-2011, SEC.1. Amended by P.L.6-2012, SEC.208; P.L.127-2012, SEC.48.

IC 32-21-14-3

"Transfer fee covenant"

Sec. 3. As used in this chapter, "transfer fee covenant" means a declaration or covenant, however denominated and regardless of whether it is recorded, that:

(1) purports to affect an interest in real property located in Indiana; and

(2) requires or purports to require the payment of a transfer fee to:

(A) the declarant;

(B) another person specified in the declaration or covenant; or

(C) the successors or assigns of a person described in clause (A) or (B);

upon a subsequent transfer of the interest in real property.

As added by P.L.136-2011, SEC.1.

IC 32-21-14-4

Transfer fee covenants; not binding or enforceable; lien to secure payment void and unenforceable; no presumption of validity

Sec. 4. (a) A transfer fee covenant recorded in Indiana after June 30, 2011:

(1) does not run with the title of the interest in real property the transfer fee covenant purports to affect; and

(2) is not binding or enforceable at law or in equity, as an

equitable servitude or otherwise, against any subsequent owner, purchaser, or mortgagee of the interest in the real property the transfer fee covenant purports to affect.

(b) Any lien purporting to secure the payment of a transfer fee payable under a transfer fee covenant recorded in Indiana after June 30, 2011, is void and unenforceable.

(c) A:

(1) transfer fee covenant; or

(2) lien purporting to secure the payment of a transfer fee payable under a transfer fee covenant;

recorded in Indiana before July 1, 2011, is not presumed to be valid and enforceable.

As added by P.L.136-2011, SEC.1.

IC 32-22

ARTICLE 22. CONVEYANCE LIMITATIONS OF REAL PROPERTY

IC 32-22-1

Chapter 1. Limitations on Persons Who May Convey Real Property

IC 32-22-1-1

Mentally incompetent persons and minors

Sec. 1. Except as provided in section 3 of this chapter, a:

(1) mentally incompetent person; or

(2) person less than eighteen (18) years of age;

may not alienate land or any interest in land.

As added by P.L.2-2002, SEC.7.

IC 32-22-1-2

False representation; good faith purchaser

Sec. 2. (a) This section does not apply to any sale or contract made and entered into before September 19, 1881.

(b) In all sales of real estate by a person less than eighteen (18) years of age, the person may not disaffirm the sale without first restoring to the purchaser the consideration received in the sale, if the person falsely represented himself or herself to the purchaser to be at least eighteen (18) years of age and the purchaser acted in good faith, relied upon the person's representations in the sale, and had good cause to believe the person to be at least eighteen (18) years of age.

As added by P.L.2-2002, SEC.7.

IC 32-22-1-3

Application of law

Sec. 3. Any person who is:

(1) less than eighteen (18) years of age; and

(2) married to a person who is at least eighteen (18) years of age;

may convey, mortgage, or agree to convey any interest in real estate or may make any contract concerning the interest, with the consent of the circuit, superior, or probate court of the county where the person resides, upon payment of the fee required under IC 33-37-4-4.

As added by P.L.2-2002, SEC.7. Amended by P.L.98-2004, SEC.117.

IC 32-22-1-4

Rights of infant; consent of judge

Sec. 4. A judge may give consent under section 3 of this chapter to a conveyance or mortgage and to any note secured by the mortgage, agreement, or contract if the judge determines that it would benefit the person described in section 3 of this chapter and that it would be prejudicial to the spouse of the person if the execution of the instrument were prevented. The judge shall endorse the judge's consent on the instrument and sign it, and the instrument so certified

is valid for all purposes as if the married person were at least eighteen (18) years of age. However, the judge has the power, in the judge's discretion, to examine witnesses concerning the propriety or necessity of executing the instrument.
As added by P.L.2-2002, SEC.7.

IC 32-22-1-5
Certification by judge

Sec. 5. (a) If a person owning real estate desires to sell the real estate or a part of the real estate and the person's spouse is, at the time, mentally incompetent, the person, upon complying with this section, may sell and convey the real estate by deed without the joinder of the mentally incompetent spouse. The conveyance has the same effect as would the joint deed of both spouses.

(b) Before a deed is made under this section, the owner intending to sell the real estate shall, by petition, apply to the court having probate jurisdiction in the county where the real estate or a part of the real estate to be sold is situated, alleging that the owner's spouse is mentally incompetent and that the incompetency is probably permanent. Upon the filing of the petition, notice shall be given to the person alleged to be mentally incompetent, either by service of process, as provided by law for service of process against incompetent persons in other civil actions, or, if the person alleged to be incompetent is by affidavit shown to be a nonresident of Indiana, by publication.

(c) After notice and upon or after the return day of the notice, the legally appointed guardian, if any, of the person alleged to be mentally incompetent or, if there is no guardian, a guardian ad litem for the person appointed by the court, shall make any proper defense to the application. The matter of the petition shall be submitted to the court, and if the allegations are proved to the satisfaction of the court, the court shall make and enter a finding that the person alleged to be incompetent is incompetent, and that the incompetency is probably permanent.

(d) Upon the filing by the petitioner with the clerk of the court of a bond, in an amount and with surety approved by the court, that is payable to the state and conditioned to:

(1) keep the mentally incompetent spouse from becoming a county charge; and

(2) account to the spouse, upon restoration to competency, if the spouse demands it, fifty percent (50%) of the purchase money received for the real estate upon sale;

the court shall enter an order authorizing the whole title to be conveyed by the petitioner without the joinder of the mentally incompetent spouse.

(e) A deed made under an order of court under this section has the same effect as the deed of an unmarried person competent to convey real estate.

(f) If it is shown to the satisfaction of the court having probate jurisdiction in the county in which lands authorized to be sold under

this section are located that:

(1) the lands were sold under an order authorizing the sale;

(2) the entire proceeds of the sale were invested in other real estate located in Indiana;

(3) the land purchased with the proceeds of the sale was of no less value than the land sold under the order;

(4) the title to the land purchased with the proceeds of the sale was taken in the name of the person having a mentally incompetent spouse; and

(5) the mentally incompetent spouse will not suffer any loss as a result of the investment described in subdivision (2);

the court shall enter an order discharging the bond described in subsection (d) and releasing the sureties from all liabilities on the bond.

As added by P.L.2-2002, SEC.7.

IC 32-22-2

Chapter 2. Rights of Aliens to Hold and Convey Real Property

IC 32-22-2-1

Alien ownership; November 1, 1851

Sec. 1. The title of any resident of Indiana who was in actual possession of any land on or before November 1, 1851, or the title of any person holding under the resident may not be defeated or prejudiced by:

(1) the alienism of the resident; or

(2) the alienism of any other person through whom the resident's title was derived.

As added by P.L.2-2002, SEC.7.

IC 32-22-2-2

Repealed

(Repealed by P.L.16-2003, SEC.2.)

IC 32-22-2-3

Repealed

(Repealed by P.L.16-2003, SEC.2.)

IC 32-22-2-4

Repealed

(Repealed by P.L.16-2003, SEC.2.)

IC 32-22-2-5

Acquisition by aliens; title to property

Sec. 5. (a) Natural persons who are aliens, whether they reside in the United States or any foreign country, subject to section 7 of this chapter, may:

(1) acquire real estate by purchase, devise, or descent;

(2) hold and enjoy real estate; and

(3) convey, devise, transmit, mortgage, or otherwise encumber real estate;

in the same manner and with the same effect as citizens of Indiana or the United States.

(b) The title of any real estate inherited, mortgaged, conveyed, or devised is not affected by the alienage of any person from or through whom the title is claimed or derived.

As added by P.L.2-2002, SEC.7. Amended by P.L.16-2003, SEC.1.

IC 32-22-2-6

Repealed

(Repealed by P.L.16-2003, SEC.2.)

IC 32-22-2-7

Conflicting laws; title to property

Sec. 7. This chapter does not affect:

(1) the title to any real estate recovered or conveyed before

March 6, 1905, by or under the authority of the state as escheated land;

(2) litigation pending on March 6, 1905, involving the escheat of land to the state; or

(3) the title of the state to any land to which the state has claimed, asserted, or attempted to assert title before March 6, 1905, by an action in any court of Indiana.

As added by P.L.2-2002, SEC.7.

IC 32-23

ARTICLE 23. CONVEYANCE OF PROPERTY INTERESTS LESS THAN FEE SIMPLE

IC 32-23-1

Chapter 1. Easements: By Prescription

IC 32-23-1-1

Use for 20 years

Sec. 1. The right-of-way, air, light, or other easement from, in, upon, or over land owned by a person may not be acquired by another person by adverse use unless the use is uninterrupted for at least twenty (20) years.

As added by P.L.2-2002, SEC.8.

IC 32-23-1-2

Notice; disputing adverse claim

Sec. 2. The owner of land described in section 1 of this chapter, or the agent or guardian of the owner, may give notice to a claimant of a right or easement described in section 1 of this chapter that the owner, or the agent or guardian of the owner, will dispute the claimant's claim to a right or easement by adverse use.

As added by P.L.2-2002, SEC.8.

IC 32-23-1-3

Serving or posting notice; easements

Sec. 3. Notice provided to a claimant under section 2 of this chapter must be:

(1) in writing; and

(2) served by an officer on the:

(A) claimant, if the claimant can be found; or

(B) if the claimant cannot be found, on the claimant's agent or the claimant's guardian;

or if the claimant, the claimant's agent, and the claimant's guardian cannot be found, a copy of the written notice shall be posted, for not less than ten (10) days, in a conspicuous place on or adjoining the premises where the right is disputed.

As added by P.L.2-2002, SEC.8.

IC 32-23-1-4

Easements

Sec. 4. The service or notice required under section 3 of this chapter must be endorsed by the officer serving the notice, on the original paper, and returned to the party giving the notice. The party that gives the notice shall record the original paper and endorsement of service or notice in the recorder's office of the county where the land is located. The served or posted and recorded notice is, at the time of record, an interruption of the adverse use.

As added by P.L.2-2002, SEC.8.

IC 32-23-2

Chapter 2. Easements in Gross: Alienation, Inheritance, Assignment

IC 32-23-2-1

"Easement in gross of a commercial character" defined

Sec. 1. As used in this chapter, "easement in gross of a commercial character" means an easement:

(1) for the transmission or distribution of natural gas, petroleum products, or cable television signals;

(2) for the provision of telephone or water service; or

(3) for the transmission, distribution, or transformation of electricity.

As added by P.L.2-2002, SEC.8.

IC 32-23-2-2

Alienation, inheritance, or assignment

Sec. 2. An easement in gross of a commercial character, including an easement acquired by eminent domain, that is created after June 30, 1989, may be alienated, inherited, or assigned in whole or in part unless the instrument creating the easement provides otherwise.

As added by P.L.2-2002, SEC.8.

IC 32-23-2-3

Certain easements in gross of a commercial character

Sec. 3. (a) This section does not apply to an easement in gross of a commercial character that is created after June 30, 1989.

(b) An easement in gross that was created after July 6, 1961, may be alienated, inherited, or assigned in whole or in part if the instrument that created the easement in real property states that the easement may be alienated, inherited, or assigned.

As added by P.L.2-2002, SEC.8.

IC 32-23-2-4

Revival or reinstatement of easement in gross of a commercial character

Sec. 4. This chapter does not revive or reinstate an expired, a terminated, or an abandoned easement in gross of a commercial character.

As added by P.L.2-2002, SEC.8.

IC 32-23-2-5

Recording easement

Sec. 5. (a) An easement that is created after June 30, 1989, must cross-reference the original recorded plat. However, if the real property from which the easement is being created is not platted, the easement must cross-reference the most recent deed of record in the recorder's office. The recorder shall charge a fee for recording the easement in accordance with IC 36-2-7-10.

(b) When a release of easement is recorded in the office of the

county recorder in the county where the property is situated, the release document must cross-reference the original easement document and reflect the name of the current owner of the property to whom the easement is being released as shown on the property tax records of the county.
As added by P.L.2-2002, SEC.8.

IC 32-23-2-6
Alienation, inheritance, or assignment of certain easements in gross of a commercial character declared valid

Sec. 6. (a) This section applies to the alienation, inheritance, or assignment of:

(1) an easement in gross of a commercial character that was created before January 1, 1990; and

(2) an interest in an easement in gross of a commercial character described in subdivision (1).

(b) This section applies to an easement in gross of a commercial character that was acquired by eminent domain.

(c) Unless the instrument that created the easement states that the easement may not be alienated, inherited, or assigned, the alienation, inheritance, or assignment of an easement in gross of a commercial character that occurred before April 1, 1990, is legalized and declared valid.
As added by P.L.6-2012, SEC.209.

IC 32-23-3

Chapter 3. Easements: Way of Necessity

IC 32-23-3-1

Refusal to grant easements; failure to agree upon consideration

Sec. 1. If:

(1) land that belongs to a landowner in Indiana is shut off from a public highway because of the:

(A) straightening of a stream under Indiana law;

(B) construction of a ditch under Indiana law; or

(C) erection of a dam that is constructed by the state or by the United States or an agency or a political subdivision of the state or of the United States under Indiana law; and

(2) the owner of the lands described in subdivision (1) is unable to secure an easement or right-of-way on and over the land that is adjacent to the affected land, and intervening between the land and the public highways that are most convenient to the land because:

(A) an adjacent and intervening landowner refuses to grant an easement; or

(B) the interested parties cannot agree upon the consideration to be paid by the landowner that is deprived of access to the highway;

the landowner of the affected land shall be granted the right of easement established as a way of necessity as provided under IC 32-24-1.

As added by P.L.2-2002, SEC.8.

IC 32-23-4

Chapter 4. Solar Easement

IC 32-23-4-1

"Passive solar energy system" defined

Sec. 1. As used in this chapter, "passive solar energy system" means a structure specifically designed to retain heat that is derived from solar energy.

As added by P.L.2-2002, SEC.8.

IC 32-23-4-2

"Solar easement" defined

Sec. 2. As used in this chapter, "solar easement" means an easement obtained for the purpose of exposure of a solar energy device or a passive solar energy system to the direct rays of the sun.

As added by P.L.2-2002, SEC.8.

IC 32-23-4-3

"Solar energy device" defined

Sec. 3. As used in this chapter, "solar energy device" means an artifice, an instrument, or the equipment designed to receive the direct rays of the sun and convert the rays into heat, electricity, or another form of energy to provide heating, cooling, or electrical power.

As added by P.L.2-2002, SEC.8.

IC 32-23-4-4

Creation; requirements

Sec. 4. A solar easement:

(1) must be created in writing; and

(2) is subject to the conveyancing and recording requirements of this title.

As added by P.L.2-2002, SEC.8.

IC 32-23-4-5

Instrument; requisites

Sec. 5. An instrument that creates a solar easement must include the following:

(1) The vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property that is subject to the solar easement, and a description of the real property to which the solar easement is appurtenant.

(2) Any terms and conditions under which the solar easement is granted or will be terminated.

As added by P.L.2-2002, SEC.8.

IC 32-23-5

Chapter 5. Uniform Conservation Easement Act

IC 32-23-5-1

Application and construction of chapter

Sec. 1. (a) This chapter applies to any interest created after September 1, 1984, that complies with this chapter, whether the interest is designated:

(1) as a conservation easement;
(2) as a covenant;
(3) as an equitable servitude;
(4) as a restriction;
(5) as an easement; or
(6) otherwise.

(b) This chapter applies to any interest created before September 1, 1984, if the interest would have been enforceable had the interest been created after September 1, 1984, unless retroactive application contravenes the constitution or laws of Indiana or the United States.

(c) This chapter does not invalidate any interest, whether designated:

(1) as a conservation easement;
(2) as a preservation easement;
(3) as a covenant;
(4) as an equitable servitude;
(5) as a restriction;
(6) as an easement; or
(7) otherwise;

if the designated interest is enforceable under another law of this state.

(d) This chapter shall be applied and construed to effectuate the general purpose of the chapter to make uniform the laws with respect to the subject of the chapter among the states that enact language consistent with this chapter.

As added by P.L.2-2002, SEC.8.

IC 32-23-5-2

"Conservation easement"

Sec. 2. As used in this chapter, "conservation easement" means a nonpossessory interest of a holder in real property that imposes limitations or affirmative obligations with the purpose of:

(1) retaining or protecting natural, scenic, or open space values of real property;
(2) assuring availability of the real property for agricultural, forest, recreational, or open space use;
(3) protecting natural resources;
(4) maintaining or enhancing air or water quality; or
(5) preserving the historical, architectural, archeological, or cultural aspects of real property.

As added by P.L.2-2002, SEC.8.

IC 32-23-5-3
"Holder"

Sec. 3. As used in this chapter, "holder" means any of the following:

(1) A governmental body that is empowered to hold an interest in real property under the laws of Indiana or the United States.

(2) A charitable corporation, charitable association, nonprofit corporation, or charitable trust, the purposes or powers of which include:

(A) retaining or protecting the natural, scenic, or open space values of real property;

(B) assuring the availability of real property for agricultural, forest, recreational, or open space use;

(C) protecting natural resources;

(D) protecting property bordering lakes;

(E) maintaining or enhancing air or water quality; or

(F) preserving the historical, architectural, archeological, or cultural aspects of real property.

As added by P.L.2-2002, SEC.8. Amended by P.L.49-2013, SEC.1.

IC 32-23-5-4
"Third party right of enforcement"

Sec. 4. As used in this chapter, "third party right of enforcement" means a right that is:

(1) provided in a conservation easement to enforce any of the conservation easement's terms; and

(2) granted to a governmental body, charitable corporation, charitable association, or charitable trust that is eligible to be a holder but is not a holder.

As added by P.L.2-2002, SEC.8.

IC 32-23-5-5
Creation, conveyance, etc., of easements; acceptance; recordation; duration; rights of parties and others protected

Sec. 5. (a) Except as otherwise provided in this chapter, a conservation easement may be:

(1) created;

(2) conveyed;

(3) recorded;

(4) assigned;

(5) released;

(6) modified;

(7) terminated; or

(8) otherwise altered or affected;

in the same manner as other easements.

(b) A right or duty in favor of or against a holder and a right in favor of a person having a third party right of enforcement does not arise under a conservation easement before the conservation easement is accepted by the holder and the acceptance is recorded.

(c) Except as provided in section 6(b) of this chapter, a

conservation easement is unlimited in duration unless the instrument creating the conservation easement provides otherwise.

(d) An interest in real property is not impaired by a conservation easement if the interest exists at the time the conservation easement is created, unless the owner of the interest is a party to the conservation easement or consents to the conservation easement.

As added by P.L.2-2002, SEC.8.

IC 32-23-5-6

Actions authorized; power of court

Sec. 6. (a) An action that affects a conservation easement may be brought by:

(1) an owner of an interest in the real property burdened by the easement;

(2) a holder of the easement;

(3) a person having a third party right of enforcement; or

(4) a person authorized by other law.

(b) This chapter does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity, or the termination of a conservation easement by agreement of the grantor and grantee.

As added by P.L.2-2002, SEC.8.

IC 32-23-5-7

Validity of conservation easements

Sec. 7. A conservation easement is valid even though:

(1) the conservation easement is not appurtenant to an interest in real property;

(2) the conservation easement can be or has been assigned to another holder;

(3) the conservation easement is not of a character that has been recognized traditionally at common law;

(4) the conservation easement imposes a negative burden;

(5) the conservation easement imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

(6) the benefit does not touch or concern real property; or

(7) there is no privity of estate or of contract.

As added by P.L.2-2002, SEC.8.

IC 32-23-5-8

Taxation

Sec. 8. For the purposes of IC 6-1.1, real property that is subject to a conservation easement shall be assessed and taxed on a basis that reflects the easement.

As added by P.L.2-2002, SEC.8.

IC 32-23-6

Chapter 6. Easements: WPA Projects

IC 32-23-6-1

Release of easements

Sec. 1. (a) If:

(1) a landowner in Indiana has had a pond or lake built on the landowner's real estate by the federal Works Progress Administration; and

(2) as a requisite to the building of the pond or lake, the landowner has given a lease in writing to the state relative to the building, upkeep, and use of the pond or lake;

the department of natural resources may, upon application in writing to the department of natural resources, release any easement the state may have to the real estate.

As added by P.L.2-2002, SEC.8.

IC 32-23-6-2

Release of easements; recording

Sec. 2. A release under section 1 of this chapter may be filed with the recorder of the county in which the real estate is situated and recorded in the miscellaneous record in the recorder's office.

As added by P.L.2-2002, SEC.8.

IC 32-23-7

Chapter 7. Oil and Gas: Estates in Land

IC 32-23-7-0.3

"Coal bed methane"

Sec. 0.3. As used in this chapter, "coal bed methane" has the meaning set forth in IC 14-8-2-42.2.

As added by P.L.140-2011, SEC.18.

IC 32-23-7-0.4

"Coal bed methane estate in land"

Sec. 0.4. (a) As used in this chapter, "coal bed methane estate in land" means the aggregate of all rights in land that affect the coal bed methane:

(1) in the land;

(2) on the land;

(3) under the land; or

(4) that may be taken from beneath the surface of the land.

(b) The term includes the following:

(1) The right to produce coal bed methane for commercial use or sale.

(2) The appurtenant right to use the surface overlying the coal bed methane for coal bed methane operations.

As added by P.L.140-2011, SEC.19.

IC 32-23-7-0.5

"Coal bed methane production area"

Sec. 0.5. (a) As used in this chapter, "coal bed methane production area" means the area of land determined by the operator in which multiple wells are drilled for a common production purpose.

(b) A coal bed methane production area need not be part of a unit or other area in which production is pooled.

As added by P.L.140-2011, SEC.20.

IC 32-23-7-0.8

"Commercially minable coal resource"

Sec. 0.8. As used in this chapter, "commercially minable coal resource" has the meaning set forth in IC 14-8-2-47.

As added by P.L.140-2011, SEC.21.

IC 32-23-7-1

"Oil and gas"

Sec. 1. (a) As used in this chapter, "oil and gas" means petroleum and mineral oils and gaseous substances of whatever character naturally lying or found beneath the surface of land.

(b) The term does not include coal bed methane.

As added by P.L.2-2002, SEC.8. Amended by P.L.140-2011, SEC.22.

IC 32-23-7-2

"Oil and gas estate in land"

Sec. 2. As used in this chapter, "oil and gas estate in land" means the aggregate of all rights in land that affect the oil and gas in, on, under, or that may be taken from beneath the surface of the land.
As added by P.L.2-2002, SEC.8.

IC 32-23-7-2.5
"Operations for coal bed methane"

Sec. 2.5. As used in this chapter, "operations for coal bed methane", unless otherwise indicated by the context of this chapter, means:

(1) the exploration, surveying, or testing of land for coal bed methane;
(2) other investigation of the potential of land for coal bed methane production;
(3) the actual drilling or preparation for drilling of wells for coal bed methane;
(4) the stimulation of coal bed methane production by hydrofracturing or otherwise;
(5) the collection and transportation by pipeline of coal bed methane from:
  (A) the land; or
  (B) nearby land that is a part of a coal bed methane production area that includes the land; or
(6) any other actions directed toward the eventual production or attempted production of coal bed methane from the land.

As added by P.L.140-2011, SEC.23.

IC 32-23-7-3
"Operations for oil and gas"

Sec. 3. As used in this chapter, "operations for oil and gas", unless otherwise indicated by the context of this chapter, means:

(1) the:
  (A) exploration;
  (B) testing;
  (C) surveying; or
  (D) other investigation;
of the potential of the land for oil and gas;
(2) the actual drilling or preparations for drilling of wells for oil and gas on the land; or
(3) any other actions directed toward the eventual production or attempted production of oil and gas from the land.

As added by P.L.2-2002, SEC.8.

IC 32-23-7-4
"Person in interest"

Sec. 4. (a) As used in this chapter, "person in interest" means:

(1) if used in reference to an oil and gas estate in land, the owner of a beneficial interest in the oil and gas estate in land; or
(2) if used in reference to a coal bed methane estate in land, the owner of a beneficial interest in the coal bed methane estate in

land;

whether the interest is held for life, for a term of years, or in fee.

(b) The term includes a lessee, licensee, or duly qualified agent of the owner.

(c) The term does not include a mortgagee or security assignee of the owner if the mortgagee or security assignee does not have a right to the control or operation of the premises for:

(1) if used in reference to an oil and gas estate in land, oil and gas; or

(2) if used in reference to a coal bed methane estate in land, coal bed methane.

As added by P.L.2-2002, SEC.8. Amended by P.L.140-2011, SEC.24.

IC 32-23-7-5

"Surface rights"

Sec. 5. As used in this chapter, "surface rights" means all rights relating to the occupancy, user, or ownership of the surface of land affected by this chapter.

As added by P.L.2-2002, SEC.8.

IC 32-23-7-6

Rights and privileges transferred

Sec. 6. A grant or reservation contained in an instrument that affects land in Indiana and that purports to convey or transfer an interest in the oil and gas in, on, under, or that may be produced from beneath the surface of the land transfers the following expressed rights and privileges in addition to any other rights naturally flowing from the character of the instrument in law to the named recipient:

(1) A person in interest in the oil and gas estate in land may enter the land for the purpose of:

(A) exploring, prospecting, testing, surveying, or otherwise investigating the land to determine the potential of the land for oil or gas production; or

(B) otherwise conducting operations for oil and gas on the land;

whether or not the person is also the owner, lessee, or licensee of an owner of an interest in the surface rights in the land.

(2) A person in interest in the oil and gas estate in land in Indiana may enter the land to drill a well or test well on the land for the production or attempted production of oil and gas regardless of whether the:

(A) person is also the owner, lessee, or licensee of an owner of an interest in the surface rights in the land; and

(B) owner of the remaining rights in the land consents to the entrance and drilling.

A person that drills a well under this subdivision shall provide an accounting to the remaining or nonparticipating persons in interest in the oil and gas estate in the land, for their respective proportionate shares of the net profits arising from the operations conducted upon the land for oil or gas. In calculating

the profits, a reduction may not be made from the gross proceeds of the production of oil and gas, except for expenses that are reasonably or necessarily incurred in connection with the drilling, completion, equipping, and operation of the wells drilled upon the premises during the period in which the relationship of cotenancy existed between the person drilling the well and the person whose interest is sought to be charged with the respective proportionate part of the cost of the drilling.

(3) A person who may enter and enters land in Indiana for the purpose of exploring, prospecting, testing, surveying, or otherwise investigating the potential of the land for oil and gas, or for the purpose of conducting operations on the land for the production of oil and gas, is accountable to the owner of the surface of the land for the actual damage resulting from the person's activities on the land to:

(A) the surface of the land;

(B) improvements to the land; or

(C) growing crops on the land.

However, a person who enters land under this subdivision is not liable for punitive damages. Actual damage for which a person is accountable under this subdivision includes actual damage to marketable timber, crops, drainage systems, or erosion control systems, or quantifiable and verifiable damage to crops from compaction, abnormal flooding, or abnormal soil erosion caused by oil and gas operations. This subdivision does not increase damages between a lessor and a lessee in a valid and subsisting oil and gas lease that specifies damages if damages are not due other than damages that are expressly provided by contract between cotenants or the lessees of cotenants of a like estate in the land. This section does not authorize the location of a well for oil and gas nearer than two hundred (200) feet to an existing house, barn, or other structure (except fences) without the express consent of the owner of the structure.

(4) The right to conduct operations for oil and gas upon land located in Indiana includes the right to:

(A) install and maintain physical equipment on the land; and

(B) use the portion of the surface of the land that is reasonably necessary for the operations;

subject to the payment of damages resulting from the installation only of the equipment specified in this subdivision.

As added by P.L.2-2002, SEC.8. Amended by P.L.140-2011, SEC.25.

IC 32-23-7-6.5

Notice to surface owner of intent to enter property

Sec. 6.5. (a) This section does not apply in the event of an emergency entry.

(b) Unless otherwise agreed by the surface owner, a person who is an owner or holder of an oil and gas mineral interest or coal bed methane mineral interest and who wants to enter land for the purpose of surveying a drilling location must provide to the surface owner a

written notice of the person's intent to enter the property at least five (5) days before the person's entry.

(c) The written notice under subsection (b) may be given by personal delivery or by certified mail:

(1) to the last known address of each person who is liable for any property taxes on the property as shown on the tax duplicate; or

(2) to the last known address of the most recent owner of the property shown in the transfer book.

As added by P.L.140-2011, SEC.26. Amended by P.L.6-2012, SEC.210.

IC 32-23-7-7

Interests created; title; alienability

Sec. 7. (a) This section applies to the following:

(1) Interests in oil and gas.

(2) Interests in coal bed methane.

(b) An interest referred to in subsection (a) in, on, under, or that may be taken from beneath the surface of land located in Indiana may be created:

(1) for life;

(2) for a term of years; or

(3) in fee;

in the manner and to the extent that other interests in real estate and title are created.

(c) Title to the estates specified under subsection (b) may be vested in one (1) or more persons by:

(1) sole ownership;

(2) tenancy in common;

(3) joint tenancy;

(4) tenancy by the entireties; or

(5) another manner recognized under Indiana law.

(d) Interests or estates specified in this section are freely alienable, in whole or in part, in the same manner as are other interests in real estate.

As added by P.L.2-2002, SEC.8. Amended by P.L.140-2011, SEC.27.

IC 32-23-7-8

Contract rights not limited; legislative intent; regulation of industry; construction of law

Sec. 8. (a) This chapter does not limit the rights of parties to contract with regard to an oil and gas estate or a coal bed methane estate in land affecting lands in Indiana:

(1) to the extent permitted by; and

(2) in a manner consistent with;

the nature of the estate in law as specified under this chapter.

(b) This chapter does not affect the rights or powers of any commission, board, or authority duly constituted for the regulation of the oil and gas industry or the coal bed methane industry in Indiana.

As added by P.L.2-2002, SEC.8. Amended by P.L.140-2011, SEC.28.

IC 32-23-8

Chapter 8. Oil and Gas: Cancellation of Contracts and Leases for Oil and Gas

IC 32-23-8-1

Lapse of rental payment; nonproduction or nondevelopment of lease

Sec. 1. (a) Leases for oil and gas that are recorded in Indiana are void:

(1) after a period of one (1) year has elapsed since:

(A) the last payment of rentals on the oil and gas lease as stipulated in the lease or contract; or

(B) operation for oil or gas has ceased, both by the nonproduction of oil or gas and the nondevelopment of the lease; and

(2) upon the written request of the owner of the land, accompanied by the affidavit of the owner stating that:

(A) no rentals have been paid to or received by the owner or any person, bank, or corporation in the owner's behalf for a period of one (1) year after they have become due; and

(B) the leases and contracts have not been operated for the production of oil or gas for one (1) year.

As added by P.L.2-2002, SEC.8.

IC 32-23-8-2

Certification of invalidity of lease; recording

Sec. 2. (a) The recorder of the county in which real estate described in section 1 of this chapter is situated shall certify upon the face of the record of the oil and gas lease that:

(1) the leases and contracts are invalid and void by reason of nonpayment of rentals; and

(2) the oil and gas lease is canceled of record.

(b) The request and affidavit shall be recorded in the miscellaneous records of the recorder's office.

As added by P.L.2-2002, SEC.8.

IC 32-23-8-3

Payment of rent; void cancellation

Sec. 3. If, at any time after the cancellation of a lease and contract and within the term provided in the lease or contract, the lessee submits to the recorder:

(1) a receipt or a canceled check, or an affidavit, showing that the rental has been paid; or

(2) an affidavit that:

(A) the lease has been operated within a period of one (1) year before the cancellation, as stipulated in the lease or contract; and

(B) the affidavit of the lessor provided under this chapter is false or fraudulent;

the cancellation is void, and the recorder shall so certify at the place

where the cancellation of the lease and contract has been entered.
As added by P.L.2-2002, SEC.8.

IC 32-23-8-4
Appeal of cancellation of lease

Sec. 4. The owner of a lease that is canceled by a county recorder under this chapter may, not more than six (6) months after the date of cancellation of the lease, appeal the order and record of cancellation in the circuit court of the county in which the land is located.
As added by P.L.2-2002, SEC.8.

IC 32-23-9

Chapter 9. Oil and Gas: Purchase of and Payment for Crude Oil

IC 32-23-9-1

Time for payment

Sec. 1. (a) A person, firm, limited liability company, or corporation that purchases crude oil that is pumped from an oil well in Indiana shall pay for the crude oil:

(1) not more than sixty (60) days after the date of the examination and approval of abstracts of title that are furnished by owners of interests and that show good title in the owners of interests; and

(2) after the purchasers have received executed division orders from the owners of interests.

As added by P.L.2-2002, SEC.8.

IC 32-23-9-2

Time for payment; interest rate

Sec. 2. If a person, firm, limited liability company, or corporation described in section 1 of this chapter:

(1) fails to pay for the crude oil:

(A) not more than sixty (60) days after the date of the examination and approval of title; and

(B) after the purchasers have received executed division orders from the owners of interests; or

(2) has failed to notify the known claimants of an interest of the purchaser's reason for nonpayment to the claimants of an interest;

the purchaser shall pay interest at the rate of six percent (6%) per year on the unpaid balance from the date on which the purchaser was required to pay for the crude oil under this chapter to the date of payment.

As added by P.L.2-2002, SEC.8.

IC 32-23-10

Chapter 10. Lapse of Mineral Interest

IC 32-23-10-1

"Mineral interest" defined

Sec. 1. As used in this chapter, "mineral interest" means the interest that is created by an instrument that transfers, by:

(1) grant;
(2) assignment;
(3) reservation; or
(4) otherwise;

an interest of any kind in coal, oil and gas, and other minerals.

As added by P.L.2-2002, SEC.8.

IC 32-23-10-2

Statement of claims; filing; reversion

Sec. 2. An interest in coal, oil and gas, and other minerals, if unused for a period of twenty (20) years, is extinguished and the ownership reverts to the owner of the interest out of which the interest in coal, oil and gas, and other minerals was carved. However, if a statement of claim is filed in accordance with this chapter, the reversion does not occur.

As added by P.L.2-2002, SEC.8.

IC 32-23-10-3

Presumption of use

Sec. 3. (a) A mineral interest is considered to be used when:

(1) minerals are produced under the mineral interest;
(2) operations are conducted on the mineral interest for injection, withdrawal, storage, or disposal of water, gas, or other fluid substances;
(3) rentals or royalties are paid by the owner of the mineral interest for the purpose of delaying or enjoying the use or exercise of the rights;
(4) a use described in subdivisions 1 through 3 is carried out on a tract with which the mineral interest may be unitized or pooled for production purposes;
(5) in the case of coal or other solid minerals, there is production from a common vein or seam by the owners of the mineral interest; or
(6) taxes are paid on the mineral interest by the owner of the mineral interest.

(b) A use under or authorized by an instrument that creates a mineral interest continues in force all rights granted by the instrument.

As added by P.L.2-2002, SEC.8.

IC 32-23-10-4

Statement of claim; filing; time

Sec. 4. (a) The statement of claim under section 2 of this chapter

must:

(1) be filed by the owner of the mineral interest before the end of the twenty (20) year period set forth in section 2 of this chapter; and

(2) contain:

(A) the name and address of the owner of the mineral interest; and

(B) a description of the land on or under which the mineral interest is located.

(b) A statement of claim described in subsection (a) must be filed in the office of the recorder of deeds in the county in which the land is located.

(c) Upon the filing of a statement of claim within the time provided in this section, the mineral interest is considered to be in use on the date the statement of claim is filed.

As added by P.L.2-2002, SEC.8.

IC 32-23-10-5

Statement of claim; failure to file

Sec. 5. Failure to file a statement of claim within the time provided in section 4 of this chapter does not cause a mineral interest to be extinguished if the owner of the mineral interest:

(1) was, at the time of the expiration of the period specified in section 4 of this chapter, the owner of ten (10) or more mineral interests in the county in which the mineral interest is located;

(2) made a diligent effort to preserve all the mineral interests that were not being used and, not more than ten (10) years before the expiration of the period specified in section 4 of this chapter, preserved other mineral interests in the county by filing statements of claim as required under this chapter;

(3) failed to preserve the mineral interest through inadvertence; and

(4) filed the statement of claim required under this chapter:

(A) not more than sixty (60) days after publication of notice as specified in section 6 of this chapter; and

(B) if a notice referred to in clause (A) is not published, not more than sixty (60) days after receiving actual knowledge that the mineral interest had lapsed.

As added by P.L.2-2002, SEC.8.

IC 32-23-10-6

Notice; lapse of interest

Sec. 6. (a) A person who succeeds to the ownership of a mineral interest may, upon the lapse of the mineral interest, give notice of the lapse of the mineral interest by:

(1) publishing notice in a newspaper of general circulation in the county in which the mineral interest is located; and

(2) if the address of the mineral interest owner is shown of record or can be determined upon reasonable inquiry, by mailing, not more than ten (10) days after publication, a copy of

the notice to the owner of the mineral interest.

(b) The notice required under subsection (a) must state:

(1) the name of the owner of the mineral interest, as shown of record;

(2) a description of the land; and

(3) the name of the person giving the notice.

(c) If a copy of the notice required under subsection (a) and an affidavit of service of the notice are promptly filed in the office of the recorder in the county where the land is located, the record is prima facie evidence in a legal proceeding that notice was given.

As added by P.L.2-2002, SEC.8.

IC 32-23-10-7

Dormant mineral interest record

Sec. 7. Upon the filing of the statement of claim specified in section 4 of this chapter or the proof of service of notice specified in section 6 of this chapter in the recorder's office for the county where a mineral interest is located, the recorder shall:

(1) record the filing in a book to be kept for that purpose, to be known as the "dormant mineral interest record"; and

(2) indicate by marginal notation on the instrument creating the original mineral interest the filing of the statement of claim or affidavit of publication and service of notice.

As added by P.L.2-2002, SEC.8.

IC 32-23-10-8

Waiver

Sec. 8. The provisions of this chapter may not be waived at any time before the expiration of the twenty (20) year period provided in section 2 of this chapter.

As added by P.L.2-2002, SEC.8.

IC 32-23-11

Chapter 11. Abandoned Railroad Rights-of-Way

IC 32-23-11-1

Nonapplicability of chapter

Sec. 1. This chapter does not apply to a railroad right-of-way that is abandoned as part of a demonstration project for the relocation of railroad lines from the central area of a city as provided under Section 163 of the Federal-Aid Highway Act of 1973 (P.L.93-87, Title I, Section 163).

As added by P.L.2-2002, SEC.8.

IC 32-23-11-2

"Public utility" defined

Sec. 2. As used in this chapter, "public utility" has the meaning set forth in IC 8-1-8.5-1.

As added by P.L.2-2002, SEC.8.

IC 32-23-11-3

"Railroad" defined

Sec. 3. (a) As used in this chapter, "railroad" refers to a railroad company.

(b) The term includes a person to whom any part of a right-of-way was transferred under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.).

As added by P.L.2-2002, SEC.8.

IC 32-23-11-4

"Right-of-way" defined

Sec. 4. (a) As used in this chapter, "right-of-way" means a strip or parcel of real property in which a railroad has acquired an interest for use as a part of the railroad's transportation corridor.

(b) The term does not refer to any real property interest in the strip or parcel.

As added by P.L.2-2002, SEC.8.

IC 32-23-11-5

"Right-of-way fee" defined

Sec. 5. "Right-of-way fee" refers to the fee simple interest in the real property through which a right-of-way runs.

As added by P.L.2-2002, SEC.8.

IC 32-23-11-6

Abandoned right-of-way

Sec. 6. (a) Except as provided in subsection (b) and in sections 7 and 8 of this chapter, a right-of-way is considered abandoned if any of subdivisions (1) through (3) apply:

(1) Before February 28, 1920, both of the following occurred:

(A) The railroad discontinued use of the right-of-way for railroad purposes.

(B) The rails, switches, ties, and other facilities were removed from the right-of-way.

(2) After February 27, 1920, both of the following occur:

(A) The Interstate Commerce Commission or the United States Surface Transportation Board issues a certificate of public convenience and necessity relieving the railroad of the railroad's common carrier obligation on the right-of-way.

(B) The earlier of the following occurs:

(i) Rails, switches, ties, and other facilities are removed from the right-of-way, making the right-of-way unusable for continued rail traffic.

(ii) At least ten (10) years have passed from the date on which the Interstate Commerce Commission or the United States Surface Transportation Board issued a certificate of public convenience and necessity relieving the railroad of its common carrier obligation on the right-of-way.

(3) The right-of-way was abandoned under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.).

(b) A right-of-way is not considered abandoned if:

(1) rail service continues on the right-of-way; or

(2) the railroad has entered into an agreement preserving rail service on the right-of-way.

As added by P.L.2-2002, SEC.8.

IC 32-23-11-7

Trail use condition imposed

Sec. 7. A right-of-way is not considered abandoned if the Interstate Commerce Commission or the United States Surface Transportation Board imposes on the right-of-way a trail use condition under 16 U.S.C. 1247(d).

As added by P.L.2-2002, SEC.8.

IC 32-23-11-8

Sale of railroad's interest

Sec. 8. (a) A right-of-way is not considered abandoned if the following conditions are met:

(1) The railroad sells the railroad's rights in the right-of-way before abandoning the right-of-way.

(2) The purchaser of the railroad's rights in the right-of-way is not a railroad.

(3) The purchaser purchases the right-of-way for use by the purchaser to transport goods or materials by rail.

(b) A railroad may discontinue rail service on the right-of-way without abandoning the right-of-way.

As added by P.L.2-2002, SEC.8.

IC 32-23-11-9

Size of interest conveyed

Sec. 9. If a railroad conveys its interest in a right-of-way, the railroad conveys not more than the interest it holds at the time of the

conveyance.
As added by P.L.2-2002, SEC.8.

IC 32-23-11-10
Abandoned interest to vest in fee owner

Sec. 10. (a) This section applies if a railroad does not own the right-of-way fee.

(b) If a railroad abandons its right to a railroad right-of-way, the railroad's interest vests in the owner of the right-of-way fee with a deed that contains a description of the real property that includes the right-of-way.

(c) If a deed described in subsection (b) does not exist, then the railroad's interest vests in the owner of the adjoining fee. The interest of the railroad that vests in the owner of the adjoining fee is for the part of the right-of-way from the center line of the right-of-way to the adjoining property line.
As added by P.L.2-2002, SEC.8.

IC 32-23-11-11
Effect of interest vesting on other easement and license holders

Sec. 11. (a) The vesting of a railroad's interest under section 10 of this chapter does not divest a valid public utility, communication, cable television, fiber optic, or pipeline easement, license, or legal occupancy if the railroad granted the easement before the date on which the railroad abandoned the right-of-way.

(b) This chapter does not deprive a public utility, communication company, cable television company, fiber optic company, or pipeline company of the use of all or part of a right-of-way if, at the time of abandonment, the company:

(1) is occupying and using all or part of the right-of-way for the location and operation of the company's facilities; or

(2) has acquired an interest for use of all or part of the right-of-way.

(c) This chapter does not do the following:

(1) Limit the right of the owner of a right-of-way fee to demand compensation from a railroad or a utility for the value of an interest taken and used or occupied after abandonment.

(2) Grant to the owner of a right-of-way fee the right to obtain duplicative compensation from a utility or pipeline company for the value of the use of any portion of the right-of-way that is subject to the terms of an agreement previously entered into between the utility or pipeline company and the owner of the right-of-way fee. For purposes of this subdivision, "pipeline" does not include a coal slurry pipeline.

As added by P.L.2-2002, SEC.8.

IC 32-23-11-12
Limitation on commencement of action

Sec. 12. (a) A person may bring an action to establish full rights of possession of the person's right-of-way fee in any part of a

right-of-way that is burdened by an easement for railroad purposes not more than thirty (30) years after the right-of-way is abandoned under this chapter.

(b) A person may commence an action to establish the person's ownership of a right-of-way fee in any part of a right-of-way by enforcing a possibility of reverter or a right of entry under IC 32-17-10.

As added by P.L.2-2002, SEC.8.

IC 32-23-11-13

Determination of ownership

Sec. 13. Except as provided in section 14 of this chapter, the ownership of a right-of-way fee is determined under the same principles that fee simple ownership in property is otherwise determined under Indiana law.

As added by P.L.2-2002, SEC.8.

IC 32-23-11-14

Adverse possessions or prescriptive easements not establishing title or rights to property

Sec. 14. For purposes of this chapter, the following are not adverse possessions or prescriptive easements to the owner and do not establish title or rights to the real property:

(1) Possession of a right-of-way by a nonrailroad purchaser under section 8 of this chapter.

(2) Possession of a right-of-way by a public utility or under a communication, cable television, fiber optic, or pipeline easement, license, or legal occupancy under section 11 of this chapter.

(3) Possession of a right-of-way by a responsible party (as defined in IC 8-4.5-1-17).

As added by P.L.2-2002, SEC.8.

IC 32-23-11-15

Easement of necessity

Sec. 15. If a railroad owns a right-of-way fee that becomes landlocked after the right-of-way is abandoned, the railroad retains an easement of necessity in the abandoned right-of-way:

(1) from the landlocked property to the nearest public highway, road, or street; and

(2) to the extent necessary to reach and use the landlocked fee interest for its intended purpose.

As added by P.L.2-2002, SEC.8.

IC 32-23-12

Chapter 12. Coal: Estates in Land

IC 32-23-12-1

Exemptions from chapter

Sec. 1. This chapter does not do the following:

(1) Provide an exclusive basis by which a joint owner in coal or a lessee of the coal owner may enjoy their estate in the coal land.

(2) Diminish the rights of a joint owner of coal or a lessee of the coal owner under common law.

(3) Diminish the appurtenant rights of a coal owner.

(4) Prohibit a joint owner from filing a petition for partition under IC 32-17-4, provided that the petition for partition is filed in accordance with and subject to IC 32-23-12-9(d).

(5) Prohibit any entity with eminent domain powers from acquiring all or a portion of the coal land by exercise of eminent domain powers.

As added by P.L.94-2009, SEC.1.

IC 32-23-12-2

"Coal land"

Sec. 2. As used in this chapter, "coal land" means the coal estate in land that contains coal and is subject to a vested interest by a plaintiff, under this chapter, to the coal lying within the land.

As added by P.L.94-2009, SEC.1.

IC 32-23-12-3

"Coal owner"

Sec. 3. As used in this chapter, "coal owner" means a person vested with an undivided fractional fee simple interest or other freehold interest in coal contained within the coal land. However, the term does not include a person with only a leasehold, easement, or right-of-way interest in the coal land.

As added by P.L.94-2009, SEC.1.

IC 32-23-12-4

"Joint owner"

Sec. 4. As used in this chapter, "joint owner" means a person who is a joint tenant, a tenant in common, a tenant by the entirety, or other person who is a coal owner of less than one hundred percent (100%) of an undivided interest in all the coal within the coal land that is sought to be developed.

As added by P.L.94-2009, SEC.1.

IC 32-23-12-5

Court proceedings

Sec. 5. A proceeding under this chapter must be brought in the circuit or superior court of the county:

(1) where the coal land sought to be affected is entirely located;

or

(2) if the coal land is located in more than one (1) county, the county where the major part of the coal land is located.

As added by P.L.94-2009, SEC.1.

IC 32-23-12-6

Authority to remove coal; authority of court; length of lease

Sec. 6. (a) If the title to coal lying within the land is owned by joint owners, a coal owner or coal lessee of the coal owner that meets the requirements under this chapter is authorized to mine and remove coal from the land subject to this chapter.

(b) The circuit or superior court of the county in which the coal land or the major part of the coal land lies may:

(1) declare a trust in the coal land;

(2) appoint without a bond a trustee for all persons owning an interest in the coal land who are not plaintiffs or the lessor of the plaintiffs under a valid and subsisting coal lease; and

(3) authorize the trustee to sell, execute, and deliver a valid lease on the coal land on behalf of each defendant on terms and conditions approved by the circuit court as provided in this chapter.

(c) A lease created under this chapter continues after the termination of the trust, unless the lease has expired by its own terms.

As added by P.L.94-2009, SEC.1.

IC 32-23-12-7

Appointment of trustee

Sec. 7. Proceedings for the appointment of a trustee may be instituted by any person who is:

(1) a coal owner of the coal sought to be developed; or

(2) vested with a valid and subsisting coal lease, if the lessor is a person described in subdivision (1).

As added by P.L.94-2009, SEC.1.

IC 32-23-12-8

Creation of trust to develop coal interest; petition; guardian ad litem; evidence; coal lease; fees

Sec. 8. (a) The person seeking to create a trust for an interest in coal land for the purpose of leasing and developing the coal interest shall join as a defendant each person who has a legal interest in the coal land, except for any plaintiffs or persons having a legal interest in the coal land who at the time of the action are parties to a valid and existing lease granting to the plaintiff the mining rights sought by the plaintiff. A person who might have a contingent or future interest in the coal land is bound by the judgment entered in the proceedings.

(b) The plaintiff shall file a verified petition that specifically sets forth the following:

(1) The request of each plaintiff that a trustee be appointed to execute a lease granting the plaintiff the right to mine and remove coal from the subject coal land.

(2) The legal description of the coal land.

(3) The interest of the plaintiff in the coal within the coal land.

(4) The apparent interest of each defendant in the coal within the coal land.

(5) A statement that the plaintiff is willing to purchase a mineral lease covering the interest of each defendant and that the existence of these unleased mineral interests is detrimental to and impairs the enjoyment of the interest of the plaintiff.

(c) The Indiana rules of trial procedure govern an action under this chapter to make an unknown party a defendant.

(d) The court shall appoint a guardian ad litem for any defendant to the proceeding who is a ward of the state or a ward to another person.

(e) If it appears to the court that a person who is not in being, but upon coming into being, is or may be entitled to any interest in the property sought to be leased, the court shall appoint a guardian ad litem to appear for and represent the interest in the proceeding and to defend the proceeding on behalf of the person not in being. A judgment or order entered by the circuit court in the proceeding is effective against the person not in being.

(f) The court shall receive evidence and hear testimony concerning:

(1) the matters in the plaintiff's petition; and

(2) the prevailing terms of similar coal leases obtained in the vicinity of the coal land in the petition, including the length of the lease term, bonus money, delay rentals, royalty rates, and other forms of lease payments.

If, upon taking evidence and hearing testimony, the court determines that the material allegations of the petition are true and that there has been compliance with the required notice provisions, the court shall enter an order determining the interest of each defendant in the coal land sought to be leased. The court shall also appoint a trustee for the purpose of executing in favor of the plaintiff a coal lease covering the interest of each defendant. The court's judgment appointing the trustee and authorizing the execution of the lease must specify the minimum terms that may be accepted by the trustee. Those terms must be substantially consistent with the terms of other similar coal leases obtained in the vicinity as determined by the court. The terms of the coal lease also must be substantially consistent with the terms of other existing leases, if any, covering the remaining coal interests in the land described in the petition.

(g) The coal land to be covered by a coal lease must be contiguous. To the extent that any of the coal land described in the petition is not contiguous to other coal land in the petition, that coal land must be subject to separate coal leases.

(h) The court shall determine a reasonable fee to be paid to the trustee and the trustee's reasonable attorney's fees and costs of the proceeding, which shall be paid by the plaintiff.

(i) Each plaintiff shall promptly furnish to the court a report of proceedings of the evidence received and testimony taken at the

hearing on the petition. The report of proceedings shall be filed and made a part of the case record.

(j) In proceedings under this chapter, the circuit or superior court may:

(1) investigate and determine questions of conflicting or controverted titles;

(2) remove invalid and inapplicable encumbrances from the title to the coal land; and

(3) establish and confirm the title to the coal or the right to mine and remove coal from any of the coal land.

As added by P.L.94-2009, SEC.1.

IC 32-23-12-9

Duties of trustee; review of lease; petition for partition

Sec. 9. (a) The trustee shall:

(1) enter into negotiations with the plaintiff;

(2) execute a coal lease in favor of the plaintiff covering the interest of the defendant that reflects the findings and judgment of the circuit or superior court; and

(3) promptly prepare and file a report of the coal lease stating the terms of the lease and the payments received for the lease and give notice to all parties appearing of record.

(b) The circuit or superior court shall review the coal lease under subsection (a) to determine if the sale is in accordance with the court's findings and judgment. If the circuit or superior court approves the sale of the coal lease, the court shall:

(1) issue an order confirming the sale; and

(2) issue an order terminating the trust.

(c) If, before an order confirming the lease pursuant to subsection (b) is issued, a party to the proceedings files, in accordance with subsection (d), a petition for partition under IC 32-17-4 applicable to the coal land, whether solely for the coal estate or for estates in the subject land in addition to and including the coal estate, the proceedings under this chapter shall be stayed during the pendency of the proceeding initiated under IC 32-17-4, and upon any final order of partition or sale in that procceding, the proceedings under this chapter shall be terminated.

(d) Any petition for partition under IC 32-17-4 applicable to the coal land filed during the pendency of any petition filed under this chapter shall be filed in the same court exercising jurisdiction over the petition filed under this chapter. If any defendant in a proceeding under this chapter files during the pendency of any proceeding under this chapter a petition for partition under IC 32-17-4 applicable to the coal land, and the petition for partition is subsequently dismissed or terminated prior to a final order of partition or sale, the same defendant may not refile a subsequent petition for partition applicable to the coal land under IC 32-17-4 until the proceedings under this chapter are concluded.

(e) If a petition for partition is filed under IC 32-17-4 after an order confirming a lease pursuant to subsection (b) has been issued,

any land partitioned or sold shall be partitioned or sold subject to the lease.
As added by P.L.94-2009, SEC.1.

IC 32-23-12-10
Lease payments
Sec. 10. Any payment that is owed to a defendant under a coal lease executed by the trustee must be paid by the plaintiff directly to the defendant.
As added by P.L.94-2009, SEC.1.

IC 32-23-12-11
Sale and execution of coal lease
Sec. 11. The sale of and execution of any coal lease under this chapter is binding concerning the interest in the coal and the right to mine and remove the coal owned by any defendant to the action in the same manner as if the defendant had personally signed and delivered the lease. The coal lease is binding on the heirs, legatees, personal representatives, successors, and assigns of the defendant.
As added by P.L.94-2009, SEC.1.

IC 32-23-12-12
Successor trustee; subsequent proceedings
Sec. 12. (a) If a trustee:
(1) dies or resigns; or
(2) refuses or is unable to act;
the circuit or superior court shall, upon either the court's motion or the motion of a plaintiff, appoint a successor trustee.
(b) After the entry of the initial judgment authorizing a lease, all subsequent proceedings pertaining to the coal land and the coal interest involved in the initial litigation, including subsequent leasing proceedings or proceedings by the trustee requesting authority to execute and deliver additional documents pertaining to a coal lease, must be commenced in the same court as the proceedings for the initial lease. The acting trustee at the time of any subsequent proceedings shall act as the trustee in the subsequent proceedings. The circuit or superior court retains continuing jurisdiction over any subsequent proceedings.
As added by P.L.94-2009, SEC.1.

IC 32-23-12-13
Court costs
Sec. 13. The court costs related to the proceedings allowed under this chapter must be paid by the plaintiff.
As added by P.L.94-2009, SEC.1.

IC 32-23-12-14
Conveying marketable title of lease
Sec. 14. This chapter shall be liberally construed so that any lease issued under this chapter conveys marketable title.

As added by P.L.94-2009, SEC.1.

IC 32-24

ARTICLE 24. EMINENT DOMAIN

IC 32-24-1

Chapter 1. General Procedures

IC 32-24-1-1

"Condemnor" defined

Sec. 1. As used in section 5 of this chapter, "condemnor" means any person authorized by Indiana law to exercise the power of eminent domain.

As added by P.L.2-2002, SEC.9.

IC 32-24-1-2

"Owner" defined

Sec. 2. As used in section 5 of this chapter, "owner" means the persons listed on the tax assessment rolls as being responsible for the payment of real estate taxes imposed on the property and the persons in whose name title to real estate is shown in the records of the recorder of the county in which the real estate is located.

As added by P.L.2-2002, SEC.9.

IC 32-24-1-3

Entry on land; purchase before instituting proceedings; surveys by public utilities or pipeline companies

Sec. 3. (a) Any person that may exercise the power of eminent domain for any public use under any statute may exercise the power only in the manner provided in this article, except as otherwise provided by law.

(b) Except as provided in subsection (g), before proceeding to condemn, the person:

(1) may enter upon any land to examine and survey the property sought to be acquired; and

(2) must make an effort to purchase for the use intended the land, right-of-way, easement, or other interest, in the property.

(c) The effort to purchase under subsection (b)(2) must include the following:

(1) Establishing a proposed purchase price for the property.

(2) Providing the owner of the property with an appraisal or other evidence used to establish the proposed purchase price.

(3) Conducting good faith negotiations with the owner of the property.

(d) If the land or interest in the land, or property or right is owned by a person who is an incapacitated person (as defined in IC 29-3-1-7.5) or less than eighteen (18) years of age, the person seeking to acquire the property may purchase the property from the guardian of the incapacitated person or person less than eighteen (18) years of age. If the purchase is approved by the court appointing the guardian and the approval is written upon the face of the deed, the conveyance of the property purchased and the deed made and

approved by the court are valid and binding upon the incapacitated person or persons less than eighteen (18) years of age.

(e) The deed given, when executed instead of condemnation, conveys only the interest stated in the deed.

(f) If property is taken by proceedings under this article, the entire fee simple title may be taken and acquired.

(g) This subsection applies to a public utility (as defined in IC 32-24-1-5.9(a)) or a pipeline company (as defined in IC 8-1-22.6-7). If a public utility or a pipeline company seeks to acquire land or an interest in land under this article, the public utility or pipeline company may not enter upon the land to examine or survey the property sought to be acquired unless either of the following occur:

(1) The public utility or the pipeline company sends notice by certified mail to the affected landowner (as defined in IC 8-1-22.6-2) of the public utility's or the pipeline company's intention to enter upon the landowner's property for survey purposes. The notice required by this subdivision must be mailed not later than fourteen (14) days before the date of the public utility's or the pipeline company's proposed examination or survey.

(2) The public utility or the pipeline company receives the landowner's signed consent to enter the property to perform the proposed examination or survey.

An affected landowner may bring an action to enforce this subsection in the circuit court of the county in which the landowner's property is located. A prevailing landowner is entitled to the landowner's actual damages as a result of the public utility's or the pipeline company's violation. In addition, the court may award a prevailing landowner reasonable costs of the action and attorney's fees.

As added by P.L.2-2002, SEC.9. Amended by P.L.163-2006, SEC.5; P.L.110-2007, SEC.2.

IC 32-24-1-4

Complaint

Sec. 4. (a) If the person seeking to acquire the property does not agree with the owner of an interest in the property or with the guardian of an owner concerning the damages sustained by the owner, the person seeking to acquire the property may file a complaint for that purpose with the clerk of the circuit court of the county where the property is located.

(b) The complaint must state the following:

(1) The name of the person seeking to acquire the property. This person shall be named as the plaintiff.

(2) The names of all owners, claimants to, and holders of liens on the property, if known, or a statement that they are unknown. These owners, claimants, and holders of liens shall be named as defendants.

(3) The use the plaintiff intends to make of the property or right sought to be acquired.

(4) If a right-of-way is sought, the location, general route, width, and the beginning and end points of the right-of-way.

(5) A specific description of each piece of property sought to be acquired and whether the property includes the whole or only part of the entire parcel or tract. If property is sought to be acquired by the state or by a county for a public highway or by a municipal corporation for a public use and the acquisition confers benefits on any other property of the owner, a specific description of each piece of property to which the plaintiff alleges the benefits will accrue. Plats of property alleged to be affected may accompany the descriptions.

(6) That the plaintiff has been unable to agree for the purchase of the property with the owner, owners, or guardians, as the case may be, or that the owner is mentally incompetent or less than eighteen (18) years of age and has no legally appointed guardian, or is a nonresident of Indiana.

(c) All parcels lying in the county and required for the same public use, whether owned by the same parties or not, may be included in the same or separate proceedings at the option of the plaintiff. However, the court may consolidate or separate the proceedings to suit the convenience of parties and the ends of justice. The filing of the complaint and a lis pendens notice in any eminent domain action under this article constitutes notice of proceedings to all subsequent purchasers and persons taking encumbrances of the property, who are bound by the notice.

As added by P.L.2-2002, SEC.9. Amended by P.L.81-2004, SEC.26.

IC 32-24-1-5

Offer of purchase; notice; service; forms; restoration of utility or transportation services

Sec. 5. (a) As a condition precedent to filing a complaint in condemnation, and except for an action brought under IC 8-1-13-19 (repealed), a condemnor may enter upon the property as provided in this chapter and must, at least thirty (30) days before filing a complaint, make an offer to purchase the property in the form prescribed in subsection (c). The offer must be served personally or by certified mail upon:

(1) the owner of the property sought to be acquired; or

(2) the owner's designated representative.

(b) If the offer cannot be served personally or by certified mail, or if the owner or the owner's designated representative cannot be found, notice of the offer shall be given by publication in a newspaper of general circulation in the county in which the property is located or in the county where the owner was last known to reside. The notice must be in the following form:

NOTICE

TO: _____, _____ (owner(s)), _____ (condemnor) needs your property for a _____ (description of project), and will need to acquire the following from

you:

_____ (general description of the property to be acquired). We have made you a formal offer for this property that is now on file in the Clerk's Office in the _____ County Court House. Please pick up the offer. If you do not respond to this notice or accept the offer by ____ (a date 30 days from 1st date of publication) 20___, we shall file a suit to condemn the property.

_____
Condemnor

The condemnor must file the offer with the clerk of the circuit court with a supporting affidavit that diligent search has been made and that the owner cannot be found. The notice shall be published twice as follows:

(1) One (1) notice immediately.

(2) A subsequent publication at least seven (7) days and not more than twenty-one (21) days after the publication under subdivision (1).

(c) The offer to purchase must be in the following form:

UNIFORM PROPERTY OR EASEMENT
ACQUISITION OFFER

_____ (condemnor) is authorized by Indiana law to obtain your property or an easement across your property for certain public purposes. _____ (condemnor) needs (your property) (an easement across your property) for a _____ (brief description of the project) and needs to take _____ (legal description of the property or easement to be taken; the legal description may be made on a separate sheet and attached to this document if additional space is required)

It is our opinion that the fair market value of the (property) (easement) we want to acquire from you is $ ____, and, therefore, _____ (condemnor) offers you $ _____ for the above described (property) (easement). You have thirty (30) days from this date to accept or reject this offer. If you accept this offer, you may expect payment in full within ninety (90) days after signing the documents accepting this offer and executing the easement, and provided there are no difficulties in clearing liens or other problems with title to land. Possession will be required thirty (30) days after you have received your payment in full.

HERE IS A BRIEF SUMMARY OF YOUR OPTIONS AND LEGALLY PROTECTED RIGHTS:

1. By law, _____ (condemnor) is required to make a good faith effort to purchase (your property) (an easement across your property).

2. You do not have to accept this offer and _____ (condemnor) is not required to agree to your demands.

3. However, if you do not accept this offer, and we cannot come to an agreement on the acquisition of (your property) (an easement), _____ (condemnor) has the right to file suit

to condemn and acquire the (property) (easement) in the county in which the property is located.

4. You have the right to seek advice of an attorney, real estate appraiser, or any other person of your choice on this matter.

5. You may object to the public purpose and necessity of this project.

6. If _____ (condemnor) files a suit to condemn and acquire (your property) (an easement) and the court grants its request to condemn, the court will then appoint three appraisers who will make an independent appraisal of the (property) (easement) to be acquired.

7. If we both agree with the court appraisers' report, then the matter is settled. However, if either of us disagrees with the appraisers' report to the court, either of us has the right to ask for a trial to decide what should be paid to you for the (property) (easement) condemned.

8. If the court appraisers' report is not accepted by either of us, then _____ (condemnor) has the legal option of depositing the amount of the court appraisers' evaluation with the court. And if such a deposit is made with the court, _____ (condemnor) is legally entitled to immediate possession of the (property) (easement). You may, subject to the approval of the court, make withdrawals from the amount deposited with the court. Your withdrawal will in no way affect the proceedings of your case in court, except that, if the final judgment awarded you is less than the withdrawal you have made from the amount deposited, you will be required to pay back to the court the amount of the withdrawal in excess of the amount of the final judgment.

9. The trial will decide the full amount of damages you are to receive. Both of us will be entitled to present legal evidence supporting our opinions of the fair market value of the property or easement. The court's decision may be more or less than this offer. You may employ, at your cost, appraisers and attorneys to represent you at this time or at any time during the course of the proceeding described in this notice. (The condemnor may insert here any other information pertinent to this offer or required by circumstances or law).

10. If you have any questions concerning this matter you may contact us at:

_____

_____

(full name, mailing and street address, and phone of the condemnor)

This offer was made to the owner(s):

_____of_____,

_____of_____,

_____of_____,

_____of_____,

on the _____ day of _____ 20___,

BY:

_____
(signature)

_____
(printed name and title)

Agent of: _____
(condemnor)

If you decide to accept the offer of $ _____ made by _____ (condemnor) sign your name below and mail this form to the address indicated above. An additional copy of this offer has been provided for your file.

ACCEPTANCE OF OFFER

I (We), _____, _____, _____, owner(s) of the above described property or interest in property, hereby accept the offer of $ _____ made by _____ (condemnor) on this _____ day of _____, 20___.

_____
_____
_____
_____

NOTARY'S CERTIFICATE

STATE OF _____)
)SS:
COUNTY OF _____)

Subscribed and sworn to before me this ____ day of _____, 20___.

My Commission Expires: _____

_____
(Signature)

_____
(Printed) NOTARY PUBLIC

(d) If the condemnor has a compelling need to enter upon property to restore utility or transportation services interrupted by disaster or unforeseeable events, the provisions of subsections (a), (b), and (c) do not apply for the purpose of restoration of utility or transportation services interrupted by the disaster or unforeseeable events. However, the condemnor shall be responsible to the property owner for all damages occasioned by the entry, and the condemnor shall immediately vacate the property entered upon as soon as utility or transportation services interrupted by the disaster or unforeseeable event have been restored.

As added by P.L.2-2002, SEC.9. Amended by P.L.163-2006, SEC.6.

IC 32-24-1-5.5

Time limit for filing a complaint

Sec. 5.5. (a) Except as provided in sections 5.8 and 5.9 of this chapter, this section applies to every person that may exercise the power of eminent domain.

(b) If:

(1) a person that may exercise the power of eminent domain

submits a written acquisition offer to the owner of a parcel of real estate under section 5 of this chapter; and

(2) the owner rejects the offer;

the person shall file a complaint under this article to acquire the parcel by the exercise of eminent domain not more than two (2) years after the date the person submitted the written acquisition offer to the owner.

(c) If a person that may exercise the power of eminent domain fails to meet the requirements described in subsection (b) concerning a parcel of real estate, the person may not initiate an action under this article to acquire the parcel through the power of eminent domain for the same project or a substantially similar project for at least three (3) years after the date the two (2) year period described in subsection (b) expires.

As added by P.L.163-2006, SEC.7.

IC 32-24-1-5.8

Time limit for filing a complaint; Indiana department of transportation projects

Sec. 5.8. (a) This section applies only to:

(1) the Indiana department of transportation when the department seeks to acquire a parcel of land or a property right for the construction, reconstruction, improvement, maintenance, or repair of a:

(A) state highway; or

(B) toll road project or toll bridge; and

(2) any other person that may exercise the power of eminent domain when the person seeks to acquire a parcel of land or a property right for the construction, reconstruction, improvement, maintenance, or repair of a feeder road for an Indiana department of transportation project described in subdivision (1) if the construction, reconstruction, improvement, maintenance, or repair of the feeder road begins not later than five (5) years from the conclusion of the project.

(b) If:

(1) the Indiana department of transportation or other person described in subsection (a)(2) submits a written acquisition offer to the owner of a parcel of real estate under section 5 of this chapter; and

(2) the owner rejects the offer;

the department or other person shall file a complaint under this article to acquire the parcel by the exercise of eminent domain not more than three (3) years after the date the department or other person submitted the written acquisition offer to the owner.

(c) If the Indiana department of transportation or other person fails to meet the requirements described in subsection (b) concerning a parcel of real estate, the department or other person may not initiate an action under this article to acquire the parcel through the power of eminent domain for the same or a substantially similar project for at least three (3) years after the date the three (3) year period described

in subsection (b) expires.

(d) A court shall expedite the hearing of an action initiated under subsection (b). A party to the action is entitled to an expedited appeal of the court's final determination, under rules to be adopted by the supreme court.

As added by P.L.163-2006, SEC.8. Amended by P.L.11-2014, SEC.1.

IC 32-24-1-5.9

Time limit for filing a complaint; public utilities and pipeline companies

Sec. 5.9. (a) As used in this section, "public utility" means a public utility, municipally owned utility, cooperatively owned utility, joint agency created under IC 8-1-2.2, municipal sanitation department operating under IC 36-9-23, sanitary district operating under IC 36-9-25, or an agency operating as a stormwater utility.

(b) This section applies only to a public utility or pipeline company.

(c) If:

(1) a public utility or pipeline company submits a written acquisition offer to the owner of a parcel of real estate under section 5 of this chapter; and

(2) the owner rejects the offer in writing;

the public utility or pipeline company, to acquire the parcel by the exercise of eminent domain, must file a complaint under this article not more than six (6) years after the date on which the public utility or pipeline company submitted the written acquisition offer to the owner.

(d) If a public utility or pipeline company fails to meet the requirements set forth in subsection (c) concerning a parcel of real estate, the public utility or pipeline company may not initiate an action under this article to acquire the parcel through the power of eminent domain for the same project or a substantially similar project for at least two (2) years after the date on which the six (6) year period described in subsection (c) expires.

As added by P.L.163-2006, SEC.9.

IC 32-24-1-6

Notice to appear in court; form

Sec. 6. (a) Upon the filing of a complaint under this chapter, the circuit court clerk shall issue a notice requiring the defendants to appear before the court on the day to be fixed by the plaintiff by indorsement on the complaint at the time of filing the complaint, and to show cause, if any, why the property sought to be condemned should not be acquired. The notice shall be substantially in the following form:

In the _____ Court of Indiana.

To the Sheriff of _____ County, Indiana:

You are hereby commanded to notify _____, defendants, to appear before the _____ Court of _____ County, Indiana on the ____ day of _____,

20_____, at _____ o'clock, __ M. to show cause, if any, they have why the property sought to be acquired in the complaint of _____ should not be acquired.

Witness my hand and the seal of the court affixed at _____, Indiana, this ___ day of _____, 20_____.

Clerk of _____ Court.

(b) The notice shall be served in the same manner as a summons is served in civil actions. Upon a showing by affidavit that any defendant is a nonresident of Indiana or that the defendant's name or residence is unknown, publication and proof of the notice may be made as provided in section 7 of this chapter.

As added by P.L.2-2002, SEC.9.

IC 32-24-1-7

Notice to appear in court; publication; nonresident landowners; assessment of damages

Sec. 7. (a) The notice, upon its return, must show its:

(1) service for ten (10) days; or

(2) proof of publication for three (3) successive weeks in a weekly newspaper of general circulation printed and published in the English language in the county in which the property sought to be acquired is located.

The last publication of the notice must be five (5) days before the day set for the hearing.

(b) The clerk of the court in which the proceedings are pending, upon the first publication of the notice, shall send to the post office address of each nonresident owner whose property will be affected by the proceedings a copy of the notice, if the post office address of the owner or owners can be ascertained by inquiry at the office of the treasurer of the county.

(c) The court, being satisfied of the regularity of the proceedings and the right of the plaintiff to exercise the power of eminent domain for the use sought, shall appoint:

(1) one (1) disinterested freeholder of the county; and

(2) two (2) disinterested appraisers licensed under IC 25-34.1;

who are residents of Indiana to assess the damages, or the benefits and damages, as the case may be, that the owner or owners severally may sustain, or be entitled to, by reason of the acquisition. One (1) of the appraisers appointed under subdivision (2) must reside not more than fifty (50) miles from the property.

As added by P.L.2-2002, SEC.9. Amended by P.L.113-2006, SEC.19.

IC 32-24-1-8

Objections to proceedings; appeals

Sec. 8. (a) A defendant may object to the proceedings:

(1) because the court does not have jurisdiction either of the subject matter or of the person;

(2) because the plaintiff does not have the right to exercise the power of eminent domain for the use sought; or

(3) for any other reason disclosed in the complaint or set up in

the objections.

(b) Objections under subsection (a) must be:

(1) in writing;

(2) separately stated and numbered; and

(3) filed not later than thirty (30) days after the date the notice required in section 6 of this chapter is served on the defendant. However, the court may extend the period for filing objections by not more than thirty (30) days upon written motion of the defendant.

(c) The court may not allow pleadings in the cause other than the complaint, any objections, and the written exceptions provided for in section 11 of this chapter. However, the court may permit amendments to the pleadings.

(d) If an objection is sustained, the plaintiff may amend the complaint or may appeal from the decision in the manner that appeals are taken from final judgments in civil actions. All the parties shall take notice and are bound by the judgment in an appeal.

(e) If the objections are overruled, the court shall appoint appraisers as provided for in this chapter. Any defendant may appeal the interlocutory order overruling the objections and appointing appraisers in the manner that appeals are taken from final judgments in civil actions upon filing with the circuit court clerk a bond:

(1) with the penalty that the court fixes;

(2) with sufficient surety;

(3) payable to the plaintiff; and

(4) conditioned for the diligent prosecution of the appeal and for the payment of the judgment and costs that may be affirmed and adjudged against the appellants.

The appeal bond must be filed not later than ten (10) days after the appointment of the appraisers.

(f) All the parties shall take notice of and be bound by the judgment in the appeal.

(g) The transcript must be filed in the office of the clerk of the supreme court not later than thirty (30) days after the filing of the appeal bond. The appeal does not stay proceedings in the cause.

As added by P.L.2-2002, SEC.9. Amended by P.L.163-2006, SEC.10.

IC 32-24-1-9

Appraisers; oath and duty

Sec. 9. (a) Each appraiser shall take an oath that:

(1) the appraiser has no interest in the matter; and

(2) the appraiser will honestly and impartially make the assessment.

(b) After the appraisers are sworn as provided in subsection (a), the judge shall instruct the appraisers as to:

(1) their duties as appraisers; and

(2) the measure of the damages and benefits, if any, they allow.

(c) The appraisers shall determine and report all of the following:

(1) The fair market value of each parcel of property sought to be acquired and the value of each separate estate or interest in the

property.

(2) The fair market value of all improvements pertaining to the property, if any, on the portion of the property to be acquired.

(3) The damages, if any, to the residue of the property of the owner or owners caused by taking out the part sought to be acquired.

(4) The other damages, if any, that will result to any persons from the construction of the improvements in the manner proposed by the plaintiff.

(d) If the property is sought to be acquired by the state or by a county for a public highway or a municipal corporation for a public use that confers benefits on any property of the owner, the report must also state the benefits that will accrue to each parcel of property, set opposite the description of each parcel of property whether described in the complaint or not.

(e) Except as provided in subsection (f), in estimating the damages specified in subsection (c), the appraisers may not deduct for any benefits that may result from the improvement.

(f) In the case of a condemnation by the state or by a county for a public highway or a municipal corporation for public use, the appraisers shall deduct any benefits assessed from the amount of damage allowed, if any, under subsection (c)(3) and (c)(4) and the difference, if any, plus the damages allowed under subsection (c)(1) and (c)(2) shall be the amount of the award. However, the damages awarded may not be less than the damages allowed under subsection (c)(1) and (c)(2). Upon the trial of exceptions to the award by either party, a like measure of damages must be followed.

(g) For the purpose of assessing compensation and damages, the right to compensation and damages is considered to have accrued as of the date of the service of the notice provided in section 6 of this chapter, and actual value of compensation and damages at that date shall be:

(1) the measure of compensation for all property to be actually acquired; and

(2) the basis of damages to property not actually acquired but injuriously affected;

except as to the damages stated in subsection (c)(4).

As added by P.L.2-2002, SEC.9.

IC 32-24-1-10

Payment of benefits or damages assessed

Sec. 10. (a) If the plaintiff pays to the circuit court clerk the amount of damages assessed under section 9 of this chapter, the plaintiff may take possession of and hold the interest in the property so acquired for the uses stated in the complaint, subject to the appeal provided for in section 8 of this chapter. But the amount of the benefits or damages is subject to review as provided in section 11 of this chapter.

(b) Upon payment by the plaintiff of the amount of the award of the court appointed appraisers, the plaintiff shall file or cause to be filed with the auditor of the county in which the property is located a

certificate, certifying the amount paid to the circuit court clerk and including the description of the property being acquired. The auditor of the county shall then transfer the property being acquired to the plaintiff on the tax records of the county.
As added by P.L.2-2002, SEC.9.

IC 32-24-1-11
Notice of filing of appraisers' reports; exceptions to reports

Sec. 11. (a) When a report of the appraisers is filed with a court under this chapter, the circuit court clerk shall send written notice of the filing of the report by certified mail to:

(1) all known parties to the action; and
(2) the attorneys of record of the parties.

(b) Any party to an action under this chapter aggrieved by the assessment of benefits or damages in a report of the appraisers may file written exceptions to the assessment in the office of the circuit court clerk. Exceptions to the assessment must be filed by a party:

(1) after the report of the appraisers is filed with the court; and
(2) not later than forty-five (45) days after the date the circuit court clerk mails the report under subsection (a).

(c) The cause shall further proceed to issue, trial, and judgment as in civil actions. The court may make orders and render findings and judgments that the court considers just. Either party may appeal a judgment as to benefits or damages as in civil actions.

(d) Forty-five (45) days after the date the circuit court clerk mails the report under subsection (a), and if the plaintiff has paid the amount of damages assessed to the circuit court clerk, any one (1) or more of the defendants may file a written request for payment of each defendant's proportionate share of the damages held by the circuit court clerk. The defendants making a request for payment must also file sufficient copies of the request for service upon the plaintiff and all other defendants not joining in the request. The defendants making the request may withdraw and receive each defendant's proportionate share of the damages upon the following terms and conditions:

(1) Each written request must:
(A) be verified under oath; and
(B) state:
(i) the amount of the proportionate share of the damages to which each of the defendants joining in the request is entitled;
(ii) the interest of each defendant joining in the request; and
(iii) the highest offer made by the plaintiff to each of the defendants for each defendant's respective interests in or damages sustained in respect to the property that has been acquired by the plaintiff.

(2) Upon the filing of a written request for withdrawal and payment of damages to any of the defendants, the circuit court clerk shall immediately issue a notice to the plaintiff and all defendants of record in the cause who have not joined in the

request for payment. The notice must contain the following:

(A) The names of the parties.

(B) The number of the cause.

(C) A statement that a request for payment has been filed.

(D) A notice to appear on a day, to be fixed by the court, and show cause, if any, why the amounts requested should not be withdrawn and paid over by the circuit court clerk to those defendants requesting the amounts to be paid.

(E) A copy of the request for payment.

If a defendant not requesting payment is a nonresident of Indiana, or if that defendant's name or residence is unknown, publication and proof of the notice and request for payment shall be made as provided in section 4 of this chapter.

(3) After a hearing held after notice of a written request made under this section, the court shall determine and order the payment by the circuit court clerk of the proportionate shares of the damages due to the defendants requesting payment. Any of the defendants may appeal an order under this subdivision within the same time and in the same manner as provided for allowable appeals from interlocutory orders in civil actions.

(4) If exceptions to the appraisers' report have been duly filed by the plaintiff or any defendant, the circuit court clerk may not make payment to any defendant of any part of the damages deposited with the clerk by the plaintiff until the defendants requesting payment have filed with the circuit court clerk a written undertaking, with surety approved by the court, for the repayment to the plaintiff of all sums received by those defendants in excess of the amount or amounts awarded as damages to those defendants by the judgment of the court upon trial held on the exceptions to the assessment of damages by the appraisers. However, the court may waive the requirement of separate surety as to any defendant who is a resident freeholder of the county in which the cause is pending and who is owner of real property in Indiana that is liable to execution, not included in the real property appropriated by the plaintiff, and equal in value to the amount by which the damages to be withdrawn exceed the amount offered to the defendants as stated in their request or the amount determined by the court if the plaintiff has disputed the statement of the offer. A surety or written undertaking may not be required for a defendant to withdraw those amounts previously offered by the plaintiff to the defendant if the plaintiff has previously notified the court in writing of the amounts so offered. The liability of any surety does not exceed the amount by which the damages to be withdrawn exceed the amount offered to the defendants with whom the surety joins in the written undertaking. Each written undertaking filed with the circuit court clerk shall be immediately recorded by the clerk in the order book and entered in the judgment docket, and from the date of the recording and entry the written undertaking is a lien upon all the real property in the county owned by the several

obligors, and the undertaking is also a lien upon all the real property owned by the several obligors in each county of Indiana in which the plaintiff causes a certified copy of the judgment docket entry to be recorded, from the date of the recording.

(5) The withdrawal and receipt from the circuit court clerk by any defendant of that defendant's proportionate share of the damages awarded by the appraisers, as determined by the court upon the written request and hearing, does not operate and is not considered as a waiver of any exceptions duly filed by that defendant to the assessment of damages by the appraisers.

(6) In any trial of exceptions, the court or jury shall compute and allow interest at an annual rate of eight percent (8%) on the amount of a defendant's damages from the date plaintiff takes possession of the property. Interest may not be allowed on any money paid by the plaintiff to the circuit court clerk:

(A) after the money is withdrawn by the defendant; or

(B) that is equal to the amount of damages previously offered by the plaintiff to any defendant and which amount can be withdrawn by the defendant without filing a written undertaking or surety with the court for the withdrawal of that amount.

As added by P.L.2-2002, SEC.9. Amended by P.L.50-2012, SEC.1.

IC 32-24-1-12

Offer of settlement; acceptance; rejection

Sec. 12. (a) Not later than forty-five (45) days before a trial involving the issue of damages, the plaintiff shall, and a defendant may, file and serve on the other party an offer of settlement. Not more than five (5) days after the date offer of settlement is served, the party served may respond by filing and serving upon the other party an acceptance or a counter offer of settlement. The offer must state that it is made under this section and specify the amount, exclusive of interest and costs, that the party serving the offer is willing to accept as just compensation and damages for the property sought to be acquired. The offer or counter offer supersedes any other offer previously made under this chapter by the party.

(b) An offer of settlement is considered rejected unless an acceptance in writing is filed and served on the party making the offer before the trial on the issue of the amount of damages begins.

(c) If the offer is rejected, it may not be referred to for any purpose at the trial but may be considered solely for the purpose of awarding costs and litigation expenses under section 14 of this chapter.

(d) This section does not limit or restrict the right of a defendant to payment of any amounts authorized by law in addition to damages for the property taken from the defendant.

(e) This section does not apply to an action brought under IC 8-1-13-19 (repealed).

As added by P.L.2-2002, SEC.9. Amended by P.L.163-2006, SEC.11.

IC 32-24-1-13

Highways and roads; appointment of appraisers

Sec. 13. (a) The Indiana department of transportation or any state board, agency, or commission that succeeds the department in respect to the duties to locate, relocate, construct, reconstruct, repair, or maintain the public highways of Indiana, having the right to exercise the power of eminent domain for the public use, in its action for condemnation is not required to prove that an offer of purchase was made to the property owner in an action under this article.

(b) The court shall on the return day fixed at the time of the filing of the complaint appoint appraisers as provided by law and fix a day not later than ten (10) days after the date of the court's order for the appraisers to appear, qualify, and file their report of appraisal.

(c) If the appraisers appointed by the court fail to appear, qualify, and file their report of appraisal as ordered by the court, the court shall discharge the appraisers and appoint new appraisers in the same manner as provided in subsection (b).

As added by P.L.2-2002, SEC.9.

IC 32-24-1-14

Costs of proceedings; litigation expenses

Sec. 14. (a) Except as provided in subsection (b), the plaintiff shall pay the costs of the proceedings.

(b) If there is a trial, the additional costs caused by the trial shall be paid as ordered by the court. However, if there is a trial and the amount of damages awarded to the defendant by the judgment, exclusive of interest and costs, is greater than the amount specified in the last offer of settlement made by the plaintiff under section 12 of this chapter, the court shall allow the defendant the defendant's litigation expenses, including reasonable attorney's fees, in an amount not to exceed the lesser of:

(1) twenty-five thousand dollars ($25,000); or

(2) the fair market value of the defendant's property or easement as determined under this chapter.

As added by P.L.2-2002, SEC.9. Amended by P.L.163-2006, SEC.12.

IC 32-24-1-15

Forfeitures; failure to pay damages or take possession

Sec. 15. (a) If the person seeking to take property under this article fails:

(1) to pay the assessed damages and, if applicable, the attorney's fees payable under section 14 of this chapter not later than one (1) year after the appraisers' report is filed, if exceptions are not filed to the report;

(2) to pay:

(A) the damages assessed and, if applicable, attorney's fees payable under section 14 of this chapter if exceptions are filed to the appraisers' report and the exceptions are not sustained; or

(B) the damages assessed and, if applicable, attorney's fees payable under section 14 of this chapter and costs if exceptions

are filed to the appraisers' report and the exceptions are sustained;

not later than one (1) year after the entry of the judgment, if an appeal is not taken from the judgment;

(3) to pay the damages assessed and, if applicable, attorney's fees payable under section 14 of this chapter or the judgment rendered in the trial court not later than one (1) year after final judgment is entered in the appeal if an appeal is taken from the judgment of the trial court; or

(4) to take possession of the property and adapt the property for the purpose for which it was acquired not later than six (6) years after the payment of the award or judgment for damages, except where a fee simple interest in the property is authorized to be acquired and is acquired;

the person seeking to acquire the property forfeits all rights in the property as fully and completely as if the procedure to take the property had not begun.

(b) An action to declare a forfeiture under this section may be brought by any person having an interest in the property sought to be acquired, or the question of the forfeiture may be raised and determined by direct allegation in any subsequent proceedings, by any other person to acquire the property for a public use. In the subsequent proceedings the person seeking the previous acquisition or the person's proper representatives, successors, or assigns shall be made parties.

As added by P.L.2-2002, SEC.9. Amended by P.L.163-2006, SEC.13.

IC 32-24-1-16

Prior appropriation of land

Sec. 16. A person having an interest in property that has been or may be acquired for a public use without the procedures of this article or any prior law followed is entitled to have the person's damages assessed under this article substantially in the manner provided in this article.

As added by P.L.2-2002, SEC.9.

IC 32-24-1-17

Conflicting laws; repeal

Sec. 17. All laws and parts of laws in conflict with the provisions of this chapter are hereby repealed: provided, that this repeal shall not affect proceedings pending on April 15, 1905, but such proceedings may be completed as if this chapter had never been passed.

As added by P.L.2-2002, SEC.9.

IC 32-24-2

Chapter 2. Procedures for Cities and Towns

IC 32-24-2-1

"Fiscal officer" defined

Sec. 1. As used in this chapter, "fiscal officer" means:

(1) the city controller of a consolidated city or second class city;

(2) the city clerk-treasurer of a third class city; or

(3) the town clerk-treasurer of a town.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-2

"Municipality" defined

Sec. 2. As used in this chapter, "municipality" means a city or town.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-3

"Property" defined

Sec. 3. As used in this chapter, "property" refers to real property or personal property.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-4

"Works board" defined

Sec. 4. As used in this chapter, "works board" means:

(1) the board of public works or the board of public works and safety of a city; or

(2) the legislative body of a town.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-5

Alternate procedure

Sec. 5. If:

(1) a municipality has the power to acquire property under this chapter; or

(2) another statute provides for proceedings by a municipality for acquiring property under this chapter;

the board exercising those powers may proceed under IC 32-24-1 instead of this chapter.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-6

Application of chapter; condemnation resolutions; notice; remonstrances

Sec. 6. (a) This chapter applies if the works board of a municipality wants to acquire property for the use of the municipality or to open, change, lay out, or vacate a street, an alley, or a public place in the municipality, including a proposed street or alley crossings of railways or other rights-of-way. However, this chapter

does not apply if a municipality wants to acquire the property of a public utility (as defined in IC 8-1-2-1).

(b) The works board must adopt a resolution that the municipality wants to acquire the property. The resolution must describe the property that may be injuriously or beneficially affected. The board shall have notice of the resolution published in a newspaper of general circulation published in the municipality once each week for two (2) consecutive weeks. The notice must name a date, at least ten (10) days after the last publication, at which time the board will receive or hear remonstrances from persons interested in or affected by the proceeding.

(c) The works board shall consider the remonstrances, if any, and then take final action, confirming, modifying, or rescinding its original resolution. This action is conclusive as to all persons.

As added by P.L.2-2002, SEC.9. Amended by P.L.172-2009, SEC.6.

IC 32-24-2-7

List of affected property owners

Sec. 7. (a) When the final action under section 6 of this chapter is taken, the works board shall have prepared the following:

(1) A list of all the owners or holders of the property, and of interests in it, sought to be acquired or to be injuriously affected.

(2) If a street, alley, or public place is to be opened, laid out, changed, or vacated in the municipality, or within four (4) miles of it, a list of the owners or holders of property, and of interests in it, to be beneficially affected by the work.

(b) The list required by subsection (a) may not be confined to the owners of property along the line of the proposed work but must include all property taken, benefitted, or injuriously affected. In addition to the names, the list must show, with reasonable certainty, a description of each piece of property belonging to those persons that will be acquired or affected, either beneficially or injuriously. A greater certainty in names or descriptions is not necessary for the validity of the list than is required in the assessment of taxes.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-8

Damage awards and benefit assessments; notice; remonstrances

Sec. 8. (a) Upon the completion of the list, the works board shall award the damages sustained and assess the benefits accruing to each piece of property on the list.

(b) When the assessments or awards are completed, the works board shall have a written notice served upon the owner of each piece of property, showing the amount of the assessment or award, by leaving a copy of the notice at the owner's last usual place of residence in the municipality or by delivering a copy to the owner personally.

(c) If the owner is a nonresident, or if the owner's residence is unknown, the municipality shall notify the owner by publication in a daily newspaper of general circulation in the municipality once

each week for three (3) successive weeks.

(d) The notices must also name a day, at least ten (10) days after service of notice or after the last publication, on which the works board will receive or hear remonstrances from persons with regard to the amount of their respective awards or assessments.

(e) Persons not included in the list of the assessments or awards and claiming to be entitled to them are considered to have been notified of the pendency of the proceedings by the original notice of the resolution of the works board.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-9

Guardianship proceedings; notice

Sec. 9. (a) If a person having an interest in property affected by the proceedings is mentally incompetent or less than eighteen (18) years of age, the works board shall certify that fact to the municipality's attorney.

(b) The municipality's attorney shall apply to the proper court and secure the appointment of a guardian for the person less than eighteen (18) years of age or the mentally incompetent person. The works board shall give notice to the guardian, who shall appear and defend the interest of the protected person. However, if the protected person already has a guardian, the notice shall be served on that guardian. The requirements of notice to the guardian are the same as for other notices.

(c) If there is a defect in the proceedings with respect to at least one (1) interested person, the defect does not affect the proceedings except as it may concern the interest or property of those persons, and the defect does not affect any other person concerned.

(d) In case of a defect, supplementary proceedings of the same general character as those prescribed by this chapter may be initiated in order to correct the defect.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-10

Remonstrances; appeal

Sec. 10. (a) A person notified or considered to be notified under this chapter may appear before the works board on the day fixed for hearing remonstrances to awards and assessments and remonstrate in writing against them.

(b) After the remonstrances have been received, the works board shall either sustain or modify the awards or assessments in the case of remonstrances that have been filed. The works board shall sustain the award or assessment in the case of an award or assessment against which a remonstrance has not been filed.

(c) A person remonstrating in writing who is aggrieved by the decision of the works board may, not later than twenty (20) days after the decision is made, take an appeal to a court that has jurisdiction in the county in which the municipality is located. The appeal affects only the assessment or award of the person appealing.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-11
Appeal procedure; discontinuance

Sec. 11. (a) The appeal may be taken by filing an original complaint in the court against the municipality within the time required by section 10(c) of this chapter, setting forth the action of the works board with respect to the assessment and stating the facts relied upon as showing an error on the part of the board. The court shall rehear the matter of the assessment de novo and confirm, reduce, or increase the assessment. If the court reduces the amount of benefit assessed or increases the amount of damages awarded, the plaintiff may recover costs. If the court confirms the amount of the assessment, the plaintiff may not recover costs. The judgment of the court is conclusive, and an appeal may not be taken from the court's judgment.

(b) If upon appeal the benefits assessed or damages awarded by the works board are reduced or increased, the municipality may, upon the payment of costs, discontinue the proceedings. It may also, through the works board, make and adopt an additional assessment against all the property originally assessed in the proceeding, or that part that is benefitted, in the manner provided for the original assessment. However, such an assessment against any one (1) piece of property may not exceed ten percent (10%) of the original assessment against it.

(c) If the municipality decides to discontinue the proceedings upon payment of costs and if assessments for benefits have already been paid, the amounts paid shall be paid back to the person or persons paying them.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-12
Assessment of benefits; local assessment roll

Sec. 12. (a) Upon completion of the assessment list by the works board, the list shall be delivered to the fiscal officer of the municipality. From the time the respective amounts of benefits are assessed, or if a lot or parcel has sustained both benefits and damages because of an improvement as stated in the assessment list, then the excess of benefits assessed over damages awarded constitutes a lien superior to all other liens except taxes against the respective lot or parcel.

(b) The fiscal officer of the municipality shall immediately prepare a list of the excess of benefits, to be known as the local assessment list. If the municipality is a second class city and the county treasurer collects money due the city, the local assessment list shall be delivered to the county treasurer.

(c) The duties of the fiscal officer of the municipality and county treasurer are the same as prescribed with regard to assessments for street improvement. The provisions of the statute relating to:

(1) the payment of street improvement assessments by

installments on the signing of waivers and issuance of bonds and coupons in anticipation;

(2) the duties of the fiscal officer and the county treasurer in relation to them; and

(3) the enforcement of payment of assessments in proceedings for the improvement of streets by the works board;

applies to these assessments.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-13

Due date of benefit assessments; foreclosure of liens; costs

Sec. 13. (a) The benefit assessments are due and payable to the fiscal officer or county treasurer from the time of the preparation or delivery of the assessment duplicate.

(b) If an assessment is not paid within sixty (60) days, the municipality, by its attorney, shall proceed to foreclose the liens as mortgages are foreclosed, with similar rights of redemption, and have the property sold to pay the assessments. The municipality may recover costs, with reasonable attorney's fees, and interest from the expiration of the sixty (60) days allowed for payment, at the rate of six percent (6%) per year.

(c) If the person against whom the assessment is made is a resident of the municipality, demand for payment must be made by delivering to the person personally, or leaving at the person's last or usual place of residence, a notice of the assessment and demand for payment.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-14

Payment of damage awards

Sec. 14. The works board may determine if any part of the damages awarded shall be paid out of funds appropriated for the use of the board. However, not more than two thousand dollars ($2,000) in damages may be paid out of the municipality's funds for any improvement or condemnation except under an ordinance appropriating money for the specific improvement or condemnation. All benefits assessed and collected by the fiscal officer or county treasurer are subject to draft, in the usual manner, upon certificate by the works board in favor of persons to whom damages have been awarded. Any surplus remaining above actual awards belongs to the municipality. The works board may delay proceedings until the benefits have been collected.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-15

Certificates of damages; disputes as to whom damages should be paid; injunction

Sec. 15. (a) Upon completion of the award of damages or whenever any time for delay as provided has expired, the works board shall make out certificates for the proper amounts and in favor of the proper persons. Presentation of the certificates to the fiscal

officer of the municipality entitles the person to a warrant on the fiscal officer or the county treasurer. The certificates or vouchers shall, whenever practicable, be actually tendered to the persons entitled to them, but when this is impracticable, they shall be kept for the persons in the office of the works board. The making and fixing of the certificate is a valid and effectual tender to the person entitled to it, and the certificate must be delivered to that person on request.

(b) If a dispute or doubt arises as to which person the money shall be paid, the works board shall make out the certificate in favor of the municipality's attorney for the use of the persons entitled to it. The attorney shall draw the money and pay it into court in a proper proceeding, requiring the various claimants to interplead and have their respective rights determined.

(c) If an injunction is obtained because damages have not been paid or tendered, the works board may tender the certificate for the amount with interest from the time of entry upon the property, if any has been made, including all accrued costs. The injunction shall then be dissolved. The pendency of an appeal does not affect the validity of a tender made under this section, but the municipality may proceed with its acquisition of the property in question. However, when a lot or parcel has sustained both benefits and damages because of improvements as stated in the assessment list, only an excess of damages awarded over benefits assessed is payable under this section.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-16
Shoreline improvements; condemnation procedure

Sec. 16. (a) This section applies whenever the works board of a municipality located upon or adjoining a harbor connected with a navigable stream or lake, or upon any navigable channel, slip, waterway, or watercourse, wants to acquire for the use of the municipality any property for a right-of-way for seawalls, docks, or other improvement of the harbor, channel, slip, waterway or watercourse.

(b) The works board shall adopt a resolution that the municipality wants to acquire the property, describing the property that may be injuriously or beneficially affected. All proceedings necessary for the completion of and payment for any such undertaking, including notice, remonstrance, appeal, letting of and performance of contracts, assessment and collection of payment for benefits, and the determination and payment of damages to property, are the same, to the extent applicable, as those proceedings for street improvements of the municipality by its works board or other entity charged by statute with the performance of those duties on behalf of the municipality.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-17
Attorney's fees

Sec. 17. If applicable, a landowner who incurs attorney's fees through the exercise of eminent domain under this chapter is entitled to reasonable attorney's fees in accordance with IC 32-24-1-14.
As added by P.L.163-2006, SEC.14.

IC 32-24-3

Chapter 3. Procedures for State Government

IC 32-24-3-1

Commencement of action

Sec. 1. If the governor considers it necessary:

(1) to acquire property on which to construct public buildings for the state; or

(2) to acquire property adjoining state property on which buildings have been erected;

the governor may order the attorney general to file an action in the name of the state. The attorney general shall file the action in a court that has jurisdiction in the county in which the property is located. The state's petition must ask that appraisers be appointed to appraise the value of the property considered necessary to be acquired for the public uses of the state.

As added by P.L.2-2002, SEC.9.

IC 32-24-3-2

Notice; appointment of appraisers

Sec. 2. Upon filing the petition, the attorney general shall provide the owners of the property the notice required by law in the commencement of a civil action. It is sufficient to make defendants to the petition all persons who are in possession of the property and those who appear to be the owners or to have any interest in the property by the tax duplicates and the records in the offices of the auditor and recorder of the county. After notice has been given, the court shall appoint:

(1) one (1) disinterested resident freeholder of the county where the property is located; and

(2) two (2) disinterested appraisers licensed under IC 25-34.1;

who are residents of Indiana to appraise the value of the property. One (1) of the licensed appraisers appointed under this subsection must reside not more than fifty (50) miles from the land or building.

As added by P.L.2-2002, SEC.9. Amended by P.L.113-2006, SEC.20.

IC 32-24-3-3

Oath and report of appraisers

Sec. 3. (a) Before entering upon their duties, the appraisers shall take and subscribe an oath that they will honestly appraise the property at its fair cash value.

(b) The appraisers shall make a report of their appraisement within a time fixed by the court.

(c) If the appraisers fail for any cause to make a report within the time fixed by the court, the court may extend the time or may appoint other appraisers.

As added by P.L.2-2002, SEC.9.

IC 32-24-3-4

Exceptions to report of appraiser

Sec. 4. (a) After the appraisers file their report, any of the defendants may, within a reasonable time fixed by the court, file exceptions to the report, alleging that the appraisement of the property, as made by the appraisers, is not the true cash value of the property. If exceptions are filed, a trial on the exceptions shall be held by the court or before a jury, if asked by either party.

(b) The circuit court clerk shall give notice of filing of the appraisers' report to all known parties to the action and their attorneys of record by certified mail.

(c) Upon the trial of the exceptions, the court may revise, correct, amend, or confirm the appraisement in accordance with the finding of the court or verdict of the jury.

(d) The court shall apportion the costs accruing in the proceedings as justice may require. However, if applicable, a landowner who incurs attorney's fees through the exercise of eminent domain under this chapter is entitled to reasonable attorney's fees in accordance with IC 32-24-1-14.

(e) Changes of venue may be had as in other cases.

As added by P.L.2-2002, SEC.9. Amended by P.L.163-2006, SEC.15.

IC 32-24-3-5

Payment of value of real estate

Sec. 5. When the value of the property has been finally determined by the court, the governor may provide for the amount so found and may direct the auditor of state to draw a warrant on the treasurer of state to be paid out of any fund available in favor of the clerk of the circuit court. The clerk shall receive the money and hold it in court for the use of the owners and other persons adjudged to be entitled to the money.

As added by P.L.2-2002, SEC.9.

IC 32-24-3-6

Receipt of payment; execution of deed

Sec. 6. Upon payment to the clerk of the circuit court and the filing of a receipt for the payment of the money in open court as a part of the proceedings of the cause, the court shall direct the clerk of the circuit court to:

(1) execute a deed conveying the title of the property to the state of Indiana; and

(2) deliver the deed to the governor.

As added by P.L.2-2002, SEC.9.

IC 32-24-4
Chapter 4. Procedures for Utilities and Other Corporations

IC 32-24-4-1
Public utilities

Sec. 1. (a) A person, firm, partnership, limited liability company, or corporation authorized to do business in Indiana and authorized to:

(1) furnish, supply, transmit, transport or distribute electrical energy, gas, oil, petroleum, water, heat, steam, hydraulic power, or communications by telegraph or telephone to the public or to any town or city; or

(2) construct, maintain or operate turnpikes, toll bridges, canals, public landings, wharves, ferries, dams, aqueducts, street railways, or interurban railways for the use of the public or for the use of any town or city;

may take, acquire, condemn, and appropriate land, real estate, or any interest in the land or real estate to accomplish the essential delivery of services described in subdivisions (1) and (2).

(b) A person described in subsection (a) has all accommodations, rights, and privileges necessary to accomplish the use for which the property is taken. A person acting under subsection (a) may use acquired, condemned, or appropriated land to construct railroad siding, switch, or industrial tracks connecting its plant or facilities with the tracks of any common carrier.

As added by P.L.2-2002, SEC.9. Amended by P.L.163-2006, SEC.16.

IC 32-24-4-2
Fee simple or easements

Sec. 2. The condemnor may take, acquire, condemn, and appropriate a fee simple estate, title, and interest in an amount of land as the condemnor considers necessary for the condemnor's proper uses and purposes. However, for rights-of-way, the condemnor shall take, acquire, condemn, and appropriate an easement.

As added by P.L.2-2002, SEC.9.

IC 32-24-4-3
Authority to exercise eminent domain

Sec. 3. The appropriation and condemnation of land and easements in land authorized under this chapter shall be made under IC 32-24-1, except as otherwise provided in this chapter.

As added by P.L.2-2002, SEC.9.

IC 32-24-4-4
Application; payments; election of method; sale of interest in servient estate; statement in offer; acceptance of offer

Sec. 4. (a) This section applies to a public utility that appropriates by condemnation procedures an easement for right-of-way purposes on land zoned or used for agricultural purposes.

(b) If a public utility makes a uniform easement acquisition offer under IC 32-24-1-5 or a settlement offer under IC 32-24-1-12 in

excess of five thousand dollars ($5,000), the owner of the land may elect to accept as compensation either a lump sum payment or annual payments for a period not to exceed twenty (20) years.

(c) The landowner must elect either the lump sum payment or the annual payment method at the time the landowner:

(1) accepts the public utility's offer under IC 32-24-1-5 or IC 32-24-1-12 to purchase an easement;

(2) accepts the appraisers' award; or

(3) is awarded damages by a judgment in a proceeding under this article.

The grant of easement or judgment, whichever is applicable, must state the method of payment the landowner has elected to receive.

(d) If the land is owned by more than one (1) person, the election to receive annual payments must be unanimous among all record owners to be binding upon the public utility.

(e) Selection of the lump sum method of payment irrevocably binds the landowner and the landowner's successors in interest.

(f) The annual amount payable must be equal to the lump sum payment that would have otherwise been made by the utility divided by the number of years the landowner elects to receive the annual payments plus interest at a rate agreed upon by the public utility and the landowner on the balance remaining at the end of each year. The public utility shall make the annual payment as close as practicable to the date of the landowner's acceptance of the public utility's offer or the date of the judgment granting the utility the easement. If the public utility and the landowner are unable to agree upon the interest rate, the interest rate shall be the average annual effective interest rate for all new Federal Land Bank Loans, computed on the basis of the twelve (12) month period immediately preceding the date of settlement.

(g) A landowner who withdraws the appraisers' award under IC 32-24-1-11 may receive only a lump sum payment from the clerk at that time. If the landowner is later awarded a judgment for damages that exceeds the amount of the appraisers' award, the landowner may elect either method of compensation only to the extent that the damages exceed the appraisers' award remaining to be paid by the public utility as a result of the judgment.

(h) A landowner who elects the annual payment method may terminate the election by giving notarized written notice to the public utility at least ninety (90) days before the annual date of payment. The public utility may prescribe reasonable forms for the notice and may require that these forms be used for the notice to be effective. In the event the landowner terminates this election, the public utility shall pay the landowner in a single payment the difference between the lump sum and the total of all annual payments previously paid by the public utility. Upon the landowner's receipt of this payment, the public utility's payment obligations cease.

(i) If a landowner sells the landowner's entire interest in the servient estate, the landowner shall give the public utility prompt notarized written notice of the sale, together with a copy of the deed

specifying the name and address of the landowner's successor in interest. If the public utility receives the notice less than ninety (90) days before the date of an annual payment, the public utility may make this annual payment to the landowner but must make all successive payments to the landowner's successors and assigns.

(j) If a landowner sells less than the landowner's entire interest in the servient estate, the public utility may continue to make the annual payments to the landowner.

(k) A public utility shall make annual payments to the landowner only for the time the servient estate continues to be zoned or used for agricultural purposes. If the servient estate is no longer zoned or used for agricultural purposes, the public utility shall pay to the landowner the difference between the lump sum and the total of all annual payments previously paid by the public utility. Upon the landowner's receipt of this payment, the public utility's payment obligations cease.

(l) This section is binding upon the heirs, successors, and assigns of the landowner and the public utility.

(m) Every offer of a public utility under IC 32-24-1-5 and IC 32-24-1-12 must include the following statement in at least ten (10) point boldface type capital letters:

> "IF THIS OFFER IS OVER FIVE THOUSAND DOLLARS ($5,000), YOU MAY ELECT UNDER IC 32-24-4-4 TO ACCEPT PAYMENT IN A LUMP SUM PAYMENT OR IN ANNUAL PAYMENTS FOR A PERIOD NOT TO EXCEED TWENTY (20) YEARS WITH INTEREST. IF YOU ELECT ANNUAL PAYMENTS, THEN POSSESSION WILL BE REQUIRED THIRTY (30) DAYS AFTER YOU HAVE RECEIVED YOUR FIRST ANNUAL PAYMENT.".

(n) Every offer of a public utility under IC 32-24-1-5 and IC 32-24-1-12 must also include a form to be used by the landowner to accept the offer that substantially contains the following:

ACCEPTANCE OF OFFER

I (We),_____,_____,_____, landowner(s) of the above described property or interest in property hereby accept the offer of $_____ made by _____ (condemnor) on this ___ day of _____, 20___. Please check one of the following if the offer is in excess of five thousand dollars ($5,000):

( ) I (We) elect to accept payment in a lump sum.

( ) I (We) elect to accept payment in annual payments for a period of ____ years with interest as determined under IC 32-24-4-4.

_____

_____

_____

_____

NOTARY'S CERTIFICATE

STATE OF _____)
)SS:
COUNTY OF_____)

Subscribed and sworn to before me this ___ day of

_____, 20___. My Commission Expires: _____

_____
(Signature)

_____
(Printed) NOTARY PUBLIC.

As added by P.L.2-2002, SEC.9.

IC 32-24-4.5

Chapter 4.5. Procedures for Transferring Ownership or Control of Real Property Between Private Persons

IC 32-24-4.5-1

Application of chapter; "public use"

Sec. 1. (a) As used in this section, "public use" means the:

(1) possession, occupation, and enjoyment of a parcel of real property by the general public or a public agency for the purpose of providing the general public with fundamental services, including the construction, maintenance, and reconstruction of highways, bridges, airports, ports, certified technology parks, intermodal facilities, and parks;

(2) leasing of a highway, bridge, airport, port, certified technology park, intermodal facility, or park by a public agency that retains ownership of the parcel by written lease with right of forfeiture; or

(3) use of a parcel of real property to create or operate a public utility, an energy utility (as defined in IC 8-1-2.5-2), or a pipeline company.

The term does not include the public benefit of economic development, including an increase in a tax base, tax revenues, employment, or general economic health.

(b) This chapter applies to a condemnor that exercises the power of eminent domain to acquire a parcel of real property:

(1) from a private person;

(2) with the intent of ultimately transferring ownership or control to another private person; and

(3) for a use that is not a public use.

(c) This chapter does not apply thirty (30) years after the acquisition of the real property.

As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-2

"Condemnor"

Sec. 2. As used in this chapter, "condemnor" means a person authorized to exercise the power of eminent domain.

As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-3

"Parcel of real property"

Sec. 3. As used in this chapter, "parcel of real property" means real property that:

(1) is under common ownership; and

(2) a condemnor is seeking to acquire.

As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-4

"Private person"

Sec. 4. As used in this chapter, "private person" means a person

other than a public agency.
As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-5
"Public agency"

Sec. 5. (a) As used in this chapter, "public agency" means:
(1) a state agency (as defined in IC 4-13-1-1);
(2) a unit (as defined in IC 36-1-2-23);
(3) a body corporate and politic created by state statute;
(4) a school corporation (as defined in IC 20-26-2-4); or
(5) another governmental unit or district with eminent domain powers.

(b) The term does not include a state educational institution.
As added by P.L.163-2006, SEC.17. Amended by P.L.2-2007, SEC.365.

IC 32-24-4.5-6
"Relocation costs"

Sec. 6. As used in this chapter, "relocation costs" means relocation expenses payable in accordance with the federal Uniform Relocation Assistance Act (42 U.S.C. 4601 through 42 U.S.C. 4655).
As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-7
Acquisition of property; conditions

Sec. 7. A condemnor may acquire a parcel of real property by the exercise of eminent domain under this chapter only if all the following conditions are met:
(1) At least one (1) of the following conditions exists on the parcel of real property:
(A) The parcel contains a structure that, because of:
(i) physical condition;
(ii) use; or
(iii) occupancy;
constitutes a public nuisance.
(B) The parcel contains a structure that is unfit for human habitation or use because the structure:
(i) is dilapidated;
(ii) is unsanitary;
(iii) is unsafe;
(iv) is vermin infested; or
(v) does not contain the facilities or equipment required by applicable building codes or housing codes.
(C) The parcel contains a structure that is:
(i) a fire hazard; or
(ii) otherwise dangerous to the safety of persons or property.
(D) The parcel contains a structure that is not fit for its intended use because:
(i) the utilities;

(ii) the sewerage;
(iii) the plumbing;
(iv) the heating; or
(v) any other similar services or facilities;
have been disconnected, destroyed, removed, or rendered ineffective.
(E) The parcel:
(i) is located in a substantially developed neighborhood;
(ii) is vacant or unimproved; and
(iii) because of neglect or lack of maintenance, has become a place for the accumulation of trash, garbage, or other debris or become infested by rodents or other vermin, and the neglect or lack of maintenance has not been corrected by the owner of the parcel within a reasonable time after the owner receives notice of the accumulation or infestation.
(F) The parcel and any improvements on the parcel are the subject of tax delinquencies that exceed the assessed value of the parcel and its improvements.
(G) The parcel poses a threat to public health or safety because the parcel contains environmental contamination.
(H) The parcel has been abandoned.
(2) The acquisition of the parcel of real property through the exercise of eminent domain is expected to accomplish more than only increasing the property tax base of a government entity.
(3) If the owner files a request for mediation at the time the owner files an objection or exception to an eminent domain proceeding, the mediation occurs as follows:
(A) The court shall appoint a mediator not later than ten (10) days after the request for mediation is filed.
(B) The condemnor shall engage in good faith mediation with the owner, including the consideration of a reasonable alternative to the exercise of eminent domain.
(C) The mediation must be concluded not later than ninety (90) days after the appointment of the mediator.
(D) The condemnor shall pay the costs of the mediator.

A determination concerning whether a condition described in this section has been met is subject to judicial review in an eminent domain proceeding concerning the parcel of real property. If a court determines that an eminent domain proceeding brought under this chapter is unauthorized because the condemnor did not meet the conditions described in this section, the court shall order the condemnor to reimburse the owner for the owner's reasonable attorney's fees that the court finds were necessary to defend the action.

As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-8

Compensation for owners of acquired property

Sec. 8. Notwithstanding IC 32-24-1, a condemnor that acquires a

parcel of real property through the exercise of eminent domain under this chapter shall compensate the owner of the parcel as follows:

(1) For agricultural land:

(A) either:

(i) payment to the owner equal to one hundred twenty-five percent (125%) of the fair market value of the parcel as determined under IC 32-24-1; or

(ii) upon the request of the owner and if the owner and condemnor both agree, transfer to the owner of an ownership interest in agricultural land that is equal in acreage to the parcel acquired through the exercise of eminent domain;

(B) payment of any other damages determined under IC 32-24-1 and any loss incurred in a trade or business that is attributable to the exercise of eminent domain; and

(C) payment of the owner's relocation costs, if any.

(2) For a parcel of real property occupied by the owner as a residence:

(A) payment to the owner equal to one hundred fifty percent (150%) of the fair market value of the parcel as determined under IC 32-24-1;

(B) payment of any other damages determined under IC 32-24-1 and any loss incurred in a trade or business that is attributable to the exercise of eminent domain; and

(C) payment of the owner's relocation costs, if any.

(3) For a parcel of real property not described in subdivision (1) or (2):

(A) payment to the owner equal to one hundred percent (100%) of the fair market value of the parcel as determined under IC 32-24-1;

(B) payment of any other damages determined under IC 32-24-1 and any loss incurred in a trade or business that is attributable to the exercise of eminent domain; and

(C) payment of the owner's relocation costs, if any.

As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-9

Offer of settlement

Sec. 9. (a) Not later than forty-five (45) days before a trial involving the issue of compensation, the condemnor shall, and an owner may, file and serve on the other party an offer of settlement. Not more than five (5) days after the date the offer of settlement is served, the party served may respond by filing and serving upon the other party an acceptance or a counter offer of settlement. The offer must state that it is made under this section and specify the amount, exclusive of interest and costs, that the party serving the offer is willing to accept as just compensation and damages for the property sought to be acquired. The offer or counter offer supersedes any other offer previously made under this chapter by the party.

(b) An offer of settlement is considered rejected unless an

acceptance in writing is filed and served on the party making the offer before the trial on the issue of the amount of damages begins.

(c) If the offer is rejected, it may not be referred to for any purpose at the trial but may be considered solely for the purpose of awarding costs and litigation expenses under section 10 of this chapter.

(d) This section does not limit or restrict the right of an owner to payment of any amounts authorized by law in addition to damages for the property taken from the owner.

As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-10

Costs of proceedings

Sec. 10. (a) Except as provided in subsection (b), the condemnor shall pay the costs of the proceedings.

(b) If there is a trial, the additional costs caused by the trial shall be paid as ordered by the court. However, if there is a trial and the amount of damages awarded to the owner by the judgment, exclusive of interest and costs, is greater than the amount specified in the last offer of settlement made by the condemnor under section 9 of this chapter, the court shall require the condemnor to pay the owner's litigation expenses, including reasonable attorney's fees, in an amount that does not exceed twenty-five percent (25%) of the cost of the acquisition.

As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-11

Acquisition of property in certain project areas

Sec. 11. (a) This section applies to a parcel of real property located in a project area:

(1) that is located in only one (1) county;

(2) that is at least ten (10) acres in size; and

(3) in which a condemnor or its agents has acquired clear title to at least ninety percent (90%) of the parcels in the project area.

(b) As used in this section, "project area" means an area designated by a condemnor and the legislative body for the condemnor for economic development.

(c) Notwithstanding sections 7 and 8 of this chapter, a condemnor may acquire a parcel of real property by the exercise of eminent domain under this section only if all of the following conditions are met:

(1) The parcel of real property is not occupied by the owner of the parcel as a residence.

(2) The legislative body for the condemnor adopts a resolution by a two-thirds (2/3) vote that authorizes the condemnor to exercise eminent domain over a particular parcel of real property.

(d) A condemnor that acquires a parcel of real property through the exercise of eminent domain under this section shall compensate the owner of the parcel as follows:

(1) Payment to the owner equal to one hundred twenty five

percent (125%) of the fair market value of the parcel as determined under IC 32-24-1.

(2) Payment of any other damages as determined under IC 32-24-1 and any loss incurred in a trade or business that is attributable to the exercise of eminent domain.

(3) Payment of the owner's relocation costs, if any.

(e) The condemnor may not acquire a parcel of real property through the exercise of eminent domain under this section if the owner of the parcel demonstrates by clear and convincing evidence that:

(1) the location of the parcel is essential to the viability of the owner's commercial activity; and

(2) the payment of damages and relocation costs cannot adequately compensate the owner of the parcel.

(f) The court shall award the payment of reasonable attorney's fees to the owner of a parcel in accordance with this chapter.

As added by P.L.163-2006, SEC.17.

IC 32-24-5

Chapter 5. Eminent Domain for Gas Storage

IC 32-24-5-1

Subsurface strata or formations

Sec. 1. Whereas, the storage of gas in subsurface strata or formations of the earth in Indiana tends to insure a more adequate supply of gas to domestic, commercial, and industrial consumers of gas in this state and materially promotes the economy of the state, the storage of gas is declared to be in public interest and for the welfare of Indiana and the people of Indiana and to be a public use.

As added by P.L.2-2002, SEC.9.

IC 32-24-5-2

Persons entitled to exercise eminent domain; conditions precedent

Sec. 2. (a) A person, firm, limited liability company, municipal corporation, or other corporation authorized to do business in Indiana and engaged in the business of transporting or distributing gas by means of pipelines into, within, or through Indiana for ultimate public use may condemn:

(1) land subsurface strata or formations;

(2) other necessary land rights;

(3) land improvements and fixtures, in or on land, except buildings of any nature; and

(4) the use and occupation of land subsurface strata or formations;

for constructing, maintaining, drilling, utilizing, and operating an underground gas storage reservoir.

(b) The following rights in land may be condemned for use in connection with the underground storage of gas:

(1) To drill and operate wells in and on land.

(2) To install and operate pipelines.

(3) To install and operate equipment, machinery, fixtures, and communication facilities.

(4) To create ingress and egress to explore and examine subsurface strata or underground formations.

(5) To create ingress and egress to construct, alter, repair, maintain, and operate an underground storage reservoir.

(6) To exclusively use any subsurface strata condemned.

(7) To remove and reinstall pipe and other equipment used in connection with rights condemned under subdivisions (1) through (6).

(c) Acquisition of subsurface rights in land for gas storage purposes by condemnation under this section must be without prejudice to any subsequent proceedings that may be necessary under this section to acquire additional subsurface rights in the same land for use in connection with the underground storage. Surface rights in land necessary for the accomplishment of the purposes set forth in this section may be condemned.

(d) Except with respect to a proceeding under this chapter to:

(1) acquire the right to explore and examine a subsurface stratum or formation in land; and

(2) create the right of ingress and egress for operations connected to the acquisition;

and subject to subsection (e), as a condition precedent to the exercise of the right to condemn any underground stratum, formation, or interest reasonably expected to be used or useful for underground gas storage, a condemnor first must have acquired by purchase, option, lease, or other method not involving condemnation, the right, or right upon the exercise of an option, if any, to store gas in at least sixty per cent (60%) of the stratum or formation. This must be computed in relation to the total surface acreage overlying the entire stratum or formation considered useful for the purpose.

(e) A tract under which the stratum or formation sought to be condemned is owned by two (2) or more persons, firms, limited liability companies, or corporations must be credited to the condemnor as acquired by it for the purpose of computing the percentage of acreage acquired by the condemnor in complying with the requirement of subsection (d) if the condemnor acquires from the owner or owners of an undivided three-fourths (3/4) part or interest or more of the underground stratum or formation, by purchase, option, lease, or other method not involving condemnation, the right, or right upon the exercise of an option, if any, to store gas in the stratum or formation. It is not necessary for the condemnor to have acquired any interest in the property in which the condemnee has an interest before instituting a proceeding under this chapter.

As added by P.L.2-2002, SEC.9.

IC 32-24-5-3

Oil and gas leases; drilling into gas storage stratum

Sec. 3. (a) The rights acquired by condemnation must be without prejudice to the rights and interests of the owners or their lessees to:

(1) execute oil and gas leases;

(2) drill or bore to any other strata or formation not condemned; and

(3) produce oil and gas discovered.

However, any drilling and all operations in connection with the drilling must be performed in a manner that protects the strata or formations condemned against the loss of gas and against contamination of the reservoir by water, oil, or other substance that will affect the use of the condemned strata or formations for gas storage purposes.

(b) If the owners of mineral rights or the owners' lessees drill into land in which gas storage rights have been condemned under this chapter, the owners of mineral rights or their lessees shall give notice to the owner of the gas storage stratum, formation, or horizon at least thirty (30) days before commencing the drilling. The notice must specify the location and nature of the operations, including the depth to be drilled. The notice must be given by United States registered or certified mail, return receipt requested, and addressed to the usual

business address of the owner or owners of the gas storage stratum or formation condemned under this chapter.

(c) It is the duty of the owner of a gas storage stratum or formation to designate all necessary procedures for protecting the gas storage area. The actual costs incurred over and above customary and usual drilling and other costs that would have been incurred without compliance with the requirements shall be borne by the owner of the gas storage stratum or formation. An owner or lessee of mineral interests other than gas storage rights is not responsible for an act done under such a requirement or the consequences of this act.

As added by P.L.2-2002, SEC.9.

IC 32-24-5-4

Rights appropriated and condemned; compensation paid

Sec. 4. Only the rights in land necessary for use in connection with underground storage of gas and those subsurface strata adaptable for underground storage of gas may be appropriated and condemned under this chapter. Rights in the subsurface of land constituting a part of a geological structure are deemed necessary to the operation of an underground storage reservoir in the structure. In determining the compensation to be paid to the owner of an oil producing stratum, or interest in the stratum, condemned under this chapter, proof may be offered and consideration must be given to potential recovery, if any, of oil from a stratum by secondary or other subsequent recovery processes in addition to potential recovery by a primary process.

As added by P.L.2-2002, SEC.9.

IC 32-24-5-5

Authority to appropriate and condemn

Sec. 5. The appropriation and condemnation of subsurface strata or formations in land rights in and easements in land and subsurface strata or formations authorized by this chapter must be made under IC 32-24-1.

As added by P.L.2-2002, SEC.9.

IC 32-24-6

Chapter 6. Exceptions to Eminent Domain Assessments

IC 32-24-6-1

Law governing procedure

Sec. 1. (a) A party may file a written objection in a proceeding for the condemnation or appropriation of property for public use brought by:

(1) the state of Indiana;
(2) a commission, a department, or an agency of the state;
(3) a county;
(4) a township;
(5) a city;
(6) a town; or
(7) a taxing district;

under a law of the state authorizing the assessment of damages or benefits, appraisal, compensation, condemnation, or appropriation of property for public use.

(b) A party aggrieved by:

(1) the assessment of compensation or damages;
(2) the fixing of the value of the property involved; or
(3) the fixing of benefits;

as set forth in the report of an appraiser filed in a proceeding described in subsection (a) may file written exceptions in the office of the clerk of the court in which the cause is pending within ten (10) days after the report is filed. After the objections are filed, the cause shall proceed to issue, trial, and judgment as in civil actions in accordance with the provisions of the law not in conflict with this chapter governing the procedure in eminent domain as defined in IC 32-24-1.

As added by P.L.2-2002, SEC.9.

IC 32-24-6-2

Appraisers' report; notice of filing; period of exceptions

Sec. 2. In the exercise of the power of eminent domain, notice of filing of the appraisers' report shall be given by the clerk of the court to all known parties to the action by certified mail. Any period of exceptions after which the parties are barred from disputing the appraisal and condemnation shall run from the date of mailing.

As added by P.L.2-2002, SEC.9.

IC 32-24-7

Chapter 7. Procedure for Libraries

IC 32-24-7-1

Application of chapter

Sec. 1. This chapter applies to the exercise of eminent domain by a library board (as defined in IC 36-12-1-3). Notwithstanding any other law, a library board may exercise eminent domain only if it complies with this chapter.

As added by P.L.163-2006, SEC.18.

IC 32-24-7-2

Adoption of resolution by certain legislative bodies

Sec. 2. A library board may exercise eminent domain only if one (1) of the following legislative bodies adopts a resolution specifically authorizing the library board to exercise eminent domain over a particular parcel of land for a specific purpose:

(1) If the library district is located entirely within the corporate boundaries of a municipality, the legislative body of the municipality.

(2) If the library district:

(A) is not described by subdivision (1); and

(B) is located entirely within the boundaries of a township;

the legislative body of the township.

(3) If the library district is not described by subdivision (1) or (2), the legislative body of each county in which the library district is located.

As added by P.L.163-2006, SEC.18.

IC 32-24-7-3

Contents of resolution

Sec. 3. The resolution described in section 2 of this chapter must specifically describe:

(1) the parcel of land that the library board seeks to acquire by exercising eminent domain;

(2) the purpose for which the parcel of land is to be acquired; and

(3) why the exercise of eminent domain is necessary to accomplish the library board's purpose.

As added by P.L.163-2006, SEC.18.

IC 32-25

ARTICLE 25. CONDOMINIUMS

IC 32-25-1

Chapter 1. Application of Law

IC 32-25-1-1

Application of law

Sec. 1. This article applies to property if:

(1) the sole owner of the property; or

(2) all of the owners of the property;

submit the property to this article by executing and recording a declaration under this article.

As added by P.L.2-2002, SEC.10.

IC 32-25-1-2

Persons subject to law

Sec. 2. (a) The following are subject to this article and to declarations and bylaws of associations of co-owners adopted under this article:

(1) Condominium unit owners.

(2) Tenants of condominium unit owners.

(3) Employees of condominium unit owners.

(4) Employees of tenants of condominium owners.

(5) Any other persons that in any manner use property or any part of property submitted to this article.

(b) All agreements, decisions, and determinations lawfully made by an association of co-owners in accordance with the voting percentages established in:

(1) this article;

(2) the declaration; or

(3) the bylaws;

are binding on all condominium unit owners.

As added by P.L.2-2002, SEC.10. Amended by P.L.2-2005, SEC.83.

IC 32-25-2
Chapter 2. Definitions

IC 32-25-2-1
Applicability of definitions
Sec. 1. The definitions in this chapter apply throughout this article.
As added by P.L.2-2002, SEC.10.

IC 32-25-2-2
"Association of co-owners"
Sec. 2. "Association of co-owners" means all the co-owners acting as an entity in accordance with the:
(1) articles;
(2) bylaws; and
(3) declaration.
As added by P.L.2-2002, SEC.10.

IC 32-25-2-3
"Building"
Sec. 3. "Building" means a structure containing:
(1) at least two (2) condominium units; or
(2) at least two (2) structures containing at least one (1) condominium unit.
As added by P.L.2-2002, SEC.10.

IC 32-25-2-4
"Common areas and facilities"
Sec. 4. "Common areas and facilities", unless otherwise provided in the declaration or lawful amendments to the declaration, means:
(1) the land on which the building is located;
(2) the building:
(A) foundations;
(B) columns;
(C) girders;
(D) beams;
(E) supports;
(F) main walls;
(G) roofs;
(H) halls;
(I) corridors;
(J) lobbies;
(K) stairs;
(L) stairways;
(M) fire escapes;
(N) entrances; and
(O) exits;
(3) the:
(A) basements;
(B) yards;
(C) gardens;

(D) parking areas;
(E) storage spaces;
(F) swimming pools; and
(G) other recreational facilities;
(4) the premises for the lodging of:
(A) janitors; or
(B) persons in charge of the property;
(5) installations of central services, such as:
(A) power;
(B) light;
(C) gas;
(D) hot and cold water;
(E) heating;
(F) refrigeration;
(G) air conditioning; and
(H) incinerating;
(6) the:
(A) elevators;
(B) tanks;
(C) pumps;
(D) motors;
(E) fans;
(F) compressors;
(G) ducts;
(H) apparatus; and
(I) installations;
existing for common use;
(7) community and commercial facilities provided for in the declaration; and
(8) all other parts of the property:
(A) necessary or convenient to its:
(i) existence;
(ii) maintenance; and
(iii) safety; or
(B) normally in common use.
As added by P.L.2-2002, SEC.10.

IC 32-25-2-5
"Common expenses"
Sec. 5. "Common expenses" means:
(1) all sums lawfully assessed against the co-owners by the association of co-owners;
(2) expenses of:
(A) administration;
(B) maintenance;
(C) repair; or
(D) replacement;
of the common areas and facilities;
(3) expenses agreed upon as common expenses by the association of co-owners; and

(4) expenses declared common expenses by:
(A) this article;
(B) the declaration; or
(C) the bylaws.

As added by P.L.2-2002, SEC.10. Amended by P.L.2-2005, SEC.84.

IC 32-25-2-6
"Common profits"

Sec. 6. "Common profits" means the balance remaining, after the deduction of the common expenses, of all:
(1) income;
(2) rents;
(3) profits; and
(4) revenues;
from the common areas and facilities.

As added by P.L.2-2002, SEC.10.

IC 32-25-2-7
"Condominium"

Sec. 7. "Condominium" means real estate:
(1) lawfully subjected to this article by the recordation of condominium instruments; and
(2) with respect to which the undivided interests in the common areas and facilities are vested in the condominium unit owners.

As added by P.L.2-2002, SEC.10. Amended by P.L.2-2005, SEC.85.

IC 32-25-2-8
"Condominium instruments"

Sec. 8. "Condominium instruments" means:
(1) the:
(A) declaration;
(B) bylaws;
(C) plats; and
(D) floor plans;
of the condominium; and
(2) any exhibits or schedules to the items listed in subdivision (1).

As added by P.L.2-2002, SEC.10.

IC 32-25-2-9
"Condominium unit"

Sec. 9. "Condominium unit" means:
(1) an enclosed space:
(A) that consists of one (1) or more rooms occupying all or part of a floor or floors in a structure of one (1) or more floors or stories, regardless of whether the enclosed space is designed:
(i) as a residence;
(ii) as an office;
(iii) for the operation of any industry or business; or

(iv) for any other type of independent use; and
(B) that has:
(i) a direct exit to a public street or highway; or
(ii) an exit to a thoroughfare or to a given common space leading to a thoroughfare; and
(2) the undivided interest in the common elements appertaining to an enclosed space referred to in subdivision (1).
As added by P.L.2-2002, SEC.10.

IC 32-25-2-10
"Contractable condominium"
Sec. 10. "Contractable condominium" means a condominium from which one (1) or more portions of the condominium real estate may be withdrawn.
As added by P.L.2-2002, SEC.10.

IC 32-25-2-11
"Co-owner"
Sec. 11. "Co-owner" means a person who owns:
(1) a condominium unit in fee simple; and
(2) an undivided interest in the common areas and facilities;
in the percentage established in the declaration.
As added by P.L.2-2002, SEC.10.

IC 32-25-2-12
"Declarant"
Sec. 12. "Declarant" means any person who:
(1) executes or proposes to execute a declaration; or
(2) executes an amendment to a declaration to expand an expandable condominium.
As added by P.L.2-2002, SEC.10.

IC 32-25-2-13
"Declaration"
Sec. 13. "Declaration" means the instrument by which the property is submitted to this article. The term refers to a declaration as it may be lawfully amended from time to time.
As added by P.L.2-2002, SEC.10.

IC 32-25-2-14
"Expandable condominium"
Sec. 14. "Expandable condominium" means a condominium to which real estate may be added.
As added by P.L.2-2002, SEC.10.

IC 32-25-2-15
"Limited common areas and facilities"
Sec. 15. "Limited common areas and facilities" means the common areas and facilities designated in the declaration as reserved for use of:

(1) a certain condominium unit; or
(2) certain condominium units;
to the exclusion of the other condominium units.
As added by P.L.2-2002, SEC.10.

IC 32-25-2-16
"Majority" or "majority of co-owners"
Sec. 16. "Majority" or "majority of co-owners" means the co-owners with at least fifty-one percent (51%) of the votes, in accordance with the percentages assigned in the declaration to the condominium units for voting purposes.
As added by P.L.2-2002, SEC.10.

IC 32-25-2-17
"Person"
Sec. 17. "Person" means:
(1) an individual;
(2) a firm;
(3) a corporation;
(4) a partnership;
(5) an association;
(6) a trust;
(7) any other legal entity; or
(8) any combination of the entities listed in subdivisions (1) through (7).
As added by P.L.2-2002, SEC.10.

IC 32-25-2-18
"Property"
Sec. 18. "Property" means:
(1) the land;
(2) the building;
(3) all improvements and structures on the land or the building; and
(4) all:
(A) easements;
(B) rights; and
(C) appurtenances;
pertaining to the land or the building.
As added by P.L.2-2002, SEC.10.

IC 32-25-2-19
"To record"
Sec. 19. "To record" means to record in accordance with the laws of the state.
As added by P.L.2-2002, SEC.10.

IC 32-25-2-20
"Unit number"
Sec. 20. "Unit number" means the:

(1) number;
(2) letter; or
(3) combination of numbers and letters;

designating the condominium unit in the declaration.

As added by P.L.2-2002, SEC.10.

IC 32-25-3

Chapter 3. Classification of Property

IC 32-25-3-1

Classification of property

Sec. 1. A condominium unit and the unit's undivided interest in the common areas and facilities constitute real property.

As added by P.L.2-2002, SEC.10.

IC 32-25-4

Chapter 4. Ownership Interest in Condominiums

IC 32-25-4-1

Fee simple title; conveyance and encumbrance of condominiums

Sec. 1. (a) If property is submitted to the condominium, each condominium unit owner is seized of:

(1) the fee simple title to;
(2) the exclusive ownership of; and
(3) the exclusive possession of;

the owner's condominium unit and undivided interest in the common areas and facilities.

(b) A condominium unit may be:

(1) individually conveyed;
(2) individually encumbered; and
(3) the subject of:
  (A) ownership;
  (B) possession;
  (C) sale; and
  (D) all types of juridic acts inter vivos or causa mortis;

as if the condominium unit were sole and entirely independent of the other condominium units in the building of which the condominium unit forms a part.

(c) Individual titles and interests with respect to condominium units are recordable.

As added by P.L.2-2002, SEC.10.

IC 32-25-4-2

Multiple ownership of condominiums

Sec. 2. A condominium unit may be held and owned by two (2) or more persons:

(1) as joint tenants;
(2) as tenants in common;
(3) as tenants by the entirety; or
(4) in any other real property tenancy relationship recognized under the law of the state.

As added by P.L.2-2002, SEC.10.

IC 32-25-4-3

Common areas and facilities; undivided interest; repairs

Sec. 3. (a) Each condominium unit owner is entitled to an undivided interest in the common areas and facilities as designated in the declaration. Except as provided in subsection (b), the undivided interest must be expressed as a percentage interest based on:

(1) the size of the unit in relation to the size of all units in the condominium;
(2) the value of each condominium unit in relation to the value of all condominium units in the condominium; or
(3) the assignment of an equal percentage undivided interest to each condominium unit.

An undivided interest allocated to each condominium unit in accordance with this subsection must be indicated in a schedule of undivided interests in the declaration. However, if the declaration does not specify the method of allocating the percentage undivided interests, an equal percentage undivided interest applies to each condominium unit. The total undivided interests allocated in accordance with subdivision (1) or (2) must equal one hundred percent (100%).

(b) With respect to an expandable condominium, the declaration may allocate undivided interests in the common area on the basis of value if:

(1) the declaration prohibits the creation of any condominium units not substantially identical to the condominium units depicted on the recorded plans of the declaration; or

(2) the declaration:

(A) prohibits the creation of any condominium units not described in the initial declaration; and

(B) contains a statement on the value to be assigned to each condominium unit created after the date of the declaration.

(c) Interests in the common areas may not be allocated to any condominium units to be created within any additional land until the plats and plans and supplemental declaration depicting the condominium units to be created are recorded. Simultaneously with the recording of the plats and plans for the condominium units to be created, the declarant must execute and record an amendment to the initial declaration reallocating undivided interests in the common areas so that the future condominium units depicted on the plats and plans will be allocated undivided interests in the common areas on the same basis as the condominium units depicted in the prior recorded plats and plans.

(d) Except as provided in section 3.5 of this chapter and in IC 32-25-8-3, the undivided interest of the owner of the condominium unit in the common areas and facilities, as expressed in the declaration, is permanent and may not be altered without the consent of the co-owners. A consent to alteration must be stated in an amended declaration, and the amended declaration must be recorded. The undivided interest may not be transferred, encumbered, disposed of, or separated from the condominium unit to which it appertains, and any purported transfer, encumbrance, or other disposition is void. The undivided interest is considered to be conveyed or encumbered with the condominium unit to which it appertains even though the undivided interest is not expressly mentioned or described in the conveyance or other instrument.

(e) The common areas and facilities shall remain undivided. A condominium unit owner or any other person may bring an action for partition or division of any part of the common areas and facilities if the property has been removed from this chapter as provided in IC 32-25-8-12 and IC 32-25-8-16. Any covenant to the contrary is void.

(f) Each condominium unit owner:

(1) may use the common areas and facilities in accordance with the purpose for which the common areas and facilities were intended; and

(2) may not, in the owner's use of the common areas and facilities, hinder or encroach upon the lawful rights of the other co-owners.

(g) The:

(1) necessary work of:

(A) maintenance;

(B) repair; and

(C) replacement;

of the common areas and facilities; and

(2) making of any additions or improvements to the common areas and facilities;

may be carried out only as provided in this chapter and in the bylaws.

(h) The association of condominium unit owners has the irrevocable right, to be exercised by the manager or board of directors, to have access to each condominium unit from time to time during reasonable hours as is necessary for:

(1) the maintenance, repair, or replacement of any of the common areas and facilities:

(A) in the condominium unit; or

(B) accessible from the condominium unit; or

(2) making emergency repairs in the condominium unit necessary to prevent damage to:

(A) the common areas and facilities; or

(B) another condominium unit.

As added by P.L.2-2002, SEC.10. Amended by P.L.1-2003, SEC.84; P.L.181-2007, SEC.1.

IC 32-25-4-3.5

Conveyance or encumberance of common areas and facilities

Sec. 3.5. (a) This section applies only to a condominium located on the shore of a lake located in a township with a population of more than three thousand (3,000) but less than three thousand one hundred (3,100) located in a county having a population of more than forty-seven thousand (47,000) but less than forty-seven thousand five hundred (47,500).

(b) Except as otherwise provided in a statement described in:

(1) IC 32-25-7-1(a)(10) and included in:

(A) the declaration; or

(B) an amendment to the declaration, if the amendment is approved by at least ninety-five percent (95%) of co-owners; or

(2) IC 32-25-8-2(12) and included in:

(A) the bylaws; or

(B) an amendment to the bylaws, if the amendment is approved by the percentage of votes set forth in the bylaws under IC 32-25-8-2(11);

part or all of the common areas and facilities of a condominium may

be conveyed or subjected to a security interest by the association of co-owners if at least ninety-five percent (95%) of the co-owners, including at least ninety-five percent (95%) of the co-owners of condominium units not owned by the declarant, agree to the action. However, if the common areas and facilities proposed to be conveyed or encumbered under this section include any limited common areas and facilities, all the owners of the limited common areas and facilities to be conveyed or encumbered must agree to the conveyance or encumbrance.

(c) An agreement to convey or encumber common areas and facilities under this section must be evidenced by an agreement:

(1) executed in the same manner as a deed or any other instrument recognized by the state for the conveyance or transfer of interests in title; and

(2) signed by:

(A) at least ninety-five percent (95%) of the co-owners, as required by this section; or

(B) another percentage of the co-owners specified in a statement described in subsection (b)(1) or (b)(2).

An agreement under this subsection is effective upon being recorded.

(d) Proceeds from the conveyance or encumbrance of common areas and facilities under this section shall be distributed to co-owners as common profits under IC 32-25-8-6. However, if the common areas and facilities conveyed or encumbered under this section include limited common areas and facilities, proceeds from the conveyance or encumbrance of the limited common areas and facilities shall be distributed to the owners of the limited common areas and facilities according to the percentage of the owners' undivided interest in the limited common areas and facilities.

(e) A conveyance or encumbrance of common areas and facilities not made in accordance with:

(1) this section; or

(2) a statement described in subsection (b)(1) or (b)(2);

is void.

As added by P.L.181-2007, SEC.2. Amended by P.L.119-2012, SEC.161.

IC 32-25-4-4

Contributions for expenses

Sec. 4. (a) Except as provided in subsection (d) or (e), the co-owners are bound to contribute pro rata, in the percentages computed under section 3 of this chapter, toward:

(1) the expenses of administration and of maintenance and repair of the general common areas and facilities and, in the proper case, of the limited common areas and facilities of the building; and

(2) any other expense lawfully agreed upon.

(b) A co-owner may not exempt the co-owner from contributing toward the expenses referred to in subsection (a) by:

(1) waiver of the use or enjoyment of the common areas and

facilities; or

(2) abandonment of the condominium unit belonging to the co-owner.

(c) All sums assessed by the association of co-owners shall be established by using generally accepted accounting principles applied on a consistent basis and shall include the establishment and maintenance of a replacement reserve fund. The replacement reserve fund may be used for capital expenditures and replacement and repair of the common areas and facilities and may not be used for usual and ordinary repair expenses of the common areas and facilities. The fund shall be:

(1) maintained in a separate interest bearing account with a bank or savings association authorized to conduct business in the county in which the condominium is established; or

(2) invested in the same manner and in the same types of investments in which the funds of a political subdivision may be invested:

(A) under IC 5-13-9; or

(B) as otherwise provided by law.

Assessments collected for contributions to the fund are not subject to adjusted gross income tax.

(d) If permitted by the declaration, the declarant or a developer (or a successor in interest of either) that is a co-owner of unoccupied condominium units offered for the first time for sale is excused from contributing toward the expenses referred to in subsection (a) for those units for a period that:

(1) is stated in the declaration;

(2) begins on the day that the declaration is recorded; and

(3) terminates no later than the first day of the twenty-fourth calendar month following the month in which the closing of the sale of the first condominium unit occurs.

However, if the expenses referred to in subsection (a) incurred by the declarant, developer, or successor during the period referred to in this subsection exceed the amount assessed against the other co-owners, the declarant, developer, or successor shall pay the amount by which the expenses incurred by the declarant, developer, or successor exceed the expenses assessed against the other co-owners.

(e) If the declaration does not contain the provisions referred to in subsection (d), the declarant or a developer (or a successor in interest of either) that is a co-owner of unoccupied condominium units offered for the first time for sale is excused from contributing toward the expenses referred to in subsection (a) for those units for a stated period if the declarant, developer, or successor:

(1) has guaranteed to each purchaser in the purchase contract, the declaration, or the prospectus, or by an agreement with a majority of the other co-owners that the assessment for those expenses will not increase over a stated amount during the stated period; and

(2) has obligated itself to pay the amount by which those expenses incurred during the stated period exceed the

assessments at the guaranteed level under subdivision (1) receivable during the stated period from the other co-owners.

As added by P.L.2-2002, SEC.10. Amended by P.L.192-2002(ss), SEC.172.

IC 32-25-5

Chapter 5. Conveyance Procedures

IC 32-25-5-1

First conveyance; satisfaction of liens

Sec. 1. (a) At the time of the first conveyance of each condominium unit:

(1) every mortgage and other lien affecting the condominium unit, including the unit's percentage of undivided interest in the common areas and facilities, must be paid and satisfied of record; or

(2) the condominium unit being conveyed and the unit's percentage of undivided interest in the common areas and facilities must be released from the mortgage or other lien by partial release.

(b) A partial release under subsection (a)(2) must be recorded.

As added by P.L.2-2002, SEC.10.

IC 32-25-5-2

Unpaid assessments; grantee and grantor jointly and severally liable

Sec. 2. (a) Except as provided in subsection (b) or (d), in a voluntary conveyance, the grantee of a condominium unit is jointly and severally liable with the grantor for all unpaid assessments against the grantor for the grantor's share of the common expenses incurred before the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts of common expenses paid by the grantee.

(b) The grantee:

(1) is entitled to a statement from the association, manager, or board of directors setting forth the amount of the unpaid assessments against the grantor; and

(2) is not liable for, nor shall the condominium unit conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount set forth in the statement.

(c) The grantee may obtain the statement of unpaid assessments described in subsection (b) by making a written request to the association, manager, or board of directors at:

(1) the last address at which the grantor made a payment of the assessments; or

(2) the address for the association, manager, or board of directors as listed in the records of the secretary of state.

(d) If the association, manager, or board of directors does not provide, by first class or certified mail, a statement of unpaid assessments not later than ten (10) business days after receipt of the written request, the:

(1) grantee is not liable for; and

(2) condominium unit conveyed is not subject to a lien for;

any unpaid assessments against the grantor.

As added by P.L.2-2002, SEC.10. Amended by P.L.94-2014, SEC.7.

IC 32-25-6

Chapter 6. Liens and Encumbrances

IC 32-25-6-1

Liens and encumbrances

Sec. 1. (a) After a declaration is recorded under this article and while the property remains subject to this article, a lien may not arise or be effective against the property as a whole. Except as provided in subsection (b), liens or encumbrances may arise or be created only against:

(1) each condominium unit; and

(2) the undivided interest in the common areas and facilities appurtenant to each unit;

in the same manner and under the same conditions as liens or encumbrances may arise or be created against any other parcel of real property.

(b) Labor performed or materials furnished with the consent or at the request of a condominium unit owner, the owner's agent, or the owner's contractor or subcontractor may not be the basis for filing a lien under any lien law against the condominium unit or any other property of any other co-owner not expressly consenting to or requesting the performance of the labor or the furnishing of the materials. However, express consent is considered to be given by the owner of any condominium unit in the case of emergency repairs to the condominium unit. Labor performed or materials furnished for the common areas and facilities, if authorized by the association of co-owners, the manager, or board of directors in accordance with this article, the declaration, or the bylaws:

(1) are considered to be performed or furnished with the express consent of each co-owner;

(2) constitute the basis for the filing of a lien under any lien law against each of the condominium units; and

(3) are subject to subsection (c).

(c) If a lien against two (2) or more condominium units becomes effective, the owner of a condominium unit against which the lien is effective may remove the owner's:

(1) unit; and

(2) undivided interest in the common areas and facilities appurtenant to the unit;

from the lien by payment of the fractional or proportional amounts attributable to the unit. After the payment, discharge of the lien, or other satisfaction of the lien, the condominium unit and the undivided interest in the common areas and facilities appurtenant to the condominium unit are free and clear of the lien. A partial payment, partial satisfaction of the lien, or discharge of the lien may not prevent the lienholder from proceeding against any condominium unit and the undivided interest in the common areas and facilities appurtenant to the condominium unit that remain subject to the lien.

As added by P.L.2-2002, SEC.10.

IC 32-25-6-2
Common areas; transferable easements for making improvements

Sec. 2. Subject to any restrictions and limitations in the condominium instruments, the declarant has a transferable easement over and upon the common areas and facilities for the purpose of:

(1) making improvements within:

(A) the condominium; or

(B) additional real estate;

under those instruments and this article; and

(2) doing all things reasonably necessary and proper in connection with the improvements referred to in subdivision (1).

As added by P.L.2-2002, SEC.10.

IC 32-25-6-3
Unpaid assessments; lien

Sec. 3. (a) All sums assessed by the association of co-owners but unpaid for the share of the common expenses chargeable to any condominium unit constitute a lien on the unit effective at the time of assessment. The lien has priority over all other liens except:

(1) tax liens on the condominium unit in favor of any:

(A) assessing unit; or

(B) special district; and

(2) all sums unpaid on a first mortgage of record.

(b) A lien under subsection (a) may be filed and foreclosed by suit by the manager or board of directors, acting on behalf of the association of co-owners, under laws of Indiana governing mechanics' and materialmen's liens. In any foreclosure under this subsection:

(1) the condominium unit owner shall pay a reasonable rental for the unit, if payment of the rental is provided in the bylaws; and

(2) the plaintiff in the foreclosure is entitled to the appointment of a receiver to collect the rental.

(c) The manager or board of directors, acting on behalf of the association of co-owners, may, unless prohibited by the declaration:

(1) bid on the condominium unit at foreclosure sale; and

(2) acquire, hold, lease, mortgage, and convey the condominium unit.

(d) Suit to recover a money judgment for unpaid common expenses is maintainable without foreclosing or having the lien securing the expenses.

(e) If the mortgagee of a first mortgage of record or other purchaser of a condominium unit obtains title to the unit as a result of foreclosure of the first mortgage, the acquirer of title, or the acquirer's successors and assigns, is not liable for the share of the common expenses or assessments by the association of co-owners chargeable to the unit that became due before the acquisition of title to the unit by the acquirer. The unpaid share of common expenses or assessments is considered to be common expenses collectible from all of the co-owners, including the acquirer or the acquirer's

successors and assigns.
As added by P.L.2-2002, SEC.10.

IC 32-25-7
Chapter 7. Declaration

IC 32-25-7-1
Recording declaration; contents

Sec. 1. (a) The owner of the land on which a condominium is declared shall record with the recorder of the county in which the land is situated a declaration. Except as provided in section 2 or 3 of this chapter, the declaration must include the following:

(1) A description of the land on which the building and improvements are or are to be located.

(2) A description of the building, stating:

(A) the number of stories and basements; and

(B) the number of condominium units.

(3) A description of the common areas and facilities.

(4) A description of the limited common areas and facilities, if any, stating to which condominium units their use is reserved.

(5) The percentage of undivided interest in the common areas and facilities appertaining to each condominium unit and its owner for all purposes, including voting.

(6) A statement of the percentage of votes by the condominium unit owners required to determine whether to:

(A) rebuild;

(B) repair;

(C) restore; or

(D) sell;

the property if all or part of the property is damaged or destroyed.

(7) Any covenants and restrictions in regard to the use of:

(A) the condominium units; and

(B) common areas and facilities.

(8) Any further details in connection with the property that:

(A) the person executing the declaration considers desirable; and

(B) are consistent with this article.

(9) The method by which the declaration may be amended in a manner consistent with this chapter.

(10) This subdivision applies only to a condominium located on the shore of a lake located in a township with a population of more than three thousand (3,000) but less than three thousand one hundred (3,100) located in a county having a population of more than forty-seven thousand (47,000) but less than forty-seven thousand five hundred (47,500). A statement of the percentage of votes by the condominium unit owners required to convey or encumber part or all of the common areas and facilities. A statement under this subdivision may not allow less than ninety-five percent (95%) of the condominium unit owners, or less than ninety-five percent (95%) of the owners of condominium units not owned by the declarant, to convey or encumber part or all of the common areas and facilities. If the

declaration does not include a statement under this subdivision, IC 32-25-4-3.5 applies.

(b) A true copy of the bylaws shall be annexed to and made a part of the declaration.

(c) The record of the declaration shall contain a reference to the:

(1) book;

(2) page; and

(3) date of record;

of the floor plans of the building affected by the declaration.

As added by P.L.2-2002, SEC.10. Amended by P.L.181-2007, SEC.3; P.L.119-2012, SEC.162.

IC 32-25-7-2

Expandable condominiums; contents of declaration

Sec. 2. (a) If a condominium is an expandable condominium, the declaration shall contain, in addition to the matters specified in section 1 of this chapter:

(1) a general plan of development showing:

(A) the property subject to the condominium;

(B) areas into which expansion may be made; and

(C) the maximum number of condominium units in additional phases that may be added;

(2) a schedule or formula for determining the percentage of undivided interests in the common areas and facilities that will appertain to each condominium unit as each additional phase is added; and

(3) a time limit, not exceeding ten (10) years, within which the phase or phases may be added to the condominium.

(b) If additional phases are not developed within five (5) years after the recordation of the declaration, the development of additional phases is not considered to be part of:

(1) a common scheme; and

(2) development of the entire condominium.

As added by P.L.2-2002, SEC.10.

IC 32-25-7-3

Contractable condominiums; contents of declaration

Sec. 3. If a condominium is a contractable condominium, the declaration shall contain, in addition to matters specified in section 1 of this chapter:

(1) an explicit reservation of an option to contract the condominium;

(2) a statement of any limitations on the option to contract the condominium;

(3) a date, not later than ten (10) years after the recording of the declaration, upon which the option to contract the condominium will expire;

(4) a statement of any circumstances that will terminate the option to contract the condominium before the expiration date referred to in subdivision (3);

(5) a legally sufficient description of all withdrawable land;
(6) a statement as to whether portions of the withdrawable land may be withdrawn from the condominium at different times; and
(7) a statement of any limitations:
(A) fixing the boundaries of portions of the withdrawable land; or
(B) regulating the order in which the portions may be withdrawn.

As added by P.L.2-2002, SEC.10.

IC 32-25-7-4
Floor plans

Sec. 4. (a) Simultaneously with the recording of the declaration, a set of floor plans of the condominium or building shall be filed in the office of the county recorder. The set of floor plans must include the following:
(1) The relation of the condominium or building to lot lines.
(2) The:
(A) layout;
(B) elevation;
(C) location;
(D) unit numbers; and
(E) dimensions;
of the condominium units.
(3) The name of the condominium or building, or that it has no name.
(4) The verified statement of a registered architect or licensed professional engineer certifying that the set of floor plans is an accurate copy of portions of the plans of the building as filed with and approved by the municipal or other governmental subdivision having jurisdiction over the issuance of permits for the construction of buildings.

(b) If the set of floor plans referred to in subsection (a) does not include a verified statement by an architect or engineer that the plans fully and accurately depict the layout, location, unit numbers, and dimensions of the condominium units as built, an amendment to the declaration must be recorded before the first conveyance of any condominium unit. The amendment to the declaration must have attached to it a verified statement of a registered architect or licensed professional engineer certifying that the filed set of floor plans or the set of floor plans being filed simultaneously with the amendment fully and accurately depicts the layout, location, unit numbers, and dimensions of the condominium units as built. The set of floor plans shall:
(1) be kept by the recording officer in a separate file for each building;
(2) be indexed in the same manner as a conveyance entitled to be recorded;
(3) be numbered serially in the order of receipt;

(4) be designated "condominium unit ownership", with the name of the building, if any; and
(5) contain a reference to the:
(A) book;
(B) page; and
(C) date of recording;
of the amendment to the declaration.

(c) The record of the amendment to the declaration referred to in subsection (b) shall contain a reference to the file number of the set of floor plans of the building affected by the amendment to the declaration.

As added by P.L.2-2002, SEC.10.

IC 32-25-7-5
Designation; conveyance

Sec. 5. (a) Each condominium unit in a building shall be designated, on the set of floor plans referred to in section 4 of this chapter, by letter, number, or other appropriate designation.

(b) Any instrument recognized by the state for the conveyance or transfer of interests in title, which describes the apartment by using the designation referred to in subsection (a) followed by the words "in (name) Condominium as recorded in Book _____, p. __, under the date of _____, _____, of the records of _____ County, Indiana", is considered to contain a good and sufficient description for all purposes.

(c) Any conveyance or transfer of interest in title of a condominium unit is considered also to convey the undivided interests of the owner in the common areas and facilities, both general and limited, appertaining to the condominium unit without specifically or particularly referring to the undivided interests. The:
(1) contents;
(2) form;
(3) method of preparation;
(4) recording of an instrument of conveyance; and
(5) interpretation of an instrument of conveyance;
are governed by the law of Indiana relating to real property.

(d) Each instrument or deed of conveyance also shall include the following:
(1) A statement of the use for which the condominium unit is intended.
(2) A statement of the restrictions on the use of the condominium unit.
(3) The percentage of undivided interest appertaining to the condominium unit in the common areas and facilities.
(4) The amount of any unpaid current or delinquent assessments of common expenses.
(5) Any other details and restrictions that:
(A) the grantor and grantee consider desirable; and
(B) are consistent with the declaration.

(e) Failure to make a statement in the deed as required by

subsection (d)(4) does not:

(1) invalidate the title conveyed by the deed; or

(2) absolve a grantee under the deed from liability for any unpaid current or delinquent assessments of common expenses against a condominium unit on the date of its conveyance.

(f) Upon the request of a:

(1) condominium unit owner;

(2) prospective grantee;

(3) title insurance company; or

(4) mortgagee;

the secretary or other authorized officer of the association of co-owners shall provide, within five (5) days of the request, a statement of the amount of current and delinquent assessments of common expenses against a particular condominium unit.

As added by P.L.2-2002, SEC.10.

IC 32-25-7-6

Presumption of consent to changes; reallocation of interests in common area; liens

Sec. 6. (a) Except as provided in subsection (b), if the declaration for a condominium is in conformity with section 2 of this chapter, it is presumed that any owner of a condominium unit in that condominium has consented to the changes in the percentage of undivided interest in the common areas and facilities appertaining to the owner's unit.

(b) An owner of a condominium unit who entered an agreement to purchase that unit before the recordation of the declaration may not be presumed to have consented to the changes referred to in subsection (a) unless the owner:

(1) was provided a copy of:

(A) the expansion provisions; or

(B) the declaration; and

(2) made a written acknowledgment of the receipt of the provisions before entering the purchase agreement.

(c) The reallocation of percentage of undivided interests in the common areas and facilities vests when the amendment to the declaration incorporating the reallocated percentages is recorded.

(d) When the amendment to the declaration incorporating:

(1) the addition of condominium units;

(2) the expansion of common areas and facilities; or

(3) both addition and expansion as described in subdivisions (1) and (2);

is recorded, all liens, including mortgage liens, are released as to the percentage of undivided interests in the common areas and facilities described in the declaration (before amendment of the declaration) and shall attach to the reallocated percentage of undivided interests in the common areas and facilities described in the amendment to the declaration as though the liens had attached to those percentage interests on the date of the recordation of the mortgage or other document that evidences the creation of the lien. The percentage

interest in the common areas and facilities appertaining to additional condominium units being added by the amendment to the declaration are subject to mortgage liens and other liens upon the recordation of the amendment to the declaration.

As added by P.L.2-2002, SEC.10.

IC 32-25-8

Chapter 8. Administration of Condominiums

IC 32-25-8-1

Bylaws; administration of property

Sec. 1. The administration of every property is governed by bylaws. A true copy of the bylaws shall be annexed to and made a part of the declaration. A modification of or amendment to the bylaws is valid only if:

(1) the modification or amendment is set forth in an amendment to the declaration; and

(2) the amendment is recorded.

As added by P.L.2-2002, SEC.10.

IC 32-25-8-2

Bylaws; contents

Sec. 2. The bylaws must provide for the following:

(1) With respect to the board of directors:

(A) the election of the board from among the co-owners;

(B) the number of persons constituting the board;

(C) the expiration of the terms of at least one-third (1/3) of the directors annually;

(D) the powers and duties of the board, including whether the board may engage the services of a manager or managing agent;

(E) the compensation, if any, of the directors; and

(F) the method of removal from office of directors.

(2) The method of calling meetings of the co-owners and the percentage, if other than a majority of co-owners, that constitutes a quorum.

(3) The election from among the board of directors of a president, who shall preside over the meetings of:

(A) the board of directors; and

(B) the association of co-owners.

(4) The election of a secretary, who shall keep the minute book in which resolutions shall be recorded.

(5) The election of a treasurer, who shall keep the financial records and books of account.

(6) The maintenance, repair, and replacement of the common areas and facilities and payments for that maintenance, repair, and replacement, including the method of approving payment vouchers.

(7) The manner of collecting from each condominium owner the owner's share of the common expenses.

(8) The designation and removal of personnel necessary for the maintenance, repair, and replacement of the common areas and facilities.

(9) The method of adopting and of amending administrative rules governing the details of the operation and use of the common areas and facilities.

(10) The restrictions on and requirements respecting the use and maintenance of the condominium units and the use of the common areas and facilities that are:

(A) not set forth in the declaration; and

(B) designed to prevent unreasonable interference with the use of their respective units and of the common areas and facilities by the several co-owners.

(11) The percentage of votes required to amend the bylaws.

(12) This subdivision applies only to a condominium located on the shore of a lake located in a township with a population of more than three thousand (3,000) but less than three thousand one hundred (3,100) located in a county having a population of more than forty-seven thousand (47,000) but less than forty-seven thousand five hundred (47,500). A statement of the percentage of votes by the condominium unit owners required to convey or encumber part or all of the common areas and facilities. A statement under this subdivision may not allow less than ninety-five percent (95%) of the condominium unit owners, or less than ninety-five percent (95%) of the owners of condominium units not owned by the declarant, to convey or encumber part or all of the common areas and facilities. If the bylaws do not include a statement under this subdivision, IC 32-25-4-3.5 applies.

(13) Other provisions consistent with this article considered necessary for the administration of the property.

As added by P.L.2-2002, SEC.10. Amended by P.L.181-2007, SEC.4; P.L.119-2012, SEC.163.

IC 32-25-8-3

Recording instruments; indexes

Sec. 3. (a) The following shall be recorded:

(1) A declaration.

(2) An amendment to a declaration.

(3) An instrument by which this article may be waived.

(4) An instrument affecting the property or any condominium unit.

(b) A declaration and any amendment to a declaration are valid only if the declaration or amendment is recorded.

(c) All of the laws of the state applicable to the recording of instruments affecting real property apply to the recording of instruments affecting any interest in a condominium unit.

(d) In addition to the records and indexes required to be maintained by the recording officer, the recording officer shall maintain an index or indexes in which:

(1) the record of each declaration contains a reference to the record of each conveyance of a condominium unit affected by the declaration; and

(2) the record of each conveyance of a condominium unit contains a reference to the declaration of the building of which the condominium unit is a part.

As added by P.L.2-2002, SEC.10.

IC 32-25-8-4
Sales and management offices; model units

Sec. 4. (a) A declarant may:
(1) maintain:
(A) sales offices;
(B) management offices; and
(C) model condominium units;
in the condominium only if the condominium instruments provide for those items; and
(2) specify the rights of the declarant with regard to the:
(A) number;
(B) size;
(C) location; and
(D) relocation;
of the items referred to in subdivision (1).
(b) If the declarant ceases to be a condominium unit owner:
(1) an item referred to in subsection (a)(1) that is not designated a condominium unit by the condominium instruments becomes part of the common areas and facilities; and
(2) the declarant ceases to have any rights to the item referred to in subdivision (1) unless the item is removed promptly from the condominium real estate under a right reserved in the condominium instruments to make the removal.

As added by P.L.2-2002, SEC.10.

IC 32-25-8-5
Alteration or structural changes; impairing easements or hereditaments

Sec. 5. A condominium unit owner may not make an alteration or structural change that would:
(1) jeopardize the soundness or safety of the property;
(2) reduce the value of the property; or
(3) impair any easement or hereditament;
unless the condominium unit owner has obtained the unanimous consent of all the other co-owners.

As added by P.L.2-2002, SEC.10.

IC 32-25-8-6
Common profits and expenses

Sec. 6. The:
(1) common profits of the property shall be credited to; and
(2) common expenses of the property shall be charged to;
the condominium unit owners according to the percentage of the owners' undivided interests in the common areas and facilities.

As added by P.L.2-2002, SEC.10.

IC 32-25-8-7
Taxes, assessments, and charges

Sec. 7. (a) Taxes, assessments, and other charges of:

(1) the state;

(2) any political subdivision;

(3) any special improvement district; or

(4) any other taxing or assessing authority;

shall be assessed against and collected on each condominium unit. Taxes, assessments, and other charges referred to in this subsection may not be assessed and collected on the building or property as a whole.

(b) Each condominium unit shall be carried on the tax books as a separate and distinct entity for the purpose of taxes, assessments, and other charges.

(c) A forfeiture or sale of the building or property as a whole for delinquent taxes, assessments, or charges may not divest or affect the title to a condominium unit if taxes, assessments, and charges on the condominium unit are currently paid.

As added by P.L.2-2002, SEC.10.

IC 32-25-8-8

Records

Sec. 8. (a) The manager or board of directors shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing:

(1) the maintenance and repair expenses of the common areas and facilities; and

(2) any other expenses incurred.

(b) The records and the vouchers authorizing the payments shall be available for examination by the co-owners at convenient hours of weekdays.

As added by P.L.2-2002, SEC.10.

IC 32-25-8-9

Insurance; co-owners

Sec. 9. (a) The co-owners, through the association of co-owners, shall purchase:

(1) a master casualty policy, payable as part of the common expenses, affording fire and extended coverage in an amount consonant with the full replacement value of the improvement that in whole or in part comprises the common areas and facilities; and

(2) a master liability policy in an amount:

(A) required by the bylaws;

(B) required by the declaration; or

(C) revised from time to time by a decision of the board of directors of the association.

(b) The policy referred to in subsection (a)(2) shall cover:

(1) the association of co-owners;

(2) the executive organ, if any;

(3) the managing agent, if any;

(4) all persons acting, or who may come to act, as agents or employees of any of the entities referred to in subdivisions (1) through (3) with respect to:

(A) the condominium;

(B) all condominium unit owners; and

(C) all other persons entitled to occupy any unit or other portions of the condominium.

(c) Other policies required by the condominium instruments may be obtained by the co-owners through the association, including:

(1) worker's compensation insurance;

(2) liability insurance on motor vehicles owned by the association;

(3) specialized policies covering land or improvements on which the association has or shares ownership or other rights; and

(4) officers' and directors' liability policies.

(d) When any policy of insurance has been obtained by or on behalf of the association of co-owners, the officer required to send notices of meetings of the association of co-owners shall promptly furnish to each co-owner or mortgagee whose interest may be affected written notice of:

(1) the obtainment of the policy; and

(2) any subsequent changes to or termination of the policy.

As added by P.L.2-2002, SEC.10.

IC 32-25-8-10

Insurance; reconstruction of building

Sec. 10. (a) In case of fire or any other casualty or disaster, other than complete destruction of all buildings containing the condominium units:

(1) the improvements shall be reconstructed; and

(2) the insurance proceeds shall be applied to reconstruct the improvements.

(b) In the event of complete destruction of all of the buildings containing condominium units:

(1) the buildings shall not be reconstructed, except as provided in subdivision (2), and the insurance proceeds, if any, shall be divided among the co-owners:

(A) in the percentage by which each owns an undivided interest in the common areas and facilities; or

(B) proportionately according to the fair market value of each condominium unit immediately before the casualty as compared with the fair market value of all other condominium units;

as specified in the bylaws of the condominium; and

(2) the property shall be considered as to be removed from the condominium under section 16 of this chapter, unless by a vote of two-thirds (2/3) of all of the co-owners a decision is made to rebuild the building.

(c) If a decision is made under subsection (b)(2) to rebuild the

building, the insurance proceeds shall be applied, and any excess of construction costs over insurance proceeds shall be contributed as provided in this section in the event of less than total destruction of the buildings.

(d) A determination of total destruction of the buildings containing condominium units shall be made by a vote of two-thirds (2/3) of all co-owners at a special meeting of the association of co-owners called for that purpose.

As added by P.L.2-2002, SEC.10.

IC 32-25-8-11

Insurance; reconstruction of building; insufficient proceeds

Sec. 11. (a) If:

(1) the:

(A) improvements are not insured; or

(B) insurance proceeds are not sufficient to cover the cost of repair or reconstruction; and

(2) the property is not to be removed from the condominium;

the co-owners shall contribute the balance of the cost of repair or reconstruction in the percentage by which a condominium unit owner owns an undivided interest in the common areas and facilities as expressed in the declaration.

(b) The amount of the contribution under subsection (a):

(1) is assessed as part of the common expense; and

(2) constitutes a lien from the time of assessment of the contribution as provided in IC 32-25-6-3.

As added by P.L.2-2002, SEC.10.

IC 32-25-8-12

Determination not to rebuild after casualty or disaster

Sec. 12. The following apply if, under section 10 of this chapter, it is not determined by the co-owners to rebuild after a casualty or disaster has occurred:

(1) The property is considered to be owned in common by the condominium unit owners.

(2) The undivided interest in the property owned in common that appertains to each condominium unit owner is the percentage of undivided interest previously owned by the owner in the common areas and facilities.

(3) Any liens affecting any of the condominium units are considered to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the condominium unit owner in the property.

(4) The property is subject to an action for partition at the suit of any condominium unit owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any:

(A) are considered as one (1) fund; and

(B) are divided among all the condominium unit owners in a percentage equal to the percentage of undivided interest

owned by each owner in the property, after first paying out of the respective shares of the condominium unit owners, to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each condominium unit owner.

As added by P.L.2-2002, SEC.10.

IC 32-25-8-13

Expandable condominiums; addition of real estate

Sec. 13. (a) Subject to the declaration and this chapter, a declarant may add additional real estate to an expandable condominium if an amendment to the declaration required by subsection (b) is executed in the manner described in section 3 of this chapter. The expansion is effective when the instruments required by subsection (b) are recorded.

(b) In expanding the condominium, the declarant shall:

(1) prepare, execute, and record amendments to the condominium instruments; and

(2) record new plats and plans under IC 32-25-7-1 and IC 32-25-7-4.

The amendment to the declaration shall assign an identifying number to each condominium unit within the real estate being added and shall reallocate undivided interests in the common areas and facilities under IC 32-25-4-3.

As added by P.L.2-2002, SEC.10.

IC 32-25-8-14

Contractable condominiums; withdrawal of land

Sec. 14. (a) Subject to:

(1) the declaration;

(2) condominium instruments; and

(3) this chapter;

a declarant may withdraw withdrawable land from a contractable condominium unless the withdrawal is prohibited by subsection (c). The contraction is effective when the instruments required by subsection (b) are recorded.

(b) In contracting the condominium, the declarant shall prepare, execute, and record an amendment to the declaration and condominium instruments:

(1) containing a legally sufficient description of the land being withdrawn; and

(2) stating the fact of withdrawal.

(c) If a portion of the withdrawable land was described under IC 32-25-7-3(6) and IC 32-25-7-3(7), that portion may not be withdrawn if any person other than the declarant owns a condominium unit situated on that portion of the withdrawable land. If that portion of the withdrawable land was not described under IC 32-25-7-3(6) and IC 32-25-7-3(7), none of the withdrawable land may be withdrawn if any person other than the declarant owns a condominium unit situated on that portion of the withdrawable land.

As added by P.L.2-2002, SEC.10.

IC 32-25-8-15
Reservation of option not to expand; disclosure

Sec. 15. If a declarant reserves an option in the declaration to not expand the condominium, the declarant shall:

(1) make a full disclosure of that option to every prospective buyer in writing before the buyer enters an agreement to purchase a condominium unit; and

(2) obtain and retain an instrument acknowledging receipt of that disclosure by the prospective buyer.

As added by P.L.2-2002, SEC.10.

IC 32-25-8-16
Removal of property

Sec. 16. (a) All of the co-owners may remove a property from this article by a recorded removal instrument if the holders of all liens affecting any of the condominium units:

(1) consent in a recorded instrument to the removal; or

(2) agree in a recorded instrument that their liens be transferred to the percentage of the undivided interest of the condominium unit owner in the property as provided in this section.

(b) If it is determined under section 10 of this chapter that all of the buildings containing condominium units have been totally destroyed:

(1) the property is considered removed from this article; and

(2) an instrument reciting the removal under section 10 of this chapter shall be recorded and executed by the association of co-owners.

(c) At the time of recording under subsection (b)(2), the property is removed from this article.

(d) Upon removal of the property from this article, the property is considered to be owned in common by the condominium unit owners. The undivided interest in the property owned in common that appertains to each condominium unit owner is the percentage of undivided interest previously owned by the owner in the common areas and facilities.

(e) Under the circumstances described in subsection (a) or in subsections (b) through (d), the property is subject to an action for partition at the suit of any condominium unit owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any:

(1) are considered as one (1) fund; and

(2) are divided among all the condominium unit owners in a percentage equal to the percentage of undivided interest owned by each owner in the property, after first paying out of the respective shares of the condominium unit owners, to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each condominium unit owner.

(f) A removal under this section does not bar the subsequent

resubmission of the property to this article.
As added by P.L.2-2002, SEC.10.

IC 32-25-9

Chapter 9. Actions and Proceedings

IC 32-25-9-1

Compliance with articles, bylaws, covenants, etc.; organization of co-owners

Sec. 1. (a) Each condominium unit owner shall comply with:

(1) the articles of incorporation or association;

(2) the bylaws;

(3) any administrative rules adopted under:

(A) the articles of incorporation or association; or

(B) the bylaws; and

(4) the covenants, conditions, and restrictions set forth in:

(A) the declaration; or

(B) the deed to the owner's condominium unit.

(b) Failure to comply as required under subsection (a) is grounds for an action:

(1) to recover sums due;

(2) for damages;

(3) for injunctive relief; or

(4) for any other legal or equitable relief;

maintainable by the manager or board of directors on behalf of the association of co-owners or by an aggrieved co-owner.

(c) The association of co-owners may be organized as:

(1) a nonprofit corporation under:

(A) IC 23-7-1.1 (before its repeal August 1, 1991); or

(B) IC 23-17; or

(2) an unincorporated association.

As added by P.L.2-2002, SEC.10.

IC 32-25-9-2

Actions and proceedings

Sec. 2. (a) The board of directors, or the manager with the approval of the board of directors, may bring an action on behalf of two (2) or more of the condominium unit owners, as their respective interests appear, with respect to any cause of action relating to:

(1) the common areas and facilities; or

(2) more than one (1) condominium unit.

An action brought under this subsection does not limit the rights of any condominium unit owner.

(b) Service of process on two (2) or more condominium unit owners in any action relating to:

(1) the common areas and facilities; or

(2) more than one (1) condominium unit;

may be made on the person designated in the declaration to receive service of process.

As added by P.L.2-2002, SEC.10.

IC 32-25.5

ARTICLE 25.5. HOMEOWNERS ASSOCIATIONS

IC 32-25.5-1

Chapter 1. Applicability

IC 32-25.5-1-1

Applicability

Sec. 1. (a) This article applies to the following:

(1) A homeowners association established after June 30, 2009.

(2) A homeowners association established before July 1, 2009:

(A) if a majority of the members of the homeowners association elect to be governed by this article; or

(B) if the number of members required by the homeowners association's governing documents elect to be governed by this article if a different number of members other than the number established in clause (A) is required by the governing documents.

(b) IC 32-25.5-3-8 applies to all homeowners associations.

(c) IC 32-25.5-3-3(g) through IC 32-25.5-3-3(m) apply to all homeowners associations.

As added by P.L.167-2009, SEC.2. Amended by P.L.49-2011, SEC.1; P.L.231-2013, SEC.10.

IC 32-25.5-2
Chapter 2. Definitions

IC 32-25.5-2-1
Applicability
Sec. 1. The definitions in this chapter apply throughout this article.
As added by P.L.167-2009, SEC.2.

IC 32-25.5-2-2
"Board"
Sec. 2. "Board" refers to the board of directors of a homeowners association.
As added by P.L.167-2009, SEC.2.

IC 32-25.5-2-3
"Governing documents"
Sec. 3. "Governing documents" includes:
(1) the articles of incorporation and bylaws of a homeowners association and all adopted amendments to the articles of incorporation and bylaws; and
(2) any applicable declaration of plat.
As added by P.L.167-2009, SEC.2.

IC 32-25.5-2-4
"Homeowners association"
Sec. 4. "Homeowners association" means a corporation or another entity that:
(1) is organized and operated exclusively for the benefit of two
(2) or more persons who each own a dwelling in fee simple;
(2) acts, in accordance with the articles, bylaws, or other documents governing the corporation or entity, to:
(A) acquire, transfer, manage, repair, maintain, or engage in construction on or in the land and improvements on the land related to the use of the dwellings owned by the members of the corporation or entity;
(B) purchase insurance to cover a casualty or an activity on or in the land and improvements on the land;
(C) engage in an activity incidental to an activity described in clause (A) or (B); or
(D) engage in more than one (1) of the activities described in clauses (A) through (C); and
(3) may be governed by a board that serves the purpose of setting policy and controlling or otherwise overseeing the activities or functional responsibilities of the corporation or entity.
As added by P.L.167-2009, SEC.2.

IC 32-25.5-2-5
"Subdivision"
Sec. 5. "Subdivision" means the division of a parcel of land into

lots, parcels, tracts, units, or interests in the manner defined and prescribed by a subdivision control ordinance adopted by a legislative body under IC 36-7-4.

As added by P.L.167-2009, SEC.2.

IC 32-25.5-3

Chapter 3. Homeowners Associations

IC 32-25.5-3-1

Roster of members; member addresses

Sec. 1. (a) A homeowners association shall maintain:

(1) a current roster of all members of the association; and

(2) the mailing address and legal description for each member of the association.

(b) The homeowners association shall also maintain any electronic mail addresses or facsimile (fax) numbers of those members who have consented to receive notice by electronic mail or facsimile (fax). Electronic mail addresses and facsimile (fax) numbers provided by a member to receive notice by electronic mail or facsimile (fax) shall be removed from the association's records when the member revokes consent to receive notice by electronic mail or facsimile (fax). However, the association is not liable for an erroneous disclosure of an electronic mail address or a facsimile (fax) number for receiving notices.

(c) The mailing addresses and legal descriptions maintained by a homeowners association under subsection (a):

(1) shall be made available to a member of the homeowners association upon request;

(2) may be used by a member of the homeowners association only for a purpose related to the operation of the homeowners association; and

(3) may not be used by a member of the homeowners association for personal reasons.

(d) Except as provided in subsection (c), a homeowners association may not sell, exchange, or otherwise transfer information maintained by the homeowners association under this section to any person.

As added by P.L.167-2009, SEC.2.

IC 32-25.5-3-2

Special meetings

Sec. 2. (a) In addition to any other meeting held by a board, a board shall hold a special meeting of the members of a homeowners association if at least ten percent (10%) of the members of the homeowners association submit to the board at least one (1) written demand for the special meeting that:

(1) describes the purpose for which the meeting is to be held; and

(2) is signed by the members requesting the special meeting.

(b) If a board does not send out a notice of the date, time, and place for a special meeting not more than thirty (30) days after the date the board receives a valid written demand for the special meeting under subsection (a), a member of the homeowners association who signed the written demand may:

(1) set the date, time, and place for the special meeting; and

(2) send out the notice for the special meeting to the other members.

As added by P.L.167-2009, SEC.2. Amended by P.L.1-2010, SEC.128.

IC 32-25.5-3-3

Annual budget; budget meeting; budget approval; records available to members

Sec. 3. (a) A homeowners association shall prepare an annual budget.

(b) The annual budget must reflect:

(1) the estimated revenues and expenses for the budget year; and

(2) the estimated surplus or deficit as of the end of the current budget year.

(c) The homeowners association shall provide each member of the homeowners association with:

(1) a:

(A) copy of the proposed annual budget; or

(B) written notice that a copy of the proposed annual budget is available upon request at no charge to the member; and

(2) a written notice of the amount of any increase or decrease in a regular annual assessment paid by the members that would occur if the proposed annual budget is approved;

before the homeowners association meeting held under subsection (d).

(d) Subject to subsection (f), a homeowners association budget must be approved at a meeting of the homeowners association members by a majority of the members of the homeowners association in attendance at a meeting called and conducted in accordance with the requirements of the homeowners association's governing documents.

(e) For purposes of this section, a member of a homeowners association is considered to be in attendance at a meeting if the member attends:

(1) in person;

(2) by proxy; or

(3) by any other means allowed under:

(A) state law; or

(B) the governing documents of the homeowners association.

(f) If the number of members of the homeowners association in attendance at a meeting held under subsection (d) does not constitute a quorum as defined in the governing documents of the homeowners association, the board may adopt an annual budget for the homeowners association for the ensuing year in an amount that does not exceed one hundred percent (100%) of the amount of the last approved homeowners association annual budget. However, the board may adopt an annual budget for the homeowners association for the ensuing year in an amount that does not exceed one hundred ten percent (110%) of the amount of the last approved homeowners association annual budget if the governing documents of the

homeowners association allow the board to adopt an annual budget under this subsection for the ensuing year in an amount that does not exceed one hundred ten percent (110%) of the amount of the last approved homeowners association annual budget.

(g) Subject to subsection (k), the financial records, including all contracts, invoices, bills, receipts, and bank records, of a homeowners association must be available for inspection by each member of the homeowners association upon written request. A written request for inspection must identify with reasonable particularity the information being requested. A member's ability to inspect records under this section shall not be unreasonably denied or conditioned upon provision of an appropriate purpose for the request.

(h) If there is a dispute between a homeowner and a homeowners association, the officers of the homeowners association must make all communications concerning the dispute available to the homeowner.

(i) A homeowners association shall make all communications and information concerning a lot available to the owner of the lot or a home on the lot.

(j) Notwithstanding subsections (h) and (i), a homeowners association is not required to make:

(1) communications between the homeowners association and the legal counsel of the homeowners association; and

(2) other communications or attorney work product prepared in anticipation of litigation;

available to the owner of a lot or home.

(k) A homeowners association is not required to make available to a member for inspection:

(1) unexecuted contracts;

(2) records regarding contract negotiations;

(3) information regarding an individual member's association account to a person who is not a named party on the account;

(4) any other information that is prohibited from release under state or federal law; or

(5) any records that were created more than two (2) years before the request.

(l) Nothing in this chapter:

(1) abrogates or eliminates provisions in homeowners association agreements that permit or require additional disclosure or inspection rights not required by this chapter; or

(2) prevents a homeowners association from agreeing to make disclosures or to provide inspection rights not required by this chapter.

(m) A homeowners association may not charge a fee for the first hour required to search for a record in response to a written request submitted under this chapter. A homeowners association may charge a search fee for any time that exceeds one (1) hour. The following provisions apply if a homeowners association charges a search fee:

(1) The homeowners association shall charge an hourly fee that does not exceed thirty-five dollars ($35) per hour.

(2) The homeowners association may charge the fee only for

time that the person making the search actually spends in searching for the record.

(3) The homeowners association shall prorate the fee to reflect any search time of less than one (1) hour.

(4) The total amount of the fee charged by the homeowners association for a search may not exceed two hundred dollars ($200).

As added by P.L.167-2009, SEC.2. Amended by P.L.231-2013, SEC.11.

IC 32-25.5-3-4

Approval of certain contracts; meeting; vote

Sec. 4. (a) This section does not apply to a contract entered into by a board that would resolve, settle, or otherwise satisfy an act of enforcement against a homeowners association for violating a state or local law.

(b) A board may not enter into any contract that would result in a new assessment or the increase in an existing assessment payable by the affected members of the homeowners association in the amount of more than five hundred dollars ($500) per year for each affected member of the homeowners association unless:

(1) the board holds at least two (2) homeowners association meetings concerning the contract; and

(2) the contract is approved by the affirmative vote of at least two-thirds (2/3) of the affected members of the homeowners association.

(c) A board shall give notice of the first homeowners association meeting held under subsection (b):

(1) to each member of the homeowners association; and

(2) at least seven (7) calendar days before the date the meeting occurs.

As added by P.L.167-2009, SEC.2.

IC 32-25.5-3-5

Borrowing money; approval by members

Sec. 5. (a) This section does not apply to money borrowed by a homeowners association that is needed to:

(1) resolve, settle, or otherwise satisfy an act of enforcement against the homeowners association for violating a state or local law; or

(2) address an emergency that affects the public health, safety, or welfare.

(b) A homeowners association may not borrow money during any calendar year on behalf of the homeowners association in an amount that exceeds the greater of:

(1) five thousand dollars ($5,000) during any calendar year; or

(2) if the homeowners association operated under an annual budget in the previous calendar year, an amount equal to at least ten percent (10%) of the previous annual budget of the homeowners association;

unless borrowing the money is approved by the affirmative vote of a majority of the members of the homeowners association voting under this section.

(c) A person who owns a lot, parcel, tract, unit, or interest in land in a subdivision may cast one (1) vote under this section for each lot, parcel, tract, unit, or interest in land in the subdivision that is owned by the person unless the governing documents provide for a different voting procedure.

(d) A vote held under this section must be conducted by paper ballot.

(e) A homeowners association shall distribute paper ballots to persons eligible to vote under this section at least thirty (30) days before the date the votes are to be opened and counted.

(f) Votes cast under this section shall be opened and counted at a public meeting held by the homeowners association.

As added by P.L.167-2009, SEC.2.

IC 32-25.5-3-6

Grievance resolution procedures

Sec. 6. The governing documents must include grievance resolution procedures that apply to all members of the homeowners association and the board.

As added by P.L.167-2009, SEC.2.

IC 32-25.5-3-7

Member voting rights

Sec. 7. A homeowners association may not suspend the voting rights of a member for nonpayment of any assessments unless:

(1) the governing documents provide for suspension; and

(2) the assessments are delinquent for more than six (6) months.

As added by P.L.167-2009, SEC.2.

IC 32-25.5-3-8

Attorney general's action against association or board member; misappropriation or fraud; remedies

Sec. 8. (a) The attorney general may bring an action against a board or an individual member of a board of a homeowners association if the attorney general finds that:

(1) the association's funds have been knowingly or intentionally misappropriated or diverted by a board member; or

(2) a board member has knowingly or intentionally used the board member's position on the board to commit fraud or a criminal act against the association or the association's members.

(b) A court in which an action is brought under this section may do the following:

(1) Issue an injunction.

(2) Order the board member to make restitution to the homeowners association or to a member.

(3) Order a board member to be removed from the board.

(4) Order a board member to reimburse the state for the reasonable costs of the attorney general's investigation and prosecution of the violation.

As added by P.L.49-2011, SEC.2.

IC 32-26

ARTICLE 26. FENCES

IC 32-26-1

Chapter 1. Fencing Associations

IC 32-26-1-1

Enclosure of lands; articles of association

Sec. 1. (a) Five (5) or more persons may form a fencing association if the persons are interested in:

(1) enclosing land with one (1) general fence; or

(2) doing any other work necessary to protect land and to secure crops raised on land.

(b) The enclosed land described in subsection (a) must be:

(1) improved land;

(2) used for purposes of cultivation; and

(3) situated in an area that is:

(A) definitely described by sections or subdivisions of sections; or

(B) sufficiently described by metes and bounds, and on or near any stream, watercourse, lake, pond, or marsh, and subject to overflow from any stream, watercourse, lake, pond, or marsh.

(c) The association shall adopt and subscribe articles, which must specify the name and objects of the association.

As added by P.L.2-2002, SEC.11.

IC 32-26-1-2

Notice of election of directors

Sec. 2. (a) Three (3) or more members of the association may give notice of an election to choose directors for the association.

(b) The notices must:

(1) be written or printed;

(2) specify the time and location of the election; and

(3) be posted for at least ten (10) days before the election in at least five (5) public places in each township where the contemplated work will occur.

(c) The location of the election must be near the contemplated work.

As added by P.L.2-2002, SEC.11.

IC 32-26-1-3

Election of directors

Sec. 3. At the election, at least five (5) of the association members shall elect by ballot at least three (3) but not more than seven (7) association members as directors of the association.

As added by P.L.2-2002, SEC.11.

IC 32-26-1-4

Articles of association; recording

Sec. 4. (a) After the election of directors, the association shall record articles of association in the office of the recorder of the county where the proposed fence will be located.

(b) The articles must specify the following:

(1) The name and objects of the association.

(2) The names of the association's officers for the first year.

(3) The character of the work proposed.

(4) The location where the fence is to be located.

(c) After recording the articles of association, the association is a body corporate and politic by the name and style adopted, with all the rights, incidents, and liabilities of bodies corporate.

(d) Any person owning land in the area may at any time become a member of the association by signing the articles of association.

As added by P.L.2-2002, SEC.11.

IC 32-26-1-5

Petition; viewers; examination and apportionment of assessments

Sec. 5. (a) The board of directors shall petition the board of commissioners of the county where the fence is to be located.

(b) The petition must do the following:

(1) Be signed by the owners of the major part of the improved land.

(2) Give a full description of the contemplated work, specifying particularly:

(A) the points of beginning and ending of the work;

(B) the course and distances of the work;

(C) the manner and character of the gates to be placed on all public highways crossed;

(D) the nature and character of the improvement;

(E) a detailed statement of the projected cost, as accurately as the projected cost can conveniently be stated; and

(F) the description of the area to be enclosed.

(3) Request the appointment of viewers to view and apportion among the owners of real estate in the area the cost of the improvement, and all expenses that:

(A) are incurred procuring the improvement; and

(B) are considered to be necessary in maintaining the improvement for one (1) year after the completion of the fence.

(c) The apportionment of the cost and expenses incurred under this chapter must be made according to the number of acres of land owned by each landowner that is improved and used for the purposes of cultivation, as described in section 6 of this chapter.

(d) The board of commissioners, on proof that the signers of the petition own the major part of the improved land in the area, shall hear and consider the petition. If the board of commissioners decides the improvement is a public utility and is in the best interests of the owners of the lands in the area, the board of commissioners shall appoint three (3) viewers.

(e) The viewers, who may not be members of the association or

interested in the proposed work, shall make the apportionments described in subsection (b)(3) among the landowners.

(f) The viewers shall be furnished:

(1) a copy of the plan and profile of the proposed work; and

(2) a certified copy of the order of the board of commissioners for their appointment.

(g) The viewers shall meet at a time and place in the area to make the apportionment as fixed by the board of commissioners.

(h) Before the apportionment begins, the owners of improved land in the area are entitled to notice of the time when and place where the viewers will begin the examination of lands and the apportionment of assessments by written or printed notices posted at the door of the courthouse of the county and five (5) public places in the area.

As added by P.L.2-2002, SEC.11.

IC 32-26-1-6

Assessments; costs and expenses of improvements

Sec. 6. (a) At the time and place named by the board of commissioners and fixed by the notices, the appointed viewers shall do the following:

(1) Meet and inspect the lands improved and used for cultivation in the area.

(2) Assess against the owners of the improved land the costs and expenses of the improvement. The costs and expenses shall be apportioned among them severally, according to the number of acres of improved land owned by each owner.

(3) Hear and determine any complaints at that time regarding the assessment.

(b) The appointed viewers have the authority to:

(1) hear evidence;

(2) swear and examine witnesses;

(3) reexamine any lands;

(4) cause surveys and measurements to be made; and

(5) adjourn periodically until the viewers complete the apportionment of assessments.

As added by P.L.2-2002, SEC.11.

IC 32-26-1-7

Viewers' report and assessments

Sec. 7. (a) The appointed viewers, after having completed their apportionment, shall submit a written report of their work to the board of commissioners, together with a tabular statement of the assessments made.

(b) The directors of the association shall record the written report by the appointed viewers in the office of the recorder of the county.

(c) From the recording date of the written report, the assessments in the written report shall be respectively a lien on each tract of land described in the written report for the amount assessed to the tract.

As added by P.L.2-2002, SEC.11.

IC 32-26-1-8
Annual assessments

Sec. 8. (a) The board of directors may make annual assessments after the first assessment for the purpose of repairing and maintaining the improvement and for other necessary expenses.

(b) The board of directors shall apportion the annual assessments among the owners and file a tabular statement of the apportionment and assessment in the recorder's office.

(c) The tabular statement of the apportionment and assessment is a lien on the tracts of land respectively assessed and may be collected in the same manner as the original assessment.

As added by P.L.2-2002, SEC.11.

IC 32-26-1-9
Fences erected before present law

Sec. 9. (a) If the owners of land have, under or by virtue of any law of Indiana or by mutual consent, erected a fence before March 14, 1877, as described in this chapter, the landowners may:

(1) organize an association according to the provisions of this chapter;

(2) file their articles of association in the office of the recorder; and

(3) petition the board of commissioners as provided in subsection (b).

(b) The petition must show that:

(1) the fence was built before March 14, 1877; and

(2) the goal of the organization is to maintain the fence in good order and repair, as though built under this chapter.

(c) The board of commissioners shall consider the petition. If the board of commissioners is satisfied that:

(1) the owners of the major part of the land improved and used for the purposes of cultivation enclosed by the fence signed the petition; and

(2) the maintenance of the improvement is of public utility and for the best interests of the owners of the land in the area;

the board of commissioners shall make an order allowing the board of directors of the association to make assessments for that purpose, as provided in section 8 of this chapter.

(d) After the directors of the association follow the steps provided in section 8 of this chapter, the association is a body corporate and politic, as though originally organized under this chapter, and has all the rights and powers granted in this chapter.

(e) All liens that then exist in favor of any creditor that financed the improvement, or against any lands on account of the improvement, shall be preserved and may be enforced, either according to the law under which the liens were created or according to this chapter.

As added by P.L.2-2002, SEC.11.

IC 32-26-1-10

Officers of fencing association

Sec. 10. (a) The board of directors shall appoint a president, secretary, and treasurer.

(b) The treasurer shall give a bond:

(1) sufficient in penalties and securities;

(2) payable to the association by its corporate name; and

(3) conditioned for:

(A) the faithful discharge of the treasurer's duties; and

(B) the safekeeping and prompt payment, according to the order of the board of directors, of all money accessible to the treasurer.

(c) A majority of the board of directors is a quorum for the transaction of business.

(d) Previous notice of any regular or adjourned meeting of the directors is not necessary.

As added by P.L.2-2002, SEC.11.

IC 32-26-1-11

Vacancy in office of director

Sec. 11. If a vacancy occurs in the office of director, the other members of the board shall fill the vacancy by a pro tempore appointment from the members of the association. The appointment continues until the next annual election and until a successor is elected and qualified.

As added by P.L.2-2002, SEC.11.

IC 32-26-1-12

Officers of association; term of office

Sec. 12. The president, secretary, and treasurer continue in office for one (1) year and until their successors in office are elected and qualified.

As added by P.L.2-2002, SEC.11.

IC 32-26-1-13

Money drawn by treasurer

Sec. 13. The treasurer may not draw money, except upon the order of the president and secretary.

As added by P.L.2-2002, SEC.11.

IC 32-26-1-14

Treasurer; presenting vouchers and settling with board

Sec. 14. Each year, before the expiration of the treasurer's term, and more often if the board of directors requires, the treasurer shall present the treasurer's vouchers and settle with the board.

As added by P.L.2-2002, SEC.11.

IC 32-26-1-15

Supplemental assessments

Sec. 15. (a) If the board of directors finds that any lands that will be affected by the proposed work have been omitted from the

assessment or that any mistake has occurred in the assessment, the board may order a supplemental assessment for the correction of mistakes.

(b) The owners of all lands directly affected by the supplemental assessment shall have notice of the time and place of making the supplemental assessment and of a time when and place where the owners may be heard regarding the supplemental assessment in the same manner as in respect to the original assessment.

(c) The supplemental assessment, when completed, shall be filed for record in the same manner as the original assessment.

(d) The supplemental assessment shall, from that date, be a lien on the lands described in the supplemental assessment in like manner as the original assessment.

As added by P.L.2-2002, SEC.11.

IC 32-26-1-16

Assessments; installment payments

Sec. 16. The board of directors may, without reference to the completion of the proposed work, order:

(1) the payment of the assessment in installments as it considers proper; or

(2) the payment in full at a stated time.

As added by P.L.2-2002, SEC.11.

IC 32-26-1-17

Assessments; enforcing payment

Sec. 17. Payment of the assessments may be enforced by suit in any court with jurisdiction as for ordinary debts or by the foreclosure of the lien in any court with jurisdiction in the same manner as is provided by law for the foreclosure of mortgages and the sale of mortgaged premises for the collection of debts.

As added by P.L.2-2002, SEC.11.

IC 32-26-1-18

Proposed work; contracts; advertisements

Sec. 18. (a) The proposed work shall be awarded by the board of directors by contract to the lowest responsible bidder, after suitable advertisements, as a whole or in sections or subdivisions as the board considers most advantageous.

(b) The board of directors may purchase any fence built along the line of the proposed fence and use the fence instead of building new fencing.

As added by P.L.2-2002, SEC.11.

IC 32-26-1-19

Appropriation of land; assessment of damages

Sec. 19. If the association wishes to appropriate any land for the construction or maintenance of any work, the association must proceed in the manner required by law for the assessment of like damages in case of the construction of railroads or other similar

works.
As added by P.L.2-2002, SEC.11.

IC 32-26-1-20
Incorrect or imperfect description of proposed work

Sec. 20. Every association organized under this chapter with the concurrence of three-fourths (3/4) of its members, expressed by resolution at any regular meeting of the association, may:

(1) correct or perfect any incorrect or imperfect description of the proposed work; or

(2) provide for the extension of the proposed work beyond the limits prescribed in the original articles of the association.

As added by P.L.2-2002, SEC.11.

IC 32-26-1-21
Limitation of actions to enforce assessment

Sec. 21. An association may not commence an action to enforce any lien upon land for assessments made five (5) years after the date of recording the schedule of the assessment constituting a lien, as contemplated by this chapter. Any assessment made under any former law of Indiana upon the same subject, when action is not pending for the enforcement of the assessment, is prima facie satisfied upon the record five (5) years after the recording of the schedule of the assessment.
As added by P.L.2-2002, SEC.11.

IC 32-26-1-22
Rules or regulations; powers of fencing association

Sec. 22. The association may pass any rules and impose reasonable fines and penalties to insure the success of the object of the association's incorporation. The association may:

(1) employ individuals to keep the fence in repair;

(2) employ gatekeepers to attend to the gates on all public highways;

(3) employ keepers of pounds to impound and care for all stock found running at large in the area enclosed by the fence;

(4) make bylaws regulating:

(A) when stock may run at large in the enclosed area; and

(B) the number of cattle, horses, and swine each landowner or occupant of lands in the enclosed area may be allowed to permit to run at large.

As added by P.L.2-2002, SEC.11.

IC 32-26-1-23
Throwing down common fence

Sec. 23. A person may not throw down the common fence. A person who throws down a common fence shall pay to the association at least five dollars ($5) but not more than twenty dollars ($20), recoverable before any court with jurisdiction. A person who throws down a common fence is liable for all damages that accrue because

of the person's actions. Damages are recoverable under this subsection in the same manner as a forfeiture.
As added by P.L.2-2002, SEC.11.

IC 32-26-1-24
Permitting animals to run at large within enclosed area

Sec. 24. It is a Class C infraction for a person to allow the person's stock to run at large in the enclosed area unless expressly permitted to do so by the board of directors of the association. A person who violates this section is liable to all persons whose lands are trespassed upon for consequential damages.
As added by P.L.2-2002, SEC.11.

IC 32-26-1-25
Stock roving within enclosed area

Sec. 25. (a) Any stock found roving about in the enclosed area contrary to the laws or regulations of the association shall be taken up and impounded at the expense of the owner. The poundkeeper shall:

(1) if the owner is known, notify the owner, in writing, of the impounding of the stock; or

(2) if the owner is unknown, post for ten (10) days a written or printed description of the stock at the public gates of the association and three (3) other public places in the township where the fence is located.

(b) If, after the expiration of ten (10) days, the owner fails to reclaim and pay the expenses of keeping and posting the stock and the damages caused by the stock to any owner or occupant of land in the area, the stock shall, upon ten (10) days further notice, be sold to pay the expenses and damages.

(c) If, after payment for the stock, there is a remaining balance, the balance shall be deposited in the treasury of the association for the benefit of the owner. If no claim is made for the remaining balance for six (6) months, it shall vest in the association.
As added by P.L.2-2002, SEC.11.

IC 32-26-2

Chapter 2. Enclosures, Trespassing Animals, and Partition Fences

IC 32-26-2-1

Lawful fences

Sec. 1. (a) As used in this chapter, "lawful fence" means any structure typically used by husbandmen for the enclosure of property.

(b) The term includes:

(1) a cattle guard;

(2) a hedge;

(3) a ditch; and

(4) any other structure that witnesses knowledgeable about fences testify is sufficient to enclose property.

As added by P.L.2-2002, SEC.11.

IC 32-26-2-2

Domestic animal breaking into enclosure

Sec. 2. (a) This subsection applies in a township for which the board of county commissioners has adopted an ordinance that allows domestic animals to run at large in unenclosed public areas. If a domestic animal breaks into an enclosure or enters upon the property of another person that is enclosed by a lawful fence, the person injured by the actions of the domestic animal may recover the amount of damage done.

(b) This subsection applies in a township for which the board of county commissioners has not adopted an ordinance that allows domestic animals to run at large in unenclosed public areas. If a domestic animal breaks into an enclosure or enters upon the property of another person, it is not necessary for the person injured by the actions of the domestic animal to allege or prove the existence of a lawful fence to recover for the damage done.

As added by P.L.2-2002, SEC.11.

IC 32-26-2-3

Tender of costs and damages; confession of judgment

Sec. 3. (a) The owner of a domestic animal described in section 2 of this chapter may:

(1) tender to the person injured by the domestic animal:

(A) any costs that have accrued; and

(B) an amount, in lieu of damage, which equals or exceeds the amount of damages awarded by the court or by a jury in an action filed to recover damages caused by the actions of the domestic animal; or

(2) offer in writing to confess judgment for the amounts set forth in subdivision (1);

before an action filed to recover damages caused by a domestic animal described in section 2 of this chapter proceeds to trial.

(b) If the person injured by the domestic animal described in

section 2 of this chapter rejects the tender or offer under subsection (a) and causes a trial for damages to proceed, the person injured:

(1) shall pay the costs of the trial; and

(2) may recover only the damages awarded.

As added by P.L.2-2002, SEC.11.

IC 32-26-2-4

Strays; confining domestic animal

Sec. 4. Except as provided in this chapter, if a domestic animal breaks into the enclosure of a person who is not the owner of the domestic animal, the person, without regard to the season of the year:

(1) may confine the animal in the same manner as a stray animal may be confined; and

(2) shall proceed under IC 32-34-8 for stray animals.

As added by P.L.2-2002, SEC.11.

IC 32-26-2-5

Notice to owner; confining domestic animal

Sec. 5. A person described in section 4 of this chapter shall, within twenty-four (24) hours after confining a stray animal, give notice to the owner of the animal, if the owner is known and can be immediately found.

As added by P.L.2-2002, SEC.11.

IC 32-26-2-6

Examination and assessment of damages

Sec. 6. Before posting or advertising a stray animal, a person described in section 4 of this chapter shall procure from two (2) disinterested property owners an examination and assessment of the damages caused by the stray animal with a certificate of the damages. Damages under this section may include reasonable pay for the persons making the assessment.

As added by P.L.2-2002, SEC.11.

IC 32-26-2-7

Notice or advertisement of confined domestic animal

Sec. 7. A notice or advertisement described in section 6 of this chapter must specify the following:

(1) The fact of trespass in the enclosure of the person confining the stray animal.

(2) The damages assessed, including pay for the person making the assessment.

As added by P.L.2-2002, SEC.11.

IC 32-26-2-8

Owner demanding trespassing stray from confiner

Sec. 8. The owner of a stray animal confined under section 4 of this chapter may demand the stray animal from the person who confined the stray animal only if the following conditions are met:

(1) The owner proceeds under IC 32-34-8-18 to prove that the

stray animal is the owner's property.

(2) The owner pays the costs allowed in the case of stray animals.

(3) The owner pays the damages and the costs of assessment.

As added by P.L.2-2002, SEC.11.

IC 32-26-2-9

Trial; owner controverting damages or denying trespass

Sec. 9. (a) Within five (5) days after the owner of a stray animal confined under section 4 of this chapter receives a notice under section 7 of this chapter, the owner may file a civil action to:

(1) controvert the amount of damages assessed; or

(2) deny the trespass.

(b) If the owner of a stray animal confined under section 4 of this chapter files an action under subsection (a), the cause shall be docketed for trial.

As added by P.L.2-2002, SEC.11.

IC 32-26-2-10

Jury trial

Sec. 10. Either party in an action filed under section 9 of this chapter may demand a jury.

As added by P.L.2-2002, SEC.11.

IC 32-26-2-11

Damages and costs; payment before recovering property

Sec. 11. If damages are assessed against the owner of a stray animal in a trial under this chapter, the owner must pay the damages and all costs assessed against the owner before the owner may recover the owner's property.

As added by P.L.2-2002, SEC.11.

IC 32-26-2-12

Judgment; trespass not committed by animal confined

Sec. 12. If the verdict or finding in a trial under this chapter is that the stray animal confined under section 4 of this chapter did not commit the trespass, a judgment shall be entered against the person who confined the stray animal for all costs and damages that are assessed.

As added by P.L.2-2002, SEC.11.

IC 32-26-2-13

Sale of trespassing strays; retention of damages and costs

Sec. 13. If a stray animal confined under section 4 of this chapter is sold under IC 32-34-8, the person who confined the stray animal may retain out of the sale price of the stray animal the damages sustained by the person and the costs of assessing the damages in addition to the costs and allowances recoverable under IC 32-34-8.

As added by P.L.2-2002, SEC.11.

IC 32-26-2-14
Release of trespassing animal; fence not lawful

Sec. 14. In an action filed under this chapter, if the court or jury finds the fence through which a stray animal breaks is not a lawful fence, the animal shall be released to the animal's owner and the occupant of the enclosure shall pay costs and damages to the animal's owner.

As added by P.L.2-2002, SEC.11.

IC 32-26-2-15
Existing fence becoming partition fence; compensation

Sec. 15. When a fence that is already erected becomes a partition fence because previously unenclosed property is enclosed, the person who encloses the previously unenclosed property shall pay to the owner of the existing fence fifty percent (50%) of the value of the existing fence, as estimated by the owner of the existing fence.

As added by P.L.2-2002, SEC.11.

IC 32-26-2-16
Existing fence becoming partition fence; action for payment

Sec. 16. (a) If a person who encloses previously unenclosed property refuses to pay the owner of an existing fence under section 15 of this chapter, the owner may file a civil action for recovery of the amount due under section 15 of this chapter.

(b) This subsection applies if, before a trial under subsection (a):

(1) the person who encloses the previously unenclosed property offers to the owner of an existing fence; and

(2) the owner of the existing fence refuses to accept;

an amount equal to or larger than the damages awarded at the trial and the costs accrued up to the date of the offer. The owner of the existing fence shall pay the costs of the action and receive only the damages assessed.

As added by P.L.2-2002, SEC.11.

IC 32-26-2-17
Joining fence to fence of another

Sec. 17. A person who encloses property that has previously been unenclosed may not join the new fence to another person's existing fence without the consent of the owner of the existing fence. If consent to join the new fence with the existing fence is not given, each property owner shall give property that is equivalent to fifty percent (50%) of the width of a lane, or a reasonable distance, for the erection of the second fence.

As added by P.L.2-2002, SEC.11.

IC 32-26-2-18
Notice; intention to remove partition fence

Sec. 18. This section applies to a person who ceases to use the person's property or opens the person's enclosures. A person to whom this section applies may not remove any part of the person's fence

that forms a partition fence between the person's property and the enclosure of any other person until the person to whom this section applies has first given six (6) months notice of the person's intention to remove the fence to any person who may be interested in the removal of the fence.
As added by P.L.2-2002, SEC.11.

IC 32-26-2-19
Removal of fence erected on land of another; damages

Sec. 19. (a) This section applies to a person who, by mistake, erects a fence on the property of another person.

(b) Within six (6) months after the determination of the legal property line, a person to whom this section applies may enter upon the other person's property and remove the fence that the person to whom this section applies erected. Before entering upon the other person's property, the person to whom this section applies must pay or offer to pay to the other person reasonable damages for injury caused in passing over the property to remove the fence.
As added by P.L.2-2002, SEC.11.

IC 32-26-2-20
Removal of fence erected on land of another; safeguarding crops

Sec. 20. If the fence to be removed under section 19 of this chapter forms any part of a fence enclosing a field of another party on which there is a crop, the person to whom section 19 of this chapter applies may not remove the fence in a manner that exposes the field until the crop:

(1) has been gathered and removed, or secured from injury; or
(2) might, with reasonable diligence, have been gathered and secured. After the conditions set forth in this section have been met, the person to whom section 19 of this chapter applies may immediately remove the fence and materials, whether or not more than six (6) months have elapsed since the legal property line was determined.

As added by P.L.2-2002, SEC.11.

IC 32-26-3

Chapter 3. Recording Agreements to Erect and Repair Fences

IC 32-26-3-1

Fencing agreements not provided by law

Sec. 1. Adjoining property owners who elect to erect, repair, maintain, or pay for fences separating their lands in a manner other than that set forth under this article shall do so by written agreement. When the agreement is signed by the adjoining property owners, the agreement must be recorded in the office of the recorder in the county or counties in which the adjoining properties are situated.

As added by P.L.2-2002, SEC.11.

IC 32-26-3-2

Existing rights safeguarded

Sec. 2. This chapter may not be held or construed as annulling or abrogating any subsisting legal right created under or any cause of action that arose and was fully accrued under any law or agreement if the legal right became effective before January 1, 1950.

As added by P.L.2-2002, SEC.11.

IC 32-26-4

Chapter 4. Cutting Live Fences Along Public Highways

IC 32-26-4-1

Obstruction of view; trimming and maintaining; application of law

Sec. 1. (a) This chapter:

(1) does not apply to:

(A) a highway intersection located within a city or town; or

(B) a building of a substantial character that is located at the intersection of highways; and

(2) except for the provisions of this chapter concerning hedge fences, applies only to the intersection of a state highway with another state highway, a county highway, or a township highway.

(b) Except as provided in subsection (c), the owner of a hedge or live fence along the line of a highway shall cut and trim down the hedge or live fence to a height of not more than five (5) feet once in each calendar year.

(c) This subsection applies if a hedge, live fence, or natural growth other than a tree connects with or is found at a highway intersection, adjacent to a curve where the view of the highway may be obstructed, or at a railway right-of-way. The owner of a hedge, live fence, or other growth to which this subsection applies shall trim and maintain the hedge, live fence, or other growth at a height of not more than five (5) feet above the level of the center of the traveled road bed in the highway that adjoins the hedge, live fence, or other growth:

(1) throughout the year;

(2) for a distance of:

(A) one hundred (100) feet, if the obstruction is a hedge or live fence; or

(B) fifty (50) feet, if the obstruction consists of any other natural growths; and

(3) beginning at the intersection of the highway and continuing along the lines dividing the highways and the adjoining property.

(d) This subsection applies to a tree growing within fifty (50) feet of the intersection of a highway with:

(1) another highway; or

(2) a steam or interurban railroad.

The owner of a tree to which this subsection applies shall trim the tree so that the view at the intersection is not obstructed.

(e) Except for a natural elevation of land, an obstruction to the view at the intersection of a highway with another highway or a steam or interurban railroad that exceeds a height of five (5) feet above the center of the highway may not be maintained at the intersection.

(f) After May 22, 1933, a building may not be erected within fifty (50) feet of an intersection to which this chapter applies.

As added by P.L.2-2002, SEC.11.

IC 32-26-4-2

Examination of live fences; notice to cut or trim; collection of expenses

Sec. 2. (a) The trustee of each township, the county highway superintendent, the Indiana department of transportation, or other officer in control of the maintenance of a highway shall between January 1 and April 1 of each year, examine all hedges, live fences, natural growths along highways, and other obstructions described in section 1 of this chapter in their respective jurisdictions. If there are hedges, live fences, other growths, or obstructions along the highways that have not been cut, trimmed down, and maintained in accordance with this chapter, the owner shall be given written notice to cut or trim the hedge or live fence and to burn the brush trimmed from the hedge or live fence and remove any other obstructions or growths.

(b) The notice required under subsection (a) must be served by reading the notice to the owner or by leaving a copy of the notice at the owner's usual place of residence.

(c) If the owner is not a resident of the township, county, or state where the hedge, live fence, or other obstructions or growth is located, the notice shall be served upon the owner's agent or tenant residing in the township. If an agent or a tenant of the owner does not reside in the township, the notice shall be served by mailing a copy of the notice to the owner, directed to the owner's last known post office address.

(d) If the owner, agents, or tenants do not proceed to cut and trim the fences and burn the brush trimmed from the fences or remove any obstructions or growths within ten (10) days after notice is served, the township trustee, county highway superintendent, or Indiana department of transportation shall immediately:

(1) cause the fences to be cut and trimmed or obstructions or growths removed in accordance with this chapter; and

(2) burn the brush trimmed from the fences.

All expenses incurred under this subsection shall be assessed against and become a lien upon the land in the same manner as road taxes.

(e) The township trustee, county highway superintendent, or Indiana department of transportation having charge of the work performed under subsection (d) shall prepare an itemized statement of the total cost of the work of removing the obstructions or growths and shall sign and certify the statement to the county auditor of the county in which the land is located. The county auditor shall place the statement on the tax duplicates. The county treasurer shall collect the costs entered on the duplicates at the same time and in the same manner as road taxes are collected. The treasurer may not issue a receipt for road taxes unless the costs entered on the duplicates are paid in full at the same time the road taxes are paid. If the costs are not paid when due, the costs shall become delinquent, bear the same interest, be subject to the same penalties, and be collected at the same time and in the same manner as other unpaid and delinquent taxes.

As added by P.L.2-2002, SEC.11.

IC 32-26-4-3

Actions; recovering expenses of cutting or trimming

Sec. 3. The prosecuting attorney shall prosecute a suit under section 2(e) of this chapter in the name of the state on relation of the supervisor or county highway superintendent. The prosecuting attorney shall receive a fee of ten dollars ($10), collected as a part of the costs of the suit, for bringing a suit under this section.

As added by P.L.2-2002, SEC.11.

IC 32-26-5

Chapter 5. Cutting Live Fences Between Adjoining Lands

IC 32-26-5-1

Height and width of hedge or live fence

Sec. 1. A hedge or other live fence grown along the lines dividing properties owned by different persons in Indiana shall be cut and trimmed down to the height of not more than five (5) feet and to a width of not more than three (3) feet once in each calendar year.

As added by P.L.2-2002, SEC.11.

IC 32-26-5-2

Complaint; written notice

Sec. 2. (a) Upon receiving a complaint in writing signed by an owner of land adjoining a hedge or fence to which this chapter applies alleging that the owner of the fence has neglected to cut and trim the hedge or fence, the township trustee shall examine, within five (5) days after receiving the complaint, the hedge or other live fence.

(b) If the hedge or other live fence that is the subject of the complaint under subsection (a) has not been cut and trimmed, the township trustee shall give the owner of the hedge or other live fence written notice to cut and trim the hedge or other live fence and to remove the brush to the owner's property within thirty (30) days after receiving the notice.

(c) The notice required under subsection (b) must be served by reading the notice to the owner or by leaving a copy of the notice at the owner's usual place of residence. If the owner of properties divided by the hedge or other live fence is not a resident of the township where the hedge or other live fence is located, the notice shall be served by mailing a copy of the notice to the owner directed to the owner's last known post office address.

(d) If the owner or the owner's agents or tenants do not cut and trim the fences and remove the brush, the trustee shall, immediately after the expiration of thirty (30) days, cause the hedge or other live fence to be cut and trimmed and the brush removed to the owner's property.

(e) The trustee shall recover all expenses incurred under subsection (d) by bringing a suit against the owner of the property on which the hedge or live fence is situated before the circuit court or the superior court of the county in which the hedge or other live fence is situated. Collection of the expenses and any judgment recovered shall be without relief from valuation or appraisement laws.

As added by P.L.2-2002, SEC.11. Amended by P.L.201-2011, SEC.12.

IC 32-26-5-3

Actions and proceedings; recovery of cutting and trimming expenses

Sec. 3. The prosecuting attorney shall prosecute a suit under this

chapter in the name of the state on relation of a township trustee. The prosecuting attorney shall receive ten dollars ($10) collected as part of the cost of the suit, for bringing a suit under this section.
As added by P.L.2-2002, SEC.11.

IC 32-26-6

Chapter 6. Enclosure of Land Subject to Flooding

IC 32-26-6-1

Petition; inspection; assessment

Sec. 1. (a) The owners of real property in a county who own the major portion of the property in the county that is:

(1) improved and used for purposes of agriculture;

(2) in an area that is:

(A) definitely described by sections or subdivisions of sections; or

(B) sufficiently described by metes and bounds; and

(3) situated upon or near, and subject to overflow from:

(A) a stream;

(B) a watercourse;

(C) a lake;

(D) a pond; or

(E) a marsh;

may petition the board of commissioners of the county, asking permission to enclose the properties within one (1) general fence that has swinging gates on all public highways crossed by the fence. A petition under this subsection must set forth the kind of fence and gates desired.

(b) Upon the receipt of a petition under subsection (a), the board of county commissioners shall appoint as viewers three (3) reputable householders of the county who are not related by blood or marriage to any of the parties interested in the subject of the petition. After being sworn to faithfully and fairly perform the services required of them, the viewers shall proceed:

(1) within a reasonable time after the viewers' appointment; and

(2) after giving publication of the viewers' intention by posting written or printed notices describing the properties in the townships where the properties are located;

to inspect the properties and make an assessment against the owners of the properties for the cost of the fence.

(c) The cost of the fence shall be apportioned between the owners of the properties severally according to the number of acres of improved land owned by each owner and the benefits accruing to the owners severally because of the fence.

As added by P.L.2-2002, SEC.11.

IC 32-26-6-2

Reports of viewers; order to erect or construct fence

Sec. 2. (a) After having performed the duties required under section 1 of this chapter, the viewers shall, as soon as practicable, submit a report in writing to the board of county commissioners of the viewers' actions and a tabular statement of the viewers' assessment. The report submitted under this section is sufficient authority for the board of county commissioners to issue an order for the erection or construction of the fence and gates if there is no

remonstrance against the erection of the fence and gates.

(b) If a remonstrance is made under subsection (a), the board of county commissioners may order or refuse to order the erection of the fence or gate, in the board's discretion.

(c) If the order under subsection (a) is not made because of a mistake or error committed by the viewers, other viewers may be appointed to perform the same service and submit a report.

As added by P.L.2-2002, SEC.11.

IC 32-26-6-3

Affidavit of unpaid assessments

Sec. 3. (a) A certified copy of the report of the viewers, as approved by the board of commissioners, shall be filed in the office of the county auditor.

(b) Thirty (30) days after the fence and gates described in section 1 of this chapter have been constructed, any person interested in the fence and gates may make an affidavit before the county auditor showing which property owners have not paid their several assessments. The county auditor shall enter the sums assessed against the delinquent persons upon the tax duplicate to be collected by the treasurer as other taxes are collected. When the assessments have been collected, the money shall be paid out to the property owners who have voluntarily paid the cost of the fence, in proportion to the amount of the property owners' several assessments.

As added by P.L.2-2002, SEC.11.

IC 32-26-6-4

Surveyors; compensation of viewers

Sec. 4. The viewers appointed under this chapter may, if necessary, employ a surveyor, who shall be paid for the surveyor's services as may be agreed upon. The board of county commissioners shall fix the compensation of the viewers for their services. The entire cost and expenses of the proceedings are a part of the cost of the erection of the fence and gates and shall be collected in the same manner.

As added by P.L.2-2002, SEC.11.

IC 32-26-6-5

Stock running at large

Sec. 5. A person who owns property enclosed under this chapter may not allow stock to run at large upon the enclosed property during the period beginning March 16 and ending December 25 of any year.

As added by P.L.2-2002, SEC.11.

IC 32-26-7

Chapter 7. Recording Fencemarks; Removal of Marked Fencing From Overflowed Lands

IC 32-26-7-1

Rails and plank fencing; record of marks

Sec. 1. If petitioned by at least twenty (20) property owners in the county, the board of county commissioners shall furnish a blank book to the recorder of the county, paid for out of the county fund, in which the county recorder shall keep a record of marks of rails and plank fencing that are adopted by the property owners of the county.
As added by P.L.2-2002, SEC.11.

IC 32-26-7-2

Fees for recording marks

Sec. 2. The county recorder shall charge a fee in accordance with IC 36-2-7-10 for the recording of each mark from the person adopting and having the mark recorded. The recorder may not record two (2) marks that exactly correspond.
As added by P.L.2-2002, SEC.11.

IC 32-26-7-3

Floods removing rails or plank fencing; recovery from land of another

Sec. 3. Any person who has the person's rails or plank fencing marked and recorded as provided under this chapter may, if the rails or plank fencing are removed by high water and overflow off the person's property on to the property of another person, remove the rails and plank fencing on to the person's own property at any time of the year. The owner of the rails or plank fencing is responsible for and shall pay all damages that may be done to growing grain on the property from which the rails or plank fencing are removed or over which the rails or plank fencing are hauled.
As added by P.L.2-2002, SEC.11.

IC 32-26-8
Chapter 8. Recovery of Property Moved by High Water

IC 32-26-8-1
Rights of property owners; arbitration

Sec. 1. (a) When the fence rails or other property of a person in Indiana are removed by high water and lodged upon the real property of another person, the owner of the fence rails or other property may proceed, within sixty (60) days after the fence rails or other property are lodged, upon the real property on which the fence rails or other property are lodged.

(b) If the owner of the real property refuses to deliver up the fence rails or other property, the parties shall each select an arbitrator, who shall examine or hear evidence upon all the circumstances and facts and determine the case.

(c) If the arbitrators selected under subsection (b) cannot agree, the arbitrators shall select an umpire. The decision of a majority of the arbitrators and the umpire is final.

As added by P.L.2-2002, SEC.11.

IC 32-26-8-2
Oath of arbitrators

Sec. 2. Before the arbitrators proceed under section 1 of this chapter, the arbitrators must swear, before a person who may administer oaths, to discharge the arbitrators' duties faithfully, impartially, and according to law.

As added by P.L.2-2002, SEC.11.

IC 32-26-8-3
Notice of arbitration

Sec. 3. If at least ten (10) persons claim the same property under section 1 of this chapter, the persons shall give notice to all interested persons of the time and place of the arbitration. Upon hearing all the facts and circumstances in the case, the arbitrators shall award to each person making a claim a proportion of the property as the arbitrators consider reasonable and just.

As added by P.L.2-2002, SEC.11.

IC 32-26-8-4
Persons recovering property not trespassers

Sec. 4. It is not a trespass for a person to go upon the real property of another person for the purposes set forth in this chapter. A person who goes upon the real property of another person under this chapter shall go upon the route that will do the least possible injury to the real property, if it is practicable and convenient.

As added by P.L.2-2002, SEC.11.

IC 32-26-9
Chapter 9. Partition Fences

IC 32-26-9-0.5
"Agricultural land"; nonapplicability of chapter

Sec. 0.5. (a) As used in this section, "agricultural land" means land that is:

(1) zoned or otherwise designated as agricultural land;
(2) used for growing crops or raising livestock; or
(3) reserved for conservation.

(b) This chapter does not apply to a fence that separates two (2) adjoining parcels of property unless at least one (1) of the adjoining parcels is agricultural land.

As added by P.L.57-2003, SEC.1.

IC 32-26-9-1
Existing fences

Sec. 1. A fence that is used by adjoining property owners as a partition fence, unless otherwise agreed upon by the property owners, is considered a partition fence and shall be repaired, maintained, and paid for as provided under this chapter.

As added by P.L.2-2002, SEC.11.

IC 32-26-9-2
Lands outside or abutting municipal boundary

Sec. 2. (a) The owner of a property that:

(1) is located outside;
(2) abuts; or
(3) is adjacent to;

the boundary of the corporate limits of a town or city shall separate the owner's property from adjoining properties by a partition fence constructed upon the line dividing or separating the properties regardless of when the properties were divided.

(b) Except as otherwise provided in this chapter, and if a division of the partition fence has not been made between the property owners for the building, repairing, or rebuilding of the partition fence:

(1) for a partition fence built along a property line than runs from north to south:
    (A) the owner whose property lies to the east of the fence shall build the north half of the fence; and
    (B) the owner whose land lies to the west of the fence shall build the south half of the fence; and
(2) for a partition fence built along a property line that runs from east to west:
    (A) the owner whose property lies north of the fence shall build the west half of the fence; and
    (B) the owner whose property lies to the south of the fence shall build the east half of the fence.

(c) Notwithstanding subsection (b), if either property owner has constructed one-half (1/2) of a partition fence that is not the portion

required under subsection (b) and has maintained that portion of the partition fence for a period of not less than five (5) years, the property owner may continue to maintain the portion of the fence.

(d) If a property owner fails to build, rebuild, or repair a partition fence after receiving notice under this chapter, the township trustee of the township in which the property is located shall build, rebuild, or repair the fence as provided under this chapter.

As added by P.L.2-2002, SEC.11.

IC 32-26-9-3

Defaulting landowner; description of lawful partition fence; floodgate across watercourse

Sec. 3. (a) A partition fence shall be built, rebuilt, and kept in repair at the cost of the property owners whose properties are enclosed or separated by the fences proportionately according to the number of rods or proportion of the fence the property owner owns along the line of the fence, whether the property owner's title is a fee simple or a life estate.

(b) If a property owner fails or refuses to compensate for building, rebuilding, or repairing the property owner's portion of a partition fence, another property owner who is interested in the fence, after having built, rebuilt, or repaired the property owner's portion of the fence, shall give to the defaulting property owner or the defaulting property owner's agent or tenant twenty (20) days notice to build, rebuild, or repair the defaulting property owner's portion of the fence. If the defaulting property owner or the defaulting property owner's agent or tenant fails to build, rebuild, or repair the fence within twenty (20) days, the complaining property owner shall notify the township trustee of the township in which the properties are located of the default.

(c) This subsection applies if the fence sought to be established, rebuilt, or repaired is on a township line. Unless disqualified under subsection (h), the complaining property owner shall notify the trustee of the township in which the property of the complaining property owner is located of the default under subsection (b), and the trustee has jurisdiction in the matter.

(d) The township trustee who receives a complaint under this section shall:

(1) estimate the costs for building, rebuilding, or repairing the partition fence; and

(2) within a reasonable time after receiving the complaint, make out a statement and notify the defaulting property owner of the probable cost of building, rebuilding, or repairing the fence.

If twenty (20) days after receiving a notice under this subsection the defaulting property owner has not built, rebuilt, or repaired the fence, the trustee shall build or repair the fence. The trustee may use only the materials for the fences that are most commonly used by the farmers of the community.

(e) If the trustee of a township is disqualified to act under subsection (h), the trustee of an adjoining township who resides

nearest to where the fence is located shall act on the complaint upon receiving a notice by a property owner who is interested in the fence.

(f) A lawful partition fence is any one (1) of the following that is sufficiently tight and strong to hold cattle, hogs, horses, mules, and sheep:

(1) A straight board and wire fence, a straight wire fence, a straight board fence, or a picket fence four (4) feet high.

(2) A straight rail fence four and one-half (4 1/2) feet high.

(3) A worm rail fence five (5) feet high.

(g) This subsection applies if a ditch or creek crosses the division line between two (2) property owners, causing additional expense in the maintenance of the part over the stream. If the property owners cannot agree upon the proportionate share of each property owner, the township trustee shall appoint three (3) disinterested citizens who shall apportion the partition fence to be built by each property owner.

(h) If a township trustee is:

(1) related to any of the interested property owners; or

(2) an interested property owner;

the trustee of any other township who resides nearest to where the fence is located shall act under this chapter.

(i) This subsection applies if a ditch or creek forms, covers, or marks the dividing line or a part of the dividing line between the properties of separate and different property owners so that partition fences required under this chapter cannot be built and maintained on the dividing line. The partition fences shall be built and maintained under this chapter as near to the boundary line as is practical, and each property owner shall build a separate partition fence on the property owner's property and maintain the fence at the property owner's cost.

(j) This subsection applies where a partition fence required under this chapter crosses a ditch or creek and it is impracticable to construct or maintain that portion of the fence that crosses the ditch or creek as a stationary fence. Instead of the portion of the fence that would cross the ditch or creek, there shall be constructed, as a part of the partition fence, floodgates or other similar structures that are sufficiently high, tight, and strong to turn hogs, sheep, cattle, mules, and horses or other domestic animals. The floodgates or other similar structures shall be constructed to swing up in times of high water and to connect continuously with the partition fences.

(k) This subsection applies if the building and maintenance of the floodgates or other similar structure required under subsection (j) causes additional expenses and the property owners cannot agree upon the character of floodgates or other similar structure, or upon the proportionate share of the cost to be borne by each property owner. The township trustee, upon notice in writing from either property owner of a disagreement and the nature of the disagreement, shall appoint three (3) disinterested citizens of the township who shall determine the kind of structure and apportion the cost of the floodgate or other structure between the property owners, taking into consideration the parts of the fence being maintained by each

property owner.

(l) The determination of a majority of the arbitrators of any matter or matters submitted to them under this section is final and binding on each property owner. The compensation of the arbitrators is two dollars ($2) each, which shall be paid by the property owners in the proportion each property owner is ordered to bear the expense of a gate or structure.

(m) This subsection applies if either or both of the property owners fail to construct or compensate for constructing the structure determined upon by the arbitrators in the proportion determined within thirty (30) days after the determination. The township trustee shall proceed at once to construct the gate or structure and collect the cost of the gate or structure, including the compensation of the arbitrators, from the defaulting property owner in the same manner as is provided for ordinary partition fences. The floodgate or other structure shall be repaired, rebuilt, or replaced according to the determination of the arbitrators.

As added by P.L.2-2002, SEC.11.

IC 32-26-9-4

Expenses; construction and maintenance by township

Sec. 4. (a) As soon as the township trustee has had a fence built, rebuilt, or repaired under this chapter, the trustee shall make out a certified statement in triplicate of the actual cost incurred by the trustee in the building, rebuilding, or repairing the fence. One (1) copy must be handed to or mailed to the property owner affected by the work, one (1) copy must be retained by the trustee as a record for the township, and one (1) copy must be filed in the auditor's office of the county in which the fence is located and in which the property of the property owner affected by the work is located. At the same time the trustee shall also file with the county auditor a claim against the county for the amount shown in the statement filed with the county auditor.

(b) The county auditor shall:

(1) examine the claims and statement as other claims are examined; and

(2) present the claims and statements to the board of county commissioners at the next regular meeting.

Unless there is an apparent error in the statement or claim, the board of county commissioners shall make allowance, and the county auditor shall issue a warrant for the amount claimed to the township trustee submitting the claim out of the county general fund without an appropriation being made by the county council.

(c) The amount paid out of the county general fund under subsection (b) shall be:

(1) placed by the county auditor on the tax duplicate against the property of the property owner affected by the work;

(2) collected as taxes are collected; and

(3) when collected, paid into the county general fund.

As added by P.L.2-2002, SEC.11.

IC 32-26-9-5

Construction and maintenance by township; personal liability of trustees

Sec. 5. The township trustee has no personal liability for a contract the trustee makes under this chapter for building, rebuilding, or repairing fences under this chapter. The contractor shall receive payment from the township funds, which shall be reimbursed when the contract price is paid into the county treasury.

As added by P.L.2-2002, SEC.11.

IC 32-26-9-6

Construction and application of law

Sec. 6. This chapter shall be liberally construed in favor of the objects and purposes for which it is enacted and shall apply to all agricultural land, whether enclosed or unenclosed, cultivated or uncultivated, wild or wood lot.

As added by P.L.2-2002, SEC.11. Amended by P.L.57-2003, SEC.2.

IC 32-26-10

Chapter 10. Spite Fences as Nuisance

IC 32-26-10-1

Description of spite fence

Sec. 1. A structure in the nature of a fence unnecessarily exceeding six (6) feet in height, maliciously:

(1) erected; or

(2) maintained;

for the purpose of annoying the owners or occupants of adjoining property, is considered a nuisance.

As added by P.L.2-2002, SEC.11.

IC 32-26-10-2

Damages

Sec. 2. (a) An owner or occupant injured either in the owner's or occupant's comfort or the enjoyment of the owner's or occupant's adjoining property by the nuisance described in section 1 of this chapter may bring an action for:

(1) damages in compensation for the nuisance;

(2) the abatement of the nuisance; and

(3) all other remedies for the prevention of a nuisances.

(b) The provisions of law concerning actions for nuisance are applicable to an action under subsection (a).

As added by P.L.2-2002, SEC.11.

IC 32-27

ARTICLE 27. CONSTRUCTION WARRANTIES ON REAL PROPERTY

IC 32-27-1

Chapter 1. Statutory Home Improvement Warranties

IC 32-27-1-1

Application of chapter

Sec. 1. (a) This chapter applies only to a home improvement that is made under a home improvement contract.

(b) This chapter applies only to a home improvement contract entered into after June 30, 1992.

As added by P.L.2-2002, SEC.12.

IC 32-27-1-2

Warranty effective date

Sec. 2. The warranties defined by this chapter become effective on the warranty date.

As added by P.L.2-2002, SEC.12.

IC 32-27-1-3

"Home" defined

Sec. 3. (a) As used in this chapter, "home" means an attached or detached single family dwelling.

(b) The term includes an attached garage.

(c) The term does not include:

(1) a driveway;
(2) a walkway;
(3) a patio;
(4) a boundary wall;
(5) a retaining wall not necessary for the structural stability of the home;
(6) landscaping;
(7) a fence;
(8) an offsite improvement;
(9) an appurtenant recreational facility; or
(10) other similar item.

As added by P.L.2-2002, SEC.12.

IC 32-27-1-4

"Home improvement" defined

Sec. 4. As used in this chapter, "home improvement" means any alteration, repair, or other modification of an existing home.

As added by P.L.2-2002, SEC.12.

IC 32-27-1-5

"Home improvement contract" defined

Sec. 5. As used in this chapter, "home improvement contract" means a written agreement between a remodeler and an owner to

make a home improvement.
As added by P.L.2-2002, SEC.12.

IC 32-27-1-6
"Load bearing parts of the home" defined

Sec. 6. As used in this chapter, "load bearing parts of the home" means the following:

(1) Foundation systems and footings.
(2) Beams.
(3) Girders.
(4) Lintels.
(5) Columns.
(6) Walls and partitions.
(7) Floor systems.
(8) Roof framing systems.

As added by P.L.2-2002, SEC.12.

IC 32-27-1-7
"Major structural defect" defined

Sec. 7. As used in this chapter, "major structural defect" means actual physical damage to the load bearing functions of the load bearing parts of the home that:

(1) were installed, altered, or repaired by the remodeler in the course of remodeling the home; or
(2) although not installed, altered, or repaired by the remodeler, were directly damaged by the work of the remodeler;

to the extent that the home becomes unsafe, unsanitary, or otherwise unlivable.
As added by P.L.2-2002, SEC.12.

IC 32-27-1-8
"Owner" defined

Sec. 8. As used in this chapter, "owner" means a person who:

(1) owns the home; and
(2) contracts with the remodeler to perform the home improvement work in the home improvement contract.

The term includes any of the owner's successors in title before the expiration of the warranties defined by this chapter.
As added by P.L.2-2002, SEC.12.

IC 32-27-1-9
"Person" defined

Sec. 9. As used in this chapter, "person" means an individual, a corporation, a limited liability company, a business trust, an estate, a trust, a partnership, an association, a cooperative, or other legal entity.
As added by P.L.2-2002, SEC.12.

IC 32-27-1-10
"Remodeler" defined

Sec. 10. As used in this chapter, "remodeler" means a person who contracts with an owner to alter, repair, or modify the owner's home.
As added by P.L.2-2002, SEC.12.

IC 32-27-1-11
"Warranty date" defined

Sec. 11. As used in this chapter, "warranty date" means the date by which all home improvements and work under the home improvement contract have been substantially completed so the owner can occupy and use the improvement in the manner contemplated by the home improvement contract.
As added by P.L.2-2002, SEC.12.

IC 32-27-1-12
Warranty coverage; warranties survive legal or equitable title

Sec. 12. (a) In performing home improvements and in contracting to perform home improvements, a remodeler may warrant to the owner the following:

(1) During the two (2) year period beginning on the warranty date, the home improvement must be free from defects in workmanship or materials.

(2) During the two (2) year period beginning on the warranty date, the home improvement must be free from defects caused by faulty installation of:

(A) new plumbing systems;
(B) new electrical systems;
(C) new heating, cooling, and ventilating systems; or
(D) extended parts of existing systems.

The warranty does not cover appliances, fixtures, or items of equipment that are installed under the home improvement contract.

(3) During the four (4) year period beginning on the warranty date, the home improvement must be free from defects caused by faulty workmanship or defective materials in the roof or roof systems of the home improvement.

(4) During the ten (10) year period beginning on the warranty date, the home improvement and affected load bearing parts of the home must be free from major structural defects.

(b) The warranties provided in this section survive the passing of legal or equitable title in the home to subsequent persons.
As added by P.L.2-2002, SEC.12.

IC 32-27-1-13
Warranty disclaimers; conditions; acknowledgment; default

Sec. 13. (a) A remodeler may disclaim all implied warranties only if all of the following conditions are met:

(1) The warranties defined in this chapter are expressly provided for in the home improvement contract between a remodeler and an owner.

(2) The performance of the warranty obligations is guaranteed

by an insurance policy in an amount equal to the contract price made under the home improvement contract.

(3) The remodeler carries completed operations products liability insurance covering the remodeler's liability for reasonably foreseeable consequential damages arising from a defect covered by the warranties provided by the remodeler.

(b) The disclaimer must be printed in a minimum size of 10 point boldface type setting forth that the warranties defined by this chapter replace the implied warranties that have been disclaimed by the remodeler. The owner must affirmatively acknowledge by complete signature that the owner has read, understands, and voluntarily agrees to the disclaimer.

(c) The owner must acknowledge the disclaimer of implied warranties by signing, at the time of execution of the home improvement contract, a separate one (1) page notice attached to the home improvement contract that includes the following language:

"NOTICE OF WAIVER OF IMPLIED WARRANTIES

I recognize that by accepting the express warranties and the insurance covering those warranties for the periods provided in this home improvement contract, I am giving up the right to any claims for implied warranties, which may be greater than the express warranties. Implied warranties are unwritten warranties relating to the reasonable expectations of a homeowner with regard to the remodeling and home improvement of the homeowner's home, as those reasonable expectations are defined by the courts on a case by case basis.".

(d) If there is a default of the:

(1) insurance for the performance of the warranty obligations; or

(2) completed operations products liability insurance;

the disclaimer by the remodeler is void.

As added by P.L.2-2002, SEC.12.

IC 32-27-1-14

Breach of warranty; award of damages

Sec. 14. (a) If a remodeler breaches a warranty set forth in section 12 of this chapter, the owner may bring an action against the remodeler for:

(1) damages arising from the breach; or

(2) specific performance.

(b) If damages are awarded for a breach of a warranty set forth in section 12 of this chapter, the award may not be for more than:

(1) the actual damages that are:

(A) necessary to effect repair of the defect that is the cause of the breach; or

(B) the difference between the value of the home without the defect and the home with the defect;

(2) the reasonably foreseeable consequential damages arising from the defect covered by the warranty; and

(3) attorney's fees, if those fees are provided for in the written

contract between the parties.
As added by P.L.2-2002, SEC.12.

IC 32-27-1-15
Warranties in addition to contract rights; remedies

Sec. 15. (a) The warranties defined in this chapter are in addition to any other rights created by contract between the parties.

(b) The remedies provided in section 14 of this chapter do not limit any remedies available in an action that is not predicated on the breach of an express or implied warranty defined by this chapter.
As added by P.L.2-2002, SEC.12.

IC 32-27-2

Chapter 2. New Home Construction Warranties

IC 32-27-2-1

Effective date of warranties

Sec. 1. The warranties defined by this chapter (or IC 34-4-20.5 or IC 32-15-7 before their repeal) become effective on the warranty date attributed to a new home.

As added by P.L.2-2002, SEC.12.

IC 32-27-2-2

"Initial home buyer" defined

Sec. 2. As used in this chapter, "initial home buyer" means a person who executes a contract with a builder to buy a new home and who:

(1) occupies the new home as its first occupant; and

(2) occupies the new home as a residence.

As added by P.L.2-2002, SEC.12.

IC 32-27-2-3

"Major structural defect" defined

Sec. 3. As used in this chapter, "major structural defect" means actual damage to the load bearing part of a new home, including actual damage due to:

(1) subsidence;

(2) expansion; or

(3) lateral movement;

of the soil affecting the load bearing function, unless the subsidence, expansion, or lateral movement of the soil is caused by flood, earthquake, or some other natural disaster.

As added by P.L.2-2002, SEC.12.

IC 32-27-2-4

"New home" defined

Sec. 4. (a) As used in this chapter, "new home" means a new dwelling occupied for the first time after construction.

(b) The term does not include:

(1) a detached garage;

(2) a driveway;

(3) a walkway;

(4) a patio;

(5) a boundary wall;

(6) a retaining wall not necessary for the structural stability of the new home;

(7) landscaping;

(8) a fence;

(9) nonpermanent construction material;

(10) an off-site improvement;

(11) an appurtenant recreational facility; or

(12) other similar item.

As added by P.L.2-2002, SEC.12.

IC 32-27-2-5
"Home buyer" defined

Sec. 5. (a) As used in this chapter, "home buyer" means a purchaser of a new home.

(b) The term includes any owner of the new home before the expiration of the warranties defined by this chapter.

As added by P.L.2-2002, SEC.12.

IC 32-27-2-6
"Builder" defined

Sec. 6. As used in this chapter, "builder" means a person who constructs new homes for sale, including the construction of new homes on land owned by home buyers.

As added by P.L.2-2002, SEC.12.

IC 32-27-2-7
"Warranty date" defined

Sec. 7. As used in this chapter, "warranty date" means the date of the first occupancy of the new home as a residence by one (1) of the following:

(1) The builder.

(2) An individual or individuals renting the home from the builder.

(3) An individual or individuals living in the home at the request of the builder.

(4) The initial home buyer.

As added by P.L.2-2002, SEC.12. Amended by P.L.165-2005, SEC.9.

IC 32-27-2-8
Warranties of builder; survival of warranties

Sec. 8. (a) In selling a completed new home, and in contracting to sell a new home to be completed, the builder may warrant to the initial home buyer the following:

(1) During the two (2) year period beginning on the warranty date, the new home will be free from defects caused by faulty workmanship or defective materials.

(2) During the two (2) year period beginning on the warranty date, the new home will be free from defects caused by faulty installation of:

(A) plumbing;

(B) electrical;

(C) heating;

(D) cooling; or

(E) ventilating;

systems, exclusive of fixtures, appliances, or items of equipment.

(3) During the four (4) year period beginning on the warranty date, the new home will be free from defects caused by faulty

workmanship or defective materials in the roof or roof systems of the new home.

(4) During the ten (10) year period beginning on the warranty date, the new home will be free from major structural defects.

(b) The warranties provided in this section (or IC 34-4-20.5-8 or IC 32-15-7 before their repeal) survive the passing of legal or equitable title in the new home to a home buyer.

(c) An individual identified in section 7(1), 7(2), or 7(3) of this chapter who is selling a new home shall notify the purchaser of the home in writing on or before the date of closing or transfer of the new home of:

(1) the warranty date (as defined in section 7 of this chapter); and

(2) the amount of time remaining under the warranty.

As added by P.L.2-2002, SEC.12. Amended by P.L.165-2005, SEC.10.

IC 32-27-2-9

Disclaimer of implied warranties

Sec. 9. (a) A builder may disclaim all implied warranties only if all of the following conditions are met:

(1) The warranties defined in this chapter are expressly provided for in the written contract between a builder and an initial home buyer of a new home.

(2) The performance of the warranty obligations is backed by an insurance policy in an amount at least equal to the purchase price of the new home.

(3) The builder carries completed operations products liability insurance covering the builder's liability for reasonably foreseeable consequential damages arising from a defect covered by the warranties provided by the builder.

(b) The disclaimer must be printed in a minimum size of 10 point boldface type setting forth that the statutory warranties of this chapter are in lieu of the implied warranties that have been disclaimed by the builder, and the initial home buyer must affirmatively acknowledge by complete signature that the home buyer has read, understands, and voluntarily agrees to the disclaimer. Additionally, the initial home buyer must acknowledge the disclaimer of implied warranties by signing, at the time of execution of the contract, a separate one (1) page notice, attached to the contract, that includes and begins with the following language:

"NOTICE OF WAIVER OF IMPLIED WARRANTIES

I recognize that by accepting the express warranties and the insurance covering those warranties for the periods of time provided in this contract, I am giving up the right to any claims for implied warranties, which may be greater than the express warranties. Implied warranties are unwritten warranties relating to the reasonable expectations of a homeowner with regard to the construction of the homeowner's home, as those reasonable expectations are defined by the courts on a case by case basis.".

(c) If there is a default of either:

(1) the insurance for the performance of the warranty obligations; or

(2) the completed operations products liability insurance;

the disclaimer by the builder is void from and after the default.

As added by P.L.2-2002, SEC.12.

IC 32-27-2-10

Breach of warranty; actions against builder; damages; attorney's fees

Sec. 10. (a) If a builder provides and breaches a warranty set forth in section 8 of this chapter (or IC 34-4-20.5-8 or IC 32-15-7-8 before their repeal), the home buyer may bring an action against the builder for:

(1) damages arising from the breach; or

(2) specific performance.

(b) If damages are awarded for a breach of a warranty set forth in section 8 of this chapter (or IC 34-4-20.5-8 or IC 32-15-7-8 before their repeal), the award may be for not more than:

(1) the actual damages, which are either:

(A) the amount necessary to effect repair of the defect that is the cause of the breach; or

(B) the amount of the difference between the value of the new home without the defect and the value of the new home with the defect;

(2) the reasonably foreseeable consequential damages arising from the defect covered by the warranty; and

(3) attorney's fees, if those fees are provided for in the written contract between the parties.

As added by P.L.2-2002, SEC.12.

IC 32-27-2-11

Warranties in addition to contract rights; other remedies

Sec. 11. (a) The warranties set forth in this chapter (or IC 34-4-20.5 or IC 32-15-7 before their repeal) are in addition to any rights created by contract between the parties.

(b) The remedies provided in section 10 of this chapter (or IC 34-4-20.5-10 or IC 32-15-7-10 before their repeal) do not limit any remedies available in an action that is not predicated upon the breach of an express or implied warranty set forth in this chapter (or IC 34-4-20.5 or IC 32-15-7 before their repeal) or otherwise existing.

As added by P.L.2-2002, SEC.12.

IC 32-27-3

Chapter 3. Notice and Opportunity to Repair

IC 32-27-3-1

Definitions

Sec. 1. The following definitions apply throughout this chapter:

(1) "Action" means any civil lawsuit or action in contract or tort for damages or indemnity brought against a construction professional to assert a claim, whether by complaint, counterclaim, or cross claim, for damage or the loss of use of real or personal property caused by a defect in the construction of a residence or in the substantial remodeling of a residence. "Action" does not include:

(A) a claim in bankruptcy; or

(B) any civil action in tort alleging personal injury to or wrongful death of a person or persons resulting from a construction defect.

(2) "Association" means an association of co-owners (as defined in IC 32-25-2-2).

(3) "Claimant" means a home owner who or an association that asserts a claim against a construction professional concerning a defect in the construction of a residence or in the substantial remodeling of a residence.

(4) "Construction professional" means an architect, a builder, a builder vendor, a contractor, a subcontractor, or an engineer, including but not limited to any person performing or furnishing the design, supervision, construction, or observation of the construction of any improvement to real property, whether operating as a sole proprietor, a partnership, a corporation, or another business entity that contracts with the home owner to build the residence. A construction professional is not a home owner under this chapter unless the construction professional occupies the residence that is the basis for the claimed defect.

(5) "Defect" or "construction defect" means damage or deficiency in the residential construction, design, specifications, surveying, planning, supervision, testing, inspection, or observation of construction.

(6) "Home owner" means:

(A) any person, company, firm, partnership, corporation, association, or other business entity that:

(i) is owner of the residence; and

(ii) contracts with a construction professional for the construction, sale, or construction and sale of a residence; or

(B) a subsequent purchaser of a residence from a home owner.

(7) "Residence" means a:

(A) single family house;

(B) duplex;

(C) triplex;

(D) quadraplex; or

(E) unit in a multiple unit residential structure in which title to the individual unit is transferred to the owner under a condominium or cooperative system.

For purposes of clause (E), the term includes common areas and facilities (as defined in IC 32-25-2-4).

(8) "Serve" or "service" means personal service or delivery by certified mail to the last known address of the addressee.

(9) "Substantial remodeling" means a remodeling of a residence, the total cost of which exceeds fifty percent (50%) of the assessed value under IC 6-1.1-1-3(a)(2) of the residence at the time that the contract for the remodeling work was made.

As added by P.L.134-2003, SEC.1.

IC 32-27-3-2
Notice of claim; response

Sec. 2. (a) At least sixty (60) days before filing a construction defect action against a construction professional, the claimant must serve written notice of claim on the construction professional. The notice of claim must state that the claimant asserts a construction defect claim against the construction professional and must describe the claim in reasonable detail sufficient to determine the general nature of the defect.

(b) Within twenty-one (21) days after service of a notice of claim under subsection (a), the construction professional must serve a written response on the claimant. The written response must do one (1) of the following:

(1) Propose to inspect the residence that is the subject of the claim and complete the inspection within a specified time frame. A response made under this subdivision must include the statement that the construction professional shall, based on the inspection, offer to remedy the defect, compromise by payment, or dispute the claim.

(2) Offer to compromise and settle the claim by monetary payment without inspection. A construction professional's offer under this subdivision may include, but is not limited to, an express offer to purchase the claimant's residence that is the subject of the claim and to pay the claimant's reasonable relocation costs.

(3) State that the construction professional disputes the claim and will neither remedy the construction defect nor compromise and settle the claim.

(c) If the construction professional terminates a proposal or offer under section 3(c) of this chapter, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim.

(d) A home owner is not required to serve an additional written notice for any additional defects discovered after the home owner has served an initial written notice of a construction defect in accordance with this section.

As added by P.L.134-2003, SEC.1.

IC 32-27-3-3
Action for construction defect; notice of rejection; notice to terminate offer or proposal

Sec. 3. (a) If the construction professional disputes the claim or does not respond to the claimant's notice of claim within the time set forth in section 2(b) of this chapter, the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.

(b) If the construction professional makes:

(1) a proposal to inspect the residence under section 2(b)(1) of this chapter; or

(2) an offer to compromise and settle the claim by monetary payment without inspection under section 2(b)(2) of this chapter;

and the claimant rejects the proposal or offer, the claimant must serve written notice of the rejection on the construction professional. After service of the rejection, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim.

(c) If the construction professional does not receive from the claimant either an acceptance or rejection of the construction professional's inspection proposal or settlement offer within sixty (60) days after the claimant's receipt of the construction professional's response, the construction professional may terminate the proposal or offer by serving written notice on the claimant.

(d) If the construction professional terminates a proposal or offer under subsection (c), the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim.

As added by P.L.134-2003, SEC.1.

IC 32-27-3-4
Reasonable access for inspection; action for construction defect; notice of rejection; notice to terminate offer or proposal

Sec. 4. (a) If the construction professional makes a proposal to inspect the residence under section 2(b)(1) of this chapter and the claimant elects to allow the construction professional to inspect in accordance with the construction professional's proposal, the claimant must provide the construction professional and the construction professional's contractors or other agents reasonable access to the claimant's residence during normal working hours to inspect the premises and the claimed defect.

(b) Within fourteen (14) days after the completion of an inspection pursuant to a proposal under section 2(b)(1) of this chapter, the construction professional must serve on the claimant:

(1) a written offer to remedy the construction defect at no cost to the claimant, including a report of the scope of the inspection, the findings and results of the inspection, a description of the

additional construction necessary to remedy the defect described in the claim, and a timetable for the completion of such construction;

(2) a written offer to compromise and settle the claim by monetary payment under section 2(b)(2) of this chapter; or

(3) a written statement that the construction professional will not proceed further to remedy the defect.

(c) If the construction professional:

(1) makes a written offer to remedy the construction defect under subsection (b)(1) but does not proceed further to remedy the construction defect within the agreed timetable; or

(2) fails to serve a written offer or statement on the claimant under subsection (b);

the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.

(d) If the construction professional makes an offer under subsection (b)(1) or (b)(2) to remedy the construction defect or to compromise and settle the claim by monetary payment and the claimant rejects the offer, the claimant shall serve written notice of the claimant's rejection on the construction professional. After service of the rejection notice, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim.

(e) If the construction professional makes an offer under subsection (b)(1) or (b)(2) and does not receive an acceptance or rejection of the offer from the claimant within sixty (60) days after the claimant's receipt of the construction professional's response, the construction professional may terminate the offer by serving written notice on the claimant.

As added by P.L.134-2003, SEC.1.

IC 32-27-3-5

Notice of acceptance; reasonable access to complete construction; agreement to alter offer

Sec. 5. (a) To accept the offer of a construction professional to remedy the construction defect under section (4)(b)(1) of this chapter, the claimant must serve on the construction professional a written notice of acceptance within a reasonable time period after receipt of the offer, and not later than sixty (60) days after receipt of the offer.

(b) A claimant who accepts a construction professional's offer under section 4(b)(1) of this chapter must provide the construction professional and the construction professional's contractors or other agents reasonable access to the claimant's residence during normal working hours to perform and complete the construction by the timetable stated in the offer.

(c) After the acceptance of an offer under section 4(b)(1) of this chapter, the claimant and construction professional may, by written mutual agreement, alter the extent of construction or the timetable for completion of construction stated in the offer, including but not limited to construction to repair additional defects.

As added by P.L.134-2003, SEC.1.

IC 32-27-3-6
Dismissal

Sec. 6. Any action commenced by a claimant before compliance with the requirements of this chapter is subject to dismissal without prejudice, and may not be recommenced until the claimant complies with the requirements of this section.
As added by P.L.134-2003, SEC.1.

IC 32-27-3-7
Commence action for construction defect

Sec. 7. Nothing in this section may be construed to prevent a claimant from commencing an action on the construction defect claim described in the notice of claim if the construction professional fails to perform the construction agreed upon, fails to remedy the defect, or fails to perform according to the timetable agreed upon under section 4(b)(1) or 5 of this chapter.
As added by P.L.134-2003, SEC.1.

IC 32-27-3-8
Amend notice of claim; date of original notice of claim applies

Sec. 8. (a) Before commencing any action alleging a construction defect, or after the dismissal of any action without prejudice under section 6 of this chapter, the claimant may amend the notice of claim to include construction defects discovered after the service of the original notice of claim.

(b) The service of an amended notice of claim relates back to the original notice of claim for purposes of section 2 of this chapter and the applicable statutes of limitations and repose.
As added by P.L.134-2003, SEC.1.

IC 32-27-3-9
Attorney's fees and costs to construction professional; deduction of sums paid under warranty; failure to comply

Sec. 9. (a) If a claimant:

(1) unreasonably rejects a reasonable written offer of settlement made under this chapter; or

(2) does not permit the construction professional a reasonable opportunity to inspect or to repair the defect under a reasonable offer of settlement;

and thereafter commences an action governed by this chapter, the court may deny the claimant attorney's fees and costs and award attorney's fees and costs to the construction professional. However, a homeowner is not required to accept an offer to repair the defect when the defect is caused by the construction professional's noncompliance with applicable building codes.

(b) Any sums paid under a homeowners warranty, other than sums paid in satisfaction of claims that are collateral to any coverage issued to or by the construction professional, must be deducted from any

recovery.

(c) If a construction professional fails to comply with the requirements of this chapter, the claimant is not obligated to comply further with the provisions of this chapter.

As added by P.L.134-2003, SEC.1.

IC 32-27-3-10

Attorney's fees and costs to claimant

Sec. 10. If a construction professional unreasonably:

(1) disputes a home owner's claim;

(2) fails to remedy or compromise and settle the claim;

(3) fails to repair the construction defect within a reasonable time, subject to the nature of the repair or some unforeseen event not caused by the construction professional; or

(4) fails to respond to a notice;

and the claimant commences an action governed by this chapter and prevails in the action, the court may award attorney's fees and costs to the claimant.

As added by P.L.134-2003, SEC.1.

IC 32-27-3-11

Filing; list of defects

Sec. 11. (a) In every action brought against a construction professional, the claimant must file with the court and serve on the defendant a list of known construction defects in accordance with this section.

(b) The list of known construction defects must contain a description of the construction that the claimant alleges to be defective. The list of known construction defects must be filed with the court and served on the defendant within sixty (60) days after the commencement of the action or within such longer period as the court in its discretion may allow.

(c) The list of known construction defects may be amended by the claimant to identify additional construction defects as they become known to the claimant.

(d) The list of known construction defects must specify, to the extent known to the claimant, the construction professional responsible for each alleged defect identified by the claimant.

(e) If a subcontractor or supplier is added as a party to an action under this section, the party making the claim against the subcontractor or supplier must serve on the subcontractor or supplier the list of construction defects in accordance with this section within sixty (60) days after service of the complaint against the subcontractor or supplier, or within such period as the court in its discretion may allow.

As added by P.L.134-2003, SEC.1.

IC 32-27-3-12

Notice of right to offer to cure; action not barred

Sec. 12. (a) Upon entering into a contract for sale, construction, or

substantial remodeling of a residence, a construction professional must provide notice to each home owner of the construction professional's right to offer to cure construction defects before a home owner may commence litigation against the construction professional. The notice must be conspicuous and may be included as part of the underlying contract signed by the home owner.

(b) The notice required by this section must be in substantially the following form:

> "IC 32-27-3 CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR OR BUILDER OF YOUR HOME. SIXTY (60) DAYS BEFORE YOU FILE YOUR LAWSUIT, YOU MUST DELIVER TO THE CONTRACTOR OR BUILDER A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE YOUR CONTRACTOR OR BUILDER THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE BUILDER OR CONTRACTOR. HOWEVER, IF YOU UNREASONABLY REJECT A REASONABLE WRITTEN OFFER AND COMMENCE AN ACTION AGAINST THE BUILDER OR CONTRACTOR, A COURT MAY AWARD ATTORNEY'S FEES AND COSTS TO THE BUILDER OR CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT.".

(c) This chapter does not preclude or bar any action if notice is not given to the home owner as required by this section.

As added by P.L.134-2003, SEC.1.

IC 32-27-3-13

Contractual relationship not affected

Sec. 13. Nothing in this chapter shall be construed to hinder or otherwise affect the employment, agency, or contractual relationship between and among home owners and construction professionals during the process of construction or remodeling and does not preclude the termination of those relationships as allowed under current law. Nothing in this chapter shall negate or otherwise restrict a construction professional's right to access or inspection provided by law, covenant, easement, or contract.

As added by P.L.134-2003, SEC.1.

IC 32-27-3-14

Tolling of statute of limitations

Sec. 14. If a written notice of claim is served under section 2 of this chapter within the time prescribed for the filing of an action against a construction professional based on an alleged construction defect, the applicable statute of limitations for construction related

claims is tolled with respect to the alleged construction defect described in the notice of claim from the day on which the notice of claim is served until sixty (60) days after the period of time during which the filing of an action is barred under this chapter.
As added by P.L.134-2003, SEC.1.

IC 32-28

ARTICLE 28. LIENS ON REAL PROPERTY

IC 32-28-1

Chapter 1. Record of Liens; Duty to Satisfy Record After Release or Discharge of Liens

IC 32-28-1-1

Debt or obligation paid

Sec. 1. (a) This section applies to a person, a firm, a limited liability company, a corporation, a copartnership, an association, an administrator, an executor, a guardian, a trustee, or another person who is the owner, holder, or custodian of any mortgage, mechanic's lien, judgment, or other lien recorded in Indiana.

(b) When the debt or obligation and the interest on the debt or obligation that the mortgage, mechanic's lien, judgment, or other lien secures has been fully paid, lawfully tendered, and discharged, the owner, holder, or custodian shall:

(1) release;

(2) discharge; and

(3) satisfy of record;

the mortgage, mechanic's lien, judgment, or other lien.

(c) If the release, discharge, or satisfaction is a release, discharge, or satisfaction in part, the instrument must:

(1) state on its face that the instrument is a:

(A) partial release;

(B) partial discharge; or

(C) partial satisfaction; and

(2) describe what portion of the mortgage, mechanic's lien, judgment, or other lien is released, discharged, or satisfied.

As added by P.L.2-2002, SEC.13.

IC 32-28-1-2

Forfeiture; commissioner to release and satisfy lien

Sec. 2. (a) This section applies if:

(1) the mortgagor or another person having the right to demand the release of a mortgage or lien makes a written demand, sent by registered or certified mail with return receipt requested, to the owner, holder, or custodian to release, discharge, and satisfy of record the mortgage, mechanic's lien, judgment, or other lien; and

(2) the owner, holder, or custodian fails, neglects, or refuses to release, discharge, and satisfy of record the mortgage, mechanic's lien, judgment, or other lien as required under section 1 of this chapter not later than fifteen (15) days after the date the owner, holder, or custodian receives the written demand.

(b) An owner, holder, or custodian shall forfeit and pay to the mortgagor or other person having the right to demand the release of the mortgage or lien:

(1) a sum not to exceed five hundred dollars ($500) for the failure, neglect, or refusal of the owner, holder, or custodian to:

(A) release;

(B) discharge; and

(C) satisfy of record the mortgage or lien; and

(2) costs and reasonable attorney's fees incurred in enforcing the release, discharge, or satisfaction of record of the mortgage or lien.

(c) If the court finds in favor of a plaintiff who files an action to recover damages under subsection (b), the court shall award the plaintiff the costs of the action and reasonable attorney's fees as a part of the judgment.

(d) The court may appoint a commissioner and direct the commissioner to release and satisfy the mortgage, mechanic's lien, judgment, or other lien. The costs incurred in connection with releasing and satisfying the mortgage, mechanic's lien, judgment, or other lien shall be taxed as a part of the costs of the action.

(e) The owner, holder, or custodian, by virtue of having recorded the mortgage, mechanic's lien, judgment, or other lien in Indiana, submits to the jurisdiction of the courts of Indiana as to any action arising under this section.

As added by P.L.2-2002, SEC.13.

IC 32-28-2

Chapter 2. Limitation on and Reinstatement of Liens After Destruction of Records

IC 32-28-2-1

Succession of lien; action to reinstate record

Sec. 1. (a) Except as provided in subsections (b) and (c), if the record of a judgment of an Indiana court that would otherwise be a lien upon real estate is destroyed, six (6) months after the date when the record is destroyed the judgment ceases to be a lien upon any real estate as against any right, title, lien on or interest in the real estate accruing to or acquired by any person for a valuable consideration and without notice.

(b) The record of a judgment does not cease to be a lien under subsection (a) six (6) months after the date when the record is destroyed if the judgment plaintiff or the assignee or owner of the judgment, less than six (6) months after the date when the record is destroyed, files an action to reinstate the record of the judgment in the court having jurisdiction of the record.

(c) If the plaintiff obtains a judgment or decree in the action filed under subsection (b), the filing of the action to reinstate the record preserves the lien of the judgment in the same manner and to the same extent as if the record had not been destroyed.

As added by P.L.2-2002, SEC.13.

IC 32-28-3

Chapter 3. Mechanic's Liens

IC 32-28-3-0.2

Application of certain amendments to prior law

Sec. 0.2. (a) The amendments made to IC 32-8-3-1 (before its repeal, now codified at section 1 of this chapter), IC 32-8-3-3 (before its repeal, now codified at section 3 of this chapter), and IC 32-8-3-5 (before its repeal, now codified at section 5 of this chapter) by P.L.53-1999 apply only to contracts and subcontracts entered into after June 30, 1999.

(b) The addition of IC 32-8-3-16 (before its repeal, now codified at section 16 of this chapter), IC 32-8-3-17 (before its repeal, now codified at section 17 of this chapter), and IC 32-8-3-18 (before its repeal, now codified at section 18 of this chapter) by P.L.53-1999 applies only to contracts and subcontracts entered into after June 30, 1999.

As added by P.L.220-2011, SEC.523.

IC 32-28-3-1

Mechanic's liens; persons to whom available; effect of contract provisions; credit transactions; restrictions

Sec. 1. (a) A contractor, a subcontractor, a mechanic, a lessor leasing construction and other equipment and tools, whether or not an operator is also provided by the lessor, a journeyman, a laborer, or any other person performing labor or furnishing materials or machinery, including the leasing of equipment or tools, for:

(1) the erection, alteration, repair, or removal of:

(A) a house, mill, manufactory, or other building; or

(B) a bridge, reservoir, system of waterworks, or other structure;

(2) the construction, alteration, repair, or removal of a walk or sidewalk located on the land or bordering the land, a stile, a well, a drain, a drainage ditch, a sewer, or a cistern; or

(3) any other earth moving operation;

may have a lien as set forth in this section.

(b) A person described in subsection (a) may have a lien separately or jointly:

(1) upon the house, mill, manufactory, or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth:

(A) that the person erected, altered, repaired, moved, or removed; or

(B) for which the person furnished materials or machinery of any description; and

(2) on the interest of the owner of the lot or parcel of land:

(A) on which the structure or improvement stands; or

(B) with which the structure or improvement is connected;

to the extent of the value of any labor done or the material furnished, or both, including any use of the leased equipment and tools.

(c) All claims for wages of mechanics and laborers employed in or about a shop, mill, wareroom, storeroom, manufactory or structure, bridge, reservoir, system of waterworks or other structure, sidewalk, walk, stile, well, drain, drainage ditch, cistern, or any other earth moving operation shall be a lien on all the:

(1) machinery;

(2) tools;

(3) stock;

(4) material; or

(5) finished or unfinished work;

located in or about the shop, mill, wareroom, storeroom, manufactory or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth used in a business.

(d) If the person, firm, limited liability company, or corporation described in subsection (a) or (c) is in failing circumstances, the claims described in this section shall be preferred debts whether a claim or notice of lien has been filed.

(e) Subject to subsection (f), a contract:

(1) for the construction, alteration, or repair of a Class 2 structure (as defined in IC 22-12-1-5);

(2) for the construction, alteration, or repair of an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5);

(3) for the construction, alteration, or repair of property that is:

(A) owned, operated, managed, or controlled by a:

(i) public utility (as defined in IC 8-1-2-1);

(ii) municipally owned utility (as defined in IC 8-1-2-1);

(iii) joint agency (as defined in IC 8-1-2.2-2);

(iv) rural electric membership corporation formed under IC 8-1-13-4;

(v) rural telephone cooperative corporation formed under IC 8-1-17; or

(vi) not-for-profit utility (as defined in IC 8-1-2-125);

regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public; or

(4) to prepare property for Class 2 residential construction;

may include a provision or stipulation in the contract of the owner and principal contractor that a lien may not attach to the real estate, building, structure or any other improvement of the owner.

(f) A contract containing a provision or stipulation described in subsection (e) must meet the requirements of this subsection to be valid against subcontractors, mechanics, journeymen, laborers, or persons performing labor upon or furnishing materials or machinery for the property or improvement of the owner. The contract must:

(1) be in writing;

(2) contain specific reference by legal description of the real estate to be improved;

(3) be acknowledged as provided in the case of deeds; and

(4) be filed and recorded in the recorder's office of the county in which the real estate, building, structure, or other improvement is situated not more than five (5) days after the date of execution of the contract.

A contract containing a provision or stipulation described in subsection (e) does not affect a lien for labor, material, or machinery supplied before the filing of the contract with the recorder.

(g) Upon the filing of a contract under subsection (f), the recorder shall:

(1) record the contract at length in the order of the time it was received in books provided by the recorder for that purpose;

(2) index the contract in the name of the:

(A) contractor; and

(B) owner;

in books kept for that purpose; and

(3) collect a fee for recording the contract as is provided for the recording of deeds and mortgages.

(h) A person, firm, partnership, limited liability company, or corporation that sells or furnishes on credit any material, labor, or machinery for the alteration or repair of an owner occupied single or double family dwelling or the appurtenances or additions to the dwelling to:

(1) a contractor, subcontractor, mechanic; or

(2) anyone other than the occupying owner or the owner's legal representative;

must furnish to the occupying owner of the parcel of land where the material, labor, or machinery is delivered a written notice of the delivery or work and of the existence of lien rights not later than thirty (30) days after the date of first delivery or labor performed. The furnishing of the notice is a condition precedent to the right of acquiring a lien upon the lot or parcel of land or the improvement on the lot or parcel of land.

(i) A person, firm, partnership, limited liability company, or corporation that sells or furnishes on credit material, labor, or machinery for the original construction of a single or double family dwelling for the intended occupancy of the owner upon whose real estate the construction takes place to a contractor, subcontractor, mechanic, or anyone other than the owner or the owner's legal representatives must:

(1) furnish the owner of the real estate:

(A) as named in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor; or

(B) if IC 6-1.1-5-9 applies, as named in the transfer books of the township assessor (if any) or the county assessor;

with a written notice of the delivery or labor and the existence of lien rights not later than sixty (60) days after the date of the first delivery or labor performed; and

(2) file a copy of the written notice in the recorder's office of the county not later than sixty (60) days after the date of the first

delivery or labor performed.

The furnishing and filing of the notice is a condition precedent to the right of acquiring a lien upon the real estate or upon the improvement constructed on the real estate.

(j) A lien for material or labor in original construction does not attach to real estate purchased by an innocent purchaser for value without notice of a single or double family dwelling for occupancy by the purchaser unless notice of intention to hold the lien is recorded under section 3 of this chapter before recording the deed by which the purchaser takes title.

As added by P.L.2-2002, SEC.13. Amended by P.L.101-2002, SEC.5; P.L.151-2003, SEC.1; P.L.1-2006, SEC.501; P.L.1-2007, SEC.210; P.L.219-2007, SEC.101; P.L.146-2008, SEC.674.

IC 32-28-3-2

Extent of lien; leased or mortgaged land

Sec. 2. (a) The entire land upon which the building, erection, or other improvement is situated, including the part of the land not occupied by the building, erection, or improvement, is subject to a lien to the extent of the right, title, and interest of the owner for whose immediate use or benefit the labor was done or material furnished.

(b) If:

(1) the owner has only a leasehold interest; or

(2) the land is encumbered by mortgage;

the lien, so far as concerns the buildings erected by the lienholder, is not impaired by forfeiture of the lease for rent or foreclosure of mortgage. The buildings may be sold to satisfy the lien and may be removed not later than ninety (90) days after the sale by the purchaser.

As added by P.L.2-2002, SEC.13.

IC 32-28-3-3

Notice of intention to hold lien; filing

Sec. 3. (a) Except as provided in subsection (b), a person who wishes to acquire a lien upon property, whether the claim is due or not, must file in duplicate a sworn statement and notice of the person's intention to hold a lien upon the property for the amount of the claim:

(1) in the recorder's office of the county; and

(2) not later than ninety (90) days after performing labor or furnishing materials or machinery described in section 1 of this chapter.

The statement and notice of intention to hold a lien may be verified and filed on behalf of a client by an attorney registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court.

(b) This subsection applies to a person that performs labor or furnishes materials or machinery described in section 1 of this chapter related to a Class 2 structure (as defined in IC 22-12-1-5) or

an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5). A person who wishes to acquire a lien upon property, whether the claim is due or not, must file in duplicate a sworn statement and notice of the person's intention to hold a lien upon the property for the amount of the claim:

(1) in the recorder's office of the county; and

(2) not later than sixty (60) days after performing labor or furnishing materials or machinery described in section 1 of this chapter.

The statement and notice of intention to hold a lien may be verified and filed on behalf of a client by an attorney registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court.

(c) A statement and notice of intention to hold a lien filed under this section must specifically set forth:

(1) the amount claimed;

(2) the name and address of the claimant;

(3) the owner's:

(A) name; and

(B) latest address as shown on the property tax records of the county; and

(4) the:

(A) legal description; and

(B) street and number, if any;

of the lot or land on which the house, mill, manufactory or other buildings, bridge, reservoir, system of waterworks, or other structure may stand or be connected with or to which it may be removed.

The name of the owner and legal description of the lot or land will be sufficient if they are substantially as set forth in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor or, if IC 6-1.1-5-9 applies, the transfer books of the township assessor (if any) or the county assessor at the time of filing of the notice of intention to hold a lien.

(d) The recorder shall:

(1) mail, first class, one (1) of the duplicates of the statement and notice of intention to hold a lien to the owner named in the statement and notice not later than three (3) business days after recordation;

(2) post records as to the date of the mailing; and

(3) collect a fee of two dollars ($2) from the lien claimant for each statement and notice that is mailed.

The statement and notice shall be addressed to the latest address of the owner as specifically set out in the sworn statement and notice of the person intending to hold a lien upon the property.

As added by P.L.2-2002, SEC.13. Amended by P.L.219-2007, SEC.102; P.L.146-2008, SEC.675.

IC 32-28-3-4

Validity of certain notices of intention to hold lien

Sec. 4. Any otherwise valid and enforceable statement and notice of intention to hold a lien filed before March 10, 1967, is valid and enforceable.
As added by P.L.2-2002, SEC.13.

IC 32-28-3-5
Recording notice; priority of lien

Sec. 5. (a) As used in this section, "lender" refers to:
(1) an individual;
(2) a supervised financial organization (as defined in IC 26-1-4-102.5);
(3) an insurance company or a pension fund; or
(4) any other entity that has the authority to make loans.

(b) The recorder shall record the statement and notice of intention to hold a lien when presented under section 3 of this chapter in the miscellaneous record book. The recorder shall charge a fee for recording the statement and notice in accordance with IC 36-2-7-10. When the statement and notice of intention to hold a lien is recorded, the lien is created. The recorded lien relates back to the date the mechanic or other person began to perform the labor or furnish the materials or machinery. Except as provided in subsections (c) and (d), a lien created under this chapter has priority over a lien created after it.

(c) The lien of a mechanic or materialman does not have priority over the lien of another mechanic or materialman.

(d) The mortgage of a lender has priority over all liens created under this chapter that are recorded after the date the mortgage was recorded, to the extent of the funds actually owed to the lender for the specific project to which the lien rights relate. This subsection does not apply to a lien that relates to a construction contract for the development, construction, alteration, or repair of the following:
(1) A Class 2 structure (as defined in IC 22-12-1-5).
(2) An improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5).
(3) Property that is:
(A) owned, operated, managed, or controlled by:
(i) a public utility (as defined in IC 8-1-2-1);
(ii) a municipally owned utility (as defined in IC 8-1-2-1);
(iii) a joint agency (as defined in IC 8-1-2.2-2);
(iv) a rural electric membership corporation formed under IC 8-1-13-4;
(v) a rural telephone cooperative corporation formed under IC 8-1-17; or
(vi) a not-for-profit utility (as defined in IC 8-1-2-125);
regulated under IC 8; and
(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public.
As added by P.L.2-2002, SEC.13. Amended by P.L.101-2002, SEC.6; P.L.35-2010, SEC.207.

IC 32-28-3-6
Enforcement of lien

Sec. 6. (a) A person may enforce a lien by filing a complaint in the circuit or superior court of the county where the real estate or property that is the subject of the lien is situated. The complaint must be filed not later than one (1) year after:

(1) the date the statement and notice of intention to hold a lien was recorded under section 3 of this chapter; or

(2) subject to subsection (c), the expiration of the credit, if a credit is given.

(b) Except as provided in subsection (c), if a lien is not enforced within the time set forth in subsection (a), the lien is void.

(c) A credit does not extend the time for filing an action to enforce the lien under subsection (a)(2) unless:

(1) the terms of the credit are in writing;

(2) the credit was executed by:

(A) the lienholder; and

(B) all owners of record; and

(3) the credit was recorded:

(A) in the same manner as the original statement and notice of intention to hold a lien; and

(B) not later than one (1) year after the date the statement and notice of intention to hold a lien was recorded.

(d) If the lien is foreclosed under this chapter, the court rendering judgment shall order a sale to be made of the property subject to the lien. The officers making the sale shall sell the property without any relief from valuation or appraisement laws.

As added by P.L.2-2002, SEC.13.

IC 32-28-3-7
Sale to satisfy lien; consolidation of actions

Sec. 7. (a) A person whose lien is recorded under this chapter may be a party to an action to enforce a lien.

(b) The court may, by judgment, direct a sale of the land and building for the satisfaction of the liens and costs. The sale shall not prejudice the rights of:

(1) a prior encumbrance; or

(2) an owner or other person who is not a party to the action.

(c) If several actions are brought by different claimants and are pending at the same time, the court may order the actions to be consolidated.

As added by P.L.2-2002, SEC.13.

IC 32-28-3-8
Insufficient proceeds of sale

Sec. 8. If the proceeds of the sale of the property subject to a lien are insufficient to pay all the claimants, the court shall order the claimants to be paid in proportion to the amount due each claimant.

As added by P.L.2-2002, SEC.13.

IC 32-28-3-9

Subcontractor's, journeyman's, or laborer's liens; notice; actions

Sec. 9. (a) This section applies to a:

(1) subcontractor;

(2) lessor leasing construction and other equipment and tools, regardless of whether an operator is also provided by the lessor;

(3) journeyman; or

(4) laborer;

employed or leasing any equipment or tools used by the lessee in erecting, altering, repairing, or removing any house, mill, manufactory or other building, or bridge, reservoir, system of waterworks, or other structure or earth moving, or in furnishing any material or machinery for these activities.

(b) Except as provided in subsection (f) and section 12 of this chapter, in order to acquire rights under this section, a person described in subsection (a) must give to the property owner, or if the property owner is absent, to the property owner's agent, written notice particularly setting forth the amount of the person's claim and services rendered for which:

(1) the person's employer or lessee is indebted to the person; and

(2) the person holds the property owner responsible.

(c) Subject to subsections (d) and (e), the property owner is liable for the person's claim.

(d) The property owner is liable to a person described in subsection (a) for not more than the amount that is due and may later become due from the owner to the employer or lessee.

(e) A person described in subsection (a) may recover the amount of the person's claim if, after the amounts of other claims that have priority are subtracted from the amount due from the property owner to the employer or lessee, the remainder of the amount due from the property owner to the employer or lessee is sufficient to pay the amount of the person's claim.

(f) This subsection applies to a person described in subsection (a) who gives written notice, to the property owner or, if the property owner is absent, to the owner's agent, before labor is performed or materials or machinery is furnished. The notice must particularly set forth the amount of:

(1) labor the person has contracted to perform; or

(2) materials or machinery the person has contracted to furnish;

for the employer or lessee in erecting, altering, repairing, or removing any of the buildings or other structures described in subsection (a). A person described in this subsection has the same rights and remedies against the property owner for the amount of the labor performed by the person or materials or machinery furnished by the person after the notice is given, as are provided in this chapter for persons who serve notice after performing the labor or furnishing the materials or machinery.

(g) If an action is brought against a property owner under this section, all subcontractors, equipment lessors leasing equipment, journeymen, and laborers who have:

(1) performed labor or furnished materials or machinery; and
(2) given notice under this section;

may become parties to the action. If, upon final judgment against the property owner the amount recovered and collected is not sufficient to pay the claimants in full, the amount recovered and collected shall be divided among the claimants pro rata.

As added by P.L.2-2002, SEC.13. Amended by P.L.1-2010, SEC.129.

IC 32-28-3-10

Notice to commence suit; affidavit of service

Sec. 10. (a) A lien is void if both of the following occur:

(1) The owner of property subject to a mechanic's lien or any person or corporation having an interest in the property, including a mortgagee or a lienholder, provides written notice to the owner or holder of the lien to file an action to foreclose the lien.

(2) The owner or holder of the lien fails to file an action to foreclose the lien in the county where the property is located not later than thirty (30) days after receiving the notice.

However, this section does not prevent the claim from being collected as other claims are collected by law.

(b) A person who gives notice under subsection (a)(1) by registered or certified mail to the lienholder at the address given in the recorded statement and notice of intention to hold a lien may file an affidavit of service of the notice to file an action to foreclose the lien with the recorder of the county in which the property is located. The affidavit must state the following:

(1) The facts of the notice.

(2) That more than thirty (30) days have passed since the notice was received by the lienholder.

(3) That no action for foreclosure of the lien is pending.

(4) That no unsatisfied judgment has been rendered on the lien.

(c) The recorder shall:

(1) record the affidavit of service in the miscellaneous record book of the recorder's office; and

(2) certify on the face of the record any lien that is fully released.

When the recorder records the affidavit and certifies the record under this subsection, the real estate described in the lien is released from the lien.

As added by P.L.2-2002, SEC.13.

IC 32-28-3-11

Undertaking to pay judgment and cost

Sec. 11. (a) In an action to foreclose a lien:

(1) the defendant or owner of the property subject to the lien; or

(2) any person having an interest in the property subject to the lien, including a mortgagee or other lienholder;

may file in the action a written undertaking with surety to be approved by the court.

(b) An undertaking filed under this section must provide that the person filing it will pay any judgment that may be recovered in the action to foreclose the lien, including costs and attorney's fees allowed by the court, if the claim on which the judgment is founded is found by the court to have been a lien on the property at the time the action was filed.

(c) If an undertaking is filed and approved by the court:

(1) the court shall enter an order releasing the property from the lien; and

(2) the property shall be discharged from the lien.

As added by P.L.2-2002, SEC.13.

IC 32-28-3-12

Railroads; labor and materials; lien

Sec. 12. (a) This section applies to a person who:

(1) performs work or labor such as:

(A) grading;

(B) building embankments;

(C) making excavations for track;

(D) building:

(i) bridges;

(ii) trestlework;

(iii) works of masonry;

(iv) fencing; or

(v) other structures; or

(E) performs work of any kind;

in the construction or repair of a railroad or part of a railroad in Indiana; or

(2) furnishes material for:

(A) a bridge, trestlework, work of masonry, fence, or other structure; or

(B) use in the construction or repair of a railroad or part of a railroad;

in Indiana.

(b) The work, labor, or material described in subsection (a) may be provided under a contract:

(1) with the railroad corporation building, repairing, or owning the railroad; or

(2) with a person, corporation, or company engaged as:

(A) lessee;

(B) contractor;

(C) subcontractor; or

(D) agent;

of the railroad corporation in the work of constructing or repairing the railroad or part of the railroad in Indiana.

(c) A person to whom this section applies may have a lien to the extent of the work or labor performed, or material furnished, or both, upon:

(1) the right-of-way and franchises of the railroad corporation; and

(2) the works and structures as set forth in this section that may be upon the right-of-way and franchise of the railroad corporation;

within the limits of the county in which the work or labor may be performed or the material may be furnished.

(d) A person performing work or labor or furnishing materials under a contract described in subsection (b)(2) is not required to give notice to the railroad corporation under section 9 of this chapter in order to acquire and hold a lien for labor performed or material furnished under the provisions of this section. The performance of the labor or the furnishing of the materials is sufficient notice to the railroad corporation. A lien that is acquired as set forth in this subsection shall be enforced as other mechanic's liens are enforced in Indiana.

(e) A person who, in doing business with a railroad company, has constructed a building or other improvement on a portion of the railroad right-of-way adjacent to the person's place of business may have a lien to the extent of the fair market value of the improvement on that portion of the right-of-way. The lien may be acquired and enforced:

(1) upon abandonment of the right-of-way by the railroad company; and

(2) against the successors in title of the railroad company.

This subsection does not apply to property that is subject to a written agreement providing for the disposition of improvements upon abandonment. Liens acquired under this subsection shall be enforced as other mechanic's liens are enforced in Indiana.

As added by P.L.2-2002, SEC.13.

IC 32-28-3-13

Notice of intention to hold lien

Sec. 13. A person who desires to acquire the lien provided for in section 12 of this chapter must give notice of the person's intention to hold the lien by causing the notice to be recorded in the recorder's office of the county in which the work was done or material furnished in the same manner and within the same time as provided in this chapter for giving notice of a mechanic's lien. A person who gives notice within the proper time may enforce the lien in the same manner as mechanic's liens are enforced. The suit must be brought within one (1) year after the time the notice was filed in the recorder's office.

As added by P.L.2-2002, SEC.13.

IC 32-28-3-14

Attorney's fees

Sec. 14. (a) Except as provided in subsection (b), in an action to enforce a lien under this chapter, a plaintiff or lienholder who recovers a judgment in any sum is entitled to recover reasonable attorney's fees. The court shall enter the attorney's fees as a part of the judgment.

(b) A plaintiff may not recover attorney's fees as part of the judgment against a property owner in an action in which the contract consideration for the labor, material, or machinery has been paid by the property owner or party for whom the improvement has been constructed.

As added by P.L.2-2002, SEC.13. Amended by P.L.1-2007, SEC.211.

IC 32-28-3-15

Accepting payment for labor or materials subject to outstanding indebtedness

Sec. 15. A person who knowingly or intentionally:

(1) performs labor, supplies services, or furnishes material or machinery in the:

(A) construction;

(B) repair; or

(C) remodeling;

of a building, structure, or other work;

(2) accepts payment for the labor, services, material, or machinery furnished and supplied;

(3) at the time of receiving the payment, knows that the person is indebted to another for:

(A) labor, including the cost of renting or leasing construction and other equipment and tools, whether or not an operator is also provided by the lessor;

(B) services;

(C) material; or

(D) machinery;

used or employed in the construction, repair, or remodeling;

(4) fails:

(A) at the time of receiving the payment; and

(B) with intent to defraud;

to notify in writing the person from whom the payment was received of the existence of the outstanding indebtedness; and

(5) causes the person from whom the payment was received to suffer a loss by failing under subdivision (4) to notify the person of the existence of the outstanding indebtedness;

commits a Level 6 felony.

As added by P.L.2-2002, SEC.13. Amended by P.L.158-2013, SEC.332.

IC 32-28-3-16

Waiver of right to a lien voiding contract

Sec. 16. (a) This section applies to a construction contract for the construction, alteration, or repair of a building or structure other than:

(1) a Class 2 structure (as defined in IC 22-12-1-5) or an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5); or

(2) property that is:

(A) owned, operated, managed, or controlled by a public utility (as defined in IC 8-1-2-1), a municipally owned utility

(as defined in IC 8-1-2-1), a joint agency (as defined in IC 8-1-2.2-2), a rural electric membership corporation formed under IC 8-1-13-4, rural telephone cooperative corporation formed under IC 8-1-17, or a not-for-profit utility (as defined in IC 8-1-2-125) regulated under IC 8; and (B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public.

(b) A provision in a contract for the improvement of real estate in Indiana is void if the provision requires a person described in section 1 of this chapter who furnishes labor, materials, or machinery to waive a right to:

(1) a lien against real estate; or

(2) a claim against a payment bond;

before the person is paid for the labor or materials furnished.

(c) A provision in a contract for the improvement of real estate in Indiana under which one (1) or more persons agree not to file a notice of intention to hold a lien is void.

As added by P.L.2-2002, SEC.13. Amended by P.L.101-2002, SEC.7.

IC 32-28-3-17

Provision that contract subject to laws of another state void

Sec. 17. A provision in a contract for the improvement of real estate in Indiana is void if the provision:

(1) makes the contract subject to the laws of another state; or

(2) requires litigation, arbitration, or other dispute resolution process on the contract occur in another state.

As added by P.L.2-2002, SEC.13.

IC 32-28-3-18

Receipt of payment from third person not limiting right to lien

Sec. 18. (a) This section applies to a provider of labor, materials, or equipment under a contract for the improvement of real estate that conditions the right of the provider to receive payment on the obligor's receipt of payment from a third person with whom the provider does not have a contractual relationship.

(b) This section does not apply to a construction contract for the construction, alteration, or repair of the following:

(1) A Class 2 structure (as defined in IC 22-12-1-5).

(2) An improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5).

(3) Property that is:

(A) owned, operated, managed, or controlled by a:

(i) public utility (as defined in IC 8-1-2-1);

(ii) municipally owned utility (as defined in IC 8-1-2-1);

(iii) joint agency (as defined in IC 8-1-2.2-2);

(iv) rural electric membership corporation formed under IC 8-1-13-4;

(v) rural telephone cooperative corporation formed under IC 8-1-17; or

(vi) not-for-profit utility (as defined in IC 8-1-2-125); regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public.

(c) An obligor's receipt of payment from a third person may not:

(1) be a condition precedent to;

(2) limit; or

(3) be a defense to;

the provider's right to record or foreclose a lien against the real estate that was improved by the provider's labor, material, or equipment.

As added by P.L.2-2002, SEC.13. Amended by P.L.101-2002, SEC.8.

IC 32-28-4

Chapter 4. Foreclosure and Expiration of a Mortgage or Vendor's Lien

IC 32-28-4-1

Limitation of actions

Sec. 1. (a) A mortgage or vendor's lien upon real estate expires ten (10) years after the last installment of the debt secured by the mortgage or vendor's lien becomes due, as shown by the record of the mortgage or vendor's lien unless an action to foreclose is brought not later than ten (10) years after the last installment of the debt secured by the mortgage or vendor's lien becomes due, as shown by the record of the mortgage or vendor's lien.

(b) An action may not be brought in the courts of Indiana to foreclose a mortgage or enforce a vendor's lien reserved by a person to secure the payment of an obligation secured by the mortgage or vendor's lien if the last installment of the debt secured by the mortgage or vendor's lien, as shown by the record of the mortgage or vendor's lien, has been due more than ten (10) years.

As added by P.L.2-2002, SEC.13. Amended by P.L.130-2012, SEC.1; P.L.18-2013, SEC.1.

IC 32-28-4-2

Record silent as to due date of debt; date of execution omitted; expiration of lien; certification of satisfaction

Sec. 2. (a) Except as provided in section 3 of this chapter, if the record of a mortgage or vendor's lien described in section 1 of this chapter does not show when the debt or the last installment of the debt secured by the mortgage or vendor's lien becomes due, the following apply:

(1) If the mortgage or vendor's lien was created before July 1, 2012, the mortgage or vendor's lien expires twenty (20) years after the date on which the mortgage or vendor's lien was executed unless an action to foreclose is brought not later than twenty (20) years after the date on which the mortgage or vendor's lien was executed.

(2) If the mortgage or vendor's lien was created after June 30, 2012, the mortgage or vendor's lien expires ten (10) years after the date on which the mortgage or vendor's lien was executed unless an action to foreclose is brought not later than ten (10) years after the date on which the mortgage or vendor's lien was executed.

(b) If:

(1) the record of a mortgage or vendor's lien described in section 1 of this chapter does not show when the debt or the last installment of the debt secured by the mortgage or vendor's lien becomes due;

(2) the date of execution has been omitted in the mortgage or vendor's lien; and

(3) the mortgage or vendor's lien was created before July 1,

2012;

the mortgage or vendor's lien expires twenty (20) years after the date on which the mortgage or vendor's lien was recorded unless an action to foreclose is brought not later than twenty (20) years after the date on which the mortgage or vendor's lien was recorded.

(c) If:

(1) the record of a mortgage or vendor's lien described in section 1 of this chapter does not show when the debt or the last installment of the debt secured by the mortgage or vendor's lien becomes due;

(2) the date of execution has been omitted in the mortgage or vendor's lien; and

(3) the mortgage or vendor's lien was created after June 30, 2012;

the mortgage or vendor's lien expires ten (10) years after the date on which the mortgage or vendor's lien was recorded unless an action to foreclose is brought not later than ten (10) years after the date on which the mortgage or vendor's lien was recorded.

(d) Upon the request of the owner of record of real estate encumbered by a mortgage or vendor's lien that has expired under this section, the recorder of the county in which the real estate is situated shall certify on the record that the mortgage or vendor's lien is fully paid and satisfied by lapse of time, and the real estate is released from the mortgage or vendor's lien.

As added by P.L.2-2002, SEC.13. Amended by P.L.130-2012, SEC.2; P.L.18-2013, SEC.2.

IC 32-28-4-3

Record silent as to when debt due; affidavit stating when debt is due; time for filing; effect of filing on lien duration and limitation of actions

Sec. 3. (a) If the record of a mortgage or vendor's lien to which this chapter applies does not show the time when the debt or the last installment of the debt secured by the mortgage or vendor's lien becomes due:

(1) the original mortgagee;

(2) the owner of the mortgage; or

(3) the owner of a vendor's lien;

may file an affidavit with the recorder of the county where the mortgage or vendor's lien is recorded, stating when the debt becomes due.

(b) An affidavit must be filed under this section not later than the following:

(1) If the mortgage or vendor's lien was created before July 1, 2012, not later than twenty (20) years after:

(A) the date on which the mortgage or vendor's lien was executed; or

(B) if the mortgage or vendor's lien does not contain the date on which the mortgage or vendor's lien was executed, the date on which the mortgage or vendor's lien was recorded.

(2) If the mortgage or vendor's lien was created after June 30, 2012, ten (10) years after the date of execution of the mortgage or vendor's lien, or, if the mortgage or vendor's lien contains no date of execution, not later than ten (10) years from the date the mortgage or vendor's lien was recorded.

Upon the filing of the affidavit, the recorder shall note in the record of the mortgage or vendor's lien that an affidavit has been filed, showing the location where the affidavit is recorded.

(c) The filing of an affidavit under subsection (a) has the same effect with respect to the duration of the mortgage or vendor's lien described in the affidavit and with respect to the time within which an action may be brought to foreclose the mortgage or vendor's lien as though the time of maturity of the debt or the last installment of the debt secured by the mortgage or vendor's lien had been stated in the mortgage or vendor's lien when recorded. The affidavit is prima facie evidence of the truth of the averments contained in the affidavit.

(d) A mortgage or vendor's lien on the real estate described in the affidavit expires as follows:

(1) If the mortgage or vendor's lien was created before July 1, 2012, twenty (20) years after the date on which the debt or the last installment of the debt secured by the mortgage or vendor's lien becomes due, as shown by the affidavit.

(2) If the mortgage or vendor's lien was created after June 30, 2012, ten (10) years after the time when the debt or the last installment of the debt secured by the mortgage or vendor's lien becomes due, as shown by the affidavit.

Upon the expiration of a mortgage or vendor's lien as described in this section and at the request of the real estate owner, the recorder of the county in which the affidavit is recorded shall certify on the record of the mortgage or vendor's lien that the mortgage or vendor's lien is fully paid and satisfied by lapse of time and that the real estate is released from the mortgage or vendor's lien.

(e) The recorder shall charge a fee for filing the affidavit in accordance with the fee schedule established in IC 36-2-7-10.

As added by P.L.2-2002, SEC.13. Amended by P.L.130-2012, SEC.3; P.L.18-2013, SEC.3.

IC 32-28-5

Chapter 5. Release of Liens on Conveyance of Real Estate

IC 32-28-5-1

Lien on real property; entry of satisfaction

Sec. 1. (a) If a grantee has satisfied a lien on real property, the grantor shall, upon the request of the grantee, record on the lien record that the lien has been satisfied.

(b) Recording on the record of a lien under subsection (a) that the lien has been satisfied operates as a complete discharge of the lien.

As added by P.L.2-2002, SEC.13.

IC 32-28-5-2

Certificate and acknowledgment releasing lien

Sec. 2. (a) If a grantee has satisfied a lien on real property but the grantor has not recorded that the lien has been satisfied under section 1 of this chapter, the grantor shall, at the request of the grantee, certify that the lien has been satisfied. The grantor's certification shall be acknowledged by the grantor in the same manner as is required to entitle a conveyance of real property to be recorded. The grantor's certification shall be recorded by the recorder in whose office the deed is recorded, with reference to the location of the recorded deed.

(b) A recorded certification that a lien has been satisfied operates as a complete discharge of the lien.

As added by P.L.2-2002, SEC.13.

IC 32-28-6

Chapter 6. Release of Mechanic's Liens

IC 32-28-6-1

Failure to release lien; damages

Sec. 1. (a) If:

(1) a person owns or has an interest in real estate to which a mechanic's lien has been attached;

(2) the debt secured by the lien has satisfied or paid; and

(3) the person who owns or has an interest in the encumbered real estate demands that the lien be released;

the lienholder shall release the lien within fifteen (15) days after the demand.

(b) If the lienholder does not release the lien within fifteen (15) days after the demand, the lienholder is liable to the person who owns or has an interest in the real estate to which the mechanic's lien has been attached for the greater of:

(1) actual damages; or

(2) liquidated damages in the sum of ten dollars ($10) per day from the fifteenth day until the release or expiration of the lien.

(c) A person who owns or who has an interest in real estate to which a mechanic's lien has been attached may, at any time thirteen (13) months after the date of the filing of the notice of the lien, file in the office of the recorder of the county in which the real estate is situated an affidavit stating that no suit for the foreclosure of the lien is pending and that no unsatisfied judgment has been rendered on the lien.

As added by P.L.2-2002, SEC.13.

IC 32-28-6-2

Certification of lien satisfaction

Sec. 2. If a person who owns or has an interest in real estate encumbered by a mechanic's lien files the affidavit described in section 1(c) of this chapter, the recorder of the county in which the encumbered real estate is situated shall immediately record the affidavit and certify on the record of the lien that the mechanic's lien is fully satisfied and that the real estate described in the mechanic's lien is released from the lien. The fee of the recorder for the filing and recording of the affidavit shall be an amount prescribed by law and shall be paid by the person filing the affidavit.

As added by P.L.2-2002, SEC.13.

IC 32-28-7

Chapter 7. Mechanic's Liens and Liens on Public Improvements; Foreclosures and Expiration

IC 32-28-7-1

Actions to foreclose or enforce

Sec. 1. An action may not be brought or maintained in Indiana to foreclose or enforce a mechanic's lien filed under Indiana law when the debt secured by the lien, as shown by the record of the lien, has been due more than one (1) year. If the record of the lien does not show when the debt secured by the lien became due, an action to foreclose or enforce the lien may not be brought or maintained in Indiana more than one (1) year after the filing date of the lien.

As added by P.L.2-2002, SEC.13.

IC 32-28-7-2

Record; notice of lien

Sec. 2. A mechanic's lien filed under Indiana law expires one (1) year after the debt secured by the lien becomes due, as shown by the record of the lien. If the record of the mechanic's lien does not show when the debt secured by the lien becomes due, the mechanic's lien expires one (1) year after the filing date of the lien.

As added by P.L.2-2002, SEC.13.

IC 32-28-7-3

Public improvement assessments; expiration of liens

Sec. 3. (a) Except as provided in subsection (b), the lien of an assessment for a:

(1) street;
(2) sewer;
(3) sidewalk;
(4) ditch; or
(5) other public improvement;

expires five (5) years after the assessment (including any installment payments) is due and payable, as shown by the record creating the lien.

(b) If an assessment is payable in installments, an action to enforce the lien may be brought within fifteen (15) years after the date of the approval of the record creating the lien. After the expiration of this time period, upon the request of the owner of record of the encumbered real estate, the custodian of the record evidencing the lien, in the jurisdiction in which the real estate is situated, shall certify on the record that the lien of the assessment for street, sewer, sidewalk, ditch, or other public improvement is satisfied and released by lapse of time and that the encumbered real estate is released from the lien.

As added by P.L.2-2002, SEC.13.

IC 32-28-7-4

Action to foreclose or enforce liens

Sec. 4. If an action to enforce a lien to which this chapter applies was commenced in Indiana before the lien expired, the lien as it existed at the time the action commenced may be enforced.
As added by P.L.2-2002, SEC.13.

IC 32-28-8

Chapter 8. Foreclosure and Expiration of Liens on Public Improvements

IC 32-28-8-1

Limitation of actions

Sec. 1. (a) Except as provided in subsection (b), an action may not be brought for the foreclosure of a lien of an assessment for a:

(1) street;
(2) sewer;
(3) sidewalk;
(4) ditch; or
(5) other public improvement;

if the action is not commenced within five (5) years after the right of action accrues.

(b) If an assessment described in subsection (a) is payable in installments, an action may be brought within fifteen (15) years after the date of the final approval of the assessment as shown by the record creating the lien.

As added by P.L.2-2002, SEC.13.

IC 32-28-9

Chapter 9. Limiting Time for Reopening Judgments Foreclosing Liens for Public Improvements

IC 32-28-9-1

Judicial sales; sheriff's deed

Sec. 1. If:

(1) a court with jurisdiction in Indiana renders a judgment foreclosing a public improvement lien;

(2) the sheriff of a county sells the encumbered real estate to satisfy the lien; and

(3) the sheriff has executed a sheriff's deed for the real estate to a purchaser;

an action to reopen the judgment or invalidate the deed for any cause may not be brought unless the action is filed within one (1) year after the date of the deed.

As added by P.L.2-2002, SEC.13.

IC 32-28-10

Chapter 10. Real Estate: Employees' Lien on Strip Mines

IC 32-28-10-1

"Strip mine" defined

Sec. 1. (a) As used in this chapter, "strip mine" means a tract of land on which the surface soil has been removed or is being removed or is proposed to be removed from the coal seam by one (1) group of operating machines or machinery and where mine run coal is being produced in the raw state ready for direct sale to a consumer or for transportation to a cleaning or preparation plant.

(b) The term includes the plant used for cleaning and preparing the coal for market.

As added by P.L.2-2002, SEC.13.

IC 32-28-10-2

Priority; notice of intention; enforcement of lien

Sec. 2. (a) A person employed and working in and about a strip mine has a lien on:

(1) the strip mine;

(2) all machinery and fixtures connected with the strip mine; and

(3) everything used in and about the strip mine;

for labor performed within a two (2) month period preceding the lien. Except as provided in subdivision (b), this lien is superior to and has priority over all other liens. As against each other, these liens have priority in the order in which they accrued.

(b) A state tax lien is superior to and has priority over a lien described in subsection (a).

(c) A person desiring to acquire an employee lien as described in subsection (a) shall file within sixty (60) days after the time the payment became due in the recorder's office of the county where the mine is situated a notice of intention to hold a lien upon property for the amount of the claim. The person filing a lien shall state in the lien notice the amount of the claim and the name of the coal works, if known. If the person filing the lien does not know the name of the coal works, the person shall include in the notice any other designation describing the location of the mine. The recorder shall immediately record the notice in the location used for recording mechanic's liens. The recorder shall receive a fee in accordance with IC 36-2-7-10. If the mine is located in more than one (1) county, the notice of intention to hold a lien may be filed in any county where any part of the mine is located.

(d) Suits brought to enforce a lien created under this section must be brought within one (1) year after the date of filing notice of the lien in the recorder's office. All judgments rendered on the foreclosure of the liens must include:

(1) the amount of the claim found to be due;

(2) the interest on the claim from the time due; and

(3) reasonable attorney's fees.

The judgment shall be collected without relief from valuation, appraisement, or state laws.

As added by P.L.2-2002, SEC.13.

IC 32-28-11

Chapter 11. Engineer's, Land Surveyor's, and Architect's Liens

IC 32-28-11-1

Mechanic's liens

Sec. 1. Registered professional engineers, registered land surveyors, and registered architects may secure and enforce the same lien that is now given to contractors, subcontractors, mechanics, journeymen, laborers, and materialmen under IC 32-28-3 and any statutes that supplement IC 32-28-3.

As added by P.L.2-2002, SEC.13.

IC 32-28-11-2

Securing and enforcing

Sec. 2. A lien created under this chapter may be secured and enforced in the same manner as mechanic's liens are secured and enforced.

As added by P.L.2-2002, SEC.13.

IC 32-28-12

Chapter 12. Corporate Employees' Liens

IC 32-28-12-0.2

Application of certain amendments to prior law

Sec. 0.2. The amendments made to IC 32-8-24-2 (before its repeal, now codified at section 2 of this chapter) by P.L.235-1993:

(1) apply to liens that are perfected before, on, or after April 22, 1993; and

(2) do not apply to divest a right that vested before April 22, 1993.

As added by P.L.220-2011, SEC.524.

IC 32-28-12-1

Work and labor; priority

Sec. 1. (a) Except as provided in subsection (b), the employees of a corporation doing business in Indiana, whether organized under Indiana law or otherwise, may have and hold a first and prior lien upon:

(1) the corporate property of the corporation; and

(2) the earnings of the corporation;

for all work and labor done and performed by the employees for the corporation from the date of the employees' employment by the corporation. A lien under this section is prior to all liens created or acquired after the date of the employment of the employees by the corporation, except as otherwise provided in this chapter.

(b) An employee lien arising from the sale of real estate:

(1) is limited to a lien on the real estate; and

(2) is subject to section 3 of this chapter.

As added by P.L.2-2002, SEC.13.

IC 32-28-12-2

Recording lien; priority

Sec. 2. (a) This section does not apply to a lien acquired by any person for purchase money.

(b) Any employee wishing to acquire a lien under section 1 of this chapter upon the corporate property of any corporation or the corporation's earnings, whether the employee's claim is due or not, must file, in the recorder's office of the county where the corporation is located or doing business, notice of the employee's intention to hold a lien upon the corporation's property and earnings. The notice must state the following:

(1) The amount of the employee's claim.

(2) The date of the employee's employment.

(3) The name of the corporation.

When a notice required by this section is presented for record, the county recorder shall record the notice in the record required by law for notice of mechanic's liens. The recorder shall charge a fee for recording the notice in an amount specified in IC 36-2-7-10(b)(1) and IC 36-2-7-10(b)(2). The lien created shall relate to the time when the

employee was employed by the corporation or to any subsequent date during the employee's employment, at the election of the employee. The lien has priority over all liens suffered or created after the time elected by the employee, except other employees' liens, over which the lien has no priority.

(c) If:

(1) a person other than an employee acquires a lien upon the corporate property of any corporation located or doing business in Indiana;

(2) the lien, for a period of sixty (60) days, either:

(A) remains a matter of record in the proper place specified in IC 26-1-9.1-501; or

(B) remains otherwise perfected under applicable law; and

(3) no notice of an employee's intention to hold a lien is filed by any employee of the corporation during that period;

the lien described in subdivision (1) has priority over the lien of an employee in the county where the corporation is located or doing business.

As added by P.L.2-2002, SEC.13.

IC 32-28-12-3

Real estate sale commission claims; filing notice; priority

Sec. 3. (a) Notwithstanding section 2 of this chapter, an employee:

(1) whose claim is for a commission due upon the conveyance of real estate; and

(2) who wishes to acquire a lien on the real estate;

may file a notice in the recorder's office of the county in which the real estate is located of the employee's intention to hold a lien on the real estate.

(b) A notice filed under this section must:

(1) contain the same information required for a mechanic's lien;

(2) state that the claim is due upon the conveyance of the real estate; and

(3) be filed before the conveyance of the real estate by the corporation.

(c) The recorder of any county shall, when notice is presented for recording under this section:

(1) record the notice in the record required by law for notice of mechanic's liens; and

(2) charge a fee in an amount specified in IC 36-2-7-10(b)(1) and IC 36-2-7-10(b)(2).

(d) The lien created under this section must relate to:

(1) the time when the employee was employed by the corporation; or

(2) any subsequent date during the employment, at the election of the employee;

and has priority over all liens suffered or created after the date, except other employees' liens, over which there is no priority.

As added by P.L.2-2002, SEC.13.

IC 32-28-12-4
Complaint to enforce lien

Sec. 4. (a) An employee having acquired a lien under this chapter may enforce the lien by filing a complaint in the circuit or superior court in the county where the lien was acquired at any time within six (6) months after the date of acquiring the lien, or if a credit is given, after the date of the credit.

(b) The court rendering judgment for the claim shall declare the claim a lien upon the corporation's property and order the property sold to pay and satisfy the judgment and costs, as other lands are sold on execution or decree, without relief from valuation or appraisement laws.

(c) In an action brought under this section, the court shall make orders as to the application of the earnings of the corporation that are just and equitable, whether or not the the relief is asked for in the complaint.

As added by P.L.2-2002, SEC.13.

IC 32-28-12-5
Parties; consolidation of actions; insufficient proceeds of sale

Sec. 5. (a) In an action brought under this chapter, all persons whose liens are recorded under section 2 of this chapter may be made parties to the action. Issues shall be made up and trials had as in other cases.

(b) The court may, when several actions are pending by different claimants to enforce liens under this chapter, order that the cases be consolidated. If the proceeds of the sale of the corporation's property or the corporation's earnings are insufficient to pay and satisfy the claimants in full, the court shall order the claimants to be paid in proportion to the amount due each, and the sale shall be made without prejudice to the rights of any prior encumbrances, owner, or other persons not parties to the action.

As added by P.L.2-2002, SEC.13.

IC 32-28-12-6
Undertaking of defendant

Sec. 6. In a proceeding commenced under this chapter, a defendant may file a written undertaking, with surety to be approved by the court, in the exercise of sound discretion, to the effect that the defendant will pay the judgments that may be recovered, and costs. An undertaking under this section releases the defendant's property from the liens created under this chapter.

As added by P.L.2-2002, SEC.13.

IC 32-28-12-7
Enforcement of mechanic's liens; application of law

Sec. 7. In all cases not specially provided for in this chapter, the law, rules, practice, and pleadings in force in reference to the enforcement of mechanic's liens apply to suits commenced under this chapter.

As added by P.L.2-2002, SEC.13.

IC 32-28-12.5

Chapter 12.5. Commercial Real Estate Broker Liens

IC 32-28-12.5-1

"Commercial real estate"

Sec. 1. As used in this chapter, "commercial real estate" means any real estate other than:

(1) real estate containing one (1) to four (4) residential units;

(2) real estate on which no buildings or structures are located and that is zoned for single family residential use; or

(3) single family residential units such as:

(A) condominiums;

(B) townhouses; or

(C) homes in a subdivision when sold, leased, or otherwise conveyed on a unit-by-unit basis, even if those units are part of a larger building or parcel or real estate containing more than four (4) residential units.

As added by P.L.78-2006, SEC.1.

IC 32-28-12.5-2

"Fees or commissions"

Sec. 2. As used in this chapter, "fees or commissions" means compensation owed to a managing broker for performing services requiring a license under IC 25-34.1-3-2.

As added by P.L.78-2006, SEC.1. Amended by P.L.127-2012, SEC.49.

IC 32-28-12.5-3

"Managing broker"

Sec. 3. As used in this chapter, "managing broker" has the meaning set forth in IC 25-34.1-1-2.

As added by P.L.78-2006, SEC.1. Amended by P.L.127-2012, SEC.50.

IC 32-28-12.5-4

"Real estate"

Sec. 4. As used in this chapter, "real estate" has the meaning set forth in IC 25-34.1-1-2.

As added by P.L.78-2006, SEC.1.

IC 32-28-12.5-5

Managing broker lien on commercial real estate, fees due under written agreement, contract, or instrument

Sec. 5. A managing broker may have a lien upon commercial real estate, or any interest in commercial real estate, that is the subject of a purchase, a lease, or other conveyance to a buyer or tenant, in the amount that the managing broker is due for licensed services, including brokerage fees, consulting fees, and management fees due the managing broker under a written agreement, a contract, or another written instrument:

(1) signed by:
(A) the owner of an interest in the commercial real estate or by the owner's authorized agent; or
(B) a prospective buyer or prospective tenant, or by the buyer's or tenant's authorized agent; and
(2) entered into after June 30, 2006.

A lien under this chapter is available to the managing broker named in the written agreement, contract, or other written instrument signed by the owner, buyer, or tenant, or their respective agents, and not to an employee or independent contractor of the managing broker.

As added by P.L.78-2006, SEC.1. Amended by P.L.127-2012, SEC.51.

IC 32-28-12.5-6

Attachment of lien; notice of lien; date of recording

Sec. 6. (a) A lien under this chapter attaches to commercial real estate or an interest in commercial real estate upon:

(1) the managing broker being entitled to fees or commissions under a written agreement, a contract, or another instrument signed by the owner, buyer, or tenant of the commercial real estate, or by an authorized agent of the owner, buyer, or tenant; and
(2) except as provided in sections 8 and 9 of this chapter, the managing broker recording a notice of lien in the office of the recorder of the county in which the commercial real estate or an interest in the commercial real estate is located:
(A) before the recording of the deed for the actual conveyance or transfer of the commercial real estate against which the broker is claiming a lien, if the managing broker claims fees or commissions from the party conveying or transferring an interest in the commercial real estate; or
(B) not later than ninety (90) days after the recording of the deed or other instrument for the purchase or other conveyance or transfer of the commercial real estate, if the managing broker claims fees or commissions from the party receiving a conveyance or transfer of an interest in the commercial real estate.

(b) A lien under this chapter attaches on the date of the recording of the notice of the lien under subsection (a)(2) and does not relate back to the date of the written agreement, contract, or other written instrument described in subsection (a)(1).

As added by P.L.78-2006, SEC.1. Amended by P.L.127-2012, SEC.52.

IC 32-28-12.5-7

Sale of commercial real estate; notice of closing; preservation of right to file lien; owner's certification at closing

Sec. 7. (a) This section does not apply:

(1) to fees or commissions that arise from a lease, including fees or commissions for a sale of the property, lease expansions, or

lease renewals;

(2) if a managing broker's fees or commissions have been paid in full; or

(3) if a managing broker waives the notice requirements of this section in writing.

(b) Not later than ten (10) days before the planned closing of a transaction involving the sale of commercial real estate, the owner shall notify the following persons of the date of the closing, the time of the closing, the address of the closing, and of the name of the closing agent, title company, or title insurance agent:

(1) One (1) or more managing brokers to whom the owner owes fees or commissions.

(2) The closing agent, title company, or title insurance agent involved in the transaction.

Notice under this subsection shall be sent by registered or certified mail, return receipt requested, or by another means of service authorized by the Indiana trial rules that provides proof that the addressee has received the notice.

(c) To exercise its rights under this chapter to file a lien after receipt of the notice under subsection (b), the managing broker must notify the closing agent, title company, or title insurance agent at the address in the notice of the amount of the fees or commissions owed before the time of the closing stated in the notice.

(d) If the managing broker does not attend the closing of a transaction involving the sale of commercial real estate, the owner shall certify in writing at the closing, under the penalties of perjury:

(1) that:

(A) the owner has notified the managing broker in accordance with subsection (b); and

(B) the managing broker received the notice; or

(2) that the managing broker has been paid in full.

As added by P.L.78-2006, SEC.1. Amended by P.L.127-2012, SEC.53.

IC 32-28-12.5-8

Installment payments; recording notice of lien; single claim for lien; partial releases

Sec. 8. (a) This section applies to a transaction involving the conveyance or transfer of commercial real estate in which:

(1) payment to a managing broker is due in installments; and

(2) a part of the installment payments is due only after the conveyance or transfer of the commercial real estate involved in the transaction.

(b) Subject to subsection (c), the managing broker may record a notice of lien for those payments described in subsection (a)(2) at any time after the transfer or conveyance, but not later than ninety (90) days after the date on which the payment is due. A notice of lien under this section is effective as a lien against the transferor's interest in the commercial real estate only to the extent consideration is still owed to the transferor by the transferee. However, the lien is effective

against the transferee's interest in the commercial real estate without the limitation described in this subsection.

(c) A single claim for a lien recorded:

(1) before the transfer or conveyance of the commercial real estate; and

(2) with respect to all payments due in installments;

is valid and enforceable with respect to payments due after the transfer or conveyance. However, as payments or partial payments of fees or commissions are received by the managing broker, the managing broker shall, by providing partial releases with respect to those payments, reduce the amount due the managing broker under the notice of lien described in this subsection.

As added by P.L.78-2006, SEC.1. Amended by P.L.127-2012, SEC.54.

IC 32-28-12.5-9

Lease of commercial real estate; recording of notice of lien; future fees or commissions; memorandum of lien; action to foreclose; sale or conveyance before fees become due

Sec. 9. (a) Subject to subsection (b), in the case of a lease of commercial real estate, including a sublease or an assignment of a lease, the notice of a lien under this chapter must be recorded not later than ninety (90) days after the tenant takes possession of the leased premises. However, if:

(1) the transferor personally serves, on the managing broker entitled to claim a lien, written notice of the intended execution of the lease; and

(2) the notice described in subdivision (1) is served not later than ten (10) days before the date of the intended execution of the lease;

the managing broker's notice of lien must be recorded before the date indicated in the notice described in subdivision (1) for the execution of the lease. The lien attaches on the recording of the notice of lien and does not relate back to the date of the written agreement, contract, or written instrument under which the managing broker is entitled to fees or commissions.

(b) As used in this subsection, "future fees or commissions" refers to fees or commissions:

(1) other than those fees or commissions due to a managing broker upon the execution of a lease under subsection (a); or

(2) due to the managing broker upon the exercise of an option to:

(A) expand the leased premises;

(B) renew or extend a lease; or

(C) purchase the commercial real estate;

under a written agreement, a contract, or another written instrument signed by the owner or tenant of the commercial real estate. The managing broker may record a memorandum of lien at any time after execution of the lease or other written agreement, contract, or written instrument that contains rights to future fees or commissions. The

managing broker shall record a notice of lien no later than ninety (90) days after the occurrence of a condition for which future fees or commissions are claimed, but may not file a notice of lien against an owner's property if the tenant is the sole party liable for payment of the future fees or commissions. Except as provided in section 11(a) or 13(b) of this chapter, an action to foreclose a lien to collect future fees or commissions must be commenced not later than one (1) year after the recording of the notice of the lien. A memorandum of lien recorded under this chapter must meet the requirements of section 12(1)(A), 12(1)(B), 12(1)(C), 12(1)(E), 12(2), 12(3), and 12(4) of this chapter. A memorandum of lien shall not constitute a lien against the real estate but shall provide notice of the right to future fees or commissions.

(c) If:

(1) commercial real estate is sold or otherwise conveyed before the date on which future fees or commissions are due; and

(2) the managing broker has recorded a valid memorandum of lien or notice of lien before the sale or other conveyance of the commercial real estate;

the purchaser or transferee is considered to have notice of and takes title to the commercial real estate subject to the right to future fees or commissions and, if applicable, notice of lien. However, if a managing broker claiming future fees or commissions fails to record a memorandum of lien or notice of lien for the future fees or commissions before the recording of a deed conveying legal title to the commercial real estate to the purchaser or transferee, the managing broker may not claim a lien on the commercial real estate. This subsection does not limit or otherwise affect claims or defenses a managing broker or owner or any other party may have in law or equity.

As added by P.L.78-2006, SEC.1. Amended by P.L.1-2007, SEC.212; P.L.127-2012, SEC.55.

IC 32-28-12.5-10

Notice of lien; service on owner; mailing or personal service

Sec. 10. A managing broker shall, not later than ten (10) days after recording a notice of lien under this chapter, personally serve or mail, by registered or certified mail, a copy of the notice of lien to the owner of record of the commercial real estate, or to the agent of the owner of record, at the address of the owner stated in the written agreement, contract, or other written instrument on which the claim for the lien is based. If the address of the owner or the owner's agent is not stated, the managing broker shall personally serve or mail, by registered or certified mail, a copy of the notice of the lien to the address where real estate taxes are sent for the commercial real estate on which the claim of lien is based. Mailing of the copy of the notice of lien is effective when deposited in the United States mail with postage prepaid. Personal service of the notice of the lien is effective upon receipt by the owner or the agent of the owner of record. A managing broker's lien is unenforceable if mailing or service of the

copy of notice of lien does not occur at the time and in the manner required by this section.
As added by P.L.78-2006, SEC.1. Amended by P.L.127-2012, SEC.56.

IC 32-28-12.5-11
Foreclosure of lien; procedures; contents of complaint

Sec. 11. (a) The managing broker claiming the lien shall, not later than one (1) year after recording the notice of the lien, commence proceedings to foreclose the lien. However, for future fees or commissions payable over a period in excess of one (1) year from the occurrence of a condition for which such future fees or commissions are claimed, the commencement of the suit must be within one (1) year of the latest date for which future fees or commissions are due. A managing broker's failure to commence proceedings within the time prescribed by this subsection extinguishes the lien and a subsequent notice of lien may not be given for the same claim, nor may that claim be asserted in any other proceedings under this chapter.

(b) A managing broker claiming a lien based upon an option or other right to purchase or lease commercial real estate shall, not later than one (1) year after recording the notice of the lien, commence proceedings to foreclose the lien. A managing broker's failure to commence proceedings within the time prescribed by this subsection extinguishes the lien and a subsequent notice of lien may not be given for the same claim, nor may that claim be asserted in any other proceedings under this chapter.

(c) The foreclosure of a lien recorded under this chapter shall be conducted under the same rules and same procedures applicable to the foreclosure of mortgages upon real estate. A complaint under this section must contain:

(1) a brief statement of the written agreement, contract, or other written instrument that is the basis for the lien;
(2) the date when the written agreement, contract, or other written instrument was made;
(3) a description of the services performed by the managing broker;
(4) the amount due and unpaid for the services described in subdivision (3);
(5) a description of the commercial real estate subject to the notice of lien; and
(6) other facts reasonably necessary to describe the rights of the parties.

As added by P.L.78-2006, SEC.1. Amended by P.L.127-2012, SEC.57.

IC 32-28-12.5-12
Notice of lien; contents; signature; verification

Sec. 12. A notice of lien recorded under this chapter must:

(1) state:

(A) the name of the claimant;
(B) the name of the owner of the commercial real estate upon which the lien is claimed;
(C) a legal description of the commercial real estate upon which the lien is claimed;
(D) the amount for which the lien is claimed; and
(E) the license number of the managing broker's license under IC 25-34.1;

(2) contain a statement that the information contained in the notice is true and accurate to the knowledge of the signatory;
(3) be signed by the managing broker or by a person authorized to sign on behalf of the managing broker; and
(4) be verified.

As added by P.L.78-2006, SEC.1. Amended by P.L.127-2012, SEC.58.

IC 32-28-12.5-13
Release or satisfaction of memorandum or notice of lien; demand to bring suit or file answer

Sec. 13. (a) If:
(1) a memorandum of lien or notice of lien has been recorded with the office of the recorder of the appropriate county; and
(2) a condition occurs that would preclude the managing broker from receiving fees or commissions under the terms of the written agreement, contract, or other written instrument upon which the lien is based;

the managing broker shall provide to the owner of record of the commercial real estate, not later than ten (10) days after written demand by the owner of record, a written release or satisfaction of the memorandum of lien or notice of lien.

(b) Upon written demand:
(1) served by the owner, buyer, or tenant described in section 5 of this chapter, or the authorized agent of the owner, buyer, or tenant described in section 5 of this chapter, on the managing broker claiming a lien under this chapter; and
(2) requiring the managing broker to:
(A) bring a suit to enforce the lien; or
(B) file an answer in a pending suit;

the managing broker shall bring a suit or file an answer not later than thirty (30) days after service of the demand. If the managing broker does not bring a suit or file an answer within the time prescribed by this subsection, the lien is extinguished. The service of a written demand under this subsection may be made by registered or certified mail, return receipt requested, or by personal service.

(c) If:
(1) a memorandum of lien or notice of lien under this chapter has been filed with the office of the recorder and the fees or commissions upon which the lien is based have been paid to the managing broker claiming the lien; or
(2) the managing broker fails to institute a suit to enforce the

lien within the time prescribed by this chapter;

the managing broker shall, not later than five (5) days after receipt of a written demand from the owner, buyer, or tenant described in section 5 of this chapter for a release or an acknowledgment of satisfaction of the memorandum or lien, acknowledge satisfaction or release of the memorandum or lien in writing.

As added by P.L.78-2006, SEC.1. Amended by P.L.127-2012, SEC.59.

IC 32-28-12.5-14

Alternative dispute resolution; forum; judgment; stay of foreclosure proceeding

Sec. 14. If the managing broker and the party from whom fees or commissions are claimed under this chapter agree to alternative dispute resolution, any claim under this chapter must be heard and resolved in the forum agreed to by the parties. The court before which a lien foreclosure proceeding is brought under this chapter retains jurisdiction to enter judgment on the award or other result made or reached under alternative dispute resolution proceedings with respect to all parties to the foreclosure. The managing broker's notice of lien remains of record and the foreclosure proceeding shall be stayed during the pendency of the alternative dispute resolution proceedings.

As added by P.L.78-2006, SEC.1. Amended by P.L.127-2012, SEC.60.

IC 32-28-12.5-15

Cost of proceedings; apportionment

Sec. 15. The cost of proceedings brought under this chapter, including reasonable attorney's fees, costs, and prejudgment interest due to the prevailing party, shall be borne by the nonprevailing party. If more than one (1) party is responsible for costs, fees, and prejudgment interest, the costs, fees, and prejudgment interest shall be equitably apportioned by the court or alternative dispute resolution tribunal among the responsible parties.

As added by P.L.78-2006, SEC.1.

IC 32-28-12.5-16

Waiver of right to lien void

Sec. 16. Except for a waiver or release of a memorandum or lien provided in consideration of payment of the fees or commissions claimed by a managing broker under this chapter, or except as otherwise provided in section 13 of this chapter, any waiver of a managing broker's right to a lien on commercial property under this chapter is void.

As added by P.L.78-2006, SEC.1. Amended by P.L.127-2012, SEC.61.

IC 32-28-12.5-17

Prior recorded liens, mortgages, and encumbrances; priority

Sec. 17. Valid recorded liens, mortgages, and other encumbrances that are recorded before a principal broker's notice of lien under this chapter have priority over a principal broker's lien under this chapter. Prior recorded liens, mortgages, and encumbrances that have priority under this section include:

(1) a valid mechanic's lien that is recorded after a principal broker's notice of lien under this chapter, but that relates back to a date before the recording date of the principal broker's notice of lien; and

(2) prior recorded liens securing revolving credit and future advances of construction loans.

As added by P.L.78-2006, SEC.1.

IC 32-28-12.5-18

Lien on funds in escrow account

Sec. 18. If:

(1) a claim for a lien under this chapter has been filed with the office of the recorder of the county in which commercial real estate or any interest in commercial real estate is located; and

(2) an escrow account is established among:

(A) the one (1) or more parties allegedly responsible for payment of the fees or commissions on which the lien is based;

(B) the managing broker that filed the lien; and

(C) an independent third party as escrowee;

from the proceeds of the conveyance, or from any other source of funds, in an amount that is at least one hundred ten percent (110%) of the amount of the lien claimed under this chapter;

the lien against the real estate is extinguished and becomes a lien on the funds contained in the escrow account. The establishment of an escrow account described in this section does not constitute cause for any party to refuse to close the transaction.

As added by P.L.78-2006, SEC.1. Amended by P.L.127-2012, SEC.62.

IC 32-28-12.5-19

Owner not providing required notice or certification at closing; civil action; damages; defenses

Sec. 19. (a) If any party, including a managing broker, buyer, or buyer's mortgagee suffers a pecuniary loss as the result of an owner's violation of the notice or certification provisions described in section 7 of this chapter, the party may bring a civil action against the owner for the following:

(1) Actual damages.

(2) The costs of the action.

(3) Reasonable attorney's fees.

However, if the party establishes that the owner's violation of the notice or certification provisions was fraudulent, a court may award the party damages that do not exceed three (3) times actual damages.

(b) It is a defense to an action brought under this section that the

most recent address provided by the managing broker to the owner in the agreement, contract, or other written instrument, including a written instrument described in section 5 of this chapter, was incorrect, and as a result of the incorrect address, the principal broker did not receive the owner's notice described in section 7(b) of this chapter, and as a result the managing broker failed to provide the notice as required in section 7(c) of this chapter.

As added by P.L.78-2006, SEC.1. Amended by P.L.127-2012, SEC.63.

IC 32-28-13

Chapter 13. Common Law Liens

IC 32-28-13-1

"Common law lien" defined

Sec. 1. As used in this chapter, "common law lien" means a lien against real or personal property that is not:

(1) a statutory lien;

(2) a security interest created by agreement; or

(3) a judicial lien obtained by legal or equitable process or proceedings.

As added by P.L.2-2002, SEC.13.

IC 32-28-13-2

"Property owner" defined

Sec. 2. As used in this chapter, "property owner" means the owner of record of real or personal property against which a common law lien is held under this chapter.

As added by P.L.2-2002, SEC.13.

IC 32-28-13-3

"Public official" defined

Sec. 3. As used in this chapter, "public official" means an individual who holds office in or is an employee of the executive, judicial, or legislative branch of the state or federal government or a political subdivision of the state or federal government.

As added by P.L.2-2002, SEC.13.

IC 32-28-13-4

Common law lien against public official based on performance of official duty precluded; voiding common law lien

Sec. 4. (a) This chapter provides the procedure for filing and releasing a common law lien.

(b) This chapter does not create a common law lien. A common law lien does not exist against the property of a public official for the performance or nonperformance of the public official's official duty. A person asserting a common law lien must prove the existence of the lien as prescribed by the common law of Indiana.

(c) Unless a common law lien becomes void at an earlier date under section 6(b) of this chapter, a common law lien is void if the common law lienholder fails to commence a suit on the common law lien within one hundred eighty (180) days after the date the common law lien is recorded under this chapter.

As added by P.L.2-2002, SEC.13. Amended by P.L.73-2009, SEC.1.

IC 32-28-13-5

Statement of intention to hold common law lien

Sec. 5. (a) A person who wishes to record a common law lien must file with the county recorder of a county in which the real or personal property against which the common law lien is to be held is located

a statement of the person's intention to hold a common law lien against the real or personal property. The statement must be recorded not later than sixty (60) days after the date of the last service provided by the person who wishes to record the lien.

(b) A statement of intention to hold a common law lien must meet all of the following requirements:

(1) Except as provided in subsection (d), the person filing the statement must swear or affirm that the facts contained in the statement are true to the best of the person's knowledge.

(2) The statement must be filed in duplicate.

(3) The statement must set forth:

(A) the amount claimed to be owed by the property owner to the lienholder;

(B) the name and address of the lienholder;

(C) the name of the property owner;

(D) the last address of the property owner as shown on the property tax records of the county;

(E) the legal description and street and number, if any, of the real property against which the common law lien is filed;

(F) a full description of the personal property against which the common law lien is filed, including the location of the personal property; and

(G) the legal basis upon which the person asserts the right to hold the common law lien.

(c) The recorder shall send by first class mail one (1) of the duplicate statements filed under subsection (b) to the property owner at the address listed in the statement within three (3) business days after the statement is recorded. The county recorder shall record the date the statement is mailed to the property owner under this subsection. The county recorder shall collect a fee of two dollars ($2) from the lienholder for each statement that is mailed under this subsection.

(d) The statement of intention to hold a common law lien required under subsection (b) may be verified and filed on behalf of a client by an attorney registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court.

As added by P.L.2-2002, SEC.13. Amended by P.L.73-2009, SEC.2.

IC 32-28-13-6

Notice to lienholder to commence suit; voiding common law lien

Sec. 6. (a) A property owner may send to the lienholder a notice requiring the lienholder to commence suit on the common law lien. The notice to commence suit must be made by registered or certified mail to the lienholder at the address given in the lienholder's statement filed under section 5 of this chapter.

(b) If the lienholder fails to commence suit within thirty (30) days after receiving the notice to commence suit, the common law lien is void. To release the common law lien from the property, the property owner must comply with the requirements of section 7 of this

chapter.
As added by P.L.2-2002, SEC.13.

IC 32-28-13-7
Affidavit of service of notice to commence suit; release of property and expunging record; fee

Sec. 7. (a) If a lienholder fails to commence suit after notice to commence suit is sent under section 6 of this chapter, a property owner may file an affidavit of service of notice to commence suit with the recorder of the county in which the statement of intention to hold a common law lien was recorded. The affidavit must:

(1) include:

(A) the date the notice to commence suit was received by the lienholder;

(B) a statement that at least thirty (30) days have elapsed from the date the notice to commence suit was received by the lienholder;

(C) a statement that a suit for foreclosure of the common law lien has not been filed and is not pending;

(D) a statement that an unsatisfied judgment has not been rendered on the common law lien; and

(E) a cross-reference specifying the record of the county recorder containing the statement of intention to hold a common law lien; and

(2) have attached to it a copy of:

(A) the notice to commence suit that was sent to the lienholder under section 6 of this chapter; and

(B) the return receipt of the notice to commence suit.

(b) The property against which the lien has been filed is released from the common law lien when the county recorder:

(1) records the affidavit of service of notice to commence suit in the miscellaneous record book of the recorder's office; and

(2) certifies in the county recorder's records that the lien is released.

(c) The county recorder shall collect a fee for filing the affidavit of service of notice to commence suit under the fee schedule established in IC 36-2-7-10.
As added by P.L.2-2002, SEC.13.

IC 32-28-13-8
Certificate of satisfaction

Sec. 8. (a) When a common law lien recorded under this chapter has been satisfied, the lienholder shall record a certificate of satisfaction with the recorder of the county in which the statement of intention to hold a common law lien was recorded. The certificate must specify the record of the county recorder that contains the statement of intention to hold a common law lien filed by the lienholder under section 5 of this chapter.

(b) The certificate of satisfaction recorded under this section must discharge and release the property owner from the common law lien

and bar all suits and actions on the lien.

(c) The recorder shall collect a fee for recording a certificate of satisfaction under this section in accordance with the fee schedule established in IC 36-2-7-10.

As added by P.L.2-2002, SEC.13.

IC 32-28-13-9

Civil actions against lienholder

Sec. 9. A person who is injured by a common law lien that is recorded under section 5 of this chapter may bring a civil action against the lienholder for:

(1) actual damages;

(2) costs; and

(3) reasonable attorney's fees.

As added by P.L.2-2002, SEC.13.

IC 32-28-14
Chapter 14. Homeowners Association Liens

IC 32-28-14-1
"Common expenses"
Sec. 1. As used in this chapter, "common expenses" means:
(1) all sums lawfully assessed against a subdivision by a homeowners association;
(2) expenses of:
(A) administration;
(B) maintenance;
(C) repair; or
(D) replacement;
of subdivision common areas and facilities;
(3) expenses agreed upon as common expenses by a homeowners association; and
(4) expenses declared common expenses by the bylaws or another written instrument of a homeowners association.
As added by P.L.135-2007, SEC.3.

IC 32-28-14-2
"Homeowners association"
Sec. 2. As used in this chapter, "homeowners association" means all the owners of real estate in a subdivision acting as an entity in accordance with any:
(1) bylaws;
(2) covenants; or
(3) other written instruments;
of the homeowners association.
As added by P.L.135-2007, SEC.3.

IC 32-28-14-3
"Real estate"
Sec. 3. As used in this chapter, "real estate" means a right, a title, or an interest in real property.
As added by P.L.135-2007, SEC.3.

IC 32-28-14-4
"Subdivision"
Sec. 4. As used in this chapter, "subdivision" means the division of a parcel of land into lots, parcels, tracts, units, or interests in the manner defined and prescribed by a subdivision control ordinance adopted by a legislative body under IC 36-7-4.
As added by P.L.135-2007, SEC.3.

IC 32-28-14-5
Homeowners association lien; notice of lien requirements
Sec. 5. (a) All sums assessed by a homeowners association but unpaid for the share of the common expenses chargeable to an owner of real estate in a subdivision constitute a homeowners association

lien on the real estate effective as provided in section 6 of this chapter.

(b) The priority of a homeowners association lien is established on the date the notice of the lien is recorded under section 6 of this chapter.

(c) A notice of lien may not be recorded under subsection (a) unless the notice of lien:

(1) contains:

(A) the name and address of the homeowners association;

(B) the address and legal description of the property that is subject to the lien;

(C) the name of the owner of the property that is subject to the lien; and

(D) the amount of the lien; and

(2) is:

(A) signed by an officer of the homeowners association; and

(B) acknowledged as in the case of deeds.

As added by P.L.135-2007, SEC.3.

IC 32-28-14-6

Lien attaches upon recording of notice of lien

Sec. 6. (a) A homeowners association lien under this chapter attaches to real estate upon the recording of a notice of lien by the homeowners association in the office of the recorder of the county in which the real estate is located.

(b) A homeowners association lien under this chapter attaches on the date of the recording of the notice of the lien under subsection (a) and does not relate back to:

(1) a date specified in the bylaws, the covenants, or another written instrument of the homeowners association; or

(2) the date the common expenses were assessed.

As added by P.L.135-2007, SEC.3.

IC 32-28-14-7

Liability for unpaid assessment

Sec. 7. (a) Except as provided in subsection (b), in a voluntary conveyance, the grantee of real estate is jointly and severally liable with the grantor for all unpaid assessments against the grantor for the grantor's share of the common expenses incurred before the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts of common expenses paid by the grantee.

(b) The grantee:

(1) is entitled to a statement from the manager, board of directors, or other governing authority of the homeowners association that sets forth the amount of the unpaid assessments against the grantor; and

(2) is not liable for, and the real estate conveyed is not subject to a homeowners association lien for, any unpaid assessments against the grantor unless the lien for unpaid assessments is recorded under section 6 of this chapter before recording the

deed by which the grantee takes title.

(c) If the mortgagee of a first mortgage of record or other purchaser of real estate obtains title to the real estate as a result of foreclosure of the first mortgage, the acquirer of title or the acquirer's successors and assigns are not liable for the share of the common expenses or assessments by the homeowners association chargeable to the real estate that became due before the acquisition of title to real estate by the acquirer. The unpaid share of common expenses or assessments is considered to be common expenses collectible from all of the owners of real estate in the subdivision, including the acquirer or the acquirer's successors and assigns.

As added by P.L.135-2007, SEC.3.

IC 32-28-14-8

Time limit for enforcing lien

Sec. 8. (a) A homeowners association may enforce a homeowners association lien by filing a complaint in the circuit or superior court of the county where the real estate that is the subject of the lien is located. The complaint:

(1) may not be filed earlier than ninety (90) days, unless:

(A) another person files a foreclosure action on the property that is the subject of the lien; or

(B) a person files written notice to file an action to foreclose the lien under section 9(a)(1) of this chapter; and

(2) must be filed not later than five (5) years;

after the date the statement and notice of intention to hold a lien was recorded under section 6 of this chapter.

(b) If a lien is not enforced within the time set forth in subsection (a), the lien is void.

(c) If a lien is foreclosed under this chapter, the court rendering judgment shall order a sale to be made of the real estate subject to the lien. The officers making the sale shall sell the real estate without any relief from valuation or appraisement laws.

As added by P.L.135-2007, SEC.3. Amended by P.L.167-2009, SEC.3; P.L.99-2011, SEC.4.

IC 32-28-14-9

Voiding of lien for failure to foreclose

Sec. 9. (a) A homeowners association lien under this chapter is void if both of the following occur:

(1) The owner of the real estate subject to the homeowners association lien or any person or corporation having an interest in the real estate, including a mortgagee or a lienholder, provides written notice to the owner or holder of the lien to file an action to foreclose the lien.

(2) The owner or holder of the lien fails to file an action to foreclose the lien in the county where the real estate is located within one (1) year after the date the owner or holder of the lien received the notice described in subdivision (1).

However, this section does not prevent the claim from being collected

as other claims are collected by law.

(b) A person who gives notice under subsection (a)(1) by registered or certified mail to the owner or holder of the homeowners association lien at the address given in the recorded statement may file an affidavit of service of the notice to file an action to foreclose the lien with the recorder of the county in which the real estate is located. The affidavit must state the following:

(1) The facts of the notice.

(2) That more than one (1) year has passed since the notice was received by the owner or holder of the lien.

(3) That an action for foreclosure of the lien is not pending.

(4) That an unsatisfied judgment has not been rendered on the lien.

(c) The recorder shall record the affidavit of service in the miscellaneous record book of the recorder's office. When the recorder records the affidavit under this subsection, the real estate described in the homeowners association lien is released from the lien.

(d) An affidavit recorded under subsection (c) must cross reference the lien.

As added by P.L.135-2007, SEC.3. Amended by P.L.167-2009, SEC.4.

IC 32-29

ARTICLE 29. MORTGAGES

IC 32-29-1

Chapter 1. Mortgage of Real Estate

IC 32-29-1-0.2

Application of prior law

Sec. 0.2. The addition of IC 32-8-11-9 (before its repeal, now codified at section 10 of this chapter) by P.L.157-1990 applies to a mortgage lien created after June 30, 1990.

As added by P.L.220-2011, SEC.525.

IC 32-29-1-1

Possession premises

Sec. 1. (a) This section does not apply to security interests in rents and profits arising from real estate.

(b) Unless a mortgage specifically provides that the mortgagee shall have possession of the mortgaged premises, the mortgagee is not entitled to possession of the mortgaged premises.

As added by P.L.2-2002, SEC.14.

IC 32-29-1-2

Construction of mortgage

Sec. 2. A mortgage may not be construed to imply a covenant for the payment of the sum intended to be secured by the mortgage so as to enable the mortgagee or the mortgagee's assignees or representatives to maintain an action for the recovery of this sum. If an express covenant is not contained in the mortgage for the payment and a bond or other separate instrument to secure the payment has not been given, the remedy of the mortgagee is confined to the real property described in the mortgage.

As added by P.L.2-2002, SEC.14.

IC 32-29-1-2.5

Hazard insurance

Sec. 2.5. A mortgagee or a mortgagee's assignee or representative may not require a mortgagor, as a condition of receiving or maintaining a mortgage, to obtain hazard insurance coverage against risks to improvements on the mortgaged property in an amount exceeding the replacement value of the improvements.

As added by P.L.73-2004, SEC.45.

IC 32-29-1-3

Sale of premises

Sec. 3. A mortgage of real estate, including an instrument having the legal effect of a mortgage, may not authorize the mortgagee to sell the mortgaged property. The sale of mortgaged property by the mortgagee may only be made under a judicial proceeding.

As added by P.L.2-2002, SEC.14.

IC 32-29-1-4
Purchase money mortgage

Sec. 4. A mortgage granted by a purchaser to secure purchase money has priority over a prior judgment against the purchaser.
As added by P.L.2-2002, SEC.14.

IC 32-29-1-5
Form; mortgage

Sec. 5. A mortgage of land that is:

(1) worded in substance as "A.B. mortgages and warrants to C.D." (here describe the premises) "to secure the repayment of" (here recite the sum for which the mortgage is granted, or the notes or other evidences of debt, or a description of the debt sought to be secured, and the date of the repayment); and

(2) dated and signed, sealed, and acknowledged by the grantor;

is a good and sufficient mortgage to the grantee and the grantee's heirs, assigns, executors, and administrators, with warranty from the grantor (as defined in IC 32-17-1-1) and the grantor's legal representatives of perfect title in the grantor and against all previous encumbrances. However, if in the mortgage form the words "and warrant" are omitted, the mortgage is good but without warranty.
As added by P.L.2-2002, SEC.14.

IC 32-29-1-6
Payment in full; release and discharge of mortgage

Sec. 6. After a mortgagee of property whose mortgage has been recorded has received full payment from the mortgagor of the sum specified in the mortgage, the mortgagee shall, at the request of the mortgagor, enter in the record of the mortgage that the mortgage has been satisfied. An entry in the record showing that a mortgage has been satisfied operates as a complete release and discharge of the mortgage.
As added by P.L.2-2002, SEC.14.

IC 32-29-1-7
Certificate of payments and satisfaction

Sec. 7. If a mortgage has been paid and satisfied by the mortgagor, the mortgagor may take a certificate of satisfaction, duly acknowledged by the mortgagee or the mortgagee's lawful agent, as required for the acknowledgment of conveyances to entitle them to be recorded. The certificate and acknowledgment shall be recorded by the recorder in whose office the mortgage is recorded, with a reference to the location of the record of the mortgage. The recorded certificate discharges and releases the mortgagor from the mortgage (or portion of the mortgage as indicated in a partial satisfaction), and bars all suits and actions on the mortgage.
As added by P.L.2-2002, SEC.14.

IC 32-29-1-8
Assignment of mortgage

Sec. 8. (a) Any mortgage of record or any part of the mortgage may be assigned by the mortgagee or any assignee of the mortgage, either by an assignment entered on the margin of the record, signed by the person making the assignment and attested by the recorder, or by a separate instrument executed and acknowledged before any person authorized to take acknowledgments, and recorded in the mortgage records of the county. The county recorder shall note the assignment in the margin by reference to the location where the assignment is recorded.

(b) The signature of a person on an assignment under subsection (a) may be a facsimile. The facsimile on the assignment is equivalent to and constitutes the written signature of the person for all requirements regarding mortgage assignments.

(c) Notwithstanding subsection (a), marginal assignments may be accepted at the discretion of the recorder. Except in a county that accepts marginal assignments of mortgage, an assignment of mortgage must be recorded on a separate written instrument from the mortgage. If a recorder accepts marginal assignments of mortgage, an instrument presented for recording in that county may not contain more than one (1) assignment. If a recorder allows an instrument to contain more than one (1) assignment, the fee for recording that instrument is provided in IC 36-2-7-10(b)(3).

(d) After entry is made of record, the mortgagor and all other persons are bound by the record, and the entry is a public record. Any assignee may enter satisfaction or release of the mortgage, or the part of the mortgage held by the assignee of record.

As added by P.L.2-2002, SEC.14.

IC 32-29-1-9

Foreclosure to state

Sec. 9. This chapter does not affect any provisions made by law relating to the foreclosure of mortgages to the state, so far as the provisions conflict with the provisions of this chapter.

As added by P.L.2-2002, SEC.14.

IC 32-29-1-10

Obligations a mortgage may secure; future obligations and advances; future modifications, extensions, and renewals of indebtedness; priority of lien

Sec. 10. (a) In addition to any other obligation secured by a mortgage, a mortgage may also secure:

(1) future obligations and advances up to the maximum amount stated in the mortgage (whether made as an obligation, made at the option of the lender, made after a reduction to a zero (0) or other balance, or made otherwise) to the same extent as if the future obligations and advances were made on the date of execution of the mortgage; and

(2) future modifications, extensions, and renewals of any indebtedness or obligations secured by the mortgage if and to the extent that the mortgage states that the mortgage secures

those future advances, modifications, extensions, and renewals.

(b) The lien of a mortgage with respect to future advances, modifications, extensions, and renewals referred to in subsection (a) has the priority to which the mortgage otherwise would be entitled under IC 32-21-4-1 without regard to the fact that the future advance, modification, extension, or renewal may occur after the mortgage is executed.

As added by P.L.2-2002, SEC.14.

IC 32-29-1-11

Rents and profits from real property; enforcement of assignment, mortgage, or pledge; rights not affected; equitable subrogation

Sec. 11. (a) This chapter does not limit:

(1) the right to assign, mortgage, or pledge the rents and profits arising from real estate;

(2) the right of an assignee, a mortgagee, or a pledgee to collect rents and profits for application in accordance with an assignment, a mortgage, or a pledge; or

(3) the power of a court of equity to appoint a receiver to take charge of real estate to collect rents and profits for application in accordance with an assignment, a mortgage, or a pledge.

(b) A person may enforce an assignment, a mortgage, or a pledge of rents and profits arising from real property:

(1) whether the person has or does not have possession of the real estate; and

(2) regardless of the:

(A) adequacy of the security; or

(B) solvency of the assignor, mortgagor, or pledgor.

(c) If a person:

(1) enforces an assignment, a mortgage, or a pledge of rents and profits arising from real estate; and

(2) does not have possession of the real estate;

the obligations of a mortgagee in possession of real estate may not be imposed on the holder of the assignment, mortgage, or pledge.

(d) Except for those instances involving liens defined in IC 32-28-3-1, a mortgagee seeking equitable subrogation with respect to a lien may not be denied equitable subrogation solely because:

(1) the mortgagee:

(A) is engaged in the business of lending; and

(B) had constructive notice of the intervening lien over which the mortgagee seeks to assert priority;

(2) the lien for which the mortgagee seeks to be subrogated was released; or

(3) the mortgagee obtained a title insurance policy.

(e) Subsection (d) does not apply to a municipal sewer lien under IC 36-9-23 or a mechanic's lien under IC 32-28-3-1.

As added by P.L.2-2002, SEC.14. Amended by P.L.122-2003, SEC.1; P.L.151-2003, SEC.2; P.L.2-2005, SEC.86.

IC 32-29-2

Chapter 2. Recording of Assignment

IC 32-29-2-1

Written transfer or assignment; acknowledgment and recording

Sec. 1. A person who transfers or assigns a mortgage within Indiana shall do so in writing by:

(1) noting the assignment or transfer on the record recording the mortgage; or

(2) separate written instrument.

A person who transfers or assigns a mortgage as described in this section shall cause the notation or written instrument to be acknowledged before an officer authorized to take acknowledgments of the execution of mortgages.

As added by P.L.2-2002, SEC.14.

IC 32-29-2-2

Written transfer or assignment; location and business address of transferee or assignee required

Sec. 2. In order to be recorded, a written instrument that transfers or assigns a mortgage under this chapter must state the location and business address of the person to whom the mortgage is transferred or assigned.

As added by P.L.2-2002, SEC.14.

IC 32-29-3

Chapter 3. Attestation of Releases; Legalizing Prior Release

IC 32-29-3-1

Necessity of attestation

Sec. 1. The release of a mortgage, lease, or other instrument required by law to be recorded written upon the margin, or upon the record, of any mortgage in Indiana by the party authorized to release the mortgage is not a valid release of the mortgage, lease, or other instrument unless the release is attested on the record by the recorder or deputy recorder of the county in which the mortgage is recorded. *As added by P.L.2-2002, SEC.14.*

IC 32-29-4

Chapter 4. Release by State

IC 32-29-4-1

Lack of evidence of indebtedness

Sec. 1. If the mortgage records of a county in Indiana indicate that a mortgage has been executed to the state and:

(1) there is no evidence of indebtedness secured by the mortgage in the possession of the treasurer of state or auditor of state; and

(2) there is no evidence in the office of the auditor of state or treasurer of state that a loan secured by the mortgage was made;

the auditor of state may release and discharge the mortgage of record.

As added by P.L.2-2002, SEC.14.

IC 32-29-5

Chapter 5. Release by Financial Institutions or Corporations

IC 32-29-5-1

Discharge and satisfaction of liens; requisites; recording

Sec. 1. (a) It is lawful for:

(1) the president, vice president, cashier, secretary, treasurer, attorney in fact, or other authorized representative of a national bank, state bank, trust company, or savings bank; or

(2) the president, vice president, general manager, secretary, treasurer, attorney in fact, or other authorized representative of any other corporation doing business in Indiana;

to release upon the record mortgages, judgments, and other record liens upon the payment of the debts secured by the liens.

(b) A release, when made upon the margin or face of the record of the mortgage, judgment, or other lien and attested by the recorder, clerk, or other officer having custody of the record of the lien, is a full discharge and satisfaction of the lien.

(c) The recorder of each county may require that each release, discharge, or satisfaction of a mortgage, judgment, or lien, or any partial release of any of these, be recorded on a separate written instrument. If a recorder requires the recording of each release, discharge, or satisfaction on a separate written instrument, an instrument presented for recordation in that county may not contain more than one (1) release, discharge, or satisfaction. If a recorder allows an instrument to contain more than one (1) release, discharge, or satisfaction, the fee for recording that instrument is provided in IC 36-2-7-10(b)(3).

(d) Except as provided in subsection (e), a national bank, state bank, trust company, savings bank, or other corporation may release and discharge mortgages, judgments, or other record liens by a separate written instrument signed by its:

(1) corporate name;

(2) president;

(3) vice president;

(4) cashier;

(5) secretary;

(6) treasurer;

(7) attorney-in-fact; or

(8) authorized representative.

A release under this subsection shall be recorded by the recorder, clerk, or other officer having custody of the record of the lien, with a reference on the margin of the record of the lien to the location where the release is recorded. Upon recordation, the release is a full discharge and satisfaction of the lien, or portion of the lien, as indicated in a partial release.

(e) A release by the attorney-in-fact may not be recorded until a written instrument specifically granting the attorney in fact the authority to release and discharge mortgages, judgments, or other record liens has been filed and recorded in the recorder's office of the

county where the release is to be recorded. The written instrument must be in writing and signed and acknowledged by two (2) officers of the national bank, state bank, trust company, savings bank, or other corporation.

(f) A party may revoke the written instrument filed under subsection (e) by:

(1) noting on the written instrument granting the attorney in fact the authority to release mortgages and liens that this power has been revoked; or

(2) filing and recording in the recorder's office of the county where the written instrument described in subsection (e) of this section was filed, a separate written instrument signed and acknowledged by two (2) officers of the entity revoking the attorney-in-fact's authority.

The written notice of revocation described in this subsection must be attested by the recorder of the county in which the revocation is filed. The party conferring the power described in subsection (e) is bound by an act performed before written notice revoking the authority is properly attested to and filed in the county recorder's office.

As added by P.L.2-2002, SEC.14.

IC 32-29-6

Chapter 6. Mortgage Release by Title Insurance Companies

IC 32-29-6-1

"Mortgage"

Sec. 1. As used in this chapter, "mortgage" means a mortgage or mortgage lien on an interest in real property in Indiana given to secure a loan in the original principal amount of not more than one million dollars ($1,000,000).

As added by P.L.2-2002, SEC.14.

IC 32-29-6-2

"Mortgagee"

Sec. 2. As used in this chapter, "mortgagee" means:

(1) the grantee of a mortgage; or

(2) if a mortgage has been assigned of record, the last person to whom the mortgage has been assigned of record.

As added by P.L.2-2002, SEC.14.

IC 32-29-6-3

"Mortgage servicer"

Sec. 3. As used in this chapter, "mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage. A person transmitting a payoff statement is the mortgage servicer for the mortgage described in the payoff statement.

As added by P.L.2-2002, SEC.14.

IC 32-29-6-4

"Mortgagor"

Sec. 4. As used in this chapter, "mortgagor" means the grantor of a mortgage.

As added by P.L.2-2002, SEC.14.

IC 32-29-6-5

"Payoff statement"

Sec. 5. As used in this chapter, "payoff statement" means a statement of the amount of:

(1) the unpaid balance of a loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage; and

(2) interest on a per day basis for the unpaid balance.

As added by P.L.2-2002, SEC.14.

IC 32-29-6-6

"Person"

Sec. 6. As used in this chapter, "person" means an individual, a corporation, or any other legal entity.

As added by P.L.2-2002, SEC.14.

IC 32-29-6-7
"Record"

Sec. 7. As used in this chapter, "record" means to record with the county recorder.

As added by P.L.2-2002, SEC.14.

IC 32-29-6-8
"Title insurance company"

Sec. 8. As used in this chapter, "title insurance company" means a corporation or other business entity authorized and licensed to transact the business of insuring titles to interests in real property in Indiana under IC 27.

As added by P.L.2-2002, SEC.14.

IC 32-29-6-9
Certificate of release

Sec. 9. An officer or appointed agent of a title insurance company may, on behalf of a mortgagor or a person who acquired from the mortgagor a lien against all or part of the property described in a mortgage, execute a certificate of release that complies with the requirements of this chapter and record the certificate of release in the real property records of each county in which the mortgage is recorded if:

(1) a satisfaction or release of the mortgage has not been executed and recorded within sixty (60) days after the date payment in full of the loan secured by the mortgage was sent in accordance with a payoff statement furnished by the mortgagee or the mortgage servicer; and

(2) the title insurance company, an officer of the title insurance company, or an agent of the title insurance company has sent to the last known address of the mortgagee or the mortgage servicer, at least thirty (30) days before executing the certificate of release, written notice of its intention to execute and record a certificate of release in accordance with this section after the expiration of the sixty (60) day period.

As added by P.L.2-2002, SEC.14.

IC 32-29-6-10
Certificate of release; contents

Sec. 10. A certificate of release executed under this chapter must contain substantially all of the following:

(1) The name of the mortgagor, the name of the original mortgagee and, if applicable, the name of the mortgage servicer, the date of the mortgage, the date of recording of the mortgage, and the volume and page or instrument number for the mortgage in the real property records where the mortgage is recorded, together with similar information for the last recorded assignment of the mortgage.

(2) A statement that the mortgage was in the original principal amount of not more than one million dollars ($1,000,000).

(3) A statement that the person executing the certificate of release is an officer or a duly appointed agent of a title insurance company authorized and licensed to transact the business of insuring titles to interests in real property in Indiana under IC 27.
(4) A statement that the certificate of release is made on behalf of the mortgagor or a person who acquired a lien from the mortgagor against all or part of the property described in the mortgage.
(5) A statement that the mortgagee or mortgage servicer provided a payoff statement that was used to make payment in full of the unpaid balance of the loan secured by the mortgage.
(6) A statement that payment in full of the unpaid balance of the loan secured by the mortgage was made in accordance with the written or verbal payoff statement and received by the mortgagee or mortgage servicer, as evidenced in the records of the title insurance company or its agents by:
(A) a bank check;
(B) a certified check;
(C) an escrow account check from the title company or title insurance agent;
(D) an attorney trust account check that has been negotiated by the mortgagee or mortgage servicer; or
(E) any other documentary evidence of payment to the mortgagee or mortgage servicer.
(7) A statement indicating that more than sixty (60) days have elapsed since the date payment in full was sent.
(8) A statement that after the expiration of the sixty (60) day period referred to in section 9 of this chapter, the title insurance company, its officers, or its agent sent to the last known address of the mortgagee or mortgage servicer, at least thirty (30) days before executing the certificate of release, notice in writing of its intention to execute and record a certificate of release as required under this section, with an unexecuted copy of the proposed certificate of release attached to the written notice.
(9) A statement that neither the title insurance company nor its officers or agent have received notification in writing of any reason why the certificate of release should not be executed and recorded after the expiration of the thirty (30) day notice period referred to in section 9 of this chapter.
As added by P.L.2-2002, SEC.14.

IC 32-29-6-11
Certificate of release; execution and acknowledgment
Sec. 11. A certificate of release authorized by this chapter shall be executed and acknowledged in the same manner as required by law in Indiana for the execution and acknowledgment of a deed.
As added by P.L.2-2002, SEC.14.

IC 32-29-6-12

Notice of authorization

Sec. 12. (a) A title insurance company may authorize an appointed agent of the title insurance company to execute certificates of release under this chapter by recording a notice of authorization in the office of the county recorder for each county in which the duly appointed agent is authorized to execute and record certificates of release on behalf of the title insurance company. The notice of authorization must state the following:

(1) The name of the title insurance company that is authorizing an appointed agent to execute certificates of release on behalf of the title insurance company.

(2) The identity of the person who is an appointed agent of the title insurance company and who is authorized to execute and record certificates of release in accordance with the requirements of this chapter on behalf of the title insurance company.

(3) That the appointed agent has full authority to execute and record certificates of release in accordance with the requirements of this chapter on behalf of the title insurance company.

(b) The notice of authorization must be executed and acknowledged in the same manner as required by law in Indiana for the execution and acknowledgment of a deed.

(c) A single notice of authorization recorded in the office of a county recorder under this section constitutes the authority of the appointed agent to execute and record certificates of release in that county on behalf of the title insurance company. A separate notice of authority is not required for each certificate of release recorded by an appointed agent.

(d) The authority granted to an appointed agent by a title insurance company under this section continues until a revocation of the notice of authorization is recorded in the office of the county recorder for the county in which the notice of authorization was recorded.

(e) The delegation of authority to an appointed agent by a title insurance company under this section does not relieve the title insurance company of any liability for damages for the wrongful or erroneous execution and recording of a certificate of release by the appointed agent.

As added by P.L.2-2002, SEC.14.

IC 32-29-6-13

Misstatement in written payoff statement

Sec. 13. A creditor or mortgage servicer may not withhold the release of a mortgage if the written mortgage payoff statement misstates the amount of the payoff and the written payoff is relied upon in good faith by an independent closing agent without knowledge of the misstatement. It is not a misstatement if the written payoff statement is not accurate as a result of a change in circumstances occurring after the issuance of the payoff statement. The release of a mortgage does not affect the ability of the creditor or

mortgage servicer to collect the full amount owed without regard to a misstatement in the written payoff statement and a release of the mortgage.
As added by P.L.2-2002, SEC.14.

IC 32-29-6-14
Acceptance of payment

Sec. 14. The acceptance of a payment by a creditor or mortgage servicer of an amount that is not sufficient to pay the amount owed does not constitute a waiver, release, accord and satisfaction, or other impairment of the creditors or mortgage servicers rights notwithstanding any contrary instructions or restrictive endorsements.
As added by P.L.2-2002, SEC.14.

IC 32-29-6-15
Release of mortgage

Sec. 15. A certificate of release prepared, executed, and recorded in accordance with the requirements of this chapter constitutes a release of the mortgage described in that certificate of release, and the county recorder shall enter and index the certificate of release in the same manner that a release or satisfaction of mortgage is entered and indexed in the records of the county recorder.
As added by P.L.2-2002, SEC.14.

IC 32-29-6-16
Erroneous certificate of release

Sec. 16. (a) The execution and recording of a wrongful or erroneous certificate of release by a title insurance company or a duly appointed agent with authority from a title insurance company does not relieve the mortgagor, or anyone succeeding to or assuming the interest of the mortgagor, from any liability for the debt or other obligations secured by the mortgage that is the subject of the wrongful or erroneous certificate of release.

(b) Additionally, a title insurance company or an appointed agent with authority from a title insurance company that wrongfully or erroneously executes and records a certificate of release is liable to the mortgagee, or the assignee of the mortgagee if the mortgage has been assigned, for actual damages sustained due to the recording of a wrongful or erroneous certificate of release.
As added by P.L.2-2002, SEC.14.

IC 32-29-6-17
Applicability of chapter

Sec. 17. This chapter applies to the release of a mortgage after June 30, 2001, regardless of when the mortgage was created or assigned.
As added by P.L.2-2002, SEC.14. Amended by P.L.48-2003, SEC.1 and P.L.79-2003, SEC.1.

IC 32-29-7

Chapter 7. Foreclosure – Redemption, Sale, Right to Retain Possession

IC 32-29-7-0.2

Application of certain amendments to prior law

Sec. 0.2. (a) The amendments made to IC 32-8-16-1 (before its repeal, now codified at section 3 of this chapter) by P.L.276-1995 do not apply to a complaint asking for foreclosure that is filed before July 1, 1995.

(b) The amendments made to IC 32-8-16-5 (before its repeal, now codified at section 9 of this chapter) by P.L.56-1996 apply to all sheriff's sales conducted to foreclose mortgages on or after March 14, 1996.

As added by P.L.220-2011, SEC.526.

IC 32-29-7-1

"Auctioneer"

Sec. 1. As used in this chapter, "auctioneer" means an auctioneer licensed under IC 25-6.1.

As added by P.L.2-2002, SEC.14.

IC 32-29-7-2

"Economically feasible"

Sec. 2. For the purposes of section 4(b) of this chapter, the sale of property by the sheriff through the services of an auctioneer is "economically feasible" if the court determines that:

(1) a reasonable probability exists that, with the use of the services of an auctioneer, a valid and enforceable bid will be made at a foreclosure for a sale price equal to or greater than the amount of the judgment and the costs and expenses necessary to its satisfaction, including the costs of the auctioneer; and

(2) the reasonable probability would not exist without the use of an auctioneer.

As added by P.L.2-2002, SEC.14.

IC 32-29-7-3

Mortgage foreclosure; time for execution of judgment; right of enforcement authority to file praecipe; sale by sheriff; advertising; sheriff's fee

Sec. 3. (a) In a proceeding for the foreclosure of a mortgage executed on real estate, process may not issue for the execution of a judgment or decree of sale for a period of three (3) months after the filing of a complaint in the proceeding. However:

(1) the period is:

(A) twelve (12) months in a proceeding for the foreclosure of a mortgage executed before January 1, 1958; and

(B) six (6) months in a proceeding for the foreclosure of a mortgage executed after December 31, 1957, but before July 1, 1975; and

(2) if the court finds under IC 32-30-10.6 that the mortgaged real estate has been abandoned, a judgment or decree of sale may be executed on the date the judgment of foreclosure or decree of sale is entered, regardless of the date the mortgage is executed.

(b) A judgment and decree in a proceeding to foreclose a mortgage that is entered by a court having jurisdiction may be filed with the clerk in any county as provided in IC 33-32-3-2. After the period set forth in subsection (a) expires, a person who may enforce the judgment and decree may file a praecipe with the clerk in any county where the judgment and decree is filed, and the clerk shall promptly issue and certify to the sheriff of that county a copy of the judgment and decree under the seal of the court. However, if:

(1) a praecipe is not filed with the clerk within one hundred eighty (180) days after the later of the dates on which:

(A) the period specified in subsection (a) expires; or

(B) the judgment and decree is filed; and

(2) the sale is not:

(A) otherwise prohibited by law;

(B) subject to a voluntary statewide foreclosure moratorium; or

(C) subject to a written agreement that:

(i) provides for a delay in the sale of the mortgaged real estate; and

(ii) is executed by and between the owner of the mortgaged real estate and a party entitled to enforce the judgment and decree;

an enforcement authority that has issued an abatement order under IC 36-7-36-9 with respect to the mortgaged real estate may file a praecipe with the clerk in any county where the judgment and decree is filed. If an enforcement authority files a praecipe under this subsection, the clerk of the county in which the praecipe is filed shall promptly issue and certify to the sheriff of that county a copy of the judgment and decree under the seal of the court.

(c) Upon receiving a certified judgment under subsection (b), the sheriff shall, subject to section 4 of this chapter, sell the mortgaged premises or as much of the mortgaged premises as necessary to satisfy the judgment, interest, and costs at public auction at the office of the sheriff or at another location that is reasonably likely to attract higher competitive bids. The sheriff shall schedule the date and time of the sheriff's sale for:

(1) a date not later than one hundred twenty (120) days after the date on which the judgment and decree under seal of the court are certified to the sheriff by the clerk; and

(2) a time certain between the hours of 10 a.m. and 4 p.m. on any day of the week except Sunday.

(d) Before selling mortgaged property, the sheriff must advertise the sale by publication once each week for three (3) successive weeks in a daily or weekly newspaper of general circulation. The sheriff shall publish the advertisement in at least one (1) newspaper

published and circulated in each county where the real estate is situated. The first publication shall be made at least thirty (30) days before the date of sale. At the time of placing the first advertisement by publication, the sheriff shall also serve a copy of the written or printed notice of sale upon each owner of the real estate. Service of the written notice shall be made as provided in the Indiana Rules of Trial Procedure governing service of process upon a person. The sheriff shall charge a fee of ten dollars ($10) to one (1) owner and three dollars ($3) to each additional owner for service of written notice under this subsection. The fee is:

(1) a cost of the proceeding;

(2) to be collected as other costs of the proceeding are collected; and

(3) to be deposited in the county general fund for appropriation for operating expenses of the sheriff's department.

(e) The sheriff also shall post written or printed notices of the sale at the door of the courthouse of each county in which the real estate is located.

(f) If the sheriff is unable to procure the publication of a notice within the county, the sheriff may dispense with publication. The sheriff shall state that the sheriff was not able to procure the publication and explain the reason why publication was not possible.

(g) Notices under subsections (d), (e), and (i) must contain a statement, for informational purposes only, of the location of each property by street address, if any, or other common description of the property other than legal description. A misstatement in the informational statement under this subsection does not invalidate an otherwise valid sale.

(h) The sheriff may charge an administrative fee of not more than two hundred dollars ($200) with respect to a proceeding referred to in subsection (b) for actual costs directly attributable to the administration of the sale under subsection (c). The fee is:

(1) payable by the person seeking to enforce the judgment and decree; and

(2) due at the time of filing of the praecipe;

under subsection (b).

(i) If a sale of mortgaged property scheduled under this section is canceled, the sheriff shall provide written notice of the cancellation to each owner of the real estate. Service of the written notice shall be made as provided in the Indiana Rules of Trial Procedure governing service of process upon a person. The sheriff shall charge a fee of ten dollars ($10) for notice to one (1) owner and three dollars ($3) for notice to each additional owner for service of written notice under this subsection. The fee:

(1) is a cost of the proceeding;

(2) shall be collected as other costs of the proceeding are collected; and

(3) shall be deposited in the county general fund for appropriation for operating expenses of the sheriff's department.

The fee for service under this subsection shall be paid by the person

who caused the sale to be canceled.
As added by P.L.2-2002, SEC.14. Amended by P.L.98-2004, SEC.118; P.L.238-2005, SEC.55 and P.L.240-2005, SEC.1; P.L.100-2008, SEC.1; P.L.68-2010, SEC.2; P.L.102-2012, SEC.1; P.L.66-2014, SEC.19.

IC 32-29-7-4
Sheriff's sale; manner of sale; engagement of auctioneer

Sec. 4. (a) A sheriff shall offer to sell and sell property on foreclosure in a manner that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer and sale.

(b) Upon prior petition of the debtor or any creditor involved in the foreclosure proceedings, the court in its order of foreclosure shall order the property sold by the sheriff through the services of an auctioneer requested by the petitioner and approved by the court if:

(1) the court determines that a sale is economically feasible; or
(2) all the creditors in the proceedings agree to both that method of sale and the compensation to be paid the auctioneer.

(c) The sheriff shall engage the auctioneer not later than fourteen (14) calendar days after the date of the order entered by the court under subsection (b). The auctioneer shall schedule the auction and conduct the auctioneer's activities as appropriate to bring the highest bid for the property on foreclosure. The advertising conducted by the auctioneer is in addition to any other notice required by law.

(d) The auctioneer's fee must be a reasonable amount stated in the court's order. However, if the sale by use of an auctioneer has not been agreed to by the creditors in the proceedings and the sale price is less than the amount of the judgment and the costs and expenses necessary to the satisfaction of the judgment, the auctioneer is entitled only to the auctioneer's advertising expenses plus one hundred dollars ($100). The amount due the auctioneer on account of the auctioneer's expenses and fee, if any, shall be paid as a cost of the sale from its proceeds before the payment of any other payment from the sale.
As added by P.L.2-2002, SEC.14. Amended by P.L.167-2005, SEC.1.

IC 32-29-7-5
Waiver of time limitations

Sec. 5. The owner of the real estate subject to the issuance of process under a judgment or decree of foreclosure may, with the consent of the judgment holder endorsed on the judgment or decree of foreclosure, file with the clerk of the court a waiver of the time limitations on issuance of process set out in section 3 of this chapter. If the owner files a waiver under this section, process shall issue immediately. The consideration for waiver, whether or not expressed by its terms, shall be the waiver and release by the judgment holder of any deficiency judgment against the owner.
As added by P.L.2-2002, SEC.14.

IC 32-29-7-6
Location of mortgaged real estate; jurisdiction; recordation

Sec. 6. (a) If the mortgaged real estate is located in more than one (1) county:

(1) the court of any county the mortgaged real estate is located in has jurisdiction of an action for the foreclosure of the mortgage; and

(2) all the real estate shall be sold in the county where the action is brought, unless the court orders otherwise.

(b) A judgment and decree granted by a court or a judge in an action for the foreclosure of the mortgaged real estate shall be recorded in the lis pendens record kept in the office of the clerk of each county where the real estate is located, unless the judgment and decree is filed with the clerk in the county as provided in IC 33-32-3-2.

As added by P.L.2-2002, SEC.14. Amended by P.L.98-2004, SEC.119.

IC 32-29-7-7
Redemption by owner before sheriff's sale

Sec. 7. Before the sale under this chapter, any owner or part owner of the real estate may redeem the real estate from the judgment by payment to the:

(1) clerk before the issuance to the sheriff of the judgment and decree; or

(2) sheriff after the issuance to the sheriff of the judgment and decree;

of the amount of the judgment, interest, and costs for the payment or satisfaction of which the sale was ordered. If the owner or part owner redeems the real estate under this section, process for the sale of the real estate under judgment may not be issued or executed, and the officer receiving the redemption payment shall satisfy the judgment and vacate order of sale. However, if the real estate is redeemed by a part owner, the part owner shall have a lien on the shares of the other owners for their respective shares of the redemption money, with interest at the rate of eight percent (8%) per annum, plus the costs of redemption. The lien shall be of the same force and effect as the judgment lien redeemed by the part owner and shall be enforceable by appropriate legal proceedings.

As added by P.L.2-2002, SEC.14.

IC 32-29-7-8
Sheriff's sale; manner of sale

Sec. 8. In selling real estate under this chapter, the sheriff is not required to first offer the rents and profits of the real estate or separate portions or parcels of the real estate. The sheriff may offer for sale the whole body of the mortgaged real estate together with rents, issues, income, and profits of the real estate unless the court in its judgment and order of sale has otherwise ordered. If any part of the judgment, interest, or costs remains unsatisfied, the sheriff shall

immediately levy the residue on the other property of the defendant.
As added by P.L.2-2002, SEC.14.

IC 32-29-7-8.5
Requirements for payment of property taxes and related costs before sheriff's sale

Sec. 8.5. (a) Before the date of a sheriff's sale of property under section 3(c) of this chapter, the party that filed the praecipe for the sheriff's sale shall pay the following:

(1) If a certificate of sale issued under IC 6-1.1-24 is outstanding:

(A) the amount necessary for redemption of the property under IC 6-1.1-25; and

(B) all delinquent property taxes, special assessments, penalties, and interest that:

(i) are not covered by the redemption referred to in clause (A); and

(ii) are due and owing on the property on the date of the sheriff's sale.

(2) If subdivision (1) does not apply, all delinquent property taxes, sewer liens described in IC 36-9-23-32, special assessments, penalties, and interest that are due and owing on the property on the date of the sheriff's sale.

(b) If the payments required under subsection (a) are not made in full by the date of the sale, the sheriff:

(1) shall cancel the sheriff's sale; and

(2) may conduct the sheriff's sale only:

(A) upon evidence that the payments required under subsection (a) have been made in full; and

(B) after a subsequent praecipe is filed, costs are paid, and the sheriff's sale is advertised under this chapter.

As added by P.L.73-2010, SEC.8. Amended by P.L.144-2013, SEC.1.

IC 32-29-7-9
Sheriff prohibited from purchasing real estate at sheriff's sale; default of purchaser

Sec. 9. (a) A sheriff or an agent of the sheriff making a foreclosure sale under this chapter may not directly or indirectly purchase property sold by the sheriff or the sheriff's agent. If the purchaser of property sold on foreclosure fails to immediately pay the purchase money, the sheriff shall resell the property either on the same day without advertisement or on a subsequent day after again advertising in accordance with this chapter, as the judgment creditor directs. If the amount bid at the second sale does not equal the amount bid at the first sale, including the costs of the second sale, the first purchaser shall be liable for:

(1) the deficiency;

(2) damages not exceeding ten percent (10%); and

(3) interest and costs;

all of which may be recovered in a court of proper jurisdiction by the

sheriff.

(b) If the property is sold, the sheriff shall pay the proceeds as provided in IC 32-30-10-14. Every sale made under this chapter must be without relief from valuation or appraisement laws and without any right of redemption.

As added by P.L.2-2002, SEC.14.

IC 32-29-7-10

Deed of conveyance; sheriff to deliver to purchaser and record with county; exception to recording requirement for HUD mortgages

Sec. 10. (a) Immediately after a foreclosure sale under this chapter, the sheriff shall:

(1) execute and deliver to the purchaser; and

(2) except as provided in subsection (b), record with the recorder of the county in which the premises are located;

a deed of conveyance for the premises, which must be valid to convey all the right, title, and interest held or claimed by all of the parties to the action and all persons claiming under them. The sheriff shall file a return with the clerk of the court.

(b) The sheriff is not required to record the deed of conveyance for the premises under subsection (a)(2) if the mortgage involved in the foreclosure action resulting in the foreclosure sale under this chapter was insured by the United States Department of Housing and Urban Development.

As added by P.L.2-2002, SEC.14. Amended by P.L.105-2009, SEC.17.

IC 32-29-7-11

Receiver; duties; owner permitted to retain possession of property used as dwelling; limitations

Sec. 11. (a) If the court appoints a receiver of mortgaged property, the receiver shall take possession of the mortgaged property, collect the rents, issues, income, and profits and apply the rents, issues, income, and profits to the payment of taxes, assessments, insurance premiums, and repairs required in the judgment of the receiver to preserve the security of the mortgage debt. The receiver shall promptly file a final report with the clerk of the court and, subject to the approval of the court, account for and pay over to the clerk, subject to the further order of the court, the balance of income or other proceeds that remain in the receiver's possession.

(b) If the mortgaged property is occupied as a dwelling by the record owner of the fee simple title, the owner shall be permitted to retain possession of the mortgaged property, rent free, until the foreclosure sale if the owner continues to pay the taxes and special assessments levied against the mortgaged property and if the owner, in the judgment of the court, does not suffer waste or other damage to the property. However, if the record owner of the fee simple title does not pay the taxes and special assessments levied against the mortgaged property, the owner may retain possession of that part of the mortgaged property, not exceeding fifteen (15) acres, that is

actually occupied as a dwelling by the record owner of the fee simple title, rent free, until the sale, if the owner does not, in the judgment of the court, suffer waste or other damage to the property. The owner of any crops growing on the mortgaged property at the time of the commencement of an action for foreclosure, other than the owner of fee simple title or the owner's assigns, may enter the property to care for and harvest the crops at any time within one (1) year after the filing of the foreclosure action.
As added by P.L.2-2002, SEC.14.

IC 32-29-7-12
Owner's right to crops

Sec. 12. If the record owner of the fee simple title has the right under section 11 of this chapter to retain possession of the mortgaged premises or any part of the mortgaged premises until the foreclosure sale, the owner may, at any time within one (1) year after the commencement of the foreclosure action, enter the premises to care for and harvest any crops growing at the time of the commencement of the foreclosure action on all or part of the mortgaged premises.
As added by P.L.2-2002, SEC.14.

IC 32-29-7-13
Other means of redemption excluded

Sec. 13. There may not be a redemption from the foreclosure of a mortgage executed after June 30, 1931, on real estate except as provided in this chapter and in IC 32-29-8.
As added by P.L.2-2002, SEC.14. Amended by P.L.130-2012, SEC.4.

IC 32-29-7-14
Applicability

Sec. 14. The laws of Indiana in force on June 29, 1931, shall apply to the foreclosure of any mortgage executed before June 30, 1931.
As added by P.L.2-2002, SEC.14.

IC 32-29-8

Chapter 8. Parties to Foreclosure Suit; Redemption

IC 32-29-8-1

Mortgagee or assignee; purchaser at judicial sale

Sec. 1. If a suit is brought to foreclose a mortgage, the mortgagee or an assignee shown on the record to hold an interest in the mortgage shall be named as a defendant.

As added by P.L.2-2002, SEC.14.

IC 32-29-8-2

Failure of assignee to record assignment

Sec. 2. A person who is assigned a mortgage and fails to have the assignment properly placed on the mortgage record is bound by the court's judgment or decree as if the person were a party to the suit.

As added by P.L.2-2002, SEC.14. Amended by P.L.130-2012, SEC.5; P.L.189-2013, SEC.1.

IC 32-29-8-3

Good faith purchaser at judicial sale

Sec. 3. A person who:

(1) purchases a mortgaged premises or any part of a mortgaged premises under the court's judgment or decree at a judicial sale or who claims title to the mortgaged premises under the judgment or decree; and

(2) buys the mortgaged premises or any part of the mortgaged premises without actual notice of an assignment that is not of record;

holds the premises free and discharged of the lien.

As added by P.L.2-2002, SEC.14. Amended by P.L.130-2012, SEC.6; P.L.189-2013, SEC.2.

IC 32-29-8-4

Interested persons and omitted parties; right of action to determine extent of and terminate omitted party's interest; right to redeem

Sec. 4. (a) As used in this section, "interested person", with respect to an action to foreclose a mortgage on an interest in real property in Indiana, means:

(1) the holder of the evidence of debt secured by the mortgage being foreclosed;

(2) a person:

(A) who purchases the property at a judicial sale after a judgment and decree of sale is entered in the action; and

(B) to whom a deed is executed and delivered by the sheriff under IC 32-29-7-10; or

(3) any person claiming by, through, or under a person described in subdivision (1) or (2).

(b) As used in this section, "omitted party", with respect to an action to foreclose a mortgage on an interest in real property in Indiana, means a person who:

(1) before the commencement of the action has acquired in the property an interest that:

(A) is junior or subordinate to the mortgage being foreclosed; and

(B) would otherwise be extinguished by the foreclosure; and

(2) is either:

(A) not named as a party defendant in the action or, if named as a party defendant, is not served with process; or

(B) not served with a notice of sale under IC 32-29-7-3(d) after a judgment and decree of sale is entered in the action.

The term includes any person claiming by, through, or under a person described in this subsection.

(c) At any time after a judgment and decree of sale is entered in an action to foreclose a mortgage on an interest in real property in Indiana, an interested person or an omitted party may bring a civil action to:

(1) determine the extent of; and

(2) terminate;

the interest of an omitted party in the property subject to the sale.

(d) Except as provided in subsection (e) and subject to subsections (f) and (g), upon the filing of an action described in subsection (c), the court shall determine the extent of the omitted party's interest in the property and issue a decree terminating that interest, subject to the right of the omitted party to redeem the property on terms as the court considers equitable under the circumstances after considering the factors set forth in subsection (f), if the omitted party would have had redemption rights:

(1) before the sale under IC 32-29-7-7; or

(2) after the sale, as described in IC 34-55-4-8(a)(2).

(e) If the omitted party proves that the omitted party has a right to receive proceeds actually paid at the judicial sale, the omitted party's interest in the property is not subject to termination by an action brought under this section unless the proceeds that the omitted party would have received at the judicial sale are paid to the omitted party.

(f) In an action brought under this section, if the court determines that the omitted party is entitled to redemption under subsection (d), the court shall consider the following in deciding the terms of the redemption:

(1) Whether the omitted party:

(A) was given or had actual notice or knowledge of the foreclosure; and

(B) had opportunity to intervene in the foreclosure action or otherwise exercise any right to redeem the property.

(2) Whether any interested person in good faith has made valuable improvements to the property and, if so, the value of all lasting improvements made to the property before the commencement of the action under this section.

(3) The amount of any taxes and assessments, along with any related interest payments, related to the property and paid by an interested person or by any person under whose title to the

property an interested person claims.

(g) If the court determines that the omitted party is entitled to redemption under subsection (d), and after considering the factors set forth in subsection (f), the court shall grant redemption rights to the omitted party that the court considers equitable under the circumstances, subject to the following:

(1) The amount to be paid for redemption may not be less than the sale price resulting from the foreclosure of the interested person's senior lien, plus interest at the statutory judgment rate.

(2) The time allowed for payment of the redemption amount may not exceed ninety (90) days after the date of the court's decree under subsection (d).

(h) The senior lien upon which the foreclosure action was based is not extinguished by merger with the title to the property conveyed to a purchaser through a sheriff's deed executed and delivered under IC 32-29-7-10 until the interest of any omitted party has been terminated:

(1) through an action brought under this section; or

(2) by operation of law.

Until an omitted party's interest is terminated as described in this subsection, any owner of the property as a holder of a sheriff's deed executed and delivered under IC 32-29-7-10, or any person claiming by, through, or under such an owner, is the equitable owner of the senior lien upon which the foreclosure action was based and has all rights against an omitted party as existed before the judicial sale.

(i) An interested person may not terminate an omitted party's interest in real property that is the subject of a foreclosure action except through an action brought under this section. An interested person's rights under this section may not be denied because the interested person:

(1) had actual or constructive notice of the omitted party's interest in the property;

(2) was negligent in examining county records;

(3) was engaged in the business of lending; or

(4) obtained a title search or commitment or a title insurance policy.

As added by P.L.130-2012, SEC.7. Amended by P.L.13-2013, SEC.80.

IC 32-29-9

Chapter 9. Name of and Service on Parties Defendant in Foreclosure Suits

IC 32-29-9-1

Necessary party defendants

Sec. 1. (a) In a suit brought in a court of Indiana to:

(1) foreclose a mortgage or other lien on real estate located in Indiana; or

(2) sell real estate located in Indiana;

if the plaintiff is required to make a person a party to the suit, the plaintiff may list the person as a defendant by the name in which the person's lien or claim appears on the public records of the county in which the suit is brought.

(b) Service of summons or notice by publication to the person, described in subsection (a) is sufficient to make the court's judgment binding as to the person.

As added by P.L.2-2002, SEC.14.

IC 32-29-10

Chapter 10. Ten Year Expiration on Lien of a Series Mortgage

IC 32-29-10-1

"Series mortgage"

Sec. 1. As used in this chapter, "series mortgage" means any mortgage, indenture of trust, or trust deed executed to create a lien on any property, whether real or personal or both, in Indiana to secure one (1) or more series of bonds, notes, or debentures. The term applies without regard to whether the total obligation to be secured is specifically defined, limited, or left open in the original security instrument.

As added by P.L.2-2002, SEC.14.

IC 32-29-10-2

"Final maturity date of the series mortgage"

Sec. 2. As used in this chapter, "final maturity date of the series mortgage" means the maturity date of the last to mature of the bonds, notes, or debentures secured by a series mortgage, as the maturity date is shown of record in the original security instrument or in a supplemental indenture subsequently recorded.

As added by P.L.2-2002, SEC.14.

IC 32-29-10-3

"Original security instrument"

Sec. 3. As used in this chapter, "original security instrument" means the original instrument or indenture executed to evidence a series mortgage.

As added by P.L.2-2002, SEC.14.

IC 32-29-10-4

"Supplemental indenture"

Sec. 4. As used in this chapter, "supplemental indenture" means an instrument or indenture executed to supplement the original security instrument, defining one (1) or more series of bonds, notes, or debentures secured, or to be secured, by the series mortgage, specifying property subject to the lien of the series mortgage or in another manner supplementing or amending the original security instrument.

As added by P.L.2-2002, SEC.14.

IC 32-29-10-5

Expiration of lien; limitation of actions

Sec. 5. Notwithstanding any other Indiana statute:

(1) the lien of a series mortgage expires ten (10) years after the final maturity date of the series mortgage; and

(2) an action may not be commenced in an Indiana court to enforce or to foreclose the lien of a series mortgage more than ten (10) years after the final maturity date of the series mortgage.

As added by P.L.2-2002, SEC.14.

IC 32-29-10-6
Impairment or injury by passage of time

Sec. 6. Notwithstanding any other Indiana statute, the lien of a series mortgage may not be impaired or injured by the passage of time other than as provided in section 5 of this chapter.
As added by P.L.2-2002, SEC.14.

IC 32-29-11

Chapter 11. Duty to Satisfy Record

IC 32-29-11-1

Duty to release and record the satisfaction of discharged obligation

Sec. 1. Unless otherwise provided in this article, if the debt or obligation, and the interest on the debt or obligation, that a mortgage secures has been fully paid, lawfully tendered, and discharged, the owner, holder, or custodian of the mortgage shall:

(1) release;

(2) discharge; and

(3) satisfy of record;

the mortgage as provided in IC 32-28-1.

As added by P.L.2-2002, SEC.14.

IC 32-30

ARTICLE 30. CAUSES OF ACTION CONCERNING REAL PROPERTY

IC 32-30-1

Chapter 1. Statute of Limitations in Actions Concerning Real Estate

IC 32-30-1-0.1

Application of certain amendments to chapter

Sec. 0.1. The amendments made to section 5 of this chapter by P.L.79-2005 apply only to a cause of action accruing after June 30, 2005.

As added by P.L.220-2011, SEC.527.

IC 32-30-1-1

"Person" defined

Sec. 1. As used in this chapter, "person" means an individual, a partnership, an association, a limited liability company, a corporation, a business trust, a joint stock company, or an unincorporated organization.

As added by P.L.2-2002, SEC.15.

IC 32-30-1-2

"Contract" defined

Sec. 2. As used in this chapter, "contract" means an oral or a written contract.

As added by P.L.2-2002, SEC.15.

IC 32-30-1-3

"Tort" defined

Sec. 3. As used in this chapter, "tort" means an injury to person or property caused by a means other than a breach of contract.

As added by P.L.2-2002, SEC.15.

IC 32-30-1-4

"Date of substantial completion" defined

Sec. 4. As used in this chapter, "date of substantial completion" means the earlier of:

(1) the date upon which construction of an improvement to real property is sufficiently completed under a contract of construction, as modified by any additions, deletions, or other amendments, so that the owner of the real property upon which the improvement is constructed can occupy and use the premises in the manner contemplated by the terms of the contract; or

(2) the date of the first beneficial use of the improvement to real property or of any portion of the improvement.

As added by P.L.2-2002, SEC.15.

IC 32-30-1-5

Statute of limitations; general rule

Sec. 5. (a) As used in this section, "designer" means a person who:

(1) designs, plans, supervises, or observes the construction of an improvement to real property; or

(2) constructs an improvement to real property.

(b) As used in this section, "possessor" means a person having ownership, possession, or control of real property at the time an alleged deficiency in an improvement to the real property causes injury or wrongful death.

(c) As used in this section, "deficiency" does not mean a failure by a possessor to use reasonable care to maintain an improvement to real property following a substantial completion of an improvement.

(d) An action to recover damages, whether based upon contract, tort, nuisance, or another legal remedy, for:

(1) a deficiency or an alleged deficiency in the design, planning, supervision, construction, or observation of construction of an improvement to real property;

(2) an injury to real or personal property arising out of a deficiency; or

(3) an injury or wrongful death of a person arising out of a deficiency;

may not be brought against a designer or possessor unless the action is commenced within the earlier of ten (10) years after the date of substantial completion of the improvement or twelve (12) years after the completion and submission of plans and specifications to the owner if the action is for a deficiency in the design of the improvement.

As added by P.L.2-2002, SEC.15. Amended by P.L.79-2005, SEC.1.

IC 32-30-1-6

Statute of limitations; applicable to injury or wrongful death occurring during ninth or tenth year after substantial completion

Sec. 6. (a) Notwithstanding section 5 of this chapter, if an injury to or wrongful death of a person occurs during the ninth or tenth year after substantial completion of an improvement to real property, an action in tort to recover damages for the injury or wrongful death may be brought within two (2) years after the date on which the injury occurred, irrespective of the date of death.

(b) However, an action may not be brought more than:

(1) twelve (12) years after the substantial completion of construction of the improvement; or

(2) fourteen (14) years after the completion and submission of plans and specifications to the owner, if the action is for a deficiency in design;

whichever comes first.

As added by P.L.2-2002, SEC.15.

IC 32-30-1-7

Repealed

(Repealed by P.L.79-2005, SEC.2.)

IC 32-30-2

Chapter 2. Ejectment and Quiet Title

IC 32-30-2-1

Action to recover real property from tenant; other persons

Sec. 1. A person having a valid subsisting interest in real property and a right to the possession of the real property may recover the real property and take possession by an action brought against the tenant in possession or, if there is not a tenant, against the person claiming the title or interest in the real property.

As added by P.L.2-2002, SEC.15.

IC 32-30-2-2

Landlord substituted as defendant in action to recover real property from tenant

Sec. 2. If it appears in an action brought under section 1 of this chapter that the defendant is only a tenant, the landlord may be substituted as the defendant if the landlord has received reasonable notice.

As added by P.L.2-2002, SEC.15.

IC 32-30-2-3

Legal service on nonresident defendant

Sec. 3. Legal service on a defendant who is a nonresident:

(1) is considered served on the defendant if the service is made to the defendant's agent for the property and the defendant's agent resides in Indiana; or

(2) may be had by publication, as in other cases.

As added by P.L.2-2002, SEC.15.

IC 32-30-2-4

Contents of complaint

Sec. 4. In an action initiated under section 1 of this chapter, the plaintiff's complaint must contain the following information:

(1) A claim that the plaintiff is entitled to the possession of the premises, including a description of the premises.

(2) The interest the plaintiff claims in the premises.

(3) That the defendant unlawfully keeps the plaintiff from possession of the premises.

As added by P.L.2-2002, SEC.15.

IC 32-30-2-5

Answer to complaint; denials

Sec. 5. The answer of the defendant to a complaint under section 4 of this chapter may contain a denial of each material statement or allegation in the plaintiff's complaint. With each denial, the defendant may give in evidence every legal or equitable defense to the action that the defendant may have.

As added by P.L.2-2002, SEC.15.

IC 32-30-2-6
Defendant not required to prove possession

Sec. 6. The defendant is not required to prove the defendant is in possession of the premises to make a defense under this chapter.
As added by P.L.2-2002, SEC.15.

IC 32-30-2-7
Recovery for use and occupation; recovery limitation

Sec. 7. The plaintiff may recover in an action under this chapter for the use and occupation of the premises up to the time the use or occupation is terminated by the defendant. However, the plaintiff may not recover for the use and occupation of the premises for more than six (6) years before the commencement of the action.
As added by P.L.2-2002, SEC.15.

IC 32-30-2-8
Expiration of plaintiff's interest; damages only

Sec. 8. If the plaintiff's interest in the premises expires before the time in which the plaintiff could be put in possession of the premises, the plaintiff may obtain only a judgment for damages.
As added by P.L.2-2002, SEC.15.

IC 32-30-2-9
Multiple parties; recovery

Sec. 9. If there are two (2) or more plaintiffs or defendants, one (1) or more of the plaintiffs may recover against one (1) or more of the defendants:

(1) the premises or any part of the premises;
(2) an interest in the premises; or
(3) damages;

according to the right of the parties, but the recovery may not be for an interest greater than the interest claimed by the party.
As added by P.L.2-2002, SEC.15.

IC 32-30-2-10
Petition for new trial

Sec. 10. A petition for a new trial under this chapter may be made by the party against whom judgment is rendered, or the party's heirs, assigns, or personal representatives, under the same restrictions and on the same grounds as allowed in other civil actions.
As added by P.L.2-2002, SEC.15.

IC 32-30-2-11
Petition for new trial; filing

Sec. 11. The petition for a new trial must be filed at the time provided for the filing of petitions for a new trial in other civil actions.
As added by P.L.2-2002, SEC.15.

IC 32-30-2-12

Third persons acquiring interest during proceedings

Sec. 12. Third persons acquiring an interest in the subject matter of the action during the pendency of the proceedings initiated under this chapter shall take their interests subject to the final result of the proceedings.

As added by P.L.2-2002, SEC.15.

IC 32-30-2-13

Recovery from good faith purchaser after new trial

Sec. 13. A party who, after a new trial, proves that the party is entitled to the premises that have been transferred in good faith to a purchaser may recover the proper amount of damages against the other party, either in the same action or in a subsequent action.

As added by P.L.2-2002, SEC.15.

IC 32-30-2-14

Judgment conclusive evidence against landlord receiving notice

Sec. 14. In an action against a tenant under this chapter, the judgment is conclusive evidence against the landlord who has received notice under section 2 of this chapter.

As added by P.L.2-2002, SEC.15.

IC 32-30-2-15

Plaintiff's recovery dependent upon strength of plaintiff's own title

Sec. 15. To recover through an action brought under this chapter, the plaintiff must recover on the strength of the plaintiff's own title.

As added by P.L.2-2002, SEC.15.

IC 32-30-2-16

Order allowing entry to survey; motion; notice; hearing

Sec. 16. After:

(1) the plaintiff has filed a motion with the court;

(2) notice has been delivered to the defendant; and

(3) a hearing at which the plaintiff has shown cause;

the court may grant an order allowing the plaintiff to enter upon the property in controversy and make a survey and admeasurement of the property for purposes of an action under this chapter.

As added by P.L.2-2002, SEC.15.

IC 32-30-2-17

Entry order; description of property; service upon owner or occupant

Sec. 17. An order issued by a court under section 16 of this chapter must describe the property. A copy of the court order must be served upon the owner or person having occupancy and control of the property.

As added by P.L.2-2002, SEC.15.

IC 32-30-2-18

Damages; set off

Sec. 18. If a plaintiff in an action under this chapter is entitled to damages for withholding, using, or injuring the plaintiff's property, the defendant may set off the value of any permanent improvements made to the property to the extent of the damages, unless the defendant prefers to use the law for the benefit of occupying defendants.
As added by P.L.2-2002, SEC.15.

IC 32-30-2-19
Defendant's wanton aggression; exemplary damages
Sec. 19. If a defendant has demonstrated wanton aggression concerning the property that is subject to an action under this chapter, the jury may award the plaintiff exemplary damages.
As added by P.L.2-2002, SEC.15.

IC 32-30-2-20
Action to determine and quiet title; plaintiffs
Sec. 20. An action to determine and quiet a question of title to property may be brought by a plaintiff who:
(1) is in possession of the property;
(2) is out of possession of the property; or
(3) has a remainder or reversion interest in the property;
against a defendant who claims title to or an interest in the real property with a claim that is adverse to the plaintiff, even if the defendant is not in possession of the property.
As added by P.L.2-2002, SEC.15.

IC 32-30-2-21
Application
Sec. 21. This chapter applies, as far as applicable, to:
(1) cases and partition cases where the title to real estate is a genuine question; and
(2) the pleadings and evidence between parties concerning questions of title to real estate.
As added by P.L.2-2002, SEC.15.

IC 32-30-2-22
Defendant's answer; court costs
Sec. 22. If the defendant's answer to a complaint under this chapter disclaims any interest or estate in the property, or if the defendant does not answer the complaint and the court issues a default judgment against the defendant, the defendant may not be required to pay the plaintiff's court costs.
As added by P.L.2-2002, SEC.15.

IC 32-30-2-23
Action against cotenant; plaintiff's evidentiary burden
Sec. 23. In an action by a plaintiff who is a tenant in common or joint tenant of real property against the plaintiff's cotenant, the plaintiff must show, in addition to the plaintiff's evidence of right,

that defendant:

(1) denied plaintiff's right; or

(2) did some act amounting to a denial of a plaintiff's right.

As added by P.L.2-2002, SEC.15.

IC 32-30-3

Chapter 3. Ejectment and Quiet Title

IC 32-30-3-1

Action for ejectment or recovery of possession of real estate; plaintiff's affidavit

Sec. 1. (a) This section applies to all actions:

(1) in ejectment; or

(2) for the recovery of possession of real estate.

(b) At the time of filing a complaint or at any time before judgment, a plaintiff may file with the clerk of the court in which the action is filed or pending an affidavit stating the following:

(1) The plaintiff is entitled to possession of the property described in the complaint.

(2) The defendant has unlawfully retained possession of the property described in the complaint.

(3) The estimated value of the property described in the complaint.

(4) The estimated rental value of the property described in the complaint.

As added by P.L.2-2002, SEC.15.

IC 32-30-3-2

Order to appear; order to show cause; requirements

Sec. 2. (a) Upon the filing of an affidavit described in section 1 of this chapter, the clerk shall issue an order for a time fixed by the judge directing the defendant to appear to controvert the affidavit or to show cause why the judge should not remove the defendant from the property and put the plaintiff in possession. The order to show cause must direct the time within which the order must be served on the defendant and set forth the date, time, and place for the hearing, which may take place no earlier than five (5) business days after the date of service on the defendant.

(b) The order to show cause must state the following:

(1) The defendant may file supporting affidavits with the court.

(2) The defendant may appear and present supporting testimony at the hearing on the order to show cause.

(3) The defendant may file with the court a written undertaking to stay the delivery of the property under this chapter.

(4) The judge may issue a judgment of possession in favor of the plaintiff if the defendant fails to appear at the hearing.

As added by P.L.2-2002, SEC.15.

IC 32-30-3-3

Preliminary order for possession; required findings

Sec. 3. After reviewing the complaint, affidavits, and other evidence or testimony, the court may issue an order for possession before the hearing if probable cause appears that:

(1) the property is in immediate danger of destruction, serious harm, or sale to an innocent purchaser; or

(2) the holder of the property threatens to destroy, harm, or sell the property to an innocent purchaser.

As added by P.L.2-2002, SEC.15.

IC 32-30-3-4

Order for possession; expedited hearing; temporary restraining orders instead of order for possession

Sec. 4. (a) If a court issues an order of possession under section 3 of this chapter, the defendant or other person from whom possession of the property has been taken may apply to the court for an order shortening the time for hearing on the order to show cause. The court may shorten the time for the hearing and direct that the matter be heard on at least forty-eight (48) hours notice to the plaintiff. An order of possession issued under section 3 of this chapter must direct the sheriff or other executing officer to hold the property until further order of the court.

(b) If a court does not issue an order of possession under section 3 of this chapter, the court may, in addition to issuing an order to show cause, issue temporary restraining orders against the defendant as needed to preserve the rights of the parties with respect to the property and the status of the property. The court shall issue the temporary restraining orders in accordance with the rules of the supreme court governing the issuance of injunctions.

As added by P.L.2-2002, SEC.15.

IC 32-30-3-5

Hearing on order to show cause; court determinations; prejudgment orders; appointment of receiver

Sec. 5. (a) After the hearing on the order to show cause, the court shall:

(1) consider the pleadings, evidence, and testimony presented at the hearing; and

(2) determine with reasonable probability which party is entitled to possession, use, and enjoyment of the property.

The court's determination is preliminary pending final adjudication of the claims of the parties. If the court determines that the action is an action in which a prejudgment order of possession in plaintiff favor should issue, the court shall issue the order.

(b) The court may issue the prejudgment order of possession in favor of the plaintiff if the defendant fails to appear at the hearing on the order to show cause.

(c) If the plaintiff's property has a peculiar value that cannot be compensated by damages, the court may appoint a receiver to take possession of and hold the property until further order of the court.

As added by P.L.2-2002, SEC.15.

IC 32-30-3-6

Order of possession; prerequisites

Sec. 6. A court may not issue an order of possession in favor of a plaintiff other than an order of final judgment until the plaintiff has

filed with the court a written undertaking in an amount fixed by the court and executed by a surety to be approved by the court binding the plaintiff to the defendant in an amount sufficient to assure the payment of any damages the defendant may suffer if the court wrongfully ordered possession of the property to the plaintiff.
As added by P.L.2-2002, SEC.15.

IC 32-30-3-7
Order of possession; requirements

Sec. 7. The court shall direct the order of possession to the sheriff or other officer charged with executing the order and within whose jurisdiction the property is located. The order of possession must:

(1) describe the property;

(2) direct the executing officer to:

(A) seize possession of the property unless the court issued the order without notice to the parties; and

(B) if the defendant has not filed a written undertaking as provided in section 8 of this chapter, put the plaintiff in possession of the property by removing the defendant and the defendant's personal property from the property;

(3) have attached a copy of any written undertaking filed by the plaintiff under section 6 of this chapter; and

(4) inform the defendant of the right to except to the surety upon the plaintiff's undertaking or to file a written undertaking for the repossession of the property as provided in section 8 of this chapter.

As added by P.L.2-2002, SEC.15.

IC 32-30-3-8
Return of possession to defendant; period for return; required surety; notice; proof of service

Sec. 8. (a) Before the hearing on the order to show cause or before final judgment, and within the time fixed in the order of possession, the defendant may require the return of possession of the property by filing with the court a written undertaking executed by a surety to be approved by the court stating that the defendant is bound in an amount determined by the court sufficient to assure the payment of costs assessed against the defendant for the wrongful detention of the property.

(b) If a defendant files an undertaking under this section, the defendant shall:

(1) serve a notice of filing the undertaking on the executing officer and the plaintiff or the plaintiff's attorney; and

(2) file with the court proof of service of the notice of filing the undertaking.

(c) If a defendant files an undertaking before the hearing on the order to show cause, the court shall terminate the hearing unless the plaintiff takes exception to the surety.

(d) If the property is in the possession of the executing officer when the defendant files the undertaking, the court shall return

possession of the property to the defendant not more than five (5) days after service of notice of the filing of the undertaking on the plaintiff or the plaintiff's attorney.
As added by P.L.2-2002, SEC.15.

IC 32-30-3-9
Order of possession; delivery; service

Sec. 9. (a) If a defendant or the defendant's attorney is in open court when the court issues the order of possession, a copy of the order shall be delivered to the defendant and the delivery noted in the order book.

(b) If the defendant and the defendant's attorney are not present, sufficient copies of the order shall be delivered to the sheriff or other executing officer. The executing officer shall, without delay, serve upon the defendant a copy of the order of possession by delivering the order to the defendant personally or to the defendant's agent. If the executing officer cannot find the defendant or the defendant's agent, the executing officer shall leave the order at the defendant's usual place of abode or with some person of suitable age and discretion. If the defendant and the defendant's agent do not have any known usual place of abode, the executing officer shall mail the order to the defendant's last known address.
As added by P.L.2-2002, SEC.15.

IC 32-30-3-10
Removal of occupants within 48 hours service

Sec. 10. If the property is in the possession or control of the defendant or the defendant's agent, the executing officer shall take the property into custody and remove the occupants from the property not earlier than forty-eight (48) hours after the order of possession is served on the defendant or the defendant's agent.
As added by P.L.2-2002, SEC.15.

IC 32-30-3-11
Executing officer's return of order of possession

Sec. 11. The executing officer shall return the order of possession with the proceedings endorsed on the order to the court in which the action is pending not more than five (5) days after taking into custody the property described in the order.
As added by P.L.2-2002, SEC.15.

IC 32-30-3-12
Final judgment supersedes prior orders

Sec. 12. A final judgment supersedes any:

(1) prejudgment order for possession;
(2) temporary restraining order; or
(3) order temporarily changing possession of property;

issued under this chapter.
As added by P.L.2-2002, SEC.15.

IC 32-30-3-13
Actions in plaintiff's own name

Sec. 13. Any person having a right to:

(1) recover the possession of; or

(2) quiet title to;

real estate in the name of any other person has a right to recover possession or quiet title in the person's own name. An action may not be defeated or reversed if the plaintiff could have successfully maintained the action in the name of another person to inure to the plaintiff's benefit.

As added by P.L.2-2002, SEC.15.

IC 32-30-3-14
Defendants in certain actions; plaintiff's complaint; plaintiff's affidavit; notice; venue

Sec. 14. (a) This section applies to the following proceedings brought in a state court concerning real estate or any interest in real estate located in Indiana:

(1) An action to:

(A) quiet or determine title to;

(B) obtain title or possession of; or

(C) partition;

real estate.

(2) An action by an executor or administrator to:

(A) sell real estate to satisfy the debts of a decedent; or

(B) enforce or foreclose a mortgage or lien on real estate.

(b) A person who institutes a proceeding described in subsection (a) may, under a circumstance set forth in subsection (c), name as a defendant any of the following individuals:

(1) A person:

(A) who may have an interest in real estate that is the subject of the proceeding; and

(B) whose name appears of record in a record concerning the real estate.

(2) A person who bears one of the following relationships to a former owner or encumbrancer of the real estate:

(A) Spouse.

(B) Widow or widower.

(C) Heir or devisee.

The person who institutes the proceeding does not have to know the name of a person described in subdivision (2).

(c) A person who institutes a proceeding described in subsection (a) may name an individual described in subsection (b) as a defendant if public records in the county in which the real estate that is the subject of the proceeding is located any of disclose the following circumstances:

(1) There is a break or hiatus in the record title of real estate.

(2) There exists:

(A) a defect in;

(B) an apparent defect in; or

(C) a cloud upon;

the title of the real estate due to a defective or inaccurate legal description of the real estate.

(3) There is no record that a grantor or mortgagor was unmarried when the deed to or mortgage on the real estate was executed.

(4) An instrument affecting the real estate, including a deed, will, or mortgage, was not properly executed.

(5) A mortgage, vendor's lien, or other lien or encumbrance affecting the real estate was not properly released.

(6) The person instituting the proceeding does not know:

(A) the name of another person who may claim an interest in the real estate based on the other person's relationship to a former owner, mortgagee, or encumbrancer of the real estate; or

(B) whether another person, including a person described in clause (A), who may have an interest in the real estate is alive or dead.

(d) The plaintiff in a proceeding described in subsection (a) may state the following in the complaint:

(1) The plaintiff asserts title to the real estate that is the subject of the proceeding against all other persons.

(2) The purpose of the proceeding is to quiet the title to the real estate.

(3) The plaintiff has named as defendants all persons whom the party knows may have a claim to or interest in the real estate.

(e) The plaintiff shall file with the complaint an affidavit that states the following:

(1) The complaint contains the names of all persons disclosed by public record by or through whom a claim or interest in the real estate may be asserted.

(2) The plaintiff does not know the following information about a person described in subdivision (1):

(A) Whether the person is alive or dead.

(B) The person's legal residence.

(C) The person's marital status.

(D) If the person is or has been married, the name or address of the person's spouse, widow, or widower.

(E) If the person is dead, whether the person has left any heirs or devisees.

(F) The name or legal residence of an heir or devisee.

(3) The plaintiff claims full and complete right and title in the real estate that is the subject of the proceeding described in subsection (a).

(4) The plaintiff intends to quiet title to the real estate through the proceeding.

(f) After the plaintiff files the complaint and affidavit, the plaintiff shall file an affidavit for publication of notice under IC 34-32-1.

(g) After the plaintiff files the affidavit for publication of notice described in subsection (f), the clerk of the county in which the real

estate that is the subject of the proceeding described in subsection (a) is located shall publish notice of the following:

(1) The filing and pendency of the proceeding.

(2) The date on which the proceeding will take place.

(3) Designations and descriptions of any defendant whose name and legal residence are unknown.

(4) A legal description of the real estate.

(5) The purpose of the proceeding, which is to quiet title to the real estate.

(h) After the clerk publishes notice as set forth in subsection (g), the clerk shall provide proof of the publication to the court in which the proceeding described in subsection (a) is pending. Not earlier than thirty (30) days after the last publication of notice, the court may hear and determine all matters in the proceeding as if the plaintiff had known and sued all possible claimants by their proper names. All decrees, orders, and judgments issued by the court are binding and conclusive on all parties and claimants. The proceeding shall be taken as a proceeding in rem against the real estate.

(i) If the real estate that is the subject of the proceeding described in subsection (a) is located in more than one (1) county, the plaintiff may file a complaint in a court located in any county in which the real estate is located. The plaintiff may not file a complaint in more than one (1) court. The plaintiff shall publish notice of the complaint in each county in which the real estate is located. The published notice in each county shall contain the following:

(1) The legal description of the real estate that is located in that county.

(2) The other counties in which the real estate is located.

(3) Notice that a certified copy of the final judgment in the proceeding will be filed, not more than three (3) months after the judgment is entered, in the recorder's office in each county in which the real estate is located.

As added by P.L.2-2002, SEC.15.

IC 32-30-3-15

Statutory construction

Sec. 15. Section 14 of this chapter may not be construed to contravene or repeal any other Indiana law concerning title to real estate or suits or actions affecting title to real estate. Section 14 of this chapter supplements laws existing on April 26, 1915.

As added by P.L.2-2002, SEC.15.

IC 32-30-3-16

Action to quiet title; service

Sec. 16. (a) In a suit to quiet title to real estate in a state court, the plaintiff shall serve:

(1) all resident and nonresident defendants whose residence is known; and

(2) all defendants whose residence is unknown.

(b) Service on a known defendant by:

(1) the defendant's individual name;
(2) the name by which the defendant appears of record;
(3) the name by which the defendant is commonly known; or
(4) the defendant's surname if the defendant's first name is unknown;

is sufficient, legal, and binding on and against all persons claiming from, through, or under the defendant.

(c) If a plaintiff serves a defendant by the defendant's surname only, the plaintiff or the plaintiff's attorney shall file an affidavit stating that the plaintiff does not know and has not, after diligent inquiry, been able to ascertain the first name of the defendant.

As added by P.L.2-2002, SEC.15.

IC 32-30-3-17

Entry of orders and decrees in civil order book; quiet title record; index requirements

Sec. 17. (a) The clerk of a court shall enter in the civil order book all orders and decrees in any suit to quiet the title to real estate. After a court enters final judgment in a proceeding, the clerk shall certify a copy of the final judgment. The clerk shall include the costs of a transcript of the proceedings in the costs of the proceeding.

(b) The county recorder shall record the certified copy of the final judgment and shall collect any applicable recording fee.

(c) A county recorder shall procure a substantially bound book that is the size and quality of the county deed records. The book shall be known as the "Quiet Title Record". The Quiet Title Record must contain a transcript of each proceeding and an index to each transcript. The index must contain the following:

(1) An alphabetical list of plaintiffs.
(2) The date of filing of the transcript.
(3) The date of the final judgment.
(4) The date on which the final judgment was recorded.
(5) A brief description of the real estate that was the subject of the proceeding.
(6) The book and page on which the final judgment is recorded.

As added by P.L.2-2002, SEC.15. Amended by P.L.78-2014, SEC.3.

IC 32-30-3-18

Presumption of death of nonresident; circumstances; intestate succession of title; vesting in nonresident's heirs

Sec. 18. (a) A nonresident who, if alive, would be entitled to take and to own real estate in Indiana by descent or devise is presumed dead if the following conditions are met:

(1) The nonresident has been absent from the nonresident's last place of residence in any other state or country for seven (7) years.
(2) A spouse, parent, child, or sibling of the nonresident has not heard from the nonresident for seven (7) years.

(b) The real estate that a nonresident described in subsection (a) otherwise would have taken descends from the nonresident to the

nonresident's heirs under IC 29.

(c) Title that passes under subsection (b) vests in a nonresident's heirs upon full compliance with the provisions of section 19 of this chapter.

As added by P.L.2-2002, SEC.15.

IC 32-30-3-19

Procedure to claim title from nonresident presumed dead

Sec. 19. (a) A person who claims real estate under section 18 of this chapter may file a verified complaint in the circuit or superior court of the county in which the real estate is located. The complaint must:

(1) name as a defendant the nonresident who is presumed dead under section 18 of this chapter;

(2) particularly describe the real estate; and

(3) contain a statement of the facts required by section 18 of this chapter.

(b) Notice of the pendency of the action, including the date on which the court shall hear the complaint filed under subsection (a), must be published in a daily or weekly newspaper of general circulation that is printed and published in the county seat of the county in which the real estate is located. If a newspaper does not exist, notice must be published in a newspaper that is printed and published in the county in which the real estate is located. Notice must also be published in a newspaper of general circulation that is printed and published in the county seat of the county in which the defendant last resided. If a newspaper is not printed and published in that county seat, then notice must be published in a newspaper that is printed and published in the county seat nearest to the county in which the defendant last resided.

(c) Prima facie proof of publication of notice as required by subsection (b) consists of:

(1) affidavits of the publishers of the newspapers in which the notice was published; and

(2) a printed copy of the published notice.

(d) The court shall hear the complaint filed under subsection (a) not earlier than sixty-five (65) days after notice was first published under subsection (b). If the court finds that:

(1) the defendant received sufficient notice under subsection (b); and

(2) the facts alleged in the complaint are true;

the court shall enter judgment quieting the title to the real estate in favor of the plaintiff.

(e) A judgment entered under subsection (d) becomes final and absolute three (3) years after the date it was entered unless, within those three (3) years, the defendant appears and moves to vacate the judgment.

As added by P.L.2-2002, SEC.15.

IC 32-30-3-20

Action to quiet title of real estate exempt from sale on execution

Sec. 20. (a) A resident householder in Indiana who may claim real estate owned by the householder exempt from sale on execution may quiet the title to the real estate against any judgment or lien.

(b) The complaint in an action described in subsection (a) must state the following:

(1) The ownership of the real estate.

(2) The existence of a judgment against the real estate.

(3) The right of the owner to claim the real estate exempt from sale on execution.

(c) In an action described in subsection (a), the title to the real estate may be quieted against a judgment whether the householder has executed the judgment or has filed a schedule claiming an exemption from sale on execution if the court finds that the owner's interest, in value, of the real estate does not at the time of the hearing exceed any mortgages, tax, or assessment on the real estate by more than seven hundred dollars ($700).

As added by P.L.2-2002, SEC.15.

IC 32-30-3-21

Valuation of exempt real estate; limitation

Sec. 21. At the hearing under section 20 of this chapter, the court shall determine the value of the householder's interest in the real estate and shall set forth this amount in the decree quieting the title to the real estate. While the householder owns the real estate, the amount shall be charged against any other claim of exemption made by the householder to limit the householder's exemption in the real estate from sale on execution or other final process to the amount allowed by law.

As added by P.L.2-2002, SEC.15.

IC 32-30-3.1

Chapter 3.1. Occupying Claimant

IC 32-30-3.1-1

Finding that occupant not rightful owner; order to give possession to plaintiff

Sec. 1. If an occupant of real property:

(1) has color of title to the property;

(2) in good faith has made valuable improvements to the property; and

(3) after making improvements to the property is found, in a court action, not to be the rightful owner of the property;

an order may not be issued to give the plaintiff possession of the property until a complaint that meets the requirements of section 2 of this chapter has been filed and the provisions of this chapter are complied with.

As added by P.L.2-2002, SEC.15.

IC 32-30-3.1-2

Complaint; requirements

Sec. 2. The complaint must:

(1) set forth the grounds on which the defendant seeks relief; and

(2) state, as accurately as practicable, the value of the improvements on the real property and the value of the property without the improvements.

As added by P.L.2-2002, SEC.15.

IC 32-30-3.1-3

Trial; required assessments

Sec. 3. All issues under this chapter joined together must be tried as in other cases, and the court or jury trying the cause shall assess the following:

(1) The value of all lasting improvements made on the real property in question before the commencement of the action for the recovery of the property.

(2) The damages, if any, which the premises may have sustained by waste or cultivation through the time the court renders a judgment.

(3) The fair value of the rents and profits that may have accrued, without the improvements, through the time the court renders a judgment.

(4) The value of the real property that the successful claimant has in the premises, without the improvements.

(5) The taxes, with interest, paid by the defendant and by those under whose title to the property the defendant claims.

As added by P.L.2-2002, SEC.15.

IC 32-30-3.1-4

Payment for improvements; possession

Sec. 4. The plaintiff in the main action for possession of the real property may pay the appraised value of the improvements to the real property, and the taxes paid, with interest, deducting the value of the rents and profits, and the damages sustained, as assessed at the trial, and take the property.
As added by P.L.2-2002, SEC.15.

IC 32-30-3.1-5
Failure to pay value of improvements; possession by defendant; payments to plaintiff

Sec. 5. If a plaintiff fails to pay the defendant the value of the improvements to the real property established under section 4 of this chapter after a reasonable time fixed by the court, the defendant may take the property after paying the plaintiff the appraised value of the property, minus the value of the improvements.
As added by P.L.2-2002, SEC.15.

IC 32-30-3.1-6
Tenants in common; failure of plaintiff and defendant to make required payments

Sec. 6. If the plaintiff does not pay the defendant the appraised value of the improvements to the real property under section 4 of this chapter and the defendant does not pay the plaintiff the appraised value of the real property under section 5 of this chapter within the time fixed by the court, the parties will be held to be tenants in common of all the real property, including the improvements, each holding an interest proportionate to the value of the party's property as determined under section 5 of this chapter.
As added by P.L.2-2002, SEC.15.

IC 32-30-3.1-7
Good faith purchaser

Sec. 7. Except when the purchaser knows at the time of the sale that the seller lacks authority to sell the property, a purchaser who in good faith, at a judicial or tax sale, purchases property that is sold by the proper person or officer has color of title within the meaning of this chapter, whether or not the person or officer had sufficient authority to sell the property. The rights of the purchaser acquired under this section pass to the purchaser's assignees or representatives.
As added by P.L.2-2002, SEC.15.

IC 32-30-3.1-8
Occupant's color of title; requirements

Sec. 8. An occupant of real property has color of title within the meaning of this chapter if the occupant:

(1) can show a connected title in law or equity, derived from the records of any public office; or

(2) holds the property by purchase or descent from a person claiming title derived from public records or by a properly recorded deed.

As added by P.L.2-2002, SEC.15.

IC 32-30-3.1-9
Recovery for lasting improvements

Sec. 9. (a) A claimant occupying real property who has color of title may recover the value of lasting improvements to the real property made by the party under whom the claimant claims, as well as those improvements made by the occupying claimant.

(b) A person holding the premises as a purchaser, by an agreement in writing from the party having color of title, is entitled to the remedy set forth in subsection (a).

As added by P.L.2-2002, SEC.15.

IC 32-30-3.1-10
Execution for possession

Sec. 10. A plaintiff in an action for possession of real property to which this chapter applies is entitled to an execution for the possession of the real property in accordance with this chapter, but not otherwise.

As added by P.L.2-2002, SEC.15.

IC 32-30-3.1-11
Writ for possession of land; required payments

Sec. 11. If any land is sold by an executor, an administrator, a guardian, a sheriff, or a commissioner of the court and afterwards the land is recovered in the proper action by:

(1) a person who was originally liable;

(2) a person in whose hands the land would be liable to pay the demand or judgment for which or for whose benefit the land was sold; or

(3) anyone making a claim under a person identified under subdivision (1) or (2);

the plaintiff is not entitled to a writ for the possession of the land without having paid the amount due, as determined under section 12 of this chapter (or IC 34-1-49-12 or IC 32-15-3-12 before their repeal) within the time determined by the court.

As added by P.L.2-2002, SEC.15.

IC 32-30-3.1-12
Remedies

Sec. 12. Any defendant in the main court action for possession of real property may file a complaint setting forth the sale and title under it and any other matter allowed under this chapter. The court proceedings must assess the values, damages, and other amounts of which assessment is required under section 3 of this chapter. If after the main court action the plaintiff has not paid the amount assessed by the court, the court shall set a reasonable time for the plaintiff to pay the defendant. If the plaintiff does not pay the amount within the time set by the court, the court shall order the land sold without relief from valuation or appraisement laws. If the premises are sold, the

defendant is entitled to receive from the proceeds of the sale the amount the defendant is due, with interest, and court costs. The plaintiff is entitled to the remainder of the proceeds of the sale.
As added by P.L.2-2002, SEC.15.

IC 32-30-4

Chapter 4. Actions for Waste

IC 32-30-4-1

Additional actions authorized

Sec. 1. (a) Wrongs that were previously remediable by an action of waste are remediable by a judgment for damages, forfeiture of the estate of the offending party, and eviction from the premises.

(b) A judgment of forfeiture and eviction may be given to a person who is entitled to the reversion against the tenant in possession only when the injury to the estate in reversion is adjudged:

(1) to be equal to the value of the tenant's estate or unexpired term; or

(2) to have been done in malice.

As added by P.L.2-2002, SEC.15.

IC 32-30-4-2

Action by person with remainder or reversion in estate

Sec. 2. Notwithstanding an intervening estate for life or years, a person who has a remainder or reversion in an estate may maintain an action for waste, trespass, or injury to the inheritance.

As added by P.L.2-2002, SEC.15.

IC 32-30-5
Chapter 5. Receiverships

IC 32-30-5-1
Appointment of receivers; cases

Sec. 1. A receiver may be appointed by the court in the following cases:

(1) In an action by a vendor to vacate a fraudulent purchase of property or by a creditor to subject any property or fund to the creditor's claim.

(2) In actions between partners or persons jointly interested in any property or fund.

(3) In all actions when it is shown that the property, fund or rent, and profits in controversy are in danger of being lost, removed, or materially injured.

(4) In actions in which a mortgagee seeks to foreclose a mortgage. However, upon motion by the mortgagee, the court shall appoint a receiver if, at the time the motion is filed, the property is not occupied by the owner as the owner's principal residence and:

(A) it appears that the property is in danger of being lost, removed, or materially injured;

(B) it appears that the property may not be sufficient to discharge the mortgaged debt;

(C) either the mortgagor or the owner of the property has agreed in the mortgage or in some other writing to the appointment of a receiver;

(D) a person not personally liable for the debt secured by the mortgage has, or is entitled to, possession of all or a portion of the property;

(E) the owner of the property is not personally liable for the debt secured by the mortgage; or

(F) all or any portion of the property is being, or is intended to be, leased for any purpose.

(5) When a corporation:

(A) has been dissolved;

(B) is insolvent;

(C) is in imminent danger of insolvency; or

(D) has forfeited its corporate rights.

(6) To protect or preserve, during the time allowed for redemption, any real estate or interest in real estate sold on execution or order of sale, and to secure rents and profits to the person entitled to the rents and profits.

(7) In other cases as may be provided by law or where, in the discretion of the court, it may be necessary to secure ample justice to the parties.

As added by P.L.2-2002, SEC.15.

IC 32-30-5-2
Persons prohibited from being appointed in particular action

Sec. 2. A court may not appoint:
(1) a party;
(2) an attorney representing a party; or
(3) another person interested in an action;
as a receiver in that action.
As added by P.L.2-2002, SEC.15.

IC 32-30-5-3
Receivers; oath; surety
Sec. 3. Before beginning duties as a receiver, the receiver must:
(1) swear to perform the duties of a receiver faithfully; and
(2) with one (1) or more sureties approved by the court or judge, execute a written undertaking, payable to such person as the court or the judge directs, to the effect that the receiver will:
(A) faithfully discharge the duties of receiver in the action; and
(B) obey the orders of the court or judge.
As added by P.L.2-2002, SEC.15.

IC 32-30-5-4
Money or things controlled by party; delivery
Sec. 4. If it is admitted by the pleading or examination of a party that the party has in the party's possession or under the party's control any money or other thing capable of delivery, which:
(1) is the subject of the litigation;
(2) is held by the party as trustee for another party; or
(3) belongs or is due to another party;
the court or the judge may order the money or thing to be deposited in court or with the clerk, or delivered to the other party, with or without security, subject to the further order of the court or the judge.
As added by P.L.2-2002, SEC.15.

IC 32-30-5-5
Disobeyed order; delivery of money or thing; deposit
Sec. 5. If:
(1) in the exercise of its authority, a court or judge has ordered the deposit or delivery of money or another thing; and
(2) the order is disobeyed;
the court or the judge, besides punishing the disobedience as contempt, may make an order requiring the sheriff to take the money or thing and deposit it or deliver it in conformity with the direction of the court or judge.
As added by P.L.2-2002, SEC.15. Amended by P.L.1-2003, SEC.85.

IC 32-30-5-6
Loan of deposited money prohibited; permitted with consent of parties
Sec. 6. Money deposited or paid into court or with the clerk in an action may not be loaned out unless consent is obtained from all parties having an interest in or making claim to the money.

As added by P.L.2-2002, SEC.15.

IC 32-30-5-7
Receiver's powers

Sec. 7. The receiver may, under control of the court or the judge:

(1) bring and defend actions;
(2) take and keep possession of the property;
(3) receive rents;
(4) collect debts; and
(5) sell property;

in the receiver's own name, and generally do other acts respecting the property as the court or judge may authorize.
As added by P.L.2-2002, SEC.15. Amended by P.L.177-2003, SEC.1.

IC 32-30-5-8
Defendant's admission; partial satisfaction of claim

Sec. 8. If the answer of the defendant admits part of the plaintiff's claim to be just, the court, on motion, may order the defendant to satisfy that part of the claim and may enforce the order by execution.
As added by P.L.2-2002, SEC.15.

IC 32-30-5-9
Time of receiver's appointment

Sec. 9. Receivers may not be appointed in any case until the adverse party has appeared or has had reasonable notice of the application for the appointment, except upon sufficient cause shown by affidavit.
As added by P.L.2-2002, SEC.15.

IC 32-30-5-10
Appeal; suspension of receiver's authority; surety

Sec. 10. (a) In all cases commenced or pending in any Indiana court in which a receiver may be appointed or refused, the party aggrieved may, within ten (10) days after the court's decision, appeal the court's decision to the supreme court without awaiting the final determination of the case.

(b) In cases where a receiver will be or has been appointed, upon the appellant filing of an appeal bond:

(1) with sufficient surety;
(2) in the same amount as was required of the receiver; and
(3) conditioned for the due prosecution of the appeal and the payment of all costs or damages that may accrue to any officer or person because of the appeal;

the authority of the receiver shall be suspended until the final determination of the appeal.
As added by P.L.2-2002, SEC.15.

IC 32-30-5-11
Actions by a receiver; pleadings

Sec. 11. In any suit or action by a receiver appointed by any court

of record in Indiana, it is only necessary for the receiver, in the receiver's complaint or pleading, to state:

(1) the court;

(2) the cause of action in which the receiver was appointed; and

(3) the date on which the receiver was appointed.

Proof of the appointment is not required on the trial of the cause unless the appointment is specially denied, in addition to the general denial filed in the cause.

As added by P.L.2-2002, SEC.15.

IC 32-30-5-12

Clerk's record book

Sec. 12. The clerk of the court of each county shall keep a record book suitable to enter and record statements of assets and liabilities.

As added by P.L.2-2002, SEC.15.

IC 32-30-5-13

Claims filed with receiver

Sec. 13. All claims against the assets in the hands of the receiver that are filed with the receiver shall be filed by the receiver with the clerk of the court in which the receivership is pending. The clerk shall record the claims with the statements under this chapter, resulting in a complete record of the assets and liabilities of the receivership.

As added by P.L.2-2002, SEC.15.

IC 32-30-5-14

Receiver's report

Sec. 14. In all receiverships pending or begun in any court, the receiver, within the time as may be fixed by an order of the court in which the receivership is pending, shall file with the court an account or report in partial or final settlement of the liquidation or receivership proceedings.

As added by P.L.2-2002, SEC.15.

IC 32-30-5-15

Receiver's report; requirements

Sec. 15. The account or report required by section 14 of this chapter must set forth all:

(1) receipts and disbursements to the date of the accounting; and

(2) other appropriate information relative to the:

(A) administration of the receivership;

(B) liquidation of the receivership; and

(C) declaration and payment of dividends.

As added by P.L.2-2002, SEC.15.

IC 32-30-5-16

Receiver's report; filing deadline; petition for court order

Sec. 16. If an account is not filed within one (1) year after the date when the receiver took possession of the assets and effects of the

receivership, any party interested may petition the court for an order requiring the filing of an account.
As added by P.L.2-2002, SEC.15.

IC 32-30-5-17
Receiver's report; hearing; notice

Sec. 17. (a) Except as provided in subsection (d), upon the filing of an account or report, the clerk of the court in which the receivership is pending shall give notice of the date on which the account or report is to be heard and determined by the court.

(b) The clerk shall give the notice required by subsection (a) by publication, once each week for three (3) successive weeks in two (2) newspapers of general circulation published or circulated within the county.

(c) The date in the notice on which the account or report is to be heard and determined by the court shall be fixed not less than thirty (30) days after the date of the filing of the account or report.

(d) Publication is not required under this section if the receivership is ancillary to a mortgage foreclosure.
As added by P.L.2-2002, SEC.15.

IC 32-30-5-18
Objections to receiver's report

Sec. 18. (a) During the thirty (30) day period referred to in section 17 of this chapter, any creditor, shareholder, or other interested party may file objections or exceptions in writing to the account or report.

(b) Any objections or exceptions to the matters and things contained in an account or report and to the receiver's acts reported in the report or account that are not filed within the thirty (30) day period referred to in section 17 of this chapter are forever barred for all purposes.
As added by P.L.2-2002, SEC.15.

IC 32-30-5-19
Objections to receiver's report; hearing

Sec. 19. At the expiration of the thirty (30) day period referred to in section 17 of this chapter, the court shall, without delay:

(1) proceed with the hearing and determination of the objections or exceptions;
(2) pass upon the account or report;
(3) order the payment of a partial or final dividend; and
(4) make other appropriate orders.

As added by P.L.2-2002, SEC.15.

IC 32-30-5-20
Court approval of partial report; release of surety

Sec. 20. The court's approval of a receiver's partial account or report, as provided in section 14 of this chapter, releases and discharges the receiver and the surety on the receiver's bond for all matters and things related to or contained in the partial account or

report.
As added by P.L.2-2002, SEC.15.

IC 32-30-5-21
Court approval of final report; discharge of surety; settlement of receivership

Sec. 21. Upon the:

(1) court's approval of the receiver's final account or report, as provided in section 14 of this chapter; and

(2) receiver's performance and compliance with the court's order made on the final report;

the receiver and the surety on the receiver's bond shall be fully and finally discharged and the court shall declare the receivership estate finally settled and closed subject to the right of appeal of the receiver or any creditor, shareholder, or other interested party who has filed objections or exceptions as provided in section 18 of this chapter.
As added by P.L.2-2002, SEC.15.

IC 32-30-5-22
Receivership estate; change of judge or venue

Sec. 22. (a) This section applies to any action, proceeding, or matter relating to or involving a receivership estate.

(b) Except as provided in subsections (c) and (d), a party to a proceeding described in subsection (a) is entitled to a change of judge or a change of venue from the county for the same reasons and upon the same terms and conditions under which a change of judge or a change of venue from the county is allowed in any civil action.

(c) This section does not authorize a change of venue from the county:

(1) concerning expenses allowed by the court incidental to the operation, management, or administration of the receivership estate;

(2) upon any petition or proceeding to remove a receiver; or

(3) upon the objections or exceptions to any partial or final account or report of any receiver.

(d) A change of venue is not allowed from the county of the administration of any receivership estate, or upon any petition or proceeding to remove a receiver, or upon objections or exceptions to a partial or final account or report of a receiver.
As added by P.L.2-2002, SEC.15.

IC 32-30-6
Chapter 6. Nuisance Actions

IC 32-30-6-1
"Agricultural operation" defined
Sec. 1. As used in this chapter, "agricultural operation" includes any facility used for the production of crops, livestock, poultry, livestock products, poultry products, or horticultural products or for growing timber.
As added by P.L.2-2002, SEC.15.

IC 32-30-6-1.5
"Forestry operation" defined
Sec. 1.5. As used in this chapter, "forestry operation" includes facilities, activities, and equipment used to plant, raise, manage, harvest, and remove trees on private land. The term includes site preparation, fertilization, pest control, and wildlife management.
As added by P.L.82-2005, SEC.2.

IC 32-30-6-2
"Industrial operation" defined
Sec. 2. As added used in this chapter, "industrial operation" includes any facility used for the:
(1) manufacture of a product from other products;
(2) transformation of a material from one (1) form to another;
(3) mining of a material and related mine activities; or
(4) storage or disposition of a product or material.
As added by P.L.2-2002, SEC.15.

IC 32-30-6-3
"Locality" defined
Sec. 3. As used in this chapter, "locality" means the following:
(1) For purposes of section 9 of this chapter, the specific area of land upon which an:
(A) agricultural operation; or
(B) industrial operation;
is conducted.
(2) For purposes of section 10 of this chapter, the following:
(A) The specific area of land upon which a public use airport operation is conducted.
(B) The airport imaginary surfaces as described in IC 8-21-10-8.
(3) For purposes of section 11 of this chapter, the specific area of land upon which a forestry operation is conducted.
As added by P.L.2-2002, SEC.15. Amended by P.L.82-2005, SEC.3.

IC 32-30-6-4
"Public use airport operation" defined
Sec. 4. As used in this chapter, "public use airport operation" includes any facility used as a public use airport for the landing, take

off, storage, or repair of aircraft.
As added by P.L.2-2002, SEC.15.

IC 32-30-6-5
"Vicinity of the locality" defined

Sec. 5. As used in this chapter, "vicinity of the locality" means the following:

(1) Three (3) miles from the locality (as defined in section 3(2) of this chapter) of a public use airport operation that serves regularly scheduled air carrier or military turbojet aircraft.

(2) One and one-half (1.5) miles from the locality of a public use airport operation that does not serve regularly scheduled air carrier or military turbojet aircraft.

As added by P.L.2-2002, SEC.15.

IC 32-30-6-6
Nuisance described and considered subject to an action

Sec. 6. Whatever is:

(1) injurious to health;

(2) indecent;

(3) offensive to the senses; or

(4) an obstruction to the free use of property;

so as essentially to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action.
As added by P.L.2-2002, SEC.15.

IC 32-30-6-7
Nuisance actions; plaintiffs; attorney's fees in certain actions

Sec. 7. (a) An action to abate or enjoin a nuisance may be brought by any person whose:

(1) property is injuriously affected; or

(2) personal enjoyment is lessened;

by the nuisance.

(b) A civil action to abate or enjoin a nuisance may also be brought by:

(1) an attorney representing the county in which a nuisance exists; or

(2) the attorney of any city or town in which a nuisance exists.

(c) A county, city, or town that brings a successful action under this section to abate or enjoin a nuisance is entitled to recover reasonable attorney's fees incurred in bringing the action.

(d) A person that successfully defends an action under this section is entitled to reasonable costs and attorney's fees incurred in defending the action.
As added by P.L.2-2002, SEC.15. Amended by P.L.82-2005, SEC.4; P.L.193-2014, SEC.1.

IC 32-30-6-8
Nuisance action; remedies

Sec. 8. If a proper case is made, the nuisance may be enjoined or

abated and damages recovered for the nuisance.
As added by P.L.2-2002, SEC.15.

IC 32-30-6-9
Agricultural and industrial operations; findings; continuity of operations; circumstances in which nuisance does not exist

Sec. 9. (a) This section does not apply if a nuisance results from the negligent operation of an agricultural or industrial operation or its appurtenances.

(b) The general assembly declares that it is the policy of the state to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. The general assembly finds that when nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations, and many persons may be discouraged from making investments in farm improvements. It is the purpose of this section to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.

(c) For purposes of this section, the continuity of an agricultural or industrial operation shall be considered to have been interrupted when the operation has been discontinued for more than one (1) year.

(d) An agricultural or industrial operation or any of its appurtenances is not and does not become a nuisance, private or public, by any changed conditions in the vicinity of the locality after the agricultural or industrial operation, as the case may be, has been in operation continuously on the locality for more than one (1) year if the following conditions exist:

(1) There is no significant change in the type of operation. A significant change in the type of agricultural operation does not include the following:

(A) The conversion from one type of agricultural operation to another type of agricultural operation.

(B) A change in the ownership or size of the agricultural operation.

(C) The:

(i) enrollment; or

(ii) reduction or cessation of participation;

of the agricultural operation in a government program.

(D) Adoption of new technology by the agricultural operation.

(2) The operation would not have been a nuisance at the time the agricultural or industrial operation began on that locality.

As added by P.L.2-2002, SEC.15. Amended by P.L.23-2005, SEC.1.

IC 32-30-6-9.5
Frivolous nuisance actions; court costs; attorney fees

Sec. 9.5. (a) If a court finds that an agricultural operation that is the subject of a nuisance action:

(1) was not a nuisance under section 9 of this chapter and that the nuisance action was frivolous, the court shall award court costs and reasonable attorney's fees, to the defendant in the action; or

(2) was a nuisance under this chapter and that the defense of the nuisance action was frivolous, the court shall award court costs, including reasonable attorney's fees, to the plaintiff in the action.

(b) Reasonable attorney's fees under subsection (a):

(1) shall be calculated based on the reasonable and customary hourly rates charged in the county in which the action occurred; and

(2) may include fees for only one (1) attorney, no matter how many attorneys were actually employed by the party.

(c) The determination that an action was initiated or maintained frivolously may not be based on the mere fact that a party did not prevail.

As added by P.L.73-2012, SEC.1.

IC 32-30-6-10

Public use airport operation; purpose; circumstances in which nuisance does not exist; negligent operations

Sec. 10. (a) This section does not apply if a nuisance results from the negligent operation of a public use airport operation or the operation's appurtenances.

(b) It is the purpose of this section to limit the circumstances under which a public use airport operation may be a nuisance in order to reduce the potential for the state to lose the benefits to the state's air transportation system that are provided by public use airports.

(c) A public use airport operation or any of the operation's appurtenances may not become a private or public nuisance by any changed condition in the vicinity of the locality that occurs after the public use airport operation operates continuously on the locality for more than one (1) year if the following conditions are met:

(1) The public use airport operation was not a nuisance at the time when the operation began operating at that locality.

(2) The public use airport operation is operated in accordance with the rules of the Indiana department of transportation, aeronautics section.

(3) There is no significant change in the hours of operation of the public use airport operation.

As added by P.L.2-2002, SEC.15.

IC 32-30-6-11

Continuous forestry operation; circumstances under which forestry operation not a nuisance

Sec. 11. (a) This section does not apply if a nuisance results from the negligent operation of a forestry operation.

(b) For purposes of subsection (d), a forestry operation is considered to be in continuous operation if the locality supports an

actual or a developing timber crop.

(c) A forestry operation that:

(1) existed before a change in the land use or occupancy of land within one (1) mile of the boundaries of the locality; and

(2) would not have been a nuisance before the change in land use or occupancy;

is not a private or public nuisance.

(d) A forestry operation that conforms to generally accepted forestry management practices and that has been in continuous operation is not a private or public nuisance as a result of any of the following:

(1) A change in the ownership or size of the forestry operation.

(2) Enrollment in a government forestry conservation program.

(3) Use of new forestry technology.

(4) A visual change due to removal of timber or vegetation.

(5) Normal noise from forestry equipment.

(6) Removal of timber or vegetation from a forest adjoining the locality.

(7) The proper application of pesticides and fertilizers.

As added by P.L.82-2005, SEC.5.

IC 32-30-7

Chapter 7. Actions for Indecent Nuisances

IC 32-30-7-1

"Indecent nuisance"

Sec. 1. As used in this chapter, "indecent nuisance" means a:

(1) place in or upon which prostitution (as described in IC 35-45-4);

(2) public place in or upon which other sexual conduct (as defined in IC 35-31.5-2-221.5) or sexual intercourse (as defined in IC 35-31.5-2-302); or

(3) public place in or upon which the fondling of the genitals of a person;

is conducted, permitted, continued, or exists, and the personal property and contents used in conducting and maintaining the place for such a purpose.

As added by P.L.2-2002, SEC.15. Amended by P.L.114-2012, SEC.54; P.L.158-2013, SEC.333.

IC 32-30-7-2

"Person"

Sec. 2. As used in this chapter, "person" has the meaning set forth in IC 35-31.5-2-234.

As added by P.L.2-2002, SEC.15. Amended by P.L.114-2012, SEC.55.

IC 32-30-7-3

"Place"

Sec. 3. As used in this chapter, "place" includes any part of a building or structure or the ground.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-4

"Prosecuting official"

Sec. 4. As used in this chapter, "prosecuting official" refers to public officials who have concurrent jurisdiction to enforce this chapter, including:

(1) the attorney general;

(2) the prosecuting attorney of the circuit in which an indecent nuisance exists;

(3) the corporation counsel or city attorney of the city (if any) in which an indecent nuisance exists; or

(4) an attorney representing the county in which an indecent nuisance exists.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-5

"Public place"

Sec. 5. As used in this chapter, "public place" means any place to which the public is invited by special or an implied invitation.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-6
Persons guilty of maintaining an indecent nuisance

Sec. 6. The following are guilty of maintaining an indecent nuisance and may be enjoined from maintaining the indecent nuisance under this chapter:

(1) A person who uses, occupies, establishes, maintains, or conducts an indecent nuisance.

(2) The owner, agent, or lessee of any interest in an indecent nuisance.

(3) A person employed in an indecent nuisance.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-7
Action by prosecuting official; actions by other persons

Sec. 7. (a) If an indecent nuisance exists, a prosecuting official or any resident of the county in which the indecent nuisance exists may bring an action to abate the indecent nuisance and to perpetually enjoin the maintenance of the indecent nuisance.

(b) If a person other than a prosecuting official institutes an action under this chapter, the complainant shall execute a bond to the person against whom complaint is made, with good and sufficient surety to be approved by the court or clerk in a sum of at least one thousand dollars ($1,000) to secure to the party enjoined the damages the party may sustain if:

(1) the action is wrongfully brought;

(2) the action is not prosecuted to final judgment;

(3) the action is dismissed;

(4) the action is not maintained; or

(5) it is finally decided that the injunction ought not to have been granted.

The party aggrieved by the issuance of the injunction has recourse against the bond for all damages suffered, including damages to the aggrieved party's property, person, or character and including reasonable attorney's fees incurred in defending the action.

(c) A person who institutes an action and executes a bond may recover the bond and reasonable attorney's fees incurred in trying the action if the existence of an indecent nuisance is admitted or established in an action as provided in this chapter.

(d) If a prosecuting official institutes an action under this chapter (or IC 34-1-52.5 or IC 34-19-2 before their repeal) and the existence of an indecent nuisance is admitted or established in the action, the governmental entity that employs the prosecuting official is entitled to all reasonable attorney's fees incurred by the entity in instituting the action. The fees shall be deposited in:

(1) the state general fund, if the action is instituted by the attorney general;

(2) the operating budget of the office of the prosecuting attorney, if the action is instituted by a prosecuting attorney;

(3) the operating budget of the office of the corporation counsel or city attorney, if the action is instituted by a corporation counsel or city attorney; or

(4) the county general fund, if the action is instituted by an attorney representing the county.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-8

Venue

Sec. 8. An indecent nuisance action must be brought in the circuit or superior court of the county in which the alleged indecent nuisance is located. The action is commenced by filing a verified complaint alleging the facts constituting the indecent nuisance.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-9

Preliminary injunction; hearing; restraining order; service

Sec. 9. (a) After filing the complaint, a complainant may apply to the court for a preliminary injunction. The court shall grant a hearing on the complainant's motion for preliminary injunction not later than ten (10) days after it is filed.

(b) If an application for a preliminary injunction is made, the court may, on application of the complainant showing good cause, issue an ex parte restraining order restraining the defendant and all other persons from removing or in any manner interfering with the personal property and contents of the place where the indecent nuisance is alleged to exist until the decision of the court granting or refusing a preliminary injunction and until further order of the court. However, pending the court's decision, the stock in trade may not be restrained, but an inventory and full accounting of business transactions after the restraining order may be required.

(c) A restraining order issued under subsection (b) may be served by:

(1) handing to and leaving a copy of the order with a person who is:

(A) in charge of the place; or

(B) a resident of the place; or

(2) posting a copy of the order in a conspicuous place at or upon at least one (1) of the principal doors or entrances to the place.

(d) The officer serving a restraining order issued under subsection (b) shall immediately make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining alleged the indecent nuisance.

(e) Violation of a restraining order served under subsection (c) (or IC 34-1-52.5-4 or IC 34-19-2-4 before their repeal) is a contempt of court.

(f) If a restraining order is posted under subsection (c)(2), mutilation or removal of the order while it is in force is a contempt of court if the order contains a notice stating that mutilating or removing the order while it is in force is a contempt of court.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-10
Complaint; notice; hearing; service

Sec. 10. (a) In an action under this chapter:

(1) a copy of the complaint; and

(2) a notice of the time and place of the hearing on the application for a preliminary injunction, if the complainant has applied for a preliminary injunction under section 9(a) of this chapter;

shall be served upon the defendant at least five (5) days before the hearing.

(b) The owners of the place where the alleged indecent nuisance is located may be served by posting the papers in the manner prescribed by section 9(c) of this chapter for serving a restraining order.

(c) If a defendant:

(1) is granted a request for continuance; or

(2) moves for a change of venue or a change of judge;

the preliminary writ shall be granted as a matter of course.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-11
Consolidation of trial on merits and hearing on request for preliminary injunction

Sec. 11. (a) If the complainant has applied for a preliminary injunction under section 9(a) of this chapter, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing on the application for the preliminary injunction:

(1) before or after the commencement of the hearing on an application for a preliminary injunction; and

(2) upon:

(A) application of either of the parties; or

(B) the court's own motion.

(b) Any evidence received upon an application for a preliminary injunction that is admissible in the trial on the merits becomes a part of the record of the trial and does not need to be repeated as to the parties at the trial on the merits.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-12
Preliminary injunction; burden of proof; temporary forfeiture; closure pending final decision on permanent injunction

Sec. 12. (a) If the plaintiff has applied for a preliminary injunction under section 9(a) of this chapter and, at the preliminary injunction hearing, the plaintiff proves by a preponderance of the evidence that the indecent nuisance exists as alleged in the complaint, the court shall issue a preliminary injunction, without additional bond, restraining the defendant and any other person from continuing the indecent nuisance.

(b) If a defendant is enjoined under subsection (a) and it appears that the person owning, in control of, or in charge of the indecent nuisance received five (5) days notice of the hearing, the court shall:

(1) declare a temporary forfeiture of the use of the real property upon which the indecent nuisance is located and the personal property located at the site; and

(2) immediately issue an order closing the place against its use for any purpose until a final decision is rendered on the application for a permanent injunction;

unless the person owning, in control of, or in charge of the indecent nuisance shows to the satisfaction of the court, by competent and admissible evidence subject to cross-examination, that the indecent nuisance complained of has been abated by the person.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-13

Effect of preliminary injunction; restraining orders

Sec. 13. An order issued under section 12(b)(2) of this chapter closing a place continues in effect while the restraining order issued under section 9(b) of this chapter is in effect. If a restraining order has not been issued under section 9(b) of this chapter, the order closing the place under section 12(b)(2) of this chapter must include an order restraining the removal or interference with the personal property and contents.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-14

Restraining orders; service; inventory

Sec. 14. If a restraining order is issued under section 9(b) or 13 of this chapter:

(1) the restraining order shall be served under section 9(c) of this chapter; and

(2) the inventory of the property shall be made and filed as provided in section 9(d) of this chapter.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-15

Owner of real property; payment of costs; surety; abatement of indecent nuisance; showing good faith; discharge of preliminary injunction

Sec. 15. (a) The owner of real property that has been closed or is to be closed under this chapter may appear after the filing of the complaint and before the hearing on the application for a permanent injunction and do the following:

(1) Pay all costs incurred.

(2) File a bond with sureties to be approved by the court:

(A) in the full value of the property to be ascertained by the court; and

(B) conditioned upon the owner immediately abating the indecent nuisance and preventing the indecent nuisance from

being established or kept until the decision of the court is rendered on the application for a permanent injunction.

(b) If the defendant complies with subsection (a) and the court is satisfied:

(1) of the good faith of the owner of the real property; and

(2) that the owner did not know and, with reasonable care and diligence, could not have known that the real property was used as an indecent nuisance;

the court shall, at the time of the hearing on the application for the preliminary injunction, refrain from issuing an order closing the real property or restraining the removal or interference with the personal property. If a preliminary injunction has already been issued, the court shall discharge the order and deliver the property to the owners.
As added by P.L.2-2002, SEC.15.

IC 32-30-7-16
Owner of personal property; petition for release of property; good faith; discharge of preliminary injunction

Sec. 16. The owner of the personal property that has been restrained or is to be restrained under this chapter may appear after the filing of the complaint and before the hearing on the application for a permanent injunction and petition the court to release the personal property. If the court is satisfied that the owner:

(1) has acted in good faith; and

(2) did not know and, with reasonable care and diligence, could not have known that the personal property was used as an indecent nuisance;

the court shall, at the time of the hearing on the application for the preliminary injunction, refrain from issuing any order restraining the removal or interference with the personal property. If the preliminary injunction has been issued, the court shall discharge the order and deliver the property to the owner.
As added by P.L.2-2002, SEC.15.

IC 32-30-7-17
Release of property; liens

Sec. 17. The release of any real or personal property under section 15 or 16 of this chapter does not release the property from any judgment, lien, penalty, or liability to which it is subject.
As added by P.L.2-2002, SEC.15.

IC 32-30-7-18
Precedence of indecent nuisance action

Sec. 18. An indecent nuisance action under this chapter shall be set down for trial without delay and takes precedence over all other cases except crimes, election contests, or injunctions.
As added by P.L.2-2002, SEC.15.

IC 32-30-7-19
Evidence

Sec. 19. In an indecent nuisance action under this chapter, evidence of the general reputation of the place is:

(1) admissible to prove the existence of the indecent nuisance; and

(2) presumptive evidence that a person who:

(A) owned;

(B) was in control of; or

(C) was in charge of;

the indecent nuisance knew the indecent nuisance existed and used the place for an act constituting an indecent nuisance.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-20

Actions by private persons; dismissal; prosecution by prosecuting attorney; costs

Sec. 20. (a) This section applies to an indecent nuisance complaint under this chapter filed by a private person.

(b) The court shall not voluntarily dismiss the complaint unless:

(1) the complainant and the complainant's attorney file a sworn statement setting forth the reason why the action should be dismissed; and

(2) the dismissal is approved in writing or in open court by the prosecuting attorney of the circuit in which the alleged indecent nuisance is located.

(c) If the judge believes that the action should not be dismissed, the judge may direct the prosecuting attorney to prosecute the action to judgment at the expense of the county.

(d) If:

(1) the action is brought by a private person;

(2) the court finds that there were no reasonable grounds or probable cause for bringing said action; and

(3) the case is dismissed either:

(A) for the reason described in subdivision (2) before trial; or

(B) for want of prosecution;

the costs may be taxed to the person who brought the case.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-21

Burden of proof; judgment for perpetual enjoinment

Sec. 21. If at the permanent injunction hearing the plaintiff proves by a preponderance of the evidence that the indecent nuisance exists as alleged in the complaint, the court shall enter a judgment that perpetually enjoins:

(1) the defendant and any other person from further maintaining the indecent nuisance at the place described in the complaint; and

(2) the defendant from maintaining an indecent nuisance elsewhere.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-22

Order of abatement; requirements; release of property; claiming property

Sec. 22. (a) If the existence of an indecent nuisance is admitted or established as provided in section 21 of this chapter, the court shall enter an order of abatement as a part of the judgment in the case. The order of abatement must:

(1) direct the removal of all personal property and contents that:

(A) are located at the place described in the complaint;

(B) are used in conducting the indecent nuisance; and

(C) have not already been released under authority of the court as provided in sections 15 and 16 of this chapter;

(2) direct the sale of personal property that belongs to the defendants who were notified or appeared at the hearing, in the manner provided for the sale of chattels under execution; and

(3) require one (1) of the following:

(A) The renewal for one (1) year of any bond furnished by the owner of the real property under section 15(a)(2) of this chapter.

(B) If a bond was not furnished, continue for one (1) year any closing order issued under section 12(b)(2) of this chapter at the time of granting the preliminary injunction.

(C) If a closing order was not issued when the preliminary injunction was granted, direct the effectual closing of the place against its use for any purpose for one (1) year, unless sooner released.

(b) The owner of a place that has been closed and not released under bond may appear and obtain a release in the manner and upon fulfilling the requirements provided in sections 15 and 16 of this chapter.

(c) The release of property under this section does not release the property from any judgment, lien, penalty, or liability to which the property may be subject.

(d) Owners of unsold personal property and contents seized under subsection (a) may:

(1) appear and claim the property within ten (10) days after an order of abatement is made; and

(2) prove to the satisfaction of the court:

(A) that the owner is innocent of any knowledge of the use of the property; and

(B) that with reasonable care and diligence the owner could not have known of the use of the property.

(e) If an owner meets the requirements set forth in subsection (d), the unsold personal property and contents shall be delivered to the owner. Otherwise, the unsold personal property and contents shall be sold as provided in this section.

(f) The officer who removes and sells the personal property and contents under subsection (e) may charge and receive the same fees as the officer would receive for levying upon and selling similar property on execution.

(g) If an order of abatement requires the closing of a place under subsection (a)(3)(C), the court shall allow a reasonable sum to be paid for the cost of closing the place and keeping it closed.
As added by P.L.2-2002, SEC.15.

IC 32-30-7-23
Violation of court orders

Sec. 23. In case of:

(1) the violation of any injunction or closing order granted under this chapter;

(2) the violation of a restraining order issued under this chapter; or

(3) the commission of any contempt of court in proceedings under this chapter;

the court may summarily try and punish the offender. The trial may be upon affidavits or either party may demand the production and oral examination of the witnesses.
As added by P.L.2-2002, SEC.15.

IC 32-30-7-24
Collected money paid to county treasurer; proceeds of sales applied to costs

Sec. 24. (a) All money collected under this chapter shall be paid to the county treasurer.

(b) The proceeds of the sale of the personal property under section 22 of this chapter, or as much of the proceeds as necessary, shall be applied in payment of the costs of the action and abatement, including the complainant's costs.
As added by P.L.2-2002, SEC.15.

IC 32-30-7-25
Indecent nuisances created by tenants; voidable title; reversion to owner; entry

Sec. 25. (a) This section applies to a tenant or occupant of a building or tenement, under a lawful title, who uses the place for acts that create an indecent nuisance.

(b) The owner of a place described in subsection (a) may void the lease or other title under which the tenant or occupant holds. The use of the place to create an indecent nuisance, without any act of the owner of the place, causes the right of possession to revert and vest in the owner. Without process of law, the owner may make immediate entry upon the premises.
As added by P.L.2-2002, SEC.15.

IC 32-30-8

Chapter 8. Actions for Drug Nuisances

IC 32-30-8-1

"Nuisance"

Sec. 1. As used in this chapter, "nuisance" means:

(1) the use of a property to commit an act constituting an offense under IC 35-48-4; or

(2) an attempt to commit or a conspiracy to commit an act described in subdivision (1).

As added by P.L.2-2002, SEC.15.

IC 32-30-8-2

"Property"

Sec. 2. (a) Except as provided in subsection (d), as used in this chapter, "property" means a house, a building, a mobile home, or an apartment that is leased for residential or commercial purposes.

(b) The term includes:

(1) an entire building or complex of buildings; or

(2) a mobile home community;

and all real property of any nature appurtenant to and used in connection with the house, building, mobile home, or apartment, including all individual rental units and common areas.

(c) The term does not include a hotel, motel, or other guest house, part of which is rented to a transient guest.

(d) For actions brought by the attorney general in relation to the sale or solicited sale of a synthetic drug (as defined in IC 35-31.5-2-321) or a synthetic drug lookalike substance (as defined in IC 35-31.5-2-321.5), "property" means a house, a building, a mobile home, or an apartment that is owned or leased for commercial or residential purposes. The term includes all real property of any nature appurtenant to and used in connection with the house, building, mobile home, or apartment.

As added by P.L.2-2002, SEC.15. Amended by P.L.87-2005, SEC.38; P.L.196-2013, SEC.12.

IC 32-30-8-3

"Tenant"

Sec. 3. (a) As used in this chapter, "tenant" means a person who leases or resides in a property.

(b) The term does not include a person who:

(1) owns a mobile home;

(2) leases or rents a site in a mobile home community for residential use; and

(3) resides in a mobile home community.

As added by P.L.2-2002, SEC.15. Amended by P.L.87-2005, SEC.39.

IC 32-30-8-4

Actions to abate nuisance; persons authorized to initiate

Sec. 4. An action to abate a nuisance under this chapter may be

initiated by any of the following:

(1) The prosecuting attorney of the circuit where the nuisance is located.

(2) The corporation counsel or city attorney of a city in which a nuisance is located.

(3) An attorney representing a county in which a nuisance is located.

(4) The property owner.

(5) The attorney general.

As added by P.L.2-2002, SEC.15. Amended by P.L.196-2013, SEC.13.

IC 32-30-8-5

Action to abate nuisance; notice; requirements

Sec. 5. (a) A person initiating an action under this chapter to abate a nuisance existing on a property shall, at least forty-five (45) days before filing the action, provide notice to:

(1) each tenant of the property; and

(2) the owner of record;

that a nuisance exists on the property.

(b) The notice required under this section must specify the following:

(1) The date and time the nuisance was first discovered.

(2) The location on the property where the nuisance is allegedly occurring.

(c) The notice must be:

(1) hand delivered; or

(2) sent by certified mail;

to each tenant and the owner of record.

(d) A person initiating an action to abate a nuisance under this chapter shall:

(1) when notice is provided under this section, produce all evidence in the person's possession or control of the existence of the nuisance; and

(2) if requested by the owner, assist the owner in the production of witness and physical evidence.

As added by P.L.2-2002, SEC.15.

IC 32-30-8-6

Action to abate nuisance initiated or joined by owner of record; exempt from notice requirement

Sec. 6. If the owner of record of a property that is the subject of an action under this chapter initiates or joins in the action under this chapter, the requirement under section 5 of this chapter to provide notice at least forty-five (45) days before filing does not apply to the action.

As added by P.L.2-2002, SEC.15.

IC 32-30-8-7

Application of trial rules to notice; posting requirement

Sec. 7. (a) Notice of a complaint initiating an action under this chapter must be made as provided in the Indiana Rules of Trial Procedure.

(b) Except in an action under this chapter in which the owner of record of the property that is the subject of the action initiates or joins the action as a party, the person who initiates an action under this chapter, not later than forty-eight (48) hours after filing a complaint under this chapter, shall post a copy of the complaint in a conspicuous place on the property alleged by the complaint to be a nuisance.

As added by P.L.2-2002, SEC.15.

IC 32-30-8-8

Service upon defendant

Sec. 8. (a) If the defendant has not been personally served with process despite the exercise of due diligence, the person initiating an action under this chapter, not more than twenty (20) days after the filing of a complaint and the filing of an affidavit that personal service on the defendant cannot be had after due diligence, may cause a copy of the complaint to be mailed to the defendant by certified mail, restricted delivery, return receipt to the clerk of court requested. Service is considered completed when the following are filed with the court:

(1) Proof of the mailing.

(2) An affidavit that a copy of the complaint has been posted on the property alleged to be a nuisance.

(b) This subsection does not apply to transient guests of a hotel, motel, or other guest house. All tenants or residents of a property that is used in whole or in part as a business, home, residence, or dwelling who may be affected by an order issued under this chapter must be:

(1) provided reasonable notice as ordered by the court having jurisdiction over the nuisance action; and

(2) afforded an opportunity to be heard at all proceedings in the action.

(c) Notice of lis pendens shall be filed concurrently with the initiation of an action under this chapter.

As added by P.L.2-2002, SEC.15.

IC 32-30-8-9

Hearing; service upon owner of property

Sec. 9. (a) Except as otherwise provided under rules adopted by the Indiana supreme court, upon the filing of a complaint initiating an action under this chapter, the court shall schedule a hearing not later than twenty (20) days after the filing date.

(b) Service of process must be made upon the owner of the property that is alleged in the notice filed under section 5 of this chapter to be a nuisance at least five (5) days before the hearing. If service cannot be completed in time to give the owner the minimum notice required by this subsection, the court may set a new hearing date.

As added by P.L.2-2002, SEC.15.

IC 32-30-8-10
Equitable relief

Sec. 10. The court may issue an injunction or order other equitable relief under this chapter regardless of whether an adequate remedy exists at law.

As added by P.L.2-2002, SEC.15.

IC 32-30-8-10.5
Additional remedies in an action involving synthetic drugs

Sec. 10.5. In addition to the remedies and penalties specified in sections 10, 11, 12, and 13 of this chapter, the court may do any of the following in an action brought under this chapter concerning the sale or solicited sale of a synthetic drug (as defined in IC 35-31.5-2-321) or a synthetic drug lookalike substance (as defined in IC 35-31.5-2-321.5):

(1) Issue a restraining order against the person subject to IC 32-30-7-9 and IC 32-30-7-13.

(2) Issue a preliminary injunction, temporary forfeiture, or closure order pending final decision on a permanent injunction subject to IC 32-30-7-12.

(3) Issue an order of abatement subject to IC 32-30-7-22.

As added by P.L.196-2013, SEC.14.

IC 32-30-8-11
Order to vacate

Sec. 11. Notwithstanding any other provision of law, and in addition to or as a component of a remedy ordered under section 10 of this chapter, the court, after a hearing, may order a tenant that created a nuisance on the property leased by the tenant to vacate the property within seventy-two (72) hours after the issuance of the order.

As added by P.L.2-2002, SEC.15.

IC 32-30-8-12
Restitution; possession; removal of tenant's personal property

Sec. 12. (a) The court, after a hearing under this chapter, may grant a judgment of restitution or the possession of the property to the owner if:

(1) the owner and tenant are parties to the action; and

(2) the tenant has failed to obey an order issued under section 10 or 11 of this chapter.

(b) If the court orders the owner to have possession of the property, the court shall require the sheriff to execute the order of possession not later than five (5) days after the order is issued.

(c) If the owner is awarded possession of the property, the owner may seek an order from the court allowing removal of a tenant's personal property under IC 32-31-4.

As added by P.L.2-2002, SEC.15.

IC 32-30-8-13
Plan for correction

Sec. 13. In an action under this chapter, the court may order the owner of the property to submit for court approval a plan for correction to ensure, to the extent reasonably possible, that the property will not again be used for a nuisance if the owner:

(1) is a party to the action; and

(2) knew of the existence of the nuisance.

As added by P.L.2-2002, SEC.15.

IC 32-30-8-14
Proof that defendant knew of nuisance not required

Sec. 14. Except as provided in section 13 of this chapter, the court may order appropriate relief under this chapter without proof that a defendant knew of the existence of the nuisance.

As added by P.L.2-2002, SEC.15.

IC 32-30-8-15
Evidence

Sec. 15. In any action brought under this chapter:

(1) evidence of the general reputation of the property is admissible to corroborate testimony based on personal knowledge or observation, or evidence seized during the execution of a search and seizure warrant, but is not sufficient to establish the existence of a nuisance under this chapter; and

(2) evidence that the nuisance had been discontinued at the time of the filing of the complaint or at the time of the hearing does not bar the imposition of appropriate relief by the court under sections 10 through 14 of this chapter.

As added by P.L.2-2002, SEC.15.

IC 32-30-9

Chapter 9. Actions Against Cotenants

IC 32-30-9-1

Action authorized

Sec. 1. A claimant who is a joint tenant, tenant in common, or tenant in coparcenary may maintain an action against the claimant's cotenant or coparcener, or the cotenant's or coparcener's personal representatives, for receiving more than the cotenant's or coparcener's just proportion of the rents, profits, or other in kind payments.

As added by P.L.2-2002, SEC.15.

IC 32-30-10
Chapter 10. Mortgage Foreclosure Actions

IC 32-30-10-0.2
Application of certain amendments to prior law

Sec. 0.2. The:

(1) amendments made to IC 34-1-53-10 (before its repeal, later codified at IC 32-15-6-10 (before its repeal), now codified at section 12 of this chapter); and

(2) addition of IC 34-1-53-12 (before its repeal, later codified at IC 32-15-6-12 (before its repeal), now codified at section 14 of this chapter);

by P.L.56-1996 apply to all sheriff's sales conducted to foreclose mortgages on or after March 14, 1996.

As added by P.L.220-2011, SEC.528.

IC 32-30-10-1
"Auctioneer" defined

Sec. 1. As used in this chapter, "auctioneer" means an auctioneer licensed under IC 25-6.1.

As added by P.L.2-2002, SEC.15.

IC 32-30-10-2
"Economically feasible"; required findings

Sec. 2. For purposes of section 9 of this chapter, the sale of a property through the services of an auctioneer is "economically feasible" if the court determines that:

(1) a reasonable probability exists that, with the use of the services of an auctioneer, a valid and enforceable bid will be made at a foreclosure for a sale price equal to or greater than the amount of the judgment and the costs and expenses necessary to its satisfaction, including the costs of the auctioneer; and

(2) the reasonable probability would not exist without the use of an auctioneer.

As added by P.L.2-2002, SEC.15.

IC 32-30-10-3
Mortgagee's right to foreclose if mortgagor defaults; venue

Sec. 3. (a) Subject to IC 32-30-10.5 with respect to mortgage transactions described in IC 32-30-10.5-5, if a mortgagor defaults in the performance of any condition contained in a mortgage, the mortgagee or the mortgagee's assigns may proceed in the circuit court of the county where the real estate is located to foreclose the equity of redemption contained in the mortgage.

(b) If the real estate is located in more than one (1) county, the circuit court of any county in which the real estate is located has jurisdiction for an action for the foreclosure of the equity of redemption contained in the mortgage.

As added by P.L.2-2002, SEC.15. Amended by P.L.105-2009, SEC.18.

IC 32-30-10-4
Remedy

Sec. 4. If there is not an express agreement in the mortgage or a separate instrument for the payment of the sum secured by the mortgage, the remedy of the mortgagee is confined to the property mortgaged.

As added by P.L.2-2002, SEC.15.

IC 32-30-10-5
Judgment of foreclosure; personal judgment; sale of property

Sec. 5. In rendering judgment of foreclosure, the courts shall:

(1) give personal judgment against any party to the suit liable upon any agreement for the payment of any sum of money secured by the mortgage; and

(2) order the mortgaged premises, or as much of the mortgaged premises as may be necessary to satisfy the mortgage and court costs, to be sold first before the sale of other property of the defendant.

The judgment is satisfied by the payment of the mortgage debt, with interest and costs, at any time before sale.

As added by P.L.2-2002, SEC.15.

IC 32-30-10-6
Satisfaction of judgment; recording; recorder's fee

Sec. 6. Upon:

(1) the foreclosure of a recorded mortgage in a court of any county having jurisdiction in Indiana; and

(2) the payment and satisfaction of the judgment as may be rendered in the foreclosure proceeding;

the prevailing party shall immediately after satisfaction of the judgment record the satisfaction of the mortgage on the records of the recorder's office of the county where the property is located. The record in foreclosure and satisfaction must show that the whole debt, secured by the mortgage, has been paid. The recorder must be paid a fee of not more than the amount specified in IC 36-2-7-10(b)(1) and IC 36-2-7-10(b)(2) in each case of foreclosure requiring satisfaction.

As added by P.L.2-2002, SEC.15.

IC 32-30-10-7
Balance due and costs that remain unsatisfied levied on any property of debtor

Sec. 7. If there is an express written agreement for the payment of the sum of money that is secured by a mortgage or a separate instrument, the court shall direct in the order of sale that the balance due on the mortgage and costs that may remain unsatisfied after the sale of the mortgaged premises be levied on any property of the mortgage-debtor.

As added by P.L.2-2002, SEC.15.

IC 32-30-10-8

Order of sale; certification; sheriff's sale; sale of remaining property to pay unsatisfied judgment, interest, and costs

Sec. 8. (a) The copy of the court's order of sale and judgment shall be issued and certified by the clerk under the seal of the court to the sheriff.

(b) After receiving the order under subsection (a), the sheriff shall proceed to sell the mortgaged premises, or as much of the mortgaged premises as is necessary to satisfy the judgment, interest, and costs. If any part of the judgment, interest, and costs remain unsatisfied after the sale of the mortgaged premises, the sheriff shall proceed to sell the remaining property of the defendant. If the mortgaged property is located in more than one (1) county, a common description of the property, the sale of the property, and the location of the sale must be advertised in each county where the property is located.

As added by P.L.2-2002, SEC.15.

IC 32-30-10-9

Manner of sale; use of auctioneer; auctioneer's fee

Sec. 9. (a) A sheriff shall sell property on foreclosure in a manner that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer and sale.

(b) Upon prior petition of the debtor or a creditor involved in the foreclosure proceedings, the court in its order of foreclosure shall order the property sold by the sheriff through the services of the auctioneer requested by the petitioner and approved by the court if:

(1) the court determines that a sale is economically feasible; or

(2) all the creditors in the proceedings agree to both that method of sale and the compensation to be paid the auctioneer.

(c) The sheriff shall engage the auctioneer not later than fourteen (14) calendar days after the date of the order entered by the court under subsection (b). The auctioneer shall schedule the auction and conduct the auctioneer's activities as appropriate to bring the highest bid for the property on foreclosure. The advertising conducted by the auctioneer is in addition to any other notice required by law.

(d) The auctioneer's fee must be a reasonable amount stated in the court's order. However, if the sale by use of an auctioneer has not been agreed to by the creditors in the proceedings and the sale price is less than the amount of the judgment and the costs and expenses necessary to the satisfaction of the judgment, the auctioneer is entitled only to the auctioneer's advertising expenses plus one hundred dollars ($100). The amount due to the auctioneer on account of the auctioneer's expenses and fee, if any, must be paid as a cost of the sale from the proceeds before the payment of any other payment.

As added by P.L.2-2002, SEC.15. Amended by P.L.167-2005, SEC.2.

IC 32-30-10-10

Mutually exclusive actions

Sec. 10. A plaintiff may not:

(1) proceed to foreclose the mortgagee's mortgage:

(A) while the plaintiff is prosecuting any other action for the same debt or matter that is secured by the mortgage;
(B) while the plaintiff is seeking to obtain execution of any judgment in any other action; or
(C) until the notice under IC 32-30-10.5-8(a) has been sent, if required, in the case of a mortgage transaction described in IC 32-30-10.5-5; or

(2) prosecute any other action for the same matter while the plaintiff is foreclosing the mortgagee's mortgage or prosecuting a judgment of foreclosure.

As added by P.L.2-2002, SEC.15. Amended by P.L.105-2009, SEC.19.

IC 32-30-10-11
Payment of principal, interest, and costs before final judgment; dismissal; payment after final judgment; stay

Sec. 11. (a) If:

(1) a complaint is filed for the foreclosure of a mortgage;
(2) any interest or installment of the principal is due, but no other installments are due; and
(3) the defendant pays the court the principal and interest due, with costs, at any time before final judgment;

the complaint must be dismissed.

(b) If the defendant pays the court the principal and interest due after the final judgment, the proceedings on the final judgment must be stayed. However, the stay may be removed upon a subsequent default in the payment of any installment of the principal or interest after the payment is due.

(c) In the final judgment, the court shall direct at what time and upon what default any subsequent execution shall issue.

As added by P.L.2-2002, SEC.15.

IC 32-30-10-12
Sale of property in parcels

Sec. 12. (a) In cases under this chapter, the court shall ascertain whether the property can be sold in parcels. If the property can be sold in parcels without injury to the interest of the parties, the court shall direct that only as much of the premises be sold as will be sufficient to pay the amount due on the mortgage, with costs, and the judgment shall remain and be enforced upon any subsequent default, unless the amount due is paid before execution of the judgment is completed.

(b) If the mortgaged premises cannot be sold in parcels, the court shall order the whole mortgaged premises to be sold.

As added by P.L.2-2002, SEC.15.

IC 32-30-10-13
Endorsement of an execution issued on a judgment

Sec. 13. If an execution is issued on a judgment recovered for a debt secured by mortgage of real property, the plaintiff shall endorse

on the execution a brief description of the mortgaged premises. However, the equity of redemption may not be sold on the execution of judgment.
As added by P.L.2-2002, SEC.15.

IC 32-30-10-14
Application of proceeds of sale; disposition of excess proceeds

Sec. 14. The proceeds of a sale described in IC 32-29-7 or section 8 or 12(b) of this chapter must be applied in the following order:

(1) Expenses of the offer and sale, including expenses incurred under IC 32-29-7-4 or section 9 of this chapter (or IC 34-1-53-6.5 or IC 32-15-6-6.5 before their repeal).

(2) The payment of the principal due, interest, and costs not described in subdivision (1).

(3) The residue secured by the mortgage and not due.

(4) If the residue referred to in subdivision (3) does not bear interest, a deduction must be made by discounting the legal interest.

In all cases in which the proceeds of sale exceed the amounts described in subdivisions (1) through (4), the surplus must be paid to the clerk of the court to be transferred, as the court directs, to the mortgage debtor, mortgage debtor's heirs, or other persons assigned by the mortgage debtor.
As added by P.L.2-2002, SEC.15. Amended by P.L.88-2009, SEC.3; P.L.182-2009(ss), SEC.390; P.L.73-2010, SEC.9.

IC 32-30-10.5

Chapter 10.5. Foreclosure Prevention Agreements for Residential Mortgages

IC 32-30-10.5-1

Legislative findings; purpose

Sec. 1. (a) The general assembly makes the following findings:

(1) Indiana faces a serious threat to its state economy and to the economies of its political subdivisions because of Indiana's high rate of residential mortgage foreclosures, which constitutes an emergency.

(2) Indiana's high rate of residential mortgage foreclosures has adversely affected property values in Indiana, and may have an even greater adverse effect on property values if the foreclosure rate continues to rise.

(3) It is in the public interest for the state to modify the foreclosure process to encourage mortgage modification alternatives.

(b) The purpose of this chapter is to avoid unnecessary foreclosures of residential properties and thereby provide stability to Indiana's statewide and local economies by:

(1) requiring early contact and communications among creditors, their authorized agents, and debtors in order to engage in negotiations that could avoid foreclosure; and

(2) facilitating the modification of residential mortgages in appropriate circumstances.

As added by P.L.105-2009, SEC.20.

IC 32-30-10.5-1.2

"Authority"

Sec. 1.2. As used in this chapter, "authority" refers to the Indiana housing and community development authority created by IC 5-20-1-3.

As added by P.L.170-2011, SEC.5.

IC 32-30-10.5-2

"Creditor"

Sec. 2. (a) As used in this chapter, "creditor" means a person:

(1) that regularly engages in the extension of mortgages that are subject to a credit service charge or loan finance charge, as applicable, or are payable by written agreement in more than four (4) installments (not including a down payment); and

(2) to which the obligation is initially payable, either on the face of the note or contract, or by agreement if there is not a note or contract.

(b) The term includes a mortgage servicer.

As added by P.L.105-2009, SEC.20.

IC 32-30-10.5-3

"Debtor"

Sec. 3. As used in this chapter, "debtor", with respect to a mortgage, refers to the maker of the note secured by the mortgage.
As added by P.L.105-2009, SEC.20.

IC 32-30-10.5-4
"Foreclosure prevention agreement"

Sec. 4. As used in this chapter, "foreclosure prevention agreement" means a written agreement that:

(1) is executed by both the creditor and the debtor; and
(2) offers the debtor an individualized plan that may include:
(A) a temporary forbearance with respect to the mortgage;
(B) a reduction of any arrearage owed by the debtor;
(C) a reduction of the interest rate that applies to the mortgage;
(D) a repayment plan;
(E) a deed in lieu of foreclosure;
(F) reinstatement of the mortgage upon the debtor's payment of any arrearage;
(G) a sale of the property; or
(H) any loss mitigation arrangement or debtor relief plan established by federal law, rule, regulation, or guideline.

As added by P.L.105-2009, SEC.20.

IC 32-30-10.5-4.7
"Loss mitigation package"

Sec. 4.7. As used in this chapter, "loss mitigation package" means a set of documents, the components of which:

(1) are specified by the authority under section 10(i) of this chapter;
(2) provide information about a debtor's present and projected future income, expenses, assets, and liabilities; and
(3) are necessary for a creditor to make underwriting decisions or other determinations in connection with a potential foreclosure prevention agreement with the debtor to whom the documents apply.

As added by P.L.170-2011, SEC.6.

IC 32-30-10.5-5
"Mortgage"

Sec. 5. (a) As used in this chapter, "mortgage" means:

(1) a loan; or
(2) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage (or another equivalent consensual security interest) that constitutes a first lien on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

(b) The term does not include a land contract (as defined in IC 24-4.4-1-301(36)) or similar agreement in which the debtor does not possess a deed.

As added by P.L.105-2009, SEC.20. Amended by P.L.89-2011, SEC.76; P.L.170-2011, SEC.7; P.L.6-2012, SEC.211.

IC 32-30-10.5-6
"Mortgage foreclosure counselor"

Sec. 6. As used in this chapter, "mortgage foreclosure counselor" means a foreclosure prevention counselor who is part of, or has been trained or certified by, the Indiana Foreclosure Prevention Network.
As added by P.L.105-2009, SEC.20.

IC 32-30-10.5-7
"Mortgage servicer"

Sec. 7. As used in this chapter, "mortgage servicer" means the last person to whom:

(1) a debtor in a mortgage; or

(2) the debtor's successor in interest;

has been instructed to send payments on the mortgage.
As added by P.L.105-2009, SEC.20.

IC 32-30-10.5-8
Presuit notice; contents; notices by creditor and court of debtor's right to settlement conference; debtor's contact information; notice to insurance company; exceptions; form of notice

Sec. 8. (a) This section applies to a foreclosure action that is filed after June 30, 2009. Except as provided in subsection (e) and section 10(g) of this chapter, not later than thirty (30) days before a creditor files an action for foreclosure, the creditor shall send to the debtor by certified mail a presuit notice on a form prescribed by the authority. The notice required by this subsection must do the following:

(1) Inform the debtor that:

(A) the debtor is in default;

(B) the debtor is encouraged to obtain assistance from a mortgage foreclosure counselor; and

(C) if the creditor proceeds to file a foreclosure action and obtains a foreclosure judgment, the debtor has a right to do the following before a sheriff's sale is conducted:

(i) Appeal a finding of abandonment by a court under IC 32-30-10.6.

(ii) Redeem the real estate from the judgment under IC 32-29-7-7.

(iii) Retain possession of the property under IC 32-29-7-11(b), subject to the conditions set forth in IC 32-29-7-11(b).

(2) Provide the contact information for the Indiana Foreclosure Prevention Network.

(3) Include the following statement printed in at least 14 point boldface type:

"NOTICE REQUIRED BY STATE LAW

Mortgage foreclosure is a complex process. People may approach you about "saving" your home. You should be

careful about any such promises. There are government agencies and nonprofit organizations you may contact for helpful information about the foreclosure process. For the name and telephone number of an organization near you, please call the Indiana Foreclosure Prevention Network.".

(b) The notice required by subsection (a) shall be sent to:

(1) the address of the mortgaged property; or

(2) the last known mailing address of the debtor if the creditor's records indicate that the mailing address of the debtor is other than the address of the mortgaged property.

If the creditor provides evidence that the notice required by subsection (a) was sent by certified mail, return receipt requested, and in accordance with this subsection, it is not necessary that the debtor accept receipt of the notice for an action to proceed as allowed under this chapter.

(c) Except as provided in subsection (e) and section 10(g) of this chapter, if a creditor files an action to foreclose a mortgage, the creditor shall:

(1) in the case of a foreclosure action filed after June 30, 2009, but before July 1, 2011, include with the complaint served on the debtor, on a form prescribed by the authority; and

(2) subject to subsection (f), in the case of a foreclosure action filed after June 30, 2011, include on the first page of the summons that is served on the debtor in conjunction with the complaint;

a notice that informs the debtor of the debtor's right to participate in a settlement conference, subject to section 9(b) of this chapter. The notice under subdivision (1) or (2) must inform the debtor that the debtor may schedule a settlement conference by notifying the court, not later than thirty (30) days after the complaint is served on the debtor, of the debtor's intent to participate in a settlement conference.

(d) If a creditor files an action to foreclose a mortgage, the creditor shall do the following:

(1) Include with the complaint filed with the court:

(A) except as provided in subsection (e) and section 10(g) of this chapter, a copy of the notices sent to the debtor under subsections (a) and (c), if the foreclosure action is filed after June 30, 2009, but before July 1, 2011; or

(B) the following, if the foreclosure action is filed after June 30, 2011:

(i) Except as provided in subsection (e) and section 10(g) of this chapter, a copy of the notice sent to the debtor under subsection (a).

(ii) The following most recent contact information for the debtor that the creditor has on file: all telephone numbers and electronic mail addresses for the debtor and any mailing address described in subsection (b)(2). The contact information provided under this item is confidential under IC 5-14-3-4(a)(13).

(2) For a foreclosure action filed after June 30, 2011, at the time

the complaint is filed with the court, send:

(A) by certified mail, return receipt requested; and

(B) to the last known mailing address of the insurance company;

a copy of the complaint filed with the court to the insurance company of record for the property that is the subject of the foreclosure action.

It is not necessary that the insurance company accept receipt of the copy of the complaint for the creditor to satisfy the requirement of subdivision (2). A creditor's failure to provide a copy of the complaint as required by subdivision (2) does not affect the foreclosure action or subject the creditor to any liability. Subject to section 9(b) of this chapter, in the case of a foreclosure action filed after June 30, 2011, upon the filing of the complaint by the creditor, the court shall send to the debtor, by United States mail and to the address of the mortgaged property, or to an address for the debtor provided by the creditor under subdivision (1)(B)(ii), if applicable, a notice that informs the debtor of the debtor's right to participate in a settlement conference. The court's notice must inform the debtor that the debtor may schedule a settlement conference by notifying the court of the debtor's intent to participate in a settlement conference. The court's notice must specify a date by which the debtor must request a settlement conference, which date must be the date that is thirty (30) days after the date of the creditor's service of the complaint on the debtor under subsection (c), as determined by the court from the service list included with the complaint filed with the court. The court may not delegate the duty to send the notice the court is required to provide under this subsection to the creditor or to any other person.

(e) A creditor is not required to send the notices described in this section if:

(1) the mortgage is secured by a dwelling that is not occupied by the debtor as the debtor's primary residence;

(2) the mortgage has been the subject of a prior foreclosure prevention agreement under this chapter and the debtor has defaulted with respect to the terms of that foreclosure prevention agreement; or

(3) bankruptcy law prohibits the creditor from participating in a settlement conference under this chapter with respect to the mortgage.

(f) Not later than June 1, 2011, the authority, in consultation with the division of state court administration, shall prescribe language for the notice required under subsection (c)(2) to be included on the first page of the summons that is served on the debtor in a foreclosure action filed after June 30, 2011. The language must convey the same information as the form prescribed by the authority under subsection (c)(1) for foreclosure actions filed after June 30, 2009, but before July 1, 2011. The authority shall make the language prescribed under this subsection available on the authority's Internet web site. A creditor complies with subsection (c)(2) in a foreclosure action filed

after June 30, 2011, if the creditor includes on the first page of the summons served on the debtor:

(1) the language that is prescribed by the authority under this subsection and made available on the authority's Internet web site; or

(2) language that conveys the same information as the language that is prescribed by the authority under this subsection and made available on the authority's Internet web site.

As added by P.L.105-2009, SEC.20. Amended by P.L.68-2010, SEC.3; P.L.170-2011, SEC.8; P.L.116-2011, SEC.4; P.L.6-2012, SEC.212; P.L.102-2012, SEC.2.

IC 32-30-10.5-8.5

Debtor's request for settlement conference; court to stay granting of dispositive motion and to treat request as appearance by debtor

Sec. 8.5. (a) This section applies to the following:

(1) A mortgage foreclosure action with respect to which:

(A) the creditor has filed the complaint in the proceeding before July 1, 2011;

(B) the debtor has contacted the court under section 8(c) of this chapter or under section 11(b) of this chapter to schedule a settlement conference under this chapter; and

(C) the court having jurisdiction over the action has not:

(i) issued a stay in the foreclosure proceedings pending the conclusion of the settlement conference under this chapter;

(ii) issued a default judgment against the debtor in the action; or

(iii) rendered a judgment of foreclosure in the action.

(2) A mortgage foreclosure action with respect to which:

(A) the creditor has filed the complaint in the proceeding after June 30, 2011; and

(B) the debtor has contacted the court under section 8(c) of this chapter to schedule a settlement conference under this chapter.

(b) In a mortgage foreclosure action to which this section applies, the court, notwithstanding Indiana Trial Rule 56, shall stay the granting of any dispositive motion until one (1) of the following occurs, subject to the court's right under section 10(b) of this chapter to order the creditor and the debtor to reconvene a settlement conference at any time before judgment is entered:

(1) The court receives notice under section 10(e) of this chapter that after the conclusion of a settlement conference held under this chapter:

(A) the debtor and the creditor have agreed to enter into a foreclosure prevention agreement; and

(B) the creditor has elected under section 10(e) of this chapter to dismiss the foreclosure action for as long as the debtor complies with the terms of the foreclosure prevention agreement.

(2) The court receives notice under section 10(f) of this chapter

that after the conclusion of a settlement conference held under this chapter, the creditor and the debtor are unable to agree on the terms of a foreclosure prevention agreement.

(c) If the debtor requests a settlement conference under this chapter, the court shall treat the request as the entry of an appearance under Indiana Trial Rule 3.1(B).

As added by P.L.170-2011, SEC.9.

IC 32-30-10.5-8.6

Pending actions; court's authority to order continuing payments on mortgage; payments to be held by clerk or in trust account; credits or disbursements of amounts paid

Sec. 8.6. (a) This section applies to a mortgage foreclosure action that is filed after June 30, 2011.

(b) During the pendency of an action to which this section applies, regardless of any stay that is issued by the court under section 8.5 of this chapter, if the debtor continues to occupy the dwelling that is the subject of the mortgage upon which the action is based, the court may issue a provisional order that requires the debtor to continue to make monthly payments with respect to the mortgage on which the action is based. The amount of the monthly payment:

(1) shall be determined by the court, which may base its determination on the debtor's ability to pay; and

(2) may not exceed the debtor's monthly obligation under the mortgage at the time the action is filed.

(c) Payments made by a debtor under an order issued by the court under subsection (b) shall be made to:

(1) the clerk of the court, who shall hold the payments in trust for the parties; or

(2) an attorney trust account;

as directed by the court. The funds held by the clerk or in an attorney trust account under this subsection may not be disbursed unless the court issues an order for their disbursement.

(d) If the debtor and the creditor agree to enter into a foreclosure prevention agreement under section 10(e) of this chapter at any time after the debtor has made payments under an order issued by the court under subsection (b), the debtor is entitled to a credit of any amounts paid under the order.

(e) In an action to which this section applies, if:

(1) a judgment of foreclosure is issued by the court after the conditions set forth in section 9 of this chapter are met;

(2) the debtor and the creditor agree to a deed in lieu of foreclosure; or

(3) the debtor otherwise forfeits the dwelling that is the subject of the mortgage upon which the action is based;

the debtor is not entitled to a refund of any payments made under an order issued by the court under subsection (b), and any amounts held in trust by the clerk of the court or in an attorney trust fund shall be disbursed to the creditor and credited against the amount of the judgment entered against the debtor or the amount otherwise owed by

the debtor.
As added by P.L.170-2011, SEC.10.

IC 32-30-10.5-9
Conditions for court's issuance of judgment of foreclosure; exceptions

Sec. 9. (a) Except as provided in sections 8(e) and 10(g) of this chapter and subsection (b), and subject to section 8.5 of this chapter, after June 30, 2009, a court may not issue a judgment of foreclosure under IC 32-30-10 on a mortgage subject to this chapter unless all of the following apply:

(1) The creditor has given the notice required under section 8(c) of this chapter.

(2) One (1) of the following applies:

(A) The debtor does not contact the court within the thirty (30) day period described in section 8(c) of this chapter to schedule a settlement conference under this chapter.

(B) The debtor contacts the court within the thirty (30) day period described in section 8(c) of this chapter to schedule a settlement conference under this chapter and, upon conclusion of the settlement conference, the parties are unable to reach agreement on the terms of a foreclosure prevention agreement.

(C) In a foreclosure action filed after June 30, 2011, the debtor:

(i) contacts the court within the thirty (30) day period described in section 8(c) of this chapter to schedule a settlement conference under this chapter; and

(ii) does not provide to the creditor and the court at least one (1) of the documents required as part of the debtor's loss mitigation package, as specified by the authority in the listing developed under section 10(i) of this chapter and included with the court's notice under section 10(a)(8) of this chapter, within the time specified in the court's notice under section 10(a)(3)(A) of this chapter.

(3) At least sixty (60) days have elapsed since the date the notice required by section 8(a) of this chapter was sent.

(b) If the court finds that a settlement conference would be of limited value based on the result of a prior loss mitigation effort between the creditor and the debtor:

(1) a settlement conference is not required under this chapter; and

(2) the conditions set forth in subsection (a) do not apply, and the foreclosure action may proceed as otherwise allowed by law.

As added by P.L.105-2009, SEC.20. Amended by P.L.170-2011, SEC.11; P.L.102-2012, SEC.3.

IC 32-30-10.5-10
Debtor's request for settlement conference; court's notice; parties' exchange of information; conference participants; creditor's

representative; conference results; loss mitigation package

Sec. 10. (a) Unless a settlement conference is not required under this chapter, the court shall issue a notice of a settlement conference if the debtor contacts the court to schedule a settlement conference as described in section 8(c) of this chapter. The court's notice of a settlement conference must do the following:

(1) Order the creditor and the debtor to conduct a settlement conference on or before a date and time specified in the notice, which date:

(A) must not be earlier than twenty-five (25) days after the date of the notice under this section or later than sixty (60) days after the date of the notice under this section, in the case of a foreclosure action filed after June 30, 2009, but before July 1, 2011; and

(B) must not be earlier than forty (40) days after the date of the notice under this section or later than sixty (60) days after the date of the notice under this section, in the case of a foreclosure action filed after June 30, 2011;

for the purpose of attempting to negotiate a foreclosure prevention agreement.

(2) Encourage the debtor to contact a mortgage foreclosure counselor before the date of the settlement conference. The notice must provide the contact information for the Indiana Foreclosure Prevention Network.

(3) Require the debtor to do the following:

(A) In the case of a foreclosure action filed after June 30, 2011, provide, not later than a date specified in the order, which date must be the date that is thirty (30) days before the date of the settlement conference specified by the court under subdivision (1), a copy of the debtor's loss mitigation package to the following:

(i) The creditor's attorney, as identified by the creditor in the complaint, at the address specified in the complaint.

(ii) The court, at an address specified by the court.

In setting forth the requirement described in this clause, the court shall reference the listing that must be included as an attachment to the notice under subdivision (8), and shall direct the debtor to consult the attachment in compiling the debtor's loss mitigation package.

(B) Bring the following to the settlement conference:

(i) In the case of a foreclosure action filed after June 30, 2009, but before July 1, 2011, documents needed to engage in good faith negotiations with the creditor, including documentation of the debtor's present and projected future income, expenses, assets, and liabilities (including documentation of the debtor's employment history), and any other documentation or information that the court determines is needed for the debtor to engage in good faith negotiations with the creditor. The court shall identify any documents required under this item with

enough specificity to allow the debtor to obtain the documents before the scheduled settlement conference.

(ii) In the case of a foreclosure action filed after June 30, 2011, the debtor's loss mitigation package.

Any document submitted to the court under this subdivision as part of the debtor's loss mitigation package is confidential under IC 5-14-3-4(a)(13).

(4) Require the creditor to do the following:

(A) In the case of a foreclosure action filed after June 30, 2011, send to the debtor, by certified mail and not later than a date specified in the order, which date must be the date that is thirty (30) days before the date of the settlement conference specified by the court under subdivision (1), the following transaction history for the mortgage:

(i) A payment record substantiating the default, such as a payment history.

(ii) An itemization of all amounts claimed by the creditor as being owed on the mortgage, such as an account payoff statement.

If the creditor provides evidence that the transaction history required by this clause was sent by certified mail, return receipt requested, it is not necessary that the debtor accept receipt of the transaction history for an action to proceed as allowed under this chapter.

(B) Bring the following to the settlement conference:

(i) A copy of the original note and mortgage.

(ii) A payment record substantiating the default, such as a payment history.

(iii) An itemization of all amounts claimed by the creditor as being owed on the mortgage, such as an account payoff statement.

(iv) Any other documentation that the court determines is needed.

(5) Inform the parties that:

(A) each party has the right to be represented by an attorney or assisted by a mortgage foreclosure counselor at the settlement conference; and

(B) subject to subsection (b), an attorney or a mortgage foreclosure counselor may participate in the settlement conference in person or by telephone.

(6) Inform the parties that the settlement conference will be conducted at the county courthouse, or at another place designated by the court, on the date and time specified in the notice under subdivision (1) unless the parties submit to the court a stipulation to:

(A) modify the date, time, and place of the settlement conference; or

(B) hold the settlement conference by telephone at a date and time agreed to by the parties.

(7) In the case of a foreclosure action filed after June 30, 2011,

inform the parties of the following:

(A) That if the parties stipulate under subdivision (6) to modify the date of the settlement conference:

(i) the debtor must provide the debtor's loss mitigation package to the creditor and to the court, as described in subdivision (3), at least thirty (30) days before the settlement conference date, as modified by the parties; and

(ii) the creditor must send to the debtor, by certified mail, the transaction history described in subdivision (4)(A) at least thirty (30) days before the settlement conference date, as modified by the parties.

(B) That if the parties stipulate under subdivision (6)(B) to conduct the settlement conference by telephone, the parties shall ensure the availability of any technology needed to allow simultaneous participation in the settlement conference by all participants.

(8) In the case of a foreclosure action filed after June 30, 2011, include as an attachment the loss mitigation package listing prescribed by the authority under subsection (i).

(b) An attorney for the creditor shall attend the settlement conference, and an authorized representative of the creditor shall be available by telephone during the settlement conference. In addition, the court may require any person that is a party to the foreclosure action to appear at or participate in a settlement conference held under this chapter, and, for cause shown, the court may order the creditor and the debtor to reconvene a settlement conference at any time before judgment is entered. Any:

(1) costs to a creditor associated with a settlement conference under this chapter; or

(2) civil penalty imposed on a creditor by the court in connection with a violation of a court order issued in the case;

may not be charged to or collected from the debtor, either directly or indirectly.

(c) At the court's discretion, a settlement conference may or may not be attended by a judicial officer.

(d) The creditor shall ensure that any person representing the creditor:

(1) at a settlement conference scheduled under this section; or

(2) in any negotiations with the debtor designed to reach agreement on the terms of a foreclosure prevention agreement;

has authority to represent the creditor in negotiating a foreclosure prevention agreement with the debtor.

(e) If, as a result of a settlement conference held under this chapter, the debtor and the creditor agree to enter into a foreclosure prevention agreement, the agreement shall be reduced to writing and signed by both parties, and each party shall retain a copy of the signed agreement. Not later than seven (7) business days after the signing of the foreclosure prevention agreement, the creditor shall file with the court a copy of the signed agreement. At the election of the creditor, the foreclosure shall be dismissed or stayed for as long as

the debtor complies with the terms of the foreclosure prevention agreement.

(f) If, as a result of a settlement conference held under this chapter, the debtor and the creditor are unable to agree on the terms of a foreclosure prevention agreement:

(1) the creditor shall, not later than seven (7) business days after the conclusion of the settlement conference, file with the court a notice indicating that the settlement conference held under this chapter has concluded and a foreclosure prevention agreement was not reached; and

(2) the foreclosure action filed by the creditor may proceed as otherwise allowed by law, subject to the court's right under subsection (b) to order the creditor and the debtor to reconvene a settlement conference at any time before judgment is entered.

(g) If:

(1) a foreclosure is dismissed by the creditor under subsection (e) after a foreclosure prevention agreement is reached; and

(2) a default in the terms of the foreclosure prevention agreement later occurs;

the creditor or its assigns may bring a foreclosure action with respect to the mortgage that is the subject of the foreclosure prevention agreement without sending the notices described in section 8 of this chapter.

(h) Participation in a settlement conference under this chapter satisfies any mediation or alternative dispute resolution requirement established by court rule.

(i) Not later than June 1, 2011, the authority shall prescribe a list of documents that must be included as part of a debtor's loss mitigation package in a foreclosure action filed after June 30, 2011. In prescribing the list of documents required by this subsection, the authority:

(1) shall require those documents that:

(A) provide information about a debtor's present and projected future income, expenses, assets, and liabilities; and

(B) are necessary for a creditor to make underwriting decisions or other determinations in connection with a potential foreclosure prevention agreement with the debtor to whom the documents apply; and

(2) may amend the list:

(A) in response to changes in any federal loan modification programs; or

(B) as otherwise determined to be necessary by the authority.

The authority shall make the list prescribed under this subsection available on the authority's Internet web site. The division of state court administration shall make the list prescribed under this subsection available on the Internet web site maintained by the state's judicial branch. If the authority determines that an amendment to the list is necessary under subdivision (2), the authority shall notify the division of state court administration of the amendment as soon as practicable before the amendment takes effect and shall update the

list on the authority's Internet web site not later than the effective date of the amendment. Upon receiving notice of an amendment to the list from the authority, the division of state court administration shall update the list on the Internet web site maintained by the state's judicial branch not later than the effective date of the amendment.
As added by P.L.105-2009, SEC.20. Amended by P.L.170-2011, SEC.12.

IC 32-30-10.5-11
Foreclosure actions filed before July 1, 2009; court's duty to provide notice of availability of settlement conference

Sec. 11. (a) This section applies to a mortgage foreclosure action with respect to which the creditor has filed the complaint in the proceeding before July 1, 2009, and the court having jurisdiction over the proceeding has not rendered a judgment of foreclosure before July 1, 2009.

(b) In a mortgage foreclosure action to which this section applies, the court having jurisdiction of the action shall serve notice of the availability of a settlement conference under this chapter. The notice required by this section must inform the debtor that the debtor:

(1) has the right to participate in a settlement conference, subject to section 9(b) of this chapter; and

(2) may schedule a settlement conference by notifying the court, not later than thirty (30) days after the notice required by this section is served, of the debtor's intent to participate in a settlement conference.

As added by P.L.105-2009, SEC.20. Amended by P.L.170-2011, SEC.13.

IC 32-30-10.6

Chapter 10.6. Determination of Abandonment for Property Subject to a Mortgage Foreclosure Action

IC 32-30-10.6-1

Applicability

Sec. 1. This chapter applies to the following:

(1) A mortgage foreclosure action filed under IC 32-30-10-3.

(2) A determination that property is abandoned or vacant for purposes of IC 6-1.1-24 or IC 34-30-26-7.

As added by P.L.102-2012, SEC.4. Amended by P.L.203-2013, SEC.19; P.L.66-2014, SEC.20.

IC 32-30-10.6-2

"Enforcement authority"

Sec. 2. As used in this chapter, "enforcement authority" refers to the enforcement authority (as defined in IC 36-7-9-2) that has jurisdiction in the location of the property.

As added by P.L.102-2012, SEC.4. Amended by P.L.203-2013, SEC.20.

IC 32-30-10.6-2.3

"Executive of a county"

Sec. 2.3. As used in this chapter, "executive of a county" in a county containing a consolidated city means the executive of the consolidated city.

As added by P.L.66-2014, SEC.21.

IC 32-30-10.6-3

Abandonment determination; petition by creditor or enforcement authority

Sec. 3. (a) At any time during a mortgage foreclosure action, the creditor may petition the court for a determination that the mortgaged property is abandoned. A petition filed with the court under this section must:

(1) allege that the mortgaged property is abandoned; and

(2) include evidence that one (1) or more of the conditions set forth in section 5(a) or 5(b) of this chapter apply.

A petition under this section shall be served on the debtor in the manner prescribed by the Indiana Rules of Trial Procedure.

(b) At any time during a mortgage foreclosure action, the enforcement authority that has jurisdiction in the location of the mortgaged property may petition the court for a determination that the mortgaged property is abandoned by filing a motion to intervene in the foreclosure action in the manner prescribed by the Indiana Rules of Trial Procedure. The motion to intervene must:

(1) include a statement of the enforcement authority's jurisdiction in the location of the mortgaged property;

(2) allege that the mortgaged property is abandoned; and

(3) include evidence that one (1) or more of the conditions set

forth in section 5(a) or 5(b) of this chapter apply.
As added by P.L.102-2012, SEC.4.

IC 32-30-10.6-3.5
Abandonment determination; executive of a county, city, or town

Sec. 3.5. (a) This section applies to a property whether or not there is a mortgage on the property.

(b) As an alternative to seeking a determination of abandonment under any other statute, the executive of a county, city, or town that:

(1) has jurisdiction in the location of a property; and

(2) does not have a person designated as a hearing authority, as defined by IC 36-7-9-2;

may petition a court for a determination that the property is abandoned.

(c) A petition filed with the court under this section must do all the following:

(1) Include a statement of the enforcement authority's jurisdiction in the location of the property.

(2) Allege that the property is abandoned.

(3) Include evidence that one (1) or more of the conditions set forth in section 5(a) or 5(b) of this chapter apply.

(d) A petition under this section shall be served on:

(1) the creditor and the debtor, if the property is subject to a mortgage; and

(2) any other appropriate party;

in the manner prescribed by the Indiana Rules of Trial Procedure.
As added by P.L.203-2013, SEC.21. Amended by P.L.66-2014, SEC.22.

IC 32-30-10.6-4
Court's order to show cause; contents; appearance date; right to present evidence or objections; right to counsel

Sec. 4. (a) Upon receiving a request for a determination of abandonment from a creditor or an enforcement authority through a petition or motion filed with the court and served on the required parties in accordance with section 3 or 3.5 of this chapter, the court shall issue an order to show cause as to why the property should not be found to be abandoned and directing the petitioner, the debtor, and any other person or party the court considers appropriate to appear before the court on a date and time specified in the order under subdivision (1). The court's order under this subsection must do the following:

(1) Direct the parties subject to the order to appear before the court on a date and time specified by the court. The date specified under this subdivision must not be:

(A) earlier than fifteen (15) days; or

(B) later than twenty-five (25) days;

after the date of the court's order under this section.

(2) Notify the parties subject to the order that any party ordered to appear:

(A) may present evidence or objections on the issue of abandonment to the court:

(i) in writing before the appearance date specified by the court under subdivision (1); or

(ii) in writing or by oral testimony on the date and at the time specified by the court under subdivision (1);

in the manner specified by the court; and

(B) has the right to be represented by an attorney when appearing before the court.

(3) Notify the parties subject to the order that if a party fails to:

(A) submit written evidence or objections to the court before the appearance date specified by the court under subdivision (1); or

(B) appear before the court on the date and at the time specified by the court under subdivision (1);

the party's failure to submit evidence or objections or to appear before the court will result in a finding of abandonment by the court.

(b) A party subject to an order issued by the court under this section has the following rights, as described in the court's order under subsection (a):

(1) The right to present evidence or objections on the issue of abandonment to the court:

(A) in writing before the appearance date specified in the court's order under subsection (a)(1); or

(B) in writing or by oral testimony on the date and at the time specified in the court's order under subsection (a)(1);

in the manner specified by the court.

(2) The right to be represented by an attorney when appearing before the court.

As added by P.L.102-2012, SEC.4. Amended by P.L.203-2013, SEC.22.

IC 32-30-10.6-5

Prima facie evidence of abandonment; court's order finding property is abandoned

Sec. 5. (a) Subject to subsection (b), for purposes of an abandonment determination under this chapter, one (1) or more of the following constitute prima facie evidence that property is abandoned:

(1) The enforcement authority that has jurisdiction in the location of the property has issued an order under IC 36-7-36-9 with respect to the property.

(2) Windows or entrances to the property are boarded up or closed off.

(3) Multiple window panes on the property are broken and unrepaired.

(4) One (1) or more doors to the property are smashed through, broken off, unhinged, or continuously unlocked.

(5) Gas service, electric service, water service, or other utility service to the property has been terminated.

(6) Rubbish, trash, or debris has accumulated on the property.

(7) The property is deteriorating and is either below or in imminent danger of falling below minimum community standards for public safety and sanitation.

(8) The creditor has changed the locks on the property and for at least fifteen (15) days after the changing of the locks the owner has not requested entrance to the property.

(9) There exist one (1) or more written statements, including documents of conveyance, that have been executed by the debtor, or by the debtor's personal representatives or assigns, and that indicate a clear intent to abandon the property.

(10) There exists other evidence indicating a clear intent to abandon the property.

(b) Regardless of whether any of the conditions described in subsection (a) are found to apply, the debtor's failure to either:

(1) present evidence or objections on the issue of abandonment to the court in writing before the appearance date specified in the court's order under section 4(a)(1) of this chapter; or

(2) appear before the court on the date specified in the court's order under section 4(a)(1) of this chapter;

constitutes prima facie evidence that the property is abandoned.

(c) If the court finds that:

(1) one (1) or more of the conditions described in subsection (a) apply; or

(2) the circumstances described in subsection (b) apply;

the court shall issue an order finding that the property is abandoned.

As added by P.L.102-2012, SEC.4. Amended by P.L.203-2013, SEC.23.

IC 32-30-10.6-6

Notice of sale of vacant or abandoned real property

Sec. 6. (a) This section applies only to a petition by the executive of a county, city, or town for a court order of abandonment.

(b) Instead of providing notice at least one hundred twenty (120) days before the date of a certification under IC 6-1.1-24-1.5, the executive of the county, city, or town that is filing the petition may provide the notice referred to IC 6-1.1-24-2.3 at least one hundred twenty (120) days before a petition is filed under section 3.5 of this chapter.

(c) A court order of abandonment under this chapter authorizes the sale of the property and transfer of the deed of the property under IC 6-1.1-24-1.5.

As added by P.L.66-2014, SEC.23.

IC 32-30-11

Chapter 11. Lis Pendens

IC 32-30-11-1

"Lis pendens record"

Sec. 1. Each clerk of the circuit court shall keep a lis pendens record. The lis pendens record is a public record. The clerk of the circuit court may keep the lis pendens record:

(1) in hard copy form; or

(2) in electronic form, if all information in the lis pendens record is available to the public to inspect or copy in the electronic form.

As added by P.L.2-2002, SEC.15. Amended by P.L.78-2014, SEC.4.

IC 32-30-11-2

Suit commenced upon a bond payable to Indiana; required written notice

Sec. 2. (a) This section applies to a suit commenced upon a bond payable to the state in any of the courts of Indiana or in a district court of the United States sitting in Indiana.

(b) The plaintiff in the case shall file with the clerk of the circuit court a written notice containing:

(1) the title of the court; and

(2) the names of all parties to the suit and a statement that the suit is upon an official bond.

As added by P.L.2-2002, SEC.15.

IC 32-30-11-3

Suit to enforce certain liens; required written notice

Sec. 3. (a) This section applies to a person who commences a suit:

(1) in any court of Indiana or in a district court of the United States sitting in Indiana;

(2) by complaint as plaintiff or by cross-complaint as defendant; and

(3) to enforce any lien upon, right to, or interest in any real estate upon any claim not founded upon:

(A) an instrument executed by the party having the legal title to the real estate, as appears from the proper records of the county, and recorded as required by law; or

(B) a judgment of record in the county in which the real estate is located, against the party having the legal title to the real estate, as appears from the proper records.

(b) The person shall file, with the clerk of the circuit court in each county where the real estate sought to be affected is located, a written notice containing:

(1) the title of the court;

(2) the names of all the parties to the suit;

(3) a description of the real estate to be affected; and

(4) the nature of the lien, right, or interest sought to be enforced against the real estate.

As added by P.L.2-2002, SEC.15.

IC 32-30-11-4
Notice filing

Sec. 4. The clerk shall:

(1) record a notice filed under section 2 or 3 of this chapter in the lis pendens record; and

(2) note upon the record the day and hour when the notice was filed and recorded.

As added by P.L.2-2002, SEC.15.

IC 32-30-11-5
Property seized by sheriff or coroner; required written notice; fees

Sec. 5. (a) This section applies when a sheriff or coroner of a county in Indiana:

(1) seizes upon real estate or an interest in real estate by virtue of a writ of attachment; or

(2) levies upon real estate or an interest in real estate by virtue of an execution issued to the sheriff or coroner from any court other than the court of the county in which the sheriff or coroner resides.

(b) At the time of the seizure or levy, the sheriff or coroner shall file with the clerk of the circuit court of the county a written notice setting forth:

(1) the names of the parties to the proceedings upon which the writ of attachment or execution is founded; and

(2) a description of the land seized or levied upon.

The notice shall be recorded, as provided for in section 4 of this chapter.

(c) The sheriff or coroner shall state, in the return to the attachment or execution, that notice has been filed. The sheriff or coroner is allowed a fee of fifty cents ($0.50) to be taxed as costs for making and filing the notice. However, the sheriff or coroner is not required to file the notice until the attachment or execution plaintiff provides the money to pay the clerk for filing and recording the notice.

As added by P.L.2-2002, SEC.15.

IC 32-30-11-6
Index of notices filed with clerk

Sec. 6. Upon filing and recording the notices described in this chapter, the clerk shall index the notices by the names of each party whose interest in the real estate might be affected by the suit, attachment, or execution. The clerk shall maintain entries for each notice listing:

(1) the plaintiff versus the names of all the defendants; and

(2) each defendant whose real estate is sought to be affected at the suit of the plaintiff.

As added by P.L.2-2002, SEC.15.

IC 32-30-11-7
Final determinations adverse to party seeking to enforce lien; satisfaction entered in lis pendens record

Sec. 7. Upon the final determination of any suit brought:

(1) for the purposes described in section 2 or 3 of this chapter; and

(2) adversely to the party seeking to enforce a lien upon, right to, or interest in the real estate;

the court rendering the judgment shall order the proper clerk to enter in the lis pendens record a satisfaction of the lien, right, or interest sought to be enforced against the real estate. When the entry is made, the real estate is forever discharged from the lien, right, or interest.
As added by P.L.2-2002, SEC.15.

IC 32-30-11-8
Certificate of dismissal or satisfaction in lis pendens record

Sec. 8. (a) This section applies when:

(1) an attachment is dismissed or the judgment rendered on it is satisfied; or

(2) the execution is satisfied without a sale of the lands seized or levied upon, or upon a redemption of the real estate within the time allowed by law after a sale of the real estate upon execution.

(b) The clerk of the court that issued the attachment or execution shall make a certificate of the dismissal or satisfaction and:

(1) enter the certificate upon the lis pendens record, if the appropriate record is kept in that clerk's office; or

(2) forward the certificate to the county in which the real estate is located, to be recorded in the lis pendens record of that county.

(c) When the certificate is entered or recorded, the real estate is discharged from the lien of attachment or execution.
As added by P.L.2-2002, SEC.15.

IC 32-30-11-9
Constructive notice of certain actions; delayed until required written notices filed with clerk

Sec. 9. (a) This section applies to the following:

(1) Suits described in section 2 or 3 of this chapter.

(2) The seizure of real estate under attachments and the levy of real estate under execution in the cases mentioned in section 5 of this chapter.

(b) Actions referred to in subsection (a) do not:

(1) operate as constructive notice of the pendency of the suit or of the seizure of or levy upon the real estate; or

(2) have any force or effect as against bona fide purchasers or encumbrancers of the real estate;

until the notices required by this section are filed with the proper clerk.
As added by P.L.2-2002, SEC.15.

IC 32-30-11-10

Orders recorded in lis pendens record; notice

Sec. 10. (a) This section applies to orders granted by any court or judge in any cause or proceeding, whether upon a hearing or ex parte, that affect the disposition of real estate.

(b) Orders described in subsection (a) may be recorded in the lis pendens record kept in the office of the clerk of the county in which the real estate affected is located.

(c) An order recorded under subsection (b) shall be notice of the matters set forth in the order to all persons that are or may become interested in the real estate, and the provisions of the order take effect upon the real estate against any subsequent disposition of the real estate.

As added by P.L.2-2002, SEC.15.

IC 32-30-12

Chapter 12. Judgments in Mortgage and Lien Actions

IC 32-30-12-1

Action upon mortgage or lien; final judgment given in first instance; exception for residential mortgages

Sec. 1. Except as provided in IC 32-30-10.5 for mortgage transactions described in IC 32-30-10.5-5, it is not necessary in any action upon a mortgage or lien to give time for:

(1) the payment of money; or

(2) performing any other act.

Final judgment may be given in the first instance.

As added by P.L.2-2002, SEC.15. Amended by P.L.105-2009, SEC.21.

IC 32-30-12-2

Sale of mortgaged property ordered in all cases

Sec. 2. In the foreclosure of a mortgage, the sale of the mortgaged property shall be ordered in all cases.

As added by P.L.2-2002, SEC.15.

IC 32-30-13

Chapter 13. Purchase of Property Subject to Judgment

IC 32-30-13-1

Validity of title

Sec. 1. If, upon the sale of real or personal property of a debtor, the title of the purchaser is invalid as to all or any part of the property by reason of any defect in the proceedings or want of title, the purchaser may be subrogated to the rights of the creditor against the debtor, to the extent of the money paid and applied to the debtor's benefit.

As added by P.L.2-2002, SEC.15.

IC 32-30-13-2

Vacation of satisfaction of judgment; notice; motion

Sec. 2. If the judgment is entered satisfied, in whole or in part, by reason of a sale referred to in section 1 of this chapter, the purchaser, upon notice to the parties to the proceeding and upon motion, may have the satisfaction of the judgment vacated in whole or in part.

As added by P.L.2-2002, SEC.15.

IC 32-30-13-3

Lien of subrogated purchaser

Sec. 3. A purchaser of property referred to in section 1 of this chapter, if the proceedings are defective or the description of the property sold is imperfect, also has a lien to the same extent on the property sold as against all persons except bona fide purchasers without notice.

As added by P.L.2-2002, SEC.15.

IC 32-30-13-4

Statutory construction

Sec. 4. This chapter may not be construed to require the creditor to refund the purchase money by reason of the invalidity of any sale.

As added by P.L.2-2002, SEC.15.

IC 32-30-14

Chapter 14. Validation of Certain Judgments Relating to Land Titles

IC 32-30-14-1

Properly recorded record of judgment in action to quiet title sufficient

Sec. 1. Unless requested, a clerk is not required to make a complete record of the proceedings in actions to quiet title. A record of the judgment in such cases, when properly recorded in the office of the county recorder, is sufficient.

As added by P.L.2-2002, SEC.15.

IC 32-30-15

Chapter 15. Statute of Limitations

IC 32-30-15-1

Statute of limitations

Sec. 1. Unless otherwise provided in this title or another law, a cause of action concerning real property must be brought within the time specified in IC 34-11.

As added by P.L.2-2002, SEC.15.

IC 32-31

ARTICLE 31. LANDLORD-TENANT RELATIONS

IC 32-31-1

Chapter 1. General Provisions

IC 32-31-1-1

Determination of estates at will

Sec. 1. (a) A tenancy at will may be determined by a one (1) month notice in writing, delivered to the tenant.

(b) A tenancy at will cannot arise or be created without an express contract.

As added by P.L.2-2002, SEC.16.

IC 32-31-1-2

Creation of tenancy at will month to month

Sec. 2. A general tenancy in which the premises are occupied by the express or constructive consent of the landlord is considered to be a tenancy from month to month. However, this section does not apply to land used for agricultural purposes.

As added by P.L.2-2002, SEC.16.

IC 32-31-1-3

Determination of year to year tenancy

Sec. 3. A tenancy from year to year may be determined by a notice given to the tenant not less than three (3) months before the expiration of the year.

As added by P.L.2-2002, SEC.16.

IC 32-31-1-4

Notice; determination of tenancy

Sec. 4. (a) This section applies to a tenancy of not more than three (3) months which, by express or implied agreement of the parties, extends from one (1) period to another.

(b) Notice to the tenant equal to the interval between the periods is sufficient to determine a tenancy described in subsection (a).

As added by P.L.2-2002, SEC.16.

IC 32-31-1-5

Form; notice determining tenancy from year to year

Sec. 5. The following form of notice may be used to terminate a tenancy from year to year:

(insert date here)

To (insert name of tenant here):

You are notified to vacate at the expiration of the current year of tenancy the following property: (insert description of property here).

(insert name of landlord here)

As added by P.L.2-2002, SEC.16.

IC 32-31-1-6

Rent; refusal or neglect to pay

Sec. 6. If a tenant refuses or neglects to pay rent when due, a landlord may terminate the lease with not less than ten (10) days notice to the tenant unless:

(1) the parties otherwise agreed; or

(2) the tenant pays the rent in full before the notice period expires.

As added by P.L.2-2002, SEC.16.

IC 32-31-1-7

Forms; notice to quit; failure or refusal to pay rent

Sec. 7. The following form of notice may be used when a tenant fails or refuses to pay rent:

(insert date here)

To (insert name of tenant here):

You are notified to vacate the following property not more than ten (10) days after you receive this notice unless you pay the rent due on the property within ten (10) days: (insert description of property here).

(insert name of landlord here)

As added by P.L.2-2002, SEC.16.

IC 32-31-1-8

Notice to quit; when not necessary

Sec. 8. Notice is not required to terminate a lease in the following situations:

(1) The landlord agrees to rent the premises to the tenant for a specified period of time.

(2) The time for the determination of the tenancy is specified in the contract.

(3) A tenant at will commits waste.

(4) The tenant is a tenant at sufferance.

(5) The express terms of the contract require the tenant to pay the rent in advance, and the tenant refuses or neglects to pay the rent in advance.

(6) The landlord-tenant relationship does not exist.

As added by P.L.2-2002, SEC.16.

IC 32-31-1-9

Service of notices

Sec. 9. (a) Notice required under sections 1 through 7 of this chapter may be served on the tenant.

(b) If the tenant cannot be found, notice may be served on a person residing at the premises. The person serving the notice must explain the contents of the notice to the person being served.

(c) If a person described in subsection (b) is not found on the premises, notice may be served by affixing a copy of the notice to a conspicuous part of the premises.

As added by P.L.2-2002, SEC.16.

IC 32-31-1-10
Conveyance by landlord

Sec. 10. A conveyance by a landlord of real estate or of any interest in the real estate is valid without the attornment of the tenant. If the tenant pays rent to the landlord before the tenant receives notice of the conveyance, the rent paid to the landlord is good against the grantee.

As added by P.L.2-2002, SEC.16.

IC 32-31-1-11
Attornment of tenant to stranger

Sec. 11. The attornment of a tenant to a stranger is void and does not affect the possession of the landlord unless:

(1) the landlord consents to the attornment; or

(2) the attornment is made under a judgment at law or the order or decree of a court.

As added by P.L.2-2002, SEC.16.

IC 32-31-1-12
Sublessees; remedy against landlord

Sec. 12. A sublessee has the same remedy under the original lease against the chief landlord as the sublessee would have had against the immediate lessor.

As added by P.L.2-2002, SEC.16.

IC 32-31-1-13
Alienees of lessors and lessees; remedies

Sec. 13. An alienee of a lessor or lessee of land has the same legal remedies in relation to the land as the lessor or lessee.

As added by P.L.2-2002, SEC.16.

IC 32-31-1-14
Rents; land granted for life

Sec. 14. Rents from lands granted for life or lives may be recovered as other rents.

As added by P.L.2-2002, SEC.16.

IC 32-31-1-15
Rents; dependency on life of another; recovery of arrears

Sec. 15. A person entitled to rents dependent on the life of another person may recover arrears unpaid at the death of the other person.

As added by P.L.2-2002, SEC.16.

IC 32-31-1-16
Rents; executors and administrators; remedies and liabilities

Sec. 16. An executor or administrator of the estate of a decedent, whether a testator or intestate:

(1) has the same remedies to recover rents; and

(2) is subject to the same liabilities to pay rents;

as the decedent.

As added by P.L.2-2002, SEC.16.

IC 32-31-1-17
Occupant without special contract; liability for rent

Sec. 17. An occupant of land without special contract is liable for the rent to any person entitled to receive the rent.
As added by P.L.2-2002, SEC.16.

IC 32-31-1-18
Death of life tenant demising land; recovery of rent

Sec. 18. If a life tenant who has demised any lands dies on or after the day on which rent is due and payable, the executor or administrator of the life tenant's estate may recover from the under tenant the whole rent due. If the life tenant dies before the day on which rent is due:

(1) the executor or administrator of the life tenant's estate may recover the proportion of rent that accrued before; and
(2) the remainderman may recover the proportion of rent that accrued after;

the life tenant's death.
As added by P.L.2-2002, SEC.16. Amended by P.L.1-2003, SEC.86.

IC 32-31-1-19
Crop paid as rent

Sec. 19. (a) In a case where a tenant agrees under contract to pay as rent:

(1) a part of the crop raised on the leased premises;
(2) rent in kind; or
(3) a cash rent;

the landlord may have a lien on the crop raised under the contract for payment of the rent. If the tenant refuses or neglects to pay or deliver to the landlord the rent when it is due, the landlord may enforce the lien by selling the crop.

(b) A landlord who desires to acquire a lien on a crop raised under a contract on leased premises must file a financing statement under IC 26-1-9.1-501 at least thirty (30) days before the crop matures and during the year in which the crop is grown. The financing statement must:

(1) give notice of the landlord's intention to hold a lien upon the crop for the amount of rent due;
(2) specifically set forth the amount claimed; and
(3) describe the lands on which the crop is being grown with sufficient precision to identify the lands.

(c) A lien created under this section relates to the time of filing and has priority over all liens created thereafter. However, a tenant may, after giving written notice to the landlord or the landlord's agent, remove the tenant's portion of the crop from the leased premises and dispose of the tenant's portion of the crop when the rent is to be paid in part of the crop raised. If the tenant does not give written notice to the landlord, the tenant may remove not more than

one-half (1/2) of the crop growing or matured.
As added by P.L.2-2002, SEC.16.

IC 32-31-1-20
Privately owned real property; regulation of rental rates

Sec. 20. (a) This section does not apply to privately owned real property for which government funds or benefits have been allocated from the United States government, the state, or a political subdivision for the express purpose of providing reduced rents to low or moderate income tenants.

(b) Regulation of rental rates for privately owned real property must be authorized by an act of the general assembly.
As added by P.L.2-2002, SEC.16.

IC 32-31-1-21
Disclosure of structure in flood plain

Sec. 21. (a) This section applies to rental agreements entered into or renewed after June 30, 2009, for residential, agricultural, and commercial property.

(b) If the lowest floor of a structure, including a basement, that is the subject of a rental agreement is at or below the one hundred (100) year frequency flood elevation, as determined by:

(1) the department of natural resources;

(2) the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps; or

(3) FEMA approved local flood plain maps;

the landlord shall clearly disclose in a landlord-tenant rental agreement that the structure is located in a flood plain.
As added by P.L.27-2009, SEC.1.

IC 32-31-2

Chapter 2. Recording Leases Longer Than Three Years

IC 32-31-2-1

Necessity of recording

Sec. 1. Not more than forty-five (45) days after its execution, a lease of real estate for a period longer than three (3) years shall be recorded in the Miscellaneous Record in the recorder's office of the county in which the real estate is located.

As added by P.L.2-2002, SEC.16.

IC 32-31-2-2

Failure to record lease; effect

Sec. 2. If a lease for a period longer than three (3) years is not recorded within forty-five (45) days after its execution, the lease is void against any subsequent purchaser, lessee, or mortgagee who acquires the real estate in good faith and for valuable consideration.

As added by P.L.2-2002, SEC.16.

IC 32-31-2.9

Chapter 2.9. Application of Residential Landlord-Tenant Statutes

IC 32-31-2.9-1

Application of definitions

Sec. 1. The definitions in IC 32-31-3 apply throughout this chapter.

As added by P.L.29-2003, SEC.1.

IC 32-31-2.9-2

"Residential landlord-tenant statute"

Sec. 2. As used in this chapter, "residential landlord-tenant statute" refers to any of the following:

(1) IC 32-31-3.
(2) IC 32-31-4.
(3) IC 32-31-5.
(4) IC 32-31-6.
(5) IC 32-31-7.
(6) IC 32-31-8.
(7) IC 32-31-9.

As added by P.L.29-2003, SEC.1. Amended by P.L.22-2007, SEC.1.

IC 32-31-2.9-3

Applicability of residential landlord-tenant statutes

Sec. 3. The residential landlord-tenant statutes apply to rental agreements for dwelling units located in Indiana.

As added by P.L.29-2003, SEC.1.

IC 32-31-2.9-4

Inapplicability of residential landlord-tenant statutes

Sec. 4. The residential landlord-tenant statutes do not apply to any of the following arrangements unless the arrangement was created to avoid application of the residential landlord-tenant statutes:

(1) Residence at a rental unit owned or operated by an institution that is directly related to detention or the provision of medical care, maternity home care, education, counseling, religious service, geriatric service, or a similar service.

(2) Occupancy under a contract of sale of a rental unit or the property of which the rental unit is a part if the occupant is the purchaser or a person who succeeds to the purchaser's interest. However, the residential landlord-tenant statutes apply to occupancy of a rental unit under a rental agreement described in IC 32-31-3-7(b).

(3) Occupancy by a member of a fraternal or social organization in the part of a structure operated for the benefit of the organization.

(4) Transient occupancy in a hotel, motel, or other lodging.

(5) Occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in or about the

premises.

(6) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative.

(7) Occupancy under a rental agreement covering property used by the occupant primarily for agricultural purposes.

As added by P.L.29-2003, SEC.1. Amended by P.L.62-2008, SEC.1.

IC 32-31-2.9-5

Application of other statutes

Sec. 5. This chapter does not limit the application of a statute that is not a residential landlord-tenant statute to a residential landlord-tenant relationship if the statute would otherwise be applicable to the relationship.

As added by P.L.29-2003, SEC.1.

IC 32-31-3

Chapter 3. Security Deposits

IC 32-31-3-1

Repealed

(Repealed by P.L.29-2003, SEC.2.)

IC 32-31-3-1.1

Validity of certain rental agreements

Sec. 1.1. Rental agreements entered into before July 1, 1989, remain valid and may be terminated, completed, consummated, or enforced as though this chapter had not been enacted.

As added by P.L.16-2009, SEC.31.

IC 32-31-3-2

"Cooperative housing association" defined

Sec. 2. As used in this chapter, "cooperative housing association" means a consumer cooperative that provides dwelling units to its members.

As added by P.L.2-2002, SEC.16.

IC 32-31-3-3

"Landlord" defined

Sec. 3. As used in this chapter, "landlord" means:

(1) the owner, lessor, or sublessor of a rental unit or the property of which the unit is a part; or

(2) a person authorized to exercise any aspect of the management of the premises, including a person who directly or indirectly:

(A) acts as a rental agent; or

(B) receives rent or any part of the rent other than as a bona fide purchaser.

As added by P.L.2-2002, SEC.16.

IC 32-31-3-4

"Owner" defined

Sec. 4. (a) As used in this chapter, "owner" means one (1) or more persons in whom is vested all or part of the legal title to property.

(b) The term includes a mortgagee or contract purchaser in possession.

As added by P.L.2-2002, SEC.16.

IC 32-31-3-5

"Person" defined

Sec. 5. As used in this chapter, "person" means an individual, a corporation, an association, a partnership, a governmental entity, a trust, an estate, or any other legal or commercial entity.

As added by P.L.2-2002, SEC.16.

IC 32-31-3-6

"Rent" defined

Sec. 6. As used in this chapter, "rent" includes all payments made to a landlord under a rental agreement except a security deposit, however denominated.

As added by P.L.2-2002, SEC.16.

IC 32-31-3-7

"Rental agreement" defined

Sec. 7. (a) As used in this chapter, "rental agreement" means an agreement together with any modifications, embodying the terms and conditions concerning the use and occupancy of a rental unit.

(b) The term includes an agreement, regardless of what the agreement is called, that satisfies the following:

(1) The agreement is entered into after June 30, 2008.

(2) The agreement provides for a rental period, explicitly or implicitly, regardless of the term of the rental period.

(3) The agreement contains an option to purchase.

As added by P.L.2-2002, SEC.16. Amended by P.L.62-2008, SEC.2.

IC 32-31-3-8

"Rental unit" defined

Sec. 8. As used in this chapter, "rental unit" means:

(1) a structure, or the part of a structure, that is used as a home, residence, or sleeping unit by:

(A) one (1) individual who maintains a household; or

(B) two (2) or more individuals who maintain a common household; or

(2) any grounds, facilities, or area promised for the use of a residential tenant, including the following:

(A) An apartment unit.

(B) A boarding house.

(C) A rooming house.

(D) A mobile home space.

(E) A single or two (2) family dwelling.

As added by P.L.2-2002, SEC.16.

IC 32-31-3-9

"Security deposit" defined

Sec. 9. (a) As used in this chapter, "security deposit" means a deposit paid by a tenant to the landlord or the landlord's agent to be held for all or a part of the term of the rental agreement to secure performance of any obligation of the tenant under the rental agreement.

(b) The term includes:

(1) a required prepayment of rent other than the first full rental payment period of the lease agreement;

(2) a sum required to be paid as rent in any rental period in excess of the average rent for the term; and

(3) any other amount of money or property returnable to the tenant on condition of return of the rental unit by the tenant in

a condition as required by the rental agreement.

(c) The term does not include the following:

(1) An amount paid for an option to purchase under a lease with option to purchase, unless it is shown that the intent was to evade this chapter.

(2) An amount paid as a subscription for or purchase of a membership in a cooperative housing association incorporated under Indiana law.

As added by P.L.2-2002, SEC.16.

IC 32-31-3-10
"Tenant" defined

Sec. 10. As used in this chapter, "tenant" means an individual who occupies a rental unit:

(1) for residential purposes;

(2) with the landlord's consent; and

(3) for consideration that is agreed upon by both parties.

As added by P.L.2-2002, SEC.16.

IC 32-31-3-11
Jurisdiction of courts

Sec. 11. (a) The following courts have original and concurrent jurisdiction in cases arising under this chapter:

(1) A circuit court.

(2) A superior court.

(3) A municipal court.

(4) A small claims court.

(b) A case arising under this chapter may be filed on the small claims docket of a court that has jurisdiction.

As added by P.L.2-2002, SEC.16. Amended by P.L.201-2011, SEC.13.

IC 32-31-3-12
Return of deposits; deductions; liability

Sec. 12. (a) Upon termination of a rental agreement, a landlord shall return to the tenant the security deposit minus any amount applied to:

(1) the payment of accrued rent;

(2) the amount of damages that the landlord has suffered or will reasonably suffer by reason of the tenant's noncompliance with law or the rental agreement; and

(3) unpaid utility or sewer charges that the tenant is obligated to pay under the rental agreement;

all as itemized by the landlord with the amount due in a written notice that is delivered to the tenant not more than forty-five (45) days after termination of the rental agreement and delivery of possession. The landlord is not liable under this chapter until the tenant supplies the landlord in writing with a mailing address to which to deliver the notice and amount prescribed by this subsection. Unless otherwise agreed, a tenant is not entitled to apply a security

deposit to rent.

(b) If a landlord fails to comply with subsection (a), a tenant may recover all of the security deposit due the tenant and reasonable attorney's fees.

(c) This section does not preclude the landlord or tenant from recovering other damages to which either is entitled.

(d) The owner of the dwelling unit at the time of the termination of the rental agreement is bound by this section.

As added by P.L.2-2002, SEC.16.

IC 32-31-3-13

Use of deposits

Sec. 13. A security deposit may be used only for the following purposes:

(1) To reimburse the landlord for actual damages to the rental unit or any ancillary facility that are not the result of ordinary wear and tear.

(2) To pay the landlord for:

(A) all rent in arrearage under the rental agreement; and

(B) rent due for premature termination of the rental agreement by the tenant.

(3) To pay for the last payment period of a residential rental agreement if a written agreement between the landlord and the tenant stipulates that the security deposit will serve as the last payment of rent due.

(4) To reimburse the landlord for utility or sewer charges paid by the landlord that are:

(A) the obligation of the tenant under the rental agreement; and

(B) unpaid by the tenant.

As added by P.L.2-2002, SEC.16.

IC 32-31-3-13.5

Use of motor vehicle liens as security

Sec. 13.5. A landlord may not require, but may accept, a lien on a motor vehicle that is owned by a tenant as a security deposit or to secure the payment of rent by the tenant. If a landlord accepts a lien on a motor vehicle as security under this section, the landlord must:

(1) file or record the lien under IC 32-33; and

(2) comply with the requirements of IC 32-31-3 concerning security deposits;

in order to enforce the lien.

As added by P.L.47-2012, SEC.1.

IC 32-31-3-14

Notice of damages; refund of remaining deposits

Sec. 14. Not more than forty-five (45) days after the termination of occupancy, a landlord shall mail to a tenant an itemized list of damages claimed for which the security deposit may be used under section 13 of this chapter. The list must set forth:

(1) the estimated cost of repair for each damaged item; and
(2) the amounts and lease on which the landlord intends to assess the tenant.

The landlord shall include with the list a check or money order for the difference between the damages claimed and the amount of the security deposit held by the landlord.
As added by P.L.2-2002, SEC.16.

IC 32-31-3-15
Remittance of full deposit

Sec. 15. Failure by a landlord to provide notice of damages under section 14 of this chapter constitutes agreement by the landlord that no damages are due, and the landlord must remit to the tenant immediately the full security deposit.
As added by P.L.2-2002, SEC.16.

IC 32-31-3-16
Liability for withheld deposits

Sec. 16. A landlord who fails to comply with sections 14 and 15 of this chapter is liable to the tenant in an amount equal to the part of the deposit withheld by the landlord plus reasonable attorney's fees and court costs.
As added by P.L.2-2002, SEC.16.

IC 32-31-3-17
Waiver of chapter

Sec. 17. A waiver of this chapter by a landlord or tenant is void.
As added by P.L.2-2002, SEC.16.

IC 32-31-3-18
Disclosure of managers and agents

Sec. 18. (a) A landlord or a person authorized to enter into a rental agreement on behalf of the landlord shall disclose and furnish to the tenant in writing at or before the commencement of the rental agreement the names and addresses of the following:

(1) A person residing in Indiana who is authorized to manage the dwelling unit.
(2) A person residing in Indiana who is reasonably accessible to the tenant and who is authorized to act as agent for the owner for purposes of:
    (A) service of process; and
    (B) receiving and receipting for notices and demands.

A person who is identified as being authorized to manage under subdivision (1) may also be identified as the person authorized to act as agent under subdivision (2).

(b) This section is enforceable against any successor landlord, owner, or manager.

(c) A person who fails to comply with subsection (a) becomes an agent of each person who is a landlord for purposes of:

(1) service of process and receiving and receipting for notices

and demands; and

(2) performing the obligations of the landlord under law or the rental agreement.

(d) If the information required by subsection (a) is not disclosed at the beginning of the rental agreement, the tenant shall be allowed any expenses reasonably incurred to discover the names and addresses required to be furnished.

As added by P.L.2-2002, SEC.16.

IC 32-31-3-19

Sale of property; liability for deposits; exceptions

Sec. 19. (a) Unless otherwise agreed, if a landlord conveys, in a good faith sale to a bona fide purchaser, property that includes a dwelling unit subject to a rental agreement, the landlord is relieved of liability under law or the rental agreement as to events occurring after written notice to the tenant of the conveyance. However, for one (1) year after giving notice of the conveyance, the landlord remains liable to the tenant for the security deposit to which the tenant is entitled under section 14 of this chapter unless:

(1) the purchaser acknowledges that the purchaser has assumed the liability of the seller by giving notice to the tenant; and

(2) upon conveyance the seller transfers the security deposit to the purchaser.

(b) Unless otherwise agreed, a manager of a dwelling unit is relieved of any liability the manager might have under law or the rental agreement as to events occurring after written notice to the tenant of the termination of the manager's management.

As added by P.L.2-2002, SEC.16.

IC 32-31-4

Chapter 4. Moving and Storage of Tenant's Property

IC 32-31-4-1

"Exempt property" defined

Sec. 1. As used in this chapter, "exempt property" means personal property that is any of the following:

(1) Medically necessary for an individual.

(2) Used by a tenant for the tenant's trade or business.

(3) Any of the following, as necessary for the tenant or a member of the tenant's household:

(A) A week's supply of seasonably necessary clothing.

(B) Blankets.

(C) Items necessary for the care and schooling of a minor child.

As added by P.L.2-2002, SEC.16.

IC 32-31-4-1.5

"Storage facility" defined

Sec. 1.5. As used in this chapter, "storage facility" means any location approved by a court for storage of a tenant's personal property under section 2(e) of this chapter.

As added by P.L.115-2007, SEC.1.

IC 32-31-4-2

Liability; abandoned property; court order allowing removal by landlord

Sec. 2. (a) A landlord has no liability for loss or damage to a tenant's personal property if the tenant's personal property has been abandoned by the tenant.

(b) For purposes of this section, a tenant's personal property is considered abandoned if a reasonable person would conclude that the tenant has vacated the premises and has surrendered possession of the personal property.

(c) An oral or a written rental agreement may not define abandonment differently than is provided in subsection (b).

(d) If a landlord is awarded possession of a dwelling unit by a court under IC 32-30-2, the landlord may seek an order from the court allowing removal of a tenant's personal property.

(e) If the tenant fails to remove the tenant's personal property before the date specified in the court's order issued under subsection (d), the landlord may remove the tenant's personal property in accordance with the order and deliver the personal property to a warehouseman under section 3 of this chapter or to a storage facility approved by the court.

As added by P.L.2-2002, SEC.16. Amended by P.L.115-2007, SEC.2.

IC 32-31-4-3

Delivery to warehouseman or storage facility after notice to tenant; release of exempt property

Sec. 3. (a) If a tenant has failed to remove the tenant's personal property under section 2 of this chapter, a landlord may deliver the personal property to a warehouseman or to a storage facility if notice of both of the following has been personally served on the tenant at the last known address of the tenant:

(1) An order for removal of personal property issued under section 2 of this chapter.

(2) The identity and location of the warehouseman or the storage facility.

(b) At the demand of the owner of the exempt property, the warehouseman or storage facility shall release the exempt property to the owner without requiring payment from the owner at the time of delivery.

(c) A waiver of the provisions of section 1 of this chapter or subsection (b) by contract or otherwise is void.

As added by P.L.2-2002, SEC.16. Amended by P.L.115-2007, SEC.3.

IC 32-31-4-4

Lien on nonexempt property for expenses incurred by warehouseman or storage facility

Sec. 4. (a) A warehouseman or storage facility that receives property under this chapter holds a lien on all of that property that is not exempt property to the extent of the expenses for any of the following incurred by the warehouseman or storage facility with respect to all of the property, whether exempt or not exempt:

(1) Storage.

(2) Transportation.

(3) Insurance.

(4) Labor.

(5) Present or future charges related to the property.

(6) Expenses necessary for preservation of the property.

(7) Expenses reasonably incurred in the lawful sale of the property.

(b) A tenant may claim the tenant's property at any time until the sale of the property under section 5 of this chapter by paying the warehouseman or storage facility the expenses described in this section.

As added by P.L.2-2002, SEC.16. Amended by P.L.115-2007, SEC.4.

IC 32-31-4-5

Sale of unclaimed property

Sec. 5. If a tenant does not claim the tenant's property within ninety (90) days after receiving notice under section 3 of this chapter, a warehouseman or storage facility may sell the property received under this chapter under IC 26-1-7-210(b).

As added by P.L.2-2002, SEC.16. Amended by P.L.143-2007, SEC.77; P.L.115-2007, SEC.5.

IC 32-31-5

Chapter 5. Rental Agreements; Right of Access

IC 32-31-5-1

Applicability of chapter

Sec. 1. (a) This chapter applies only to a rental agreement entered into or renewed after June 30, 1999.

(b) This chapter applies to a landlord or tenant only if the rental agreement was entered into or renewed after June 30, 1999.

(c) A waiver of this chapter by a landlord or tenant, including a former tenant, by contract or otherwise, is void.

As added by P.L.2-2002, SEC.16.

IC 32-31-5-2

Applicability of definitions

Sec. 2. Except as otherwise provided in this chapter, the definitions in IC 32-31-3 apply throughout this chapter.

As added by P.L.2-2002, SEC.16.

IC 32-31-5-3

"Dwelling unit" defined

Sec. 3. (a) As used in this chapter, "dwelling unit" means a structure or part of a structure that is used as a home, residence, or sleeping unit.

(b) The term includes the following:

(1) An apartment unit.

(2) A boarding house unit.

(3) A rooming house unit.

(4) A manufactured home (as defined in IC 22-12-1-16) or mobile structure (as defined in IC 22-12-1-17) and the space occupied by the manufactured home or mobile structure.

(5) A single or two (2) family dwelling.

As added by P.L.2-2002, SEC.16.

IC 32-31-5-4

Written notice required to modify rental agreement

Sec. 4. Unless otherwise provided by a written rental agreement between a landlord and tenant, a landlord shall give the tenant at least thirty (30) days written notice before modifying the rental agreement.

As added by P.L.2-2002, SEC.16.

IC 32-31-5-5

Tenant's personal property

Sec. 5. (a) Except as provided in IC 16-41-27-29, IC 32-31-3, or IC 32-31-4, a landlord may not:

(1) take possession of;

(2) remove from a tenant's dwelling unit;

(3) deny a tenant access to; or

(4) dispose of;

a tenant's personal property in order to enforce an obligation of the

tenant to the landlord under a rental agreement.

(b) The landlord and tenant may agree in a writing separate from the rental agreement that the landlord may hold property voluntarily tendered by the tenant as security in exchange for forbearance from an action to evict.

As added by P.L.2-2002, SEC.16.

IC 32-31-5-6

Landlord prohibited from interfering with access, possession, or essential services; unit entry by landlord

Sec. 6. (a) This section does not apply if the dwelling unit has been abandoned.

(b) For purposes of this section, a dwelling unit is considered abandoned if:

(1) the tenants have failed to:

(A) pay; or

(B) offer to pay;

rent due under the rental agreement; and

(2) the circumstances are such that a reasonable person would conclude that the tenants have surrendered possession of the dwelling unit.

An oral or written rental agreement may not define abandonment differently than is provided by this subsection.

(c) Except as authorized by judicial order, a landlord may not deny or interfere with a tenant's access to or possession of the tenant's dwelling unit by commission of any act, including the following:

(1) Changing the locks or adding a device to exclude the tenant from the dwelling unit.

(2) Removing the doors, windows, fixtures, or appliances from the dwelling unit.

(3) Interrupting, reducing, shutting off, or causing termination of any of the following to a tenant:

(A) Electricity.

(B) Gas.

(C) Water.

(D) Other essential services.

However, the landlord may interrupt, shut off, or terminate service as the result of an emergency, good faith repairs, or necessary construction. This subdivision does not require a landlord to pay for services described in this subdivision if the landlord has not agreed, by an oral or written rental agreement, to do so.

(d) A tenant may not interrupt, reduce, shut off, or cause termination of:

(1) electricity;

(2) gas;

(3) water; or

(4) other essential services;

to the dwelling unit if the interruption, reduction, shutting off, or termination of the service will result in serious damage to the rental

unit.

(e) A tenant may not unreasonably withhold consent to the tenant's landlord to enter the tenant's dwelling unit in order to:

(1) inspect the dwelling unit;

(2) make necessary or agreed to:

(A) repairs;

(B) decorations;

(C) alterations; or

(D) improvements;

(3) supply necessary or agreed to services; or

(4) exhibit the dwelling unit to prospective or actual:

(A) purchasers;

(B) mortgagees;

(C) tenants;

(D) workers; or

(E) contractors.

(f) A landlord may enter the dwelling unit:

(1) without notice to the tenant in the case of an emergency that threatens the safety of the occupants or the landlord's property; and

(2) without the consent of the tenant:

(A) under a court order; or

(B) if the tenant has abandoned or surrendered the dwelling unit.

(g) A landlord:

(1) shall not abuse the right of entry or use a right of entry to harass a tenant;

(2) shall give a tenant reasonable written or oral notice of the landlord's intent to enter the dwelling unit; and

(3) may enter a tenant's dwelling unit only at reasonable times.

As added by P.L.2-2002, SEC.16. Amended by P.L.115-2007, SEC.6.

IC 32-31-5-7

Written acknowledgement by tenant

Sec. 7. (a) At the time a landlord delivers a rental unit to a tenant, the landlord shall require the tenant to acknowledge in writing that the rental unit is equipped with a functional smoke detector.

(b) A landlord and a tenant may not waive, in a rental agreement or a separate writing, the requirements under IC 22-11-18-3.5 concerning smoke detectors.

As added by P.L.17-2008, SEC.4.

IC 32-31-6

Chapter 6. Emergency Possessory Orders

IC 32-31-6-1

Applicability of definitions

Sec. 1. The definitions in IC 32-31-3 and IC 32-31-5 apply throughout this chapter.

As added by P.L.2-2002, SEC.16.

IC 32-31-6-2

Small claims jurisdiction

Sec. 2. The small claims docket of a court has jurisdiction to grant an emergency possessory order under this chapter.

As added by P.L.2-2002, SEC.16.

IC 32-31-6-3

Eligibility to file petition

Sec. 3. The following may file a petition for an emergency possessory order under this chapter:

(1) A tenant, if the landlord has violated IC 32-31-5-6.

(2) A landlord, if the tenant has committed or threatens to commit waste to the rental unit.

As added by P.L.2-2002, SEC.16.

IC 32-31-6-4

Petition requirements

Sec. 4. A petition for an order under this chapter must:

(1) include an allegation specifying:

(A) the violation, act, or omission caused or threatened by a landlord or tenant; and

(B) The nature of the specific immediate and serious:

(i) injury;

(ii) loss; or

(iii) damage;

that the landlord or tenant has suffered or will suffer if the violation, act, or omission is not enjoined; and

(2) be sworn to by the petitioner.

As added by P.L.2-2002, SEC.16.

IC 32-31-6-5

Court review; emergency hearing

Sec. 5. If a tenant or a landlord petitions the court to issue an order under this chapter, the court shall immediately do the following:

(1) Review the petition.

(2) Schedule an emergency hearing for not later than three (3) business days after the petition is filed.

As added by P.L.2-2002, SEC.16.

IC 32-31-6-6

Emergency order

Sec. 6. (a) At the emergency hearing, if the court finds:

(1) probable cause to believe that the landlord has violated or threatened to violate IC 32-31-5-6; and

(2) that the tenant will suffer immediate and serious injury, loss, or damage;

the court shall issue an emergency order under subsection (b).

(b) If the court makes a finding under subsection (a), the court shall order the landlord to do either or both of the following:

(1) Return possession of the dwelling unit to the tenant if the tenant has been deprived of possession of the dwelling unit.

(2) Refrain from violating IC 32-31-5-6.

(c) The court may make other orders that the court considers just under the circumstances, including setting a subsequent hearing at the request of a party to adjudicate related claims between the parties.

As added by P.L.2-2002, SEC.16.

IC 32-31-6-7

Waste

Sec. 7. (a) As used in this section, "waste" does not include failure to pay rent.

(b) At the emergency hearing, if the court finds:

(1) probable cause to believe that the tenant has committed or threatens to commit waste to the rental unit; and

(2) that the landlord has suffered or will suffer immediate and serious:

(A) injury;

(B) loss; or

(C) damage;

the court shall issue an order under subsection (c).

(c) If the court makes a finding under subsection (b), the court shall order the tenant to do either or both of the following:

(1) Return possession of the dwelling unit to the landlord.

(2) Refrain from committing waste to the dwelling unit.

(d) The court may make other orders that the court considers just under the circumstances, including setting a subsequent hearing at the request of a party to adjudicate related claims between the parties.

As added by P.L.2-2002, SEC.16.

IC 32-31-6-8

Summons; court procedure

Sec. 8. (a) If a petition is filed under this chapter, the clerk shall issue to the respondent a summons to appear at a hearing. The summons must:

(1) give notice of the date, time, and place of the hearing; and

(2) inform the respondent that the respondent must appear before the court to answer the petition.

(b) The clerk shall serve the respondent with the summons to appear in accordance with Rule 4.1 of the Rules of Trial Procedure.

(c) The court shall not grant a continuance of the emergency hearing except upon clear and convincing evidence that manifest

injustice would result if a continuance were not granted.
As added by P.L.2-2002, SEC.16.

IC 32-31-6-9
Subsequent hearing

Sec. 9. If the court sets a subsequent hearing under section 6(c) or 7(d) of this chapter, the court may do the following at the subsequent hearing:

(1) Determine damages.

(2) Order return of a tenant's withheld property.

(3) Make other orders the court considers just under the circumstances.

As added by P.L.2-2002, SEC.16.

IC 32-31-6-10
Other claims

Sec. 10. The adjudication of an emergency possessory claim under section 6(b) or 7(c) of this chapter does not bar a subsequent claim a party may have against the other party arising out of the landlord and tenant relationship unless that claim has been adjudicated under section 9 of this chapter.
As added by P.L.2-2002, SEC.16.

IC 32-31-7
Chapter 7. Tenant Obligations

IC 32-31-7-1
Application
Sec. 1. (a) Except as provided in subsection (b), this chapter applies only to dwelling units that are let for rent under a rental agreement entered into after June 30, 2002.
(b) This chapter does not apply to dwelling units that are let for rent with an option to purchase under an agreement entered into before July 1, 2008.
As added by P.L.92-2002, SEC.1. Amended by P.L.62-2008, SEC.3.

IC 32-31-7-2
Applicability of definitions
Sec. 2. The definitions in IC 32-31-3 apply throughout this chapter.
As added by P.L.92-2002, SEC.1.

IC 32-31-7-3
"Rental premises" defined
Sec. 3. As used in this chapter, "rental premises" includes all of the following:
(1) A tenant's rental unit.
(2) The structure in which the tenant's rental unit is a part.
As added by P.L.92-2002, SEC.1.

IC 32-31-7-4
Effect of waiver of statute
Sec. 4. A waiver of the application of this chapter by a landlord or tenant, by contract or otherwise, is void.
As added by P.L.92-2002, SEC.1.

IC 32-31-7-5
Tenant obligations
Sec. 5. A tenant shall do the following:
(1) Comply with all obligations imposed primarily on a tenant by applicable provisions of health and housing codes.
(2) Keep the areas of the rental premises occupied or used by the tenant reasonably clean.
(3) Use the following in a reasonable manner:
(A) Electrical systems.
(B) Plumbing.
(C) Sanitary systems.
(D) Heating, ventilating, and air conditioning systems.
(E) Elevators, if provided.
(F) Facilities and appliances of the rental premises.
(4) Refrain from defacing, damaging, destroying, impairing, or removing any part of the rental premises.
(5) Comply with all reasonable rules and regulations in

existence at the time a rental agreement is entered into. A tenant shall also comply with amended rules and regulations as provided in the rental agreement.

(6) Ensure that each smoke detector installed in the tenant's rental unit remains functional and is not disabled. If the smoke detector is battery operated, the tenant shall replace batteries in the smoke detector as necessary. If the smoke detector is hard wired into the rental unit's electrical system, and the tenant believes that the smoke detector is not functional, the tenant shall provide notice to the landlord under IC 22-11-18-3.5(e)(2).

This section may not be construed to limit a landlord's obligations under this chapter or IC 32-31-8.

As added by P.L.92-2002, SEC.1. Amended by P.L.17-2008, SEC.5.

IC 32-31-7-6

Condition of rental premises upon termination of occupancy

Sec. 6. At the termination of a tenant's occupancy, the tenant shall deliver the rental premises to the landlord in a clean and proper condition, excepting ordinary wear and tear expected in the normal course of habitation of a dwelling unit.

As added by P.L.92-2002, SEC.1.

IC 32-31-7-7

Landlord's cause of action to enforce tenant obligations

Sec. 7. (a) A landlord may bring an action in a court with jurisdiction to enforce an obligation of a tenant under this chapter.

(b) Except as provided in subsection (c), a landlord may not bring an action under this chapter unless the following conditions are met:

(1) The landlord gives the tenant notice of the tenant's noncompliance with a provision of this chapter.

(2) The tenant has been given a reasonable amount of time to remedy the noncompliance.

(c) If the noncompliance has caused physical damage that the landlord has repaired, the landlord shall give notice specifying the repairs that the landlord has made and documenting the landlord's cost to remedy the condition described in the notice.

(d) A landlord is not required to comply with the notice requirements of this section to bring an action under subsection (a) if the tenant's occupancy of the rental premises has terminated.

(e) This section may not be construed to limit a landlord's or tenant's rights under IC 32-31-3, IC 32-31-5, or IC 32-31-6.

(f) If the landlord is the prevailing party in an action under this section, the landlord may obtain any of the following, if appropriate under the circumstances:

(1) Recovery of the following:

(A) Actual damages.

(B) Attorney's fees and court costs.

(2) Injunctive relief.

(3) Any other remedy appropriate under the circumstances.

As added by P.L.92-2002, SEC.1.

IC 32-31-8

Chapter 8. Landlord Obligations Under a Rental Agreement

IC 32-31-8-1

Application

Sec. 1. (a) Except as provided in subsection (b), this chapter applies only to dwelling units that are let for rent under a rental agreement entered into after June 30, 2002.

(b) This chapter does not apply to dwelling units that are let for rent with an option to purchase under an agreement entered into before July 1, 2008.

As added by P.L.92-2002, SEC.2. Amended by P.L.62-2008, SEC.4.

IC 32-31-8-2

Applicability of definitions

Sec. 2. The definitions in IC 32-31-3 apply throughout this chapter.

As added by P.L.92-2002, SEC.2.

IC 32-31-8-3

"Rental premises" defined

Sec. 3. As used in this chapter, "rental premises" includes all of the following:

(1) A tenant's rental unit.

(2) The structure in which the tenant's rental unit is a part.

As added by P.L.92-2002, SEC.2.

IC 32-31-8-4

Effect of waiver of statute

Sec. 4. A waiver of the application of this chapter by a landlord or tenant, by contract or otherwise, is void.

As added by P.L.92-2002, SEC.2.

IC 32-31-8-5

Landlord obligations

Sec. 5. A landlord shall do the following:

(1) Deliver the rental premises to a tenant in compliance with the rental agreement, and in a safe, clean, and habitable condition.

(2) Comply with all health and housing codes applicable to the rental premises.

(3) Make all reasonable efforts to keep common areas of a rental premises in a clean and proper condition.

(4) Provide and maintain the following items in a rental premises in good and safe working condition, if provided on the premises at the time the rental agreement is entered into:

(A) Electrical systems.

(B) Plumbing systems sufficient to accommodate a reasonable supply of hot and cold running water at all times.

(C) Sanitary systems.

(D) Heating, ventilating, and air conditioning systems. A heating system must be sufficient to adequately supply heat at all times.

(E) Elevators, if provided.

(F) Appliances supplied as an inducement to the rental agreement.

As added by P.L.92-2002, SEC.2.

IC 32-31-8-6

Tenant's cause of action to enforce landlord obligations

Sec. 6. (a) A tenant may bring an action in a court with jurisdiction to enforce an obligation of a landlord under this chapter.

(b) A tenant may not bring an action under this chapter unless the following conditions are met:

(1) The tenant gives the landlord notice of the landlord's noncompliance with a provision of this chapter.

(2) The landlord has been given a reasonable amount of time to make repairs or provide a remedy of the condition described in the tenant's notice. The tenant may not prevent the landlord from having access to the rental premises to make repairs or provide a remedy to the condition described in the tenant's notice.

(3) The landlord fails or refuses to repair or remedy the condition described in the tenant's notice.

(c) This section may not be construed to limit a tenant's rights under IC 32-31-3, IC 32-31-5, or IC 32-31-6.

(d) If the tenant is the prevailing party in an action under this section, the tenant may obtain any of the following, if appropriate under the circumstances:

(1) Recovery of the following:

(A) Actual damages and consequential damages.

(B) Attorney's fees and court costs.

(2) Injunctive relief.

(3) Any other remedy appropriate under the circumstances.

(e) A landlord's liability for damages under subsection (d) begins when:

(1) the landlord has notice or actual knowledge of noncompliance; and

(2) the landlord has:

(A) refused to remedy the noncompliance; or

(B) failed to remedy the noncompliance within a reasonable amount of time following the notice or actual knowledge;

whichever occurs first.

As added by P.L.92-2002, SEC.2.

IC 32-31-9

Chapter 9. Rights of Tenants Who Are Victims of Certain Crimes

IC 32-31-9-1

Application; waiver

Sec. 1. (a) This chapter applies only to a rental agreement for a dwelling unit that is entered into or renewed after June 30, 2007.

(b) This chapter applies to a landlord or tenant only with respect to a rental agreement for a dwelling unit that is entered into or renewed after June 30, 2007.

(c) A waiver of this chapter by a landlord or current or former tenant, by contract or otherwise, is void.

As added by P.L.22-2007, SEC.2.

IC 32-31-9-2

Applicability of definitions

Sec. 2. Except as otherwise provided in this chapter, the definitions in IC 32-31-3 apply throughout this chapter.

As added by P.L.22-2007, SEC.2.

IC 32-31-9-3

"Applicable offense"

Sec. 3. As used in this chapter, "applicable offense" refers to any of the following:

(1) A crime involving domestic or family violence (as defined in IC 35-31.5-2-76).

(2) A sex offense under IC 35-42-4.

(3) Stalking under IC 35-45-10.

As added by P.L.22-2007, SEC.2. Amended by P.L.114-2012, SEC.56.

IC 32-31-9-4

"Applicant"

Sec. 4. As used in this chapter, "applicant" means an individual who applies to a landlord to enter into a lease of a dwelling unit.

As added by P.L.22-2007, SEC.2.

IC 32-31-9-5

"Dwelling unit"

Sec. 5. As used in this chapter, "dwelling unit" has the meaning set forth in IC 32-31-5-3.

As added by P.L.22-2007, SEC.2.

IC 32-31-9-6

"Perpetrator"

Sec. 6. As used in this chapter, "perpetrator" means an individual who:

(1) has been convicted of; or

(2) for purposes of a civil protection order, has been determined

to have committed;
an applicable offense.
As added by P.L.22-2007, SEC.2.

IC 32-31-9-7
"Protected individual"

Sec. 7. As used in this chapter, "protected individual" means a tenant or applicant:

(1) who is:
(A) a victim; or
(B) an alleged victim;
of an applicable offense; and
(2) who has received either of the following:
(A) A civil order for protection issued or recognized by a court under IC 34-26-5 that restrains a perpetrator from contact with the individual.
(B) A criminal no contact order that restrains a perpetrator from contact with the individual.

As added by P.L.22-2007, SEC.2.

IC 32-31-9-8
Lease protections; prohibition of retaliation by landlord

Sec. 8. (a) A landlord may not terminate a lease, refuse to renew a lease, refuse to enter into a lease, or retaliate against a tenant solely because:

(1) a tenant;
(2) an applicant; or
(3) an individual who is a member of the tenant's or applicant's household;
is a protected individual.

(b) A landlord may not refuse to enter into a lease with an applicant or retaliate against a tenant solely because:

(1) the tenant;
(2) the applicant; or
(3) an individual who is a member of the tenant's or applicant's household;
has terminated a rental agreement as a protected individual under section 12 of this chapter.

As added by P.L.22-2007, SEC.2.

IC 32-31-9-9
Change of lock requirements

Sec. 9. (a) This section applies if a perpetrator who is restrained from contact with the tenant referred to in subsection (b) under an order referred to in section 7(2)(A) or 7(2)(B) of this chapter is not a tenant of the same dwelling unit as the tenant referred to in subsection (b).

(b) A landlord shall change the locks of a tenant's dwelling unit upon the written request of the tenant not later than forty-eight (48) hours after the tenant gives the landlord a copy of a court order

referred to in section 7(2) of this chapter, and shall give a key to the new locks to the tenant.
As added by P.L.22-2007, SEC.2.

IC 32-31-9-10
Change of lock requirements if a court issues a protection or restraining order

Sec. 10. (a) This section applies if the perpetrator who is restrained from contact with the tenant referred to in subsection (b) under an order referred to in section 7(2)(A) or 7(2)(B) of this chapter is a tenant of the same dwelling unit as the tenant referred to in subsection (b).

(b) A landlord shall change the locks of a tenant's dwelling unit, upon the written request of the tenant, not later than twenty-four (24) hours after the tenant provides the landlord with a copy of a court order referred to in section 7(2) of this chapter restraining the perpetrator referred to in subsection (a) from contact with the tenant, and shall give a key to the new locks to the tenant.

(c) Unless the court order provided to the landlord under subsection (b) allows the perpetrator to return to the dwelling unit to retrieve the perpetrator's personal property, a landlord to whom subsection (b) applies may not by any act provide the perpetrator access to the dwelling unit.

(d) A landlord to whom subsection (b) applies is immune from civil liability for:

(1) excluding the perpetrator from the dwelling unit under a court order; or

(2) loss of use of or damage to personal property while the personal property is present in the dwelling unit.

(e) A perpetrator who has been excluded from a dwelling unit under this section remains liable under the lease with all other tenants of the dwelling unit for rent or damages to the dwelling unit as provided in the lease.
As added by P.L.22-2007, SEC.2.

IC 32-31-9-11
Reimbursement for lock changes; key requirements

Sec. 11. (a) A tenant who provides notice or a copy of a court order under section 9 or 10 of this chapter shall reimburse the landlord for the actual expense incurred by the landlord in changing the locks.

(b) If a landlord fails to change the locks within the time set forth in section 9(b) or 10(b) of this chapter, the tenant may change the locks without the landlord's permission, and the landlord shall reimburse the tenant for the actual expense incurred by the tenant in changing the locks.

(c) If a tenant changes the locks of the tenant's dwelling unit under subsection (b), the tenant shall give a key to the new locks to the landlord not later than twenty-four (24) hours after the locks are changed.

As added by P.L.22-2007, SEC.2.

IC 32-31-9-12
Termination of rental agreements by protected individuals; written notices; liability

Sec. 12. (a) A protected individual who is a tenant may terminate the protected individual's rights and obligations under a rental agreement by providing the landlord with a written notice of termination in compliance with this section.

(b) A protected individual must give written notice of termination under this section to the landlord at least thirty (30) days before the termination date stated in the notice.

(c) The written notice required by this section must include:

(1) a copy of:

(A) a civil order for protection issued or recognized by a court under IC 34-26-5 that restrains a perpetrator from contact with the protected individual; or

(B) a criminal no contact order that restrains a perpetrator from contact with the protected individual; and

(2) if the protected individual is a victim of domestic violence or sexual assault, a copy of a safety plan, which must satisfy the following:

(A) The plan must be dated not more than thirty (30) days before the date on which the protected individual provides the written notice to the landlord under this section.

(B) The plan must be provided by an accredited domestic violence or sexual assault program.

(C) The plan must recommend relocation of the protected individual.

(d) If a protected individual's rights and obligations under a rental agreement are terminated under this section, the protected individual is liable for the rent and other expenses due under the rental agreement:

(1) prorated to the effective date of the termination; and

(2) payable at the time when payment of rent would have been required under the rental agreement.

A protected individual whose rights and obligations under a rental agreement are terminated under this section is not liable for any other rent or fees that would be due only because of the early termination of the protected individual's rights and obligations under the rental agreement. If a protected individual terminates the rental agreement at least fourteen (14) days before the protected individual would first have the right to occupy the dwelling unit under the lease, the individual is not subject to any damages or penalties.

(e) Notwithstanding section 13 of this chapter, a protected individual is entitled to deposits, returns, and other refunds as if the tenancy terminated by expiring under the terms of the rental agreement.

As added by P.L.22-2007, SEC.2.

IC 32-31-9-13
Rights and obligations of other adult tenants

Sec. 13. Notwithstanding:

(1) the termination of a protected individual's rights and obligations under a rental agreement under this chapter; or

(2) the exclusion of a perpetrator of an applicable offense from a dwelling unit under this chapter;

the rights and obligations of other adult tenants of the dwelling unit under the rental agreement continue unaffected. A landlord is not obligated to return or account for any security deposit associated with the rental agreement until forty-five (45) days after the tenancy of all tenants has terminated.

As added by P.L.22-2007, SEC.2.

IC 32-31-9-14
Liability of a perpetrator who is a tenant

Sec. 14. A perpetrator who is a tenant and who is excluded from a dwelling unit under a court order remains liable under the lease with other tenants of the dwelling unit for rent and for the cost of damages to the dwelling unit.

As added by P.L.22-2007, SEC.2.

IC 32-31-9-15
Landlord or agent liability

Sec. 15. This chapter does not make a landlord or the agent of a landlord liable for the actions of a perpetrator or a third party.

As added by P.L.22-2007, SEC.2.

IC 32-32

ARTICLE 32. TIME SHARES AND CAMPING CLUBS

IC 32-32-1

Chapter 1. Application

IC 32-32-1-1

Application

Sec. 1. This article does not apply to the following:

(1) The sale of not more than twelve (12) time shares or camping club memberships in a time share project or camping site project, unless the developer offers to sell time shares or camping club memberships in other projects in the same subdivision and the total number of the shares offered for sale exceeds twenty-six (26) in a period of twelve (12) months.

(2) The sale or transfer of a time share or camping club membership by an owner who is not the developer, unless the time share or camping club membership is sold in the ordinary course of business of that owner.

(3) Any transfer of a time share or camping club membership by deed instead of foreclosure or as a result of foreclosure of the time share or camping club membership.

(4) A gratuitous transfer of a time share or camping site.

(5) A transfer of a time share or camping club membership by devise or descent or a transfer to an inter vivos trust, unless the method of disposition is adopted for the purpose of evading this chapter.

As added by P.L.2-2002, SEC.17.

IC 32-32-2
Chapter 2. Definitions

IC 32-32-2-1
Applicability of definitions
Sec. 1. The definitions in this chapter apply throughout this article.
As added by P.L.2-2002, SEC.17.

IC 32-32-2-2
"Camping club" defined
Sec. 2. "Camping club" means any enterprise, other than one that is tax exempt under Section 501 of the Internal Revenue Code, that has as its primary purpose camping or outdoor recreation that involves or will involve camping sites.
As added by P.L.2-2002, SEC.17.

IC 32-32-2-3
"Camping club member" defined
Sec. 3. "Camping club member" means any person, other than the developer or lender, who purchases a camping club membership.
As added by P.L.2-2002, SEC.17.

IC 32-32-2-4
"Camping club membership" defined
Sec. 4. (a) "Camping club membership" means an agreement evidencing a purchaser's title to, interest in, or right or license to use for more than thirty (30) days the camping or outdoor recreation facilities of a camping club.
(b) The term does not include an agreement of a camping or outdoor recreation facility that expires within three hundred sixty-five (365) days after the execution date of the agreement.
As added by P.L.2-2002, SEC.17.

IC 32-32-2-5
"Camping site" defined
Sec. 5. "Camping site" means a space that:
(1) is designed and promoted for the purpose of locating a trailer, tent, tent trailer, pickup camper, or other similar device used for land based portable housing; and
(2) is the subject of a camping club membership.
As added by P.L.2-2002, SEC.17.

IC 32-32-2-6
"Developer" defined
Sec. 6. "Developer" means any person who engages in the business of creating or selling its own time shares or camping club memberships.
As added by P.L.2-2002, SEC.17.

IC 32-32-2-7

"Director" defined

Sec. 7. "Director" refers to the director of the division appointed under IC 4-6-9-2.

As added by P.L.2-2002, SEC.17.

IC 32-32-2-8

"Division" defined

Sec. 8. "Division" refers to the consumer protection division of the office of the attorney general created by IC 4-6-9-1.

As added by P.L.2-2002, SEC.17.

IC 32-32-2-9

"Exchange company" defined

Sec. 9. "Exchange company" means any person owning or operating an exchange program.

As added by P.L.2-2002, SEC.17.

IC 32-32-2-10

"Exchange program" defined

Sec. 10. (a) "Exchange program" means any arrangement allowing owners to exchange occupancy rights with persons owning other time shares or camping club memberships.

(b) The term does not include an arrangement in which all of the occupancy rights that may be exchanged are in the same time share property or camping site.

As added by P.L.2-2002, SEC.17.

IC 32-32-2-11

"Offer" defined

Sec. 11. "Offer" means any advertised inducement, solicitation, or attempt to encourage any person to acquire a time share or camping club membership other than as security for an obligation.

As added by P.L.2-2002, SEC.17.

IC 32-32-2-12

"Participant" defined

Sec. 12. "Participant" means any person who, by means of a verbal or written purchase, exchange, or leasing agreement, acquires a right to occupy a time share unit from a developer, purchaser, exchange company, rental or management company, or any other person or organization.

As added by P.L.2-2002, SEC.17.

IC 32-32-2-13

"Person" defined

Sec. 13. "Person" means a natural person, a corporation, a government, a governmental subdivision or agency, a business trust, an estate, a trust, a partnership, an association, a joint venture, or another legal or commercial entity.

As added by P.L.2-2002, SEC.17.

IC 32-32-2-14
"Project" defined

Sec. 14. "Project" means the real property, which must contain more than one (1) unit, in which time shares or camping sites are created by a single instrument or set of instruments.

As added by P.L.2-2002, SEC.17.

IC 32-32-2-15
"Project manager" defined

Sec. 15. "Project manager" means any person:

(1) who coordinates the sale of time shares or camping club memberships; and

(2) to whom sales agents and representatives are responsible.

As added by P.L.2-2002, SEC.17.

IC 32-32-2-16
"Purchaser" defined

Sec. 16. "Purchaser" means any person, other than the developer or lender, who purchases a time share or camping club membership.

As added by P.L.2-2002, SEC.17.

IC 32-32-2-17
"Representative" defined

Sec. 17. (a) "Representative" means a person who is not a seller and who, on behalf of a developer, induces other persons to attend a sales presentation.

(b) The term does not include a person who only performs clerical tasks, arranges appointments set up by others, or prepares or distributes promotional materials.

As added by P.L.2-2002, SEC.17.

IC 32-32-2-18
"Seller" defined

Sec. 18. "Seller" means a developer or any other person or agent or employee of a developer who offers time shares or camping club memberships to the public.

As added by P.L.2-2002, SEC.17.

IC 32-32-2-19
"Substantially completed" defined

Sec. 19. "Substantially completed" means that:

(1) all roadways, utilities, amenities, furnishings, appliances, structural components, and mechanical systems of buildings and premises are completed and provided as represented in the time share instrument or agreement or camping club membership agreement; and

(2) the premises are ready for occupancy and the proper governmental authority has caused to be issued a certificate of occupancy, if a certificate of occupancy is required.

As added by P.L.2-2002, SEC.17.

IC 32-32-2-20
"Time share" defined

Sec. 20. "Time share" means the right to use and occupy a unit on a periodic basis according to an arrangement allocating this right among various time share participants.

As added by P.L.2-2002, SEC.17.

IC 32-32-2-21
"Time share instrument" defined

Sec. 21. "Time share instrument" means any document creating or regulating time shares, excluding any law, ordinance, or governmental regulation.

As added by P.L.2-2002, SEC.17.

IC 32-32-2-22
"Time share participant" defined

Sec. 22. "Time share participant" has the meaning set forth in section 12 of this chapter.

As added by P.L.2-2002, SEC.17.

IC 32-32-2-23
"Unit" defined

Sec. 23. "Unit" means each portion of a time share project or each camping site that is designated for separate use.

As added by P.L.2-2002, SEC.17.

IC 32-32-3
Chapter 3. Time Shares and Camping Clubs

IC 32-32-3-1
Registration with division

Sec. 1. (a) Before a developer may offer to sell any time shares or camping club memberships in this state, the developer must register with the division under this section.

(b) A person who applies for registration under this section shall submit an application in the manner provided by the division and shall disclose the following information under oath:

(1) The names and addresses of all officers, project managers, marketing agencies, advertising agencies, and exchange companies who are actively involved in soliciting or selling time share units or camping club memberships.

(2) The name and address of each person who owns an interest of ten percent (10%) or more in the registrant, except for reporting companies under the Securities Exchange Act of 1934.

(3) A copy of the document in which the time share project or camping club project is created.

(4) A preliminary title report for the time share project or camping club project and copies of the documents listed as exceptions in the report showing any encumbrances.

(5) Copies of and instructions for escrow agreements, deeds, and sales contracts.

(6) Documents that show the current assessments for property taxes on the time share project or camping club project.

(7) A copy of bylaws or similar instrument that creates any community ownership relationship.

(8) Copies of all documents that will be given to a participant who is interested in participating in a program for the exchange of occupancy rights among time share participants or camping club members, and copies of the documents that show acceptance of the time share or camping club membership in the program.

(c) A developer who knowingly or intentionally offers to sell any time shares or camping club memberships in this state before registering with the division under this section commits a Level 6 felony.

As added by P.L.2-2002, SEC.17. Amended by P.L.158-2013, SEC.334.

IC 32-32-3-2
Amendment by developer must be filed

Sec. 2. Any amendment by the developer of the provisions of the document that created the time share or camping club membership, or of the articles of incorporation, trust, or bylaws, must be filed with the division.

As added by P.L.2-2002, SEC.17.

IC 32-32-3-3
Registration fee

Sec. 3. (a) A time share or camping site developer who applies for registration under section 1 of this chapter shall pay a one (1) time registration fee of two hundred fifty dollars ($250).

(b) Each July 1 after a developer applies for registration under section 1 of this chapter, the developer shall file an update to the registration. The developer shall pay an additional fifty dollars ($50) for each yearly refiling under this subsection.

(c) The fees collected under this section shall be used, in addition to funds appropriated by the general assembly, for the administration and enforcement of this chapter.

As added by P.L.2-2002, SEC.17.

IC 32-32-3-4
Requirements for membership agreement

Sec. 4. All registration statements and information required to be filed under this chapter with the division are subject to IC 5-14-3.

As added by P.L.2-2002, SEC.17.

IC 32-32-3-5
Requirements of membership agreement

Sec. 5. A time share project and camping club project must be created by a time share instrument or camping club membership agreement. The membership agreement must include the following provisions:

(1) A legal description of the time share project or camping club project that transfers an interest in real property.

(2) The name and location of the time share project or camping club project.

(3) A system of identification of the time periods assigned to time shares by letter, name, number, or any combination of letters, names, or numbers.

(4) Provisions for assessment of the expenses of the time share project or camping club project and an allocation of those expenses among the time share participants or camping club members.

(5) A procedure to add units to the time share project or camping club project.

(6) Provisions for maintenance of the time share units or camp sites.

(7) Provisions for management of the time share project or camping club project.

(8) A procedure to amend the time share instrument or the camping club membership agreement.

(9) A description of the rights of the purchaser relating to the occupancy of the time share unit or camping site.

As added by P.L.2-2002, SEC.17.

IC 32-32-3-6

Transfer of interest

Sec. 6. A transfer of an interest in a time share unit or camping club membership shall be by written contract that includes or incorporates by reference the following provisions:

(1) A legal description of the time share unit or camping site that transfers an interest in real property.

(2) The name and location of the time share unit or camping site.

(3) A system of identification of the time periods assigned to time shares by letter, name, number, or any combination of letters, names, or numbers.

(4) Provisions for assessment of the expenses of the time share project or camping club project and an allocation of those expenses among the time share participants or camping club members.

(5) Provisions for maintenance of the time share units or camping sites.

(6) Provisions for management of the time share project or camping club project.

(7) A description of the rights of the time share participant or camping club member relating to the occupancy of the time share unit or camping site.

As added by P.L.2-2002, SEC.17.

IC 32-32-3-7

Cancellation of purchase

Sec. 7. (a) A purchaser has the right to cancel a camping club membership or time share purchase within seventy-two (72) hours after the execution of the sales contract, excluding Sundays and legal holidays as set forth in IC 1-1-9-1. The right of cancellation shall be set forth conspicuously in boldface type on the first page of any time share instrument or camping club membership agreement and immediately above the signature of the purchaser on any sales contract. In each case, the cancellation clause must include an explanation of the conditions and manner of exercise of the cancellation right. The right of cancellation may not be waivable by any purchaser. The developer shall furnish to each purchaser a form, as prescribed by the agency, for the exercise of the right.

(b) To cancel a camping club membership or time share purchase, a consumer must give notice of cancellation by mail or telegraphic communication or as otherwise allowed by this subsection. The notice is effective on the date postmarked or when transmitted from the place of origin. Any written notice of cancellation delivered other than by mail or telegraph is effective at the time of delivery at the place of business of the developer or escrow agent designated in the form of notice of cancellation.

As added by P.L.2-2002, SEC.17.

IC 32-32-3-8

Attorney general requirements

Sec. 8. The attorney general may require:

(1) that a developer file a performance bond with the division; or

(2) that all or part of the money collected from the consumer as part of a purchase of a time share instrument or camping club membership, including closing costs and exchange company membership fees, be placed and held in escrow until the particular time share unit or camping site to which the time share or camping club membership relates is substantially completed and ready for occupancy.

As added by P.L.2-2002, SEC.17.

IC 32-32-3-9
Unavailability; remedy

Sec. 9. If a time share unit or camping site is not available for a period to which the owner is entitled by schedule or by confirmed reservation and the developer is responsible for the unavailability of the unit or site, the participant is entitled at the participant's election to be provided:

(1) a comparable unit or site for the period; or

(2) monetary compensation for the loss of use of the time share unit or camping site.

As added by P.L.2-2002, SEC.17.

IC 32-32-3-10
Leasehold interest

Sec. 10. (a) If the interest of the developer in a project is a leasehold interest, the lease, unless otherwise determined by the division, must provide that:

(1) the lessee must give the association notice of termination of the lease for any default by the lessor; and

(2) the lessor, upon the bankruptcy of the lessee, shall enter into a new lease with the association upon the same terms and conditions as were contained in the lease with the developer.

(b) The division may require the developer to execute a bond or other type of security for the payment of the lease obligation.

As added by P.L.2-2002, SEC.17.

IC 32-32-3-11
Action for partition; judicial sale

Sec. 11. An action for partition of a time share unit or camping site may not be maintained except as provided in the time share instrument. If a time share or camping site is owned by two (2) or more persons, an action may be brought for the judicial sale of the time share or camping site. A provision in a time share instrument for the waiver or subordination of the right of partition or any other right characteristic of a tenancy in common is valid.

As added by P.L.2-2002, SEC.17.

IC 32-32-3-12

Required disclosures

Sec. 12. (a) A developer, or exchange company if the exchange company is dealing directly with the participants or camping club members, that offers a program for the exchange of occupancy rights among time share participants or camping club members or with the purchasers or members in other time share or camping club projects, or both, shall give in writing to the camping club members or time share participants the following information:

(1) The name and address of the exchange company offering the exchange program.

(2) A statement indicating whether the exchange company or any of its officers or directors has any legal or beneficial interest in any interest of the developer or managing agent in any plan to sell time shares or camping club memberships included in the program and, if so, the name, location, and nature of the interest.

(3) A statement that the time share participant's or camping club member's contract with the exchange company is a contract separate and distinct from the contract to purchase the time share or camping club membership, unless the exchange company and the developer or an affiliate of the developer are the same.

(4) A statement indicating whether the participant's or member's participation in the exchange project is dependent upon the continued inclusion of the plan to sell time shares or camping club memberships in the program.

(5) A statement indicating whether the purchaser's or member's membership or participation in the exchange program is voluntary or mandatory.

(6) A complete and accurate description of the following:

(A) The terms and conditions of the purchaser's contractual relationship with the company and the procedure by which changes in the contractual relationship and may be made.

(B) The procedure to qualify for and make exchanges.

(C) All limitations, restrictions, and priorities of the program, including limitations on exchanges based on the seasons of the year, the size of units, or levels of occupancy. The written description of the limitations, restrictions, and priorities given under this clause must be printed in boldface type and, if the limitations, restrictions, and priorities are not uniformly applied by the program, must include a clear description of the manner in which they are applied.

(7) A statement, which must be printed on all promotional brochures, pamphlets, advertisements, and other materials disseminated by the exchange company that indicate the percentage of confirmed exchanges, to the effect that:

(A) the percentage of confirmed exchanges is a summary of the requests for exchanges received by the exchange company in the most recent annual reporting period; and

(B) the percentage does not indicate the probability of a purchaser or members being confirmed to any specific

choice since availability at individual locations may vary.

(8) A statement indicating whether exchanges are arranged on the basis of available space and whether there are any guarantees of fulfilling specific requests for exchanges.

(9) A statement indicating whether and under what circumstances a participant or member, in dealing with the exchange company, may lose the right to use and occupy a time share unit or camping site in any properly applied for exchange without being provided with substitute accommodations by the company.

(10) A statement of the fees to be paid by participants or members in the program, including a statement indicating whether any fees may be changed by the exchange company, and if so, the circumstances under which those changes may be made.

(11) The name and address of the site of each time share or camping club project included in the program.

(b) The information required by subsection (a) must be delivered to the camping club member or time share participant before the execution of:

(1) any contract between the camping club member or time share participant and the exchange company; or

(2) the contract to purchase the time share or camping club membership.

(c) Upon receipt of the information required by subsection (a), the camping club member or time share participant shall certify in writing that the member or participant has received the information from the developer.

(d) Except as otherwise provided in this section, the information required by subsection (a) must be accurate as of thirty (30) days before the date on which the information is delivered to the participant or member.

As added by P.L.2-2002, SEC.17.

IC 32-32-3-13

Investigation and prosecution of complaints

Sec. 13. (a) The division may receive, investigate, and prosecute complaints concerning persons subject to this chapter.

(b) The director may subpoena witnesses and send for and compel the production of books, records, papers, and documents of time share or camping club developers who are subject to registration under this chapter for the furtherance of any investigation under this chapter. The circuit or superior court located in the county where the subpoena is to be issued shall enforce any subpoena by the attorney general. In addition, the attorney general may issue a civil investigative demand as provided by IC 4-6-3.

As added by P.L.2-2002, SEC.17.

IC 32-32-3-14

Penalties and remedies

Sec. 14. A person who violates this chapter commits a deceptive act and is subject to the penalties and remedies provided in IC 24-5-0.5. Any action by the attorney general for violations of this chapter may be brought in the circuit or superior court of Marion County.
As added by P.L.2-2002, SEC.17.

IC 32-32-3-15
Assurance of voluntary compliance

Sec. 15. In the administration of this chapter, the attorney general may execute an assurance of voluntary compliance with a time share developer in existence on September 1, 1985, in the same manner as provided in IC 24-5-0.5-7(a), except that no filing with the court is required in order for the assurance to be effective under this chapter.
As added by P.L.2-2002, SEC.17.

IC 32-33

ARTICLE 33. LIENS ON PERSONAL PROPERTY

IC 32-33-1

Chapter 1. Blacksmith's Liens

IC 32-33-1-1

Shoeing animals or repairing vehicles; lien; precedence

Sec. 1. (a) A person who, at the request of an owner or an owner's authorized agent:

(1) shoes or causes to be shod by the person's employees a horse, a mule, an ox, or other animal; or

(2) repairs or causes to be repaired by the person's employees, a vehicle;

has a lien upon the animal shod or vehicle repaired for the person's reasonable charge for shoeing the animal or repairing the vehicle.

(b) A lien conferred by this chapter takes the precedence of all other liens or claims upon the animal shod or the vehicle repaired that are not duly recorded before the recording of a claim for the lien conferred by this chapter. However, a lien may not attach to the animal shod or the vehicle repaired if the property has changed ownership before the filing of the lien.

As added by P.L.2-2002, SEC.18.

IC 32-33-1-2

Filing intention to claim lien; recording lien

Sec. 2. A claim for a lien under this chapter must be filed within sixty (60) days after the shoeing of a horse, a mule, an ox or other animal, or the repairing of a vehicle. The claim must be filed with the recorder of the county in which the owner of the animal or vehicle resides. A claim for a lien under this chapter must be in writing, setting forth the person's intention to claim a lien upon the animal or vehicle for the charges for shoeing or repairing. However, this lien must be recorded in the miscellaneous record book in the recorder's office of the county. The recorder shall charge a fee in accordance with IC 36-2-7-10 for recording the lien.

As added by P.L.2-2002, SEC.18.

IC 32-33-1-3

Contents of claim for lien; expiration of lien

Sec. 3. A claim for lien under this chapter must:

(1) state the name and residence of the person claiming the lien;

(2) the name of the owner of the animal or vehicle sought to be charged with the lien;

(3) a description sufficient for identification of the animal or vehicle upon which the lien is claimed; and

(4) the amount due the claimant, as near as may be, over and above all legal set-offs.

A claim for lien filed with the recorder of the county under section 2 of this chapter expires and becomes void and of no effect if suit is not

brought to foreclose the lien within three (3) months after filing the claim under section 2 of this chapter.
As added by P.L.2-2002, SEC.18.

IC 32-33-1-4
Foreclosure of lien

Sec. 4. A lien under this chapter may be foreclosed in any circuit or superior court in the county in which the lien is recorded under section 2 of this chapter.
As added by P.L.2-2002, SEC.18.

IC 32-33-1-5
Attorney's fees

Sec. 5. If the plaintiff recovers on a claim and a lien is foreclosed under this chapter, the plaintiff shall recover and the court may allow a reasonable fee for plaintiff's attorney for bringing and prosecuting the cause of action, all of which shall be recovered from the defendant, and the property in controversy may be sold as in case of sales in foreclosure of chattel mortgages.
As added by P.L.2-2002, SEC.18.

IC 32-33-2

Chapter 2. Boats and Other Watercraft Liens

IC 32-33-2-1

Liability for liens

Sec. 1. All boats, vessels, and watercraft of every description found in the waters of Indiana, including wharf boats and floating warehouses that are used for storing, receiving, and forwarding freights and that may be removed from place to place at the pleasure of the owner or owners of the watercraft, are liable for the following:

(1) A debt contracted within Indiana by the master, owner, agent, clerk, or consignee of the watercraft:

(A) on account of supplies furnished for use of the master, owner, agent, clerk, or consignee;

(B) on account of work done or service rendered for the master, owner, agent, clerk, or consignee by boatmen, mariners, laborers, or other persons; or

(C) on account of work done or materials furnished in building, repairing, fitting out, furnishing, or equipping the boat, vessel, wharf boat, floating warehouse, or watercraft.

(2) All demands or damages arising out of:

(A) a contract of affreightment made either within or outside Indiana;

(B) a willful or negligent act of the master, owner, or agent of the master or owner done in connection with the business of the boat, vessel, wharf boat, floating warehouse, or other watercraft either within or outside Indiana; or

(C) a contract relative to the transportation of persons or property entered into by the master, owner, agent, clerk, or consignee either within or outside Indiana.

(3) An injury to a person or property by the boat, vessel, wharf-boat, floating warehouse, or other watercraft, or by the owners, officers, or crew, done in connection with the business of the boat, vessel, wharf boat, floating warehouse, or other watercraft either within or without outside Indiana.

As added by P.L.2-2002, SEC.18.

IC 32-33-2-2

Claims arising out of contracts, wrongs, or injuries

Sec. 2. A claim growing out of a cause set forth in section 1 of this chapter, whether arising out of contracts made or broken within or outside Indiana, or wrongs or injuries done or committed within or outside Indiana, is a lien upon the boat, vessel, or other watercraft, and upon the apparel, tackle, or furniture and appendages, including barges and lighters, that belong to the owners of the boat, vessel, or other watercraft and are used with the boat, vessel, or other watercraft at the time the action is commenced.

As added by P.L.2-2002, SEC.18.

IC 32-33-2-3

Preference of liens

Sec. 3. A lien provided for in section 2 of this chapter takes preference of any claims against the boat itself or all or any of its owners, masters, or consignees growing out of any other cause than those set forth in section 1 of this chapter and, as between themselves, mariners' and boatmens' wages shall be first preferred.
As added by P.L.2-2002, SEC.18.

IC 32-33-2-4
Enforcement of lien; complaint; requisites; order of attachment

Sec. 4. (a) Any person aggrieved by a cause set forth in section 1 of this chapter may have an action against the boat, vessel, or other watercraft in the county where the boat, vessel, or other watercraft may be found, or against the owners of the boat, vessel, or other watercraft, to enforce a lien provided for in section 2 of this chapter.

(b) If the complaint in the action shows:

(1) the particulars of the demand;

(2) the amount due; and

(3) a demand made upon the owner, master, clerk, or consignee and refusal of payment, and verified by the affidavit of the plaintiff or other person in the plaintiff's behalf;

an order of attachment shall be issued by the clerk against the boat, vessel, or other watercraft and the tackle and furniture of the boat, vessel, or other watercraft. The order of attachment must be directed, executed, and returned as an order of attachment in other cases.
As added by P.L.2-2002, SEC.18.

IC 32-33-2-5
Joinder of plaintiffs in complaint

Sec. 5. In all actions contemplated in section 4 of this chapter, all or any of the persons having demands described in section 4 of this chapter may join in a complaint against the boat, vessel, or other watercraft either at the commencement of the action or at any time afterwards, before judgment, upon filing the requisite complaint and affidavit.
As added by P.L.2-2002, SEC.18.

IC 32-33-2-6
Proceedings; judgment; execution

Sec. 6. In an action under this chapter, proceedings shall be had and judgment rendered and enforced by execution or other proper means.
As added by P.L.2-2002, SEC.18.

IC 32-33-2-7
Undertaking discharging attachment

Sec. 7. (a) If the defendant master, owner, or consignee, before final judgment, gives a written undertaking payable to the plaintiff, with surety to be approved by the clerk or sheriff, to the effect that the defendant will perform the judgment of the court, the attachment

shall be discharged and restitution made of the boat, vessel, or other watercraft.

(b) A person who executes a written undertaking under subsection (a) shall, by order of the court, be made a defendant in the action instead of the boat, vessel, or other watercraft, and the action shall proceed to final judgment as in ordinary actions in personam. If a recovery is had by any of the plaintiffs, judgment shall be rendered against all defendants for the sum recovered.

As added by P.L.2-2002, SEC.18.

IC 32-33-2-8

Service of summons

Sec. 8. In cases arising under section 1 of this chapter, the summons may be served upon:

(1) the officer or consignee making the contract;

(2) if the officer or consignee cannot be found, upon the clerk;

(3) if neither the officer, the consignee, nor the clerk can be found, upon any other officer of the boat, vessel, or watercraft, or any person having charge of the boat, vessel, or watercraft; or

(4) if the summons cannot be served under subdivision 1, 2, or 3, by affixing a copy of the summons in some conspicuous place in the boat, vessel, or watercraft.

As added by P.L.2-2002, SEC.18.

IC 32-33-3

Chapter 3. Cleaning Lien for Services on and Storage of Clothing and Household Goods

IC 32-33-3-1

Persons subject to lien; sale to pay charges

Sec. 1. (a) A person doing any cleaning, glazing, washing, alteration, repair, or furnishing any materials or supplies for or upon any garment, clothing, wearing apparel, or household goods has a lien on the item for the reasonable value of the unpaid work, labor or material, and supplies used. The lien may be foreclosed in the manner provided by this chapter if at the time of receiving the clothing, garment, wearing apparel, or household goods a written receipt is given to the person or customer leaving the item.

(b) Any garment, clothing, wearing apparel, or household goods remaining in the possession of a person, firm, partnership, limited liability company, or corporation:

(1) on which cleaning, pressing, glazing, or washing has been done; or

(2) upon which alterations or repairs have been made, or on which materials or supplies have been used or furnished;

for a period of at least ninety (90) days after the cleaning, pressing, glazing, or washing has been done, the alterations or repairs have been made, or the materials or supplies have been used or furnished may be sold to pay the reasonable or agreed charges and the costs of notifying the owner or owners. However, the person, firm, partnership, limited liability company, or corporation to whom the charges are payable and owing must first notify the owner or owners of the time and place of the sale.

(c) Property that is to be placed in storage after any of the services or labors referred to in subsection (a) or (b) is not affected by this section.

As added by P.L.2-2002, SEC.18.

IC 32-33-3-2

Sale to pay storage charges

Sec. 2. (a) This section does not apply to persons, firms, partnerships, limited liability companies, or corporations operating as warehouses or warehousemen.

(b) All garments, clothing, wearing apparel, or household goods:

(1) that are placed in storage; or

(2) on which any of the services or labors mentioned in section 1 of this chapter have been performed and that have then been placed in storage by agreement;

and that remain in the possession of a person, firm, partnership, limited liability company, or corporation without the reasonable or agreed charges having been paid for a period of ninety (90) days may be sold to pay the charges if the person, firm, partnership, limited liability company, or corporation to whom the charges are payable first notifies the owner or owners of the items placed in storage of the

time and place of sale.
As added by P.L.2-2002, SEC.18.

IC 32-33-3-3
Mailing letter constituting notice

Sec. 3. The mailing of a letter that has a return address, that is addressed to the owner at the owner's address given at the time of delivery of the article to a person, firm, partnership, limited liability company, or corporation to render any of the services or labors set forth in section 1 of this chapter, and that states the time and place of sale constitutes notice for the purposes of section 2 of this chapter. The notice must be given at least thirty (30) days before the date of sale. The cost of posting or mailing letters under this section shall be added to the charges.
As added by P.L.2-2002, SEC.18.

IC 32-33-3-4
Proceeds of sale to pay service or storage charges

Sec. 4. The person, firm, partnership, limited liability company, or corporation to whom the charges are payable shall:

(1) from the proceeds of sale, deduct the charges due plus the costs of notifying the owner;
(2) hold the over-plus, if any, subject to the order of the owner;
(3) immediately after the sale mail to the owner at the owner's address, if known, a notice of the sale and the amount of over-plus, if any, due the owner; and
(4) at any time within twelve (12) months after the sale, upon demand by the owner, pay to the owner the sums or over-plus.

As added by P.L.2-2002, SEC.18.

IC 32-33-3-5
Posting notice of sale

Sec. 5. All persons, firms, partnerships, limited liability companies, or corporations taking advantage of this chapter must keep posted in a prominent place in their receiving office at all times two (2) notices that must read as follows:

"All articles cleaned, pressed, glazed, laundered, washed, altered, or repaired and not called for in ninety (90) days shall be sold to pay charges," and "If any articles are stored by agreement and the charges are not paid for ninety (90) days, the articles shall be sold to pay charges."

As added by P.L.2-2002, SEC.18.

IC 32-33-4

Chapter 4. Hospital Liens

IC 32-33-4-1

Lien for services or expenses; exception; entry on judgment docket

Sec. 1. Subject to sections 3(c), 3(d), and 3.5 of this chapter, a person, a firm, a partnership, an association, a limited liability company, or a corporation maintaining a hospital in Indiana or a hospital owned, maintained, or operated by the state or a political subdivision of the state is entitled to hold a lien for the reasonable value of its services or expenses (including any amount designated as a copayment or deductible) on any judgment for personal injuries rendered in favor of any person, except:

(1) a person covered by the provisions of IC 22-3, the state worker's compensation laws;

(2) a person covered by the provisions of 5 U.S.C. 8101 et seq., the federal worker's compensation laws;

(3) a person covered by the provisions of 45 U.S.C. 51 et seq., the Federal Employers Liability Act;

(4) an eligible person (as defined in IC 34-13-8-1) with respect to a distribution paid from the supplemental state fair relief fund for an occurrence (as defined in IC 34-13-8-2); and

(5) a person covered by the provisions of 42 U.S.C. 1395 et seq., the federal Medicare program;

who is admitted to the hospital and receives treatment, care, and maintenance on account of personal injuries received as a result of the negligence of any person or corporation. In order to claim the lien, the hospital must satisfy the conditions for perfecting the lien as set forth in section 4 of this chapter and, not later than the date on which the judgment is rendered, enter, in writing, upon the judgment docket where the judgment is recorded, the hospital's intention to hold a lien upon the judgment, together with the amount claimed.

As added by P.L.2-2002, SEC.18. Amended by P.L.160-2012, SEC.59; P.L.173-2013, SEC.1; P.L.205-2013, SEC.340; P.L.2-2014, SEC.116.

IC 32-33-4-2

Junior and inferior lien

Sec. 2. The lien provided for in section 1 of this chapter is junior and inferior to all claims for attorney's fees, court costs, and all other expenses contracted for or incurred in the recovery of claims or damages for personal injuries as described in this chapter.

As added by P.L.2-2002, SEC.18.

IC 32-33-4-3

Lien for reasonable and necessary charges upon any claims accruing to patient; scope of lien; allowance to patient

Sec. 3. (a) A person, a firm, a partnership, an association, a limited liability company, or a corporation maintaining a hospital in Indiana or a hospital owned, maintained, or operated by the state or a political

subdivision has a lien for all reasonable and necessary charges for hospital care, treatment, and maintenance of a patient (including emergency ambulance services provided by the hospital and any amount designated as a copayment or deductible) upon any cause of action, suit, or claim accruing to the patient, or in the case of the patient's death, the patient's legal representative, because of the illness or injuries that:

(1) gave rise to the cause of action, suit, or claim; and

(2) necessitated the hospital care, treatment, and maintenance.

(b) The lien provided for in subsection (a):

(1) except as provided in subsection (c), applies to any amount obtained or recovered by the patient by settlement or compromise rendered or entered into by the patient or by the patient's legal representative;

(2) is subject and subordinate to any attorney's lien upon the claim or cause of action;

(3) is not applicable to a person covered by:

(A) the provisions of IC 22-3, the state worker's compensation laws;

(B) the provisions of 5 U.S.C. 8101 et seq., the federal worker's compensation laws;

(C) 45 U.S.C. 51 et seq., the federal liability act;

(D) IC 34-13-8 concerning a distribution paid from the supplemental state fair relief fund to an eligible person (as defined in IC 34-13-8-1) for an occurrence (as defined in IC 34-13-8-2); or

(E) the provisions of 42 U.S.C. 1395 et seq., the federal Medicare program;

(4) is not assignable; and

(5) must:

(A) first be reduced by the amount of any benefits to which the patient is entitled under the terms of any contract, health plan, or medical insurance; and

(B) reflect credits for all payments, contractual adjustments, write-offs, and any other benefit in favor of the patient;

after the hospital has made all reasonable efforts to pursue the insurance claims in cooperation with the patient.

(c) If a settlement or compromise that is subject to subsection (b)(1) is for an amount that would permit the patient to receive less than twenty percent (20%) of the full amount of the settlement or compromise if all the liens created under this chapter were paid in full, the liens must be reduced on a pro rata basis to the extent that will permit the patient to receive twenty percent (20%) of the full amount.

(d) A lien provided for in this chapter does not apply to a judgment, cause of action, suit, or claim accruing to the patient under:

(1) a policy of disability insurance; or

(2) automobile or homeowner's insurance that provides for medical payments.

As added by P.L.2-2002, SEC.18. Amended by P.L.160-2012,

SEC.60; P.L.173-2013, SEC.2; P.L.205-2013, SEC.341.

IC 32-33-4-3.5
Restrictions on hospital lienholder

Sec. 3.5. (a) This section applies to any person who holds a lien under this chapter.

(b) As used in this section, "hospital lienholder" means:

(1) a person, firm, partnership, association, limited liability company, or corporation maintaining a hospital in Indiana; or

(2) a hospital owned, maintained, or operated by the state or a political subdivision;

that has a lien under this chapter.

(c) If a hospital lienholder settles or compromises a claim in an amount less than the amount of its lien, the hospital lienholder is barred from seeking any additional reimbursement from the patient or the patient's representative.

(d) A hospital lienholder is barred from seeking from the patient or the patient's representative payment for any amount of the hospital's charges that exceed the patient's financial obligation to the hospital under the terms of any private benefits to which the patient is entitled, including the terms of any health plan contract and medical insurance. The lien must reflect credits for all payments, contractual adjustments, write-offs, and any other benefit in favor of the patient.

(e) A hospital lienholder is barred from enforcing the collection of charges covered by this chapter until the cause of action, suit, or claim accruing to the patient has been resolved by compromise, settlement, or judgment.

As added by P.L.173-2013, SEC.3. Amended by P.L.205-2013, SEC.342.

IC 32-33-4-4
Perfecting lien; procedure; contest

Sec. 4. (a) To perfect the lien provided for in section 3 of this chapter, the hospital must file for record in the office of the recorder of the county in which the hospital is located, within ninety (90) days after the person is discharged or not later than the date of the final settlement, compromise, or resolution of the cause of action, suit, or claim accruing to the patient, whichever occurs first, a verified statement in writing stating:

(1) the name and address of the patient as it appears on the records of the hospital;

(2) the name and address of the operator of the hospital;

(3) the dates of the patient's admission to and discharge from the hospital;

(4) the amount claimed to be due for the hospital care; and

(5) to the best of the hospital's knowledge, the names and addresses of anyone claimed by the patient or the patient's legal representative to be liable for damages arising from the patient's illness or injury.

(b) Within ten (10) days after filing the statement, the hospital shall send a copy by registered mail, postage prepaid:

(1) to each person claimed to be liable because of the illness or injury at the address given in the statement;

(2) to the attorney representing the patient if the name of the attorney is known or with reasonable diligence could be discovered by the hospital; and

(3) to the department of insurance as notice to insurance companies doing business in Indiana.

(c) The filing of a claim under subsections (a) and (b) is notice to any person, firm, limited liability company, or corporation that may be liable because of the illness or injury if the person, firm, limited liability company, or corporation:

(1) receives notice under subsection (b);

(2) resides or has offices in a county where the lien was perfected or in a county where the lien was filed in the recorder's office as notice under this subsection; or

(3) is an insurance company authorized to do business in Indiana under IC 27-1-3-20.

(d) A lien:

(1) is effective under this chapter on the date a hospital complies with subsections (a) and (b); and

(2) may not be made retroactive to any prior date.

(e) A person desiring to contest a lien or the reasonableness of the charges claimed by the hospital may do so by filing a motion to quash or reduce the claim in the circuit court in which the lien was perfected, making all other parties of interest respondents.

As added by P.L.2-2002, SEC.18. Amended by P.L.173-2013, SEC.4.

IC 32-33-4-5

Date and hour of filing; endorsement; filing fee; rules

Sec. 5. (a) The recorder of the county shall endorse on the statement filed under section 4(a) of this chapter the date and hour of filing.

(b) The recorder shall charge a fee for filing the claim in accordance with the fee schedule established in IC 36-2-7-10.

(c) The department of insurance shall adopt rules under IC 4-22-2 to:

(1) provide for the filing of lien notices mailed to the department by hospitals under section 4(b)(3) of this chapter;

(2) provide insurance companies with reasonable and timely access to the information contained in the lien notices filed with the department under section 4(b)(3) of this chapter; and

(3) provide a system for filing and for cross-referencing lien releases mailed under section 7 of this chapter with lien notices filed under section 4(b)(3) of this chapter.

As added by P.L.2-2002, SEC.18.

IC 32-33-4-6

Validity of lien; release or settlement of claim; satisfaction of

judgment; jurisdiction

Sec. 6. (a) A lien perfected under section 4 of this chapter is valid unless the lienholder executes a release of the lien under section 7 of this chapter.

(b) The release or settlement of a claim with a patient by a person claimed to be liable for the damages incurred by the patient:

(1) after a lien has been perfected under section 4 of this chapter; and

(2) without obtaining a release of the lien;

entitles the lienholder to damages for the reasonable cost of the hospital care, treatment, and maintenance.

(c) Satisfaction of a judgment rendered in favor of the lienholder under subsection (b) is satisfaction of the lien.

(d) An action by the lienholder must be brought in the court having jurisdiction of the amount of the lienholder's claim and may be brought and maintained in the county of residence of the lienholder.

As added by P.L.2-2002, SEC.18.

IC 32-33-4-7

Release of lien; filing executed certificate; entry in lien book; lienholders liability

Sec. 7. (a) To release a lien perfected under section 4 of this chapter, the operator of the hospital that claims the lien must file with each recorder in whose office the notice of the hospital lien was filed an executed certificate:

(1) stating that the claim filed by the hospital for treatment, care, and maintenance has been paid or discharged; and

(2) authorizing the recorder to release the lien.

The hospital shall bear the expense of obtaining a release.

(b) Upon receipt of the certificate, the recorder shall enter in the margin of the record of the lien and the entry book a memorandum of the filing and the date the certificate was filed. This entry constitutes a release of lien for which the recorder shall receive the fee prescribed in IC 36-2-7-10.

(c) If the amount of a lien has been satisfied or paid and subsequently a demand for a release of the lien is made, the lienholder is liable to the person, firm, limited liability company, or corporation against whose interest the lien has been filed for twenty-five dollars ($25) for each day that the lien remains in effect after the fifteenth day after the demand for a release of the lien was made.

(d) The operator of the releasing hospital shall mail a copy of the release of lien certificate required under subsection (a) to the department of insurance within ten (10) days after the certificate was filed with the recorder.

As added by P.L.2-2002, SEC.18. Amended by P.L.173-2013, SEC.5.

IC 32-33-4-8

Limitation on hospital's right

Sec. 8. This chapter does not give any hospital a right:

(1) of action to determine liability; or

(2) to approve a compromise or settlement;

for injuries sustained by any person covered by this chapter.

As added by P.L.2-2002, SEC.18.

IC 32-33-5
Repealed

(Repealed by P.L.173-2013, SEC.6.)

IC 32-33-6

Chapter 6. Innkeeper's Liens

IC 32-33-6-1

Lien for accommodation charges; sale enforcing

Sec. 1. (a) The owner or keeper of any hotel, inn, boardinghouse, eating facility, lodging house, or restaurant has a lien upon any trunk, valise or baggage, or other article of value brought into the hotel, inn, boardinghouse, eating facility, lodging house, or restaurant by a person for any and all proper charges due from the person for food, lodging, entertainment, or other accommodation.

(b) The owner or keeper referred to in subsection (a) may detain the trunk, valise or baggage, or other articles of value until the amount of the charge is fully paid. If the charges are not paid within sixty (60) days after the charges accrued, the owner or keeper may sell the trunk, valise or baggage, or other article of value at public auction after giving ten (10) days notice of the time and place of the sale by publication of notice in a newspaper of general circulation in the county in which the hotel, inn, boardinghouse, eating facility, lodging house, or restaurant is situated. In addition, the owner or keeper must at least ten (10) days before the sale mail a copy of the notice addressed to the person at:

(1) the person's post office address if known to the owner or keeper; or

(2) the address registered by the person with the owner or keeper if the owner or keeper is required to keep a register under IC 16-41-29.

(c) After satisfying the lien out of the proceeds of a sale under this section together with any costs that may have been incurred in enforcing the lien, the residue of the proceeds of the sale, if any, must be paid on demand by the owner or keeper to the person not more than six (6) months after the sale. If the residue is not demanded within six (6) months after the date of the sale, the residue or remainder shall be deposited by the owner or keeper with the county treasurer of the county in which the hotel, inn, boardinghouse, eating facility, lodging house, or restaurant is situated, together with a statement of:

(1) the owner's or keeper's claim;

(2) the amount of costs incurred in enforcing the lien;

(3) a copy of the published notice; and

(4) the amount received from the sale of the trunk, valise or baggage, or other article of value sold at the sale.

(d) The residue deposited under subsection (c) shall be accredited to the general revenue funds of the county by the county treasurer subject to the right of the person or the person's representatives to reclaim the residue at any time within three (3) years after the date of the deposit with the county treasurer.

(e) A sale under this section is a bar to any action against the owner or keeper for the recovery of the trunk, valise or baggage, or other article of value or of the value of the trunk, valise or baggage,

or other article of value, or for any damage growing out of the failure of the person to receive the trunk, valise or baggage, or other article of value.

(f) However, if the proceeds of a sale after deducting any costs that may have been incurred in enforcing the lien are not sufficient to discharge the owner's or keeper's charges, the balance remains due and owing, and the owner or keeper may commence an action at law against the person for any balance due.

As added by P.L.2-2002, SEC.18.

IC 32-33-7

Chapter 7. Liability of Hotels for Loss of Property of Guests

IC 32-33-7-1

"Guest" defined

Sec. 1. As used in this chapter, "guest" includes a transient guest, permanent guest, tenant, lodger, or boarder.

As added by P.L.2-2002, SEC.18.

IC 32-33-7-2

Safekeeping place for valuables; notice; limitation on amount of liability

Sec. 2. If:

(1) the proprietor or manager of a hotel, an apartment hotel, or an inn provides a safe in a convenient place for the safekeeping of any money, jewels, ornaments, furs, bank notes, bonds, negotiable security, or other valuable papers, precious stones, railroad tickets, articles of silver or gold, or other valuable property of small compass belonging to or brought in by the guests of the hotel, apartment hotel, or inn;

(2) the proprietor or manager notifies the guests by posting in a public and conspicuous place and manner at the place of registration of the hotel, apartment hotel, or inn or in each guest room a notice stating that a safe place is provided in which the articles may be deposited; and

(3) the guest neglects or fails to deliver the guest's property to the person in charge of the office for deposit in the safe;

the hotel, apartment hotel, or inn and proprietor or manager are not liable for any loss of or damage to the property sustained by the guest or other owner of the property, whether the loss or damage is occasioned by the neglect of the proprietor or manager or of the proprietor's or manager's agents or otherwise.

(b) If a guest delivers property to the person in charge of the office for deposit in a safe, the hotel, apartment hotel, or inn and its manager or proprietor are not liable for the loss or damage of the property sustained by the guest or other owner of the property in any amount exceeding six hundred dollars ($600), whether the loss or damage is occasioned by the negligence of the proprietor or manager or by the proprietor's or manager's agents or otherwise, notwithstanding that the property may be of greater value, unless the proprietor or manager has entered into a special agreement in writing agreeing to assume additional liability.

As added by P.L.2-2002, SEC.18.

IC 32-33-7-3

Limitation of liability

Sec. 3. Except as provided in section 2 of this chapter, the hotel, apartment hotel, or inn and its proprietor or manager are not liable for the loss of or damage to personal property, other than merchandise samples or merchandise for sale, brought into the hotel, apartment

hotel, or inn by any guest, exceeding two hundred dollars ($200) in value, whether the loss or damage is occasioned by the negligence of the proprietor or manager or the proprietor's or manager's agents or otherwise, unless the manager or proprietor has contracted in writing to assume greater liability. This limitation of liability also applies with respect to the liability for the safekeeping of any luggage or other personal property left in any hotel, apartment hotel, or inn to be checked in any checkroom operated by the hotel, apartment hotel, or inn, whether the luggage or other personal property is brought in by and belongs to a guest or belongs to a person who is not a guest.
As added by P.L.2-2002, SEC.18.

IC 32-33-7-4
Notice; guest bringing property into hotel

Sec. 4. A hotel, an apartment hotel, or an inn and its proprietor or manager are not liable for the loss of or damage to any merchandise samples or merchandise for sale, whether the loss or damage is occasioned by the negligence of the proprietor or manager or the proprietor's or manager's agents or otherwise, unless:

(1) the guest or other owner has given prior written notice of having brought the merchandise into the hotel and of the value of the merchandise; and

(2) the receipt of the notice has been acknowledged in writing by the proprietor, manager, or other agent.

However, the liability of the hotel, apartment hotel, inn, or the proprietor or manager may not exceed four hundred dollars ($400) unless the manager or proprietor of the hotel, apartment hotel, or inn has contracted in writing to assume a greater liability.
As added by P.L.2-2002, SEC.18.

IC 32-33-7-5
Departed guest's property left behind

Sec. 5. In case of loss or damage to any property left by a guest after the guest has departed from any hotel, apartment hotel, or inn and ceased to be a guest, the liability of the proprietor is that of "gratuitous bailee" and may not exceed one hundred dollars ($100).
As added by P.L.2-2002, SEC.18.

IC 32-33-7-6
In transit loss or damage to property of guests

Sec. 6. In case of loss of or damage to any property while in transit to or from any hotel, apartment hotel, or inn on behalf of a guest, the liability of the proprietor is limited to two hundred dollars ($200), whether the loss or damage is occasioned by the negligence of the proprietor or the proprietor's agents or otherwise, unless:

(1) the guest has given prior written notice of the value of the property; and

(2) the receipt of the notice has been acknowledged in writing by the proprietor, manager, or other agent.

However, the liability of the hotel, apartment hotel, or inn may not

exceed four hundred dollars ($400), unless the proprietor has contracted in writing to assume a greater liability.
As added by P.L.2-2002, SEC.18.

IC 32-33-8

Chapter 8. Livestock Care and Feeding Liens

IC 32-33-8-1

Feed and care bestowed upon livestock

Sec. 1. The keeper of a livery stable or a person engaged in feeding horses, cattle, hogs, and other livestock:

(1) has a lien upon the livestock for the feed and care bestowed by the keeper upon the livestock; and

(2) has the same rights and remedies as are provided for those persons having, before July 24, 1853, by law, a lien under IC 32-33-9.

As added by P.L.2-2002, SEC.18.

IC 32-33-9

Chapter 9. Mechanic's and Tradesman's Liens

IC 32-33-9-1

Sale of property to satisfy unpaid charges

Sec. 1. If a person entrusts to a mechanic or tradesman materials to construct, alter, or repair an article of value, the mechanic or tradesman, if the construction, alteration, or repair is completed and not taken away and the mechanic's or tradesman's fair and reasonable charges not paid, may, after sixty (60) days after the charges became due:

(1) sell the article of value; or

(2) if the article of value is susceptible of division, without injury, may sell as much of the article of value as is necessary to pay the charges.

As added by P.L.2-2002, SEC.18.

IC 32-33-9-2

Notice of sale

Sec. 2. Before a sale under section 1 of this chapter, the mechanic or tradesman must give notice of the amount due and the time and place of the sale by mailing a certified or registered letter, return receipt requested, to the last known address of the entrusting person or owner at least thirty (30) days before the date of the sale.

As added by P.L.2-2002, SEC.18.

IC 32-33-9-3

Proceeds of sale; disposition

Sec. 3. (a) The proceeds of a sale that takes place under section 1 of this chapter, after payment of charges for construction or repair and for giving notice by registered or certified mail, shall be:

(1) returned to the entrusting person or owner if the identity and mailing address of the entrusting person or owner are known; or

(2) deposited with the treasurer of the county in which the construction or repair work was performed.

(b) If the entrusting person or owner does not:

(1) claim the article within the thirty (30) days before the date of the sale;

(2) pay for the construction, alteration, or repair; and

(3) provide reimbursement for the expenses of notification;

the mechanic or tradesman may proceed with the sale according to the terms of the notice.

As added by P.L.2-2002, SEC.18.

IC 32-33-9-4

Application of law

Sec. 4. Except as provided in section 5 of this chapter, this chapter applies to all cases of personal property on which the bailee or keeper has, by law, a lien for any feed or care by the bailee or keeper provided on the property. However, in cases where the person liable

dies before the expiration of sixty (60) days after the charges accrued, the sale may not be made until at least sixty (60) days after the date of the person's death.
As added by P.L.2-2002, SEC.18.

IC 32-33-9-5
Animals; perishable property; time for disposal of property

Sec. 5. For personal property described in section 4 of this chapter, if the property bailed or kept is:

(1) horses;
(2) cattle;
(3) hogs;
(4) other livestock; or
(5) other property covered in this chapter that is of a perishable nature and will be greatly injured by delay;

the person to whom the charges may be due may, after the expiration of thirty (30) days after the charges become due, proceed to dispose of as much of the property as may be necessary, as provided in this chapter.
As added by P.L.2-2002, SEC.18.

IC 32-33-9-6
Additional compensation taken from proceeds of sale

Sec. 6. Additional compensation for keeping and taking care of property referred to in section 5 of this chapter, if necessarily incurred, may be taken from the proceeds of sale under section 5 of this chapter as part of the charges.
As added by P.L.2-2002, SEC.18.

IC 32-33-9-7
Forwarding and commission merchant

Sec. 7. A forwarding and commission merchant having a lien upon goods that may have remained in store for at least one (1) year may proceed to advertise and sell at public auction as much of the goods as may be necessary to pay the amount of the lien and expenses, according to the provisions of this chapter.
As added by P.L.2-2002, SEC.18.

IC 32-33-9-8
Receipt for entrusted articles

Sec. 8. All mechanics, tradesmen, or bailees taking advantage of this chapter, at the time of the entrusting, must issue a receipt to the person entrusting the article to them. The receipt must conspicuously state, "All articles left on the premises after work is completed may be sold for charges.".
As added by P.L.2-2002, SEC.18.

IC 32-33-10

Chapter 10. Motor Vehicles Lien for Repair, Storage, Service, and Supplies for Certain Motor Vehicles and Equipment

IC 32-33-10-1

"Construction machinery and equipment"

Sec. 1. As used in this chapter, "construction machinery and equipment" includes all classes and types of machinery and equipment used in road construction, road maintenance, earth moving, and building construction work.

As added by P.L.2-2002, SEC.18.

IC 32-33-10-2

"Farm machinery"

Sec. 2. As used in this chapter, "farm machinery" means all types of tractors, implements, and machinery used in the operation and maintenance of farms.

As added by P.L.2-2002, SEC.18.

IC 32-33-10-3

"Motor vehicle"

Sec. 3. (a) As used in this chapter, "motor vehicle" means every vehicle and device in, upon, or by which persons or property is, or may be, moved, transported, or drawn upon public highways.

(b) The term includes:

(1) self-propelled vehicles; and

(2) vehicles and devices drawn or propelled by other vehicles, devices, trucks, and tractors.

As added by P.L.2-2002, SEC.18.

IC 32-33-10-4

"Person"

Sec. 4. As used in this chapter, "person" includes a natural person, a firm, a copartnership, an association, a limited liability company, and a corporation.

As added by P.L.2-2002, SEC.18.

IC 32-33-10-5

Services and vehicles subject to lien

Sec. 5. (a) A person engaged in:

(1) towing, repairing, storing, servicing, or furnishing supplies or accessories for motor vehicles, airplanes, construction machinery and equipment, and farm machinery; or

(2) maintaining a motor vehicle garage, an airport or repair shop for airplanes, or a repair shop or servicing facilities for construction machinery and equipment and farm machinery;

has a lien on any motor vehicle or airplane or any unit of construction machinery and equipment or farm machinery towed, stored, repaired, serviced, or maintained for the person's reasonable charges for the towing, repair work, storage, or service, including reasonable charges

for labor, for the use of tools, machinery, and equipment, and for all accessories, materials, gasoline, oils, lubricants, and other supplies furnished in connection with the towing, repair, storage, servicing, or maintenance of the motor vehicle, airplane, unit of construction machinery and equipment, or farm machinery.

(b) The costs of storing a motor vehicle may not exceed one thousand five hundred dollars ($1,500).

As added by P.L.2-2002, SEC.18. Amended by P.L.104-2005, SEC.10.

IC 32-33-10-6

Notice of intention to hold lien; requisites; filing

Sec. 6. (a) A person seeking to acquire a lien upon a motor vehicle, an airplane, a unit of construction machinery and equipment, or farm machinery, whether the claim to be secured by the lien is then due or not, must file in the recorder's office of the county where:

(1) the towing, repair, service, or maintenance work was performed; or

(2) the storage, supplies, or accessories were furnished;

a notice in writing of the intention to hold the lien upon the motor vehicle, airplane, unit of construction machinery and equipment, or farm machinery for the amount of the person's claim.

(b) A notice filed under subsection (a) must specifically state the amount claimed and give a substantial description of the motor vehicle, airplane, unit of construction machinery and equipment, or farm machinery upon which the lien is asserted.

(c) Any description in a notice of intention to hold a lien filed under subsection (a) is sufficient if by the description the motor vehicle, airplane, unit of construction machinery and equipment, or farm machinery can be identified.

(d) A notice under subsection (a) must be filed in the recorder's office not later than sixty (60) days after the:

(1) performance of the towing or work; or

(2) furnishing of the storage, supplies, accessories, or materials.

As added by P.L.2-2002, SEC.18. Amended by P.L.104-2005, SEC.11.

IC 32-33-10-7

Notice of intention to hold lien; recording; fee

Sec. 7. (a) The recorder of the county where a notice of intention to hold a lien is filed under section 6 of this chapter shall record the lien in the manner provided by law for the recording of mechanic's liens.

(b) The recorder shall receive a fee in accordance with IC 36-2-7-10 for the recording.

As added by P.L.2-2002, SEC.18.

IC 32-33-10-8

Foreclosure of lien

Sec. 8. (a) A lien provided for in this chapter may be foreclosed,

as equitable liens are foreclosed, in the circuit or superior court of the county where the motor vehicle, airplane, unit of construction machinery and equipment, or farm machinery is located.

(b) The complaint for foreclosure of a lien under subsection (a) must be filed not later than one (1) year after the notice of intention to hold the lien is recorded.

As added by P.L.2-2002, SEC.18.

IC 32-33-10-9

Attorney's fees

Sec. 9. In a suit brought for the enforcement of a lien under section 8 of this chapter in which the plaintiff recovers judgment in any sum, the plaintiff may also recover reasonable attorney's fees as a part of the judgment in the action.

As added by P.L.2-2002, SEC.18.

IC 32-33-10-10

Construction of law

Sec. 10. This chapter may not be construed to repeal, modify, or amend IC 9-22-6-1 or IC 9-22-6-2.

As added by P.L.2-2002, SEC.18. Amended by P.L.125-2012, SEC.409.

IC 32-33-11

Chapter 11. Transfer, Moving, and Storage Liens

IC 32-33-11-1

Services and property subject to lien

Sec. 1. A transferman, a drayman, or any other person, firm, limited liability company, or corporation that is engaged in:

(1) packing for shipment or storage; or

(2) transferring, hauling, or conveying from place to place;

goods, merchandise, machines, machinery or other articles of value is entitled to a lien under this chapter for money paid for freight, storage or demurrage charges on the goods, merchandise, machines, machinery or other articles of value or for erecting machines, machinery, stacks or other equipment. The lien is imposed upon the goods, merchandise, machines, machinery, or other articles of value that are packed, hauled, transferred, conveyed, or erected, for charges for the hauling, packing, transferring, conveying, or erecting or for money paid for freight, storage, or demurrage on the goods, merchandise, machines, machinery, or other articles of value.

As added by P.L.2-2002, SEC.18.

IC 32-33-11-2

Notice of intention to hold lien; requisites; filing

Sec. 2. (a) A transferman, drayman, or any other person, firm, limited liability company, or corporation that is engaged in:

(1) packing for shipment or storage; or

(2) transferring, hauling, or conveying from place to place;

goods, merchandise, machinery, machines, or other articles of value and that wishes to acquire a lien on any of this property for money paid for freight, storage, or demurrage charges or for erecting machines, machinery, stacks, or other equipment, whether the claim is due or not, may, at any time within sixty (60) days after performing the labor or the payment of money described in section 1 of this chapter, file in the recorder's office of the county a notice of intention to hold a lien upon the property for the amount of the claim.

(b) The notice filed under subsection (a) must state the amount claimed and provide a substantial description of the property. The description of the property in a notice filed under subsection (a) must be sufficient to identify the property.

(c) The party ordering the work done or charges paid or advanced, shall, for the purpose of enforcing this lien, be considered prima facie the agent of all persons having or claiming any interest in the work done or charges paid or advanced but not a matter of record, if the person has knowledge of the performance of the services or the making of the expenditures.

(d) The lienor may keep possession of the goods during the pendency of the lien or an action on the lien unless otherwise ordered by the court.

As added by P.L.2-2002, SEC.18.

IC 32-33-11-3
Notice of intention to hold lien; recording; priority

Sec. 3. (a) The recorder shall record the notice of intention to hold a lien filed under section 2(a) of this chapter, when presented, in the miscellaneous record book. The recorder shall receive fees in accordance with IC 36-2-7-10.

(b) All liens created in this manner:

(1) relate to the date the labor was begun or money advanced; and

(2) have priority over all liens suffered or created after that date.

As added by P.L.2-2002, SEC.18.

IC 32-33-11-4
Enforcement of lien

Sec. 4. (a) A person that has a lien under this chapter may enforce the lien by filing the person's complaint in the circuit or superior court of the county in which the lien is filed, at any time within one (1) year after the notice is received for record under section 2(a) of this chapter by the recorder of the county.

(b) If the lien is not enforced within the time prescribed by this section, the lien is void. If the lien is enforced as provided in this chapter, the court rendering judgment shall order the sale to be made, and the officers making the sale shall sell the property without relief whatever from valuation or appraisement laws.

As added by P.L.2-2002, SEC.18.

IC 32-33-11-5
Attorney's fees

Sec. 5. (a) In all suits brought for the enforcement of a lien under the provisions of this chapter, if the plaintiff or lienholder recovers a judgment in any sum, the plaintiff or lienholder may recover reasonable attorney's fees.

(b) Attorney's fees awarded under subsection (a) shall be entered by the court as a part of the judgment in the suit for the enforcement of the lien.

As added by P.L.2-2002, SEC.18.

IC 32-33-11-6
Additional goods, merchandise, machines, or other articles of value subject to liens

Sec. 6. (a) In addition to the lien provided for in section 1 of this chapter, a person, firm, limited liability company, or corporation that ships, transfers, hauls, or conveys goods, merchandise, machines, machinery, or other articles of value for another person is entitled to a lien:

(1) upon goods, merchandise, machines, machinery, or other articles of value:

(A) shipped;

(B) transferred;

(C) hauled; or

(D) conveyed;

for the other person; and

(2) to cover charges that the other person owes the person, firm, limited liability company, or corporation for goods, merchandise, machines, machinery, or other articles of value previously:

(A) shipped;

(B) transferred;

(C) hauled; or

(D) conveyed;

by the person, firm, limited liability company, or corporation for the other person.

(b) To obtain a lien under this section, a person, firm, limited liability company, or corporation must do the following:

(1) Notify the other person in writing that if the other person fails to pay the person, firm, limited liability company, or corporation for shipping, transferring, hauling, or conveying goods, merchandise, machines, machinery, or other articles of value, the person, firm, limited liability company, or corporation may obtain a lien upon goods, merchandise, machines, machinery, or other articles of value subsequently:

(A) shipped;

(B) transferred;

(C) hauled; or

(D) conveyed;

by the person, firm, limited liability company, or corporation for the other person.

(2) File an intention to hold a lien with a county recorder as provided in section 2 of this chapter.

(c) A sale of property subject to a lien acquired under this section may not take place under section 4 of this chapter:

(1) for at least thirty-five (35) days after the date the person, firm, limited liability company, or corporation that has obtained the lien takes possession of the property; and

(2) unless the person, firm, limited liability company, or corporation that has obtained the lien notifies:

(A) the person that had the property shipped, transferred, hauled, or conveyed;

(B) the consignee of the property; and

(C) a secured party that has a perfected security interest in the property;

of the date, time, and location of the sale at least ten (10) days before the date the sale occurs.

(d) A sale of property subject to a lien acquired under this section may not be concluded if the largest amount bid for the property is not at least equal to the total amount of all outstanding obligations secured by perfected security interests in the property. The proceeds of the sale of property subject to a lien under this section shall be applied as follows:

(1) First, to a secured party that has a perfected security interest

in the property in an amount equal to the amount of the perfected security interest.

(2) Second, to the discharge of the lien acquired under this section.

(3) Third, to the legal owner of the property.

If the highest bid for the property does not at least equal the total amount of all outstanding obligations secured by a perfected security interest in the property, the person, firm, limited liability company, or corporation that obtained the lien on the property under this section shall release the property to the legal owner of the property if the legal owner pays the person, firm, limited liability company, or corporation the amount due for shipping, transferring, hauling, or conveying the property that does not include an amount charged for property that the person, firm, limited liability company, or corporation previously shipped, transferred, hauled, or conveyed.

(e) A person, firm, limited liability company, or corporation that obtains a lien under this section:

(1) is liable to a secured party that has a security interest in property covered by the lien:

(A) if the person, firm, limited liability company, or corporation violates this section; and

(B) for damages and expenses, including reasonable attorney's fees, incurred by the secured party in enforcing the secured party's rights; and

(2) is not liable to a consignee of property for damages that the consignee incurs because the person, firm, limited liability company, or corporation obtained a lien on the property under this section.

(f) A perfected security interest in property has priority over a lien obtained under this section.

(g) A lien may not be acquired under this section upon perishable goods.

As added by P.L.2-2002, SEC.18.

IC 32-33-11-7

Construction of law

Sec. 7. This chapter may not be construed as repealing any other law in force on May 31, 1921, concerning liens or the foreclosure of liens. This chapter is intended to be supplemental to all laws in force on May 31, 1921, concerning liens and the foreclosure of liens.

As added by P.L.2-2002, SEC.18.

IC 32-33-12
Chapter 12. Mechanized Agricultural Services Lien

IC 32-33-12-1
Products and services subject to lien

Sec. 1. (a) The owner or operator of a machine or tool used in threshing or hulling grain or seeds or in the plowing, disking, or cultivating of land for the production of crops or in the combining, picking, or baling of crops has a lien upon the grain or seed threshed or hulled with the machine or upon the crops produced or prepared for market or storage by the plowing, disking, cultivating, combining, baling, or picking to secure payment to the owner or operator of the machine or tool by the owner of the crops produced or partially produced by the service, as may be agreed upon.

(b) If the charges for the services referred to in subsection (a) are not agreed upon, the amount of the lien must equal charges that are reasonable for the work.

(c) The owner or operator of the machine must file in the proper place specified in IC 26-1-9.1-501 a financing statement giving notice of the lien. The notice must designate the following:

(1) The name of the person for whom the work was done.
(2) The amount due for the service.
(3) The particular crops covered by the lien.
(4) The place where the crops are located.
(5) The date on which the work was done.

(d) The notice required in subsection (c) must be filed not later than:

(1) thirty (30) days after the completion of the work, if the work was plowing, disking, or cultivating; and
(2) ten (10) days after the completion of the work if the work was combining, baling, or picking.

(e) If the party for whom the work was done desires to sell or deliver the crops, the party must notify the consignee or purchaser that the account for service of the machine has not been paid, and the lien given on the crops shifts from the crops to the purchase price of the crops in the hands of the purchaser or consignee specified.

(f) If the crops are sold or consigned with the consent and knowledge of the party entitled to a lien on the crops, the lien does not attach to the crops or to the purchase price of the crops unless:

(1) the party entitled to the lien personally notifies the purchaser of the lien; and
(2) the sale is made within the ten (10) day period immediately following the date of the performance of the work.

This lien may be enforced as other liens are enforced.

As added by P.L.2-2002, SEC.18.

IC 32-33-12-2
Necessity of notice

Sec. 2. A lien provided for in this chapter does not attach to crops in the hands of an innocent purchaser or dealer in the usual course of

trade unless all of the notices provided for in section 1 of this chapter have been given.
As added by P.L.2-2002, SEC.18.

IC 32-33-13

Chapter 13. Watchmaker and Jeweler Liens

IC 32-33-13-1

Services and materials subject to lien

Sec. 1. A person, firm, limited liability company, or corporation engaged in performing work upon any watch, clock, or jewelry for a price has a lien upon the watch, clock, or jewelry upon which the person, firm, limited liability company, or corporation performs the work for the amount of any account that may be due for the work.

As added by P.L.2-2002, SEC.18.

IC 32-33-13-2

Notice; sale of property

Sec. 2. (a) A lien provided for in section 1 of this chapter includes the value or agreed price, if any, of all materials furnished by the bailees for hire in connection with the work, whether added to the article or otherwise.

(b) If the account remains unpaid for one hundred twenty (120) days after completing the work, the bailees for hire may give written notice to the owner, specifying the amount due and informing the owner that:

(1) the payment of the amount within thirty (30) days will entitle the owner to redeem the property;

(2) if the property is not redeemed within the thirty (30) day period, the bailee for hire may give a second and similar notice; and

(3) if the owner does not redeem the property not later than fifteen (15) days after the second notice is given, the bailee for hire may sell the article at a bona fide public or private sale to satisfy the account.

(c) The proceeds of a sale under subsection (b), after paying the expenses of the sale, shall be applied in liquidation of the indebtedness secured by the lien and the balance, if any, shall be paid over to the owner.

(d) The notice under subsection (b) may:

(1) be served by mail directed to the owner's last known address; or

(2) be posted in two (2) public places in the town or city where the property is located, if the owner or the owner's address is not known. The notice must be written or printed.

As added by P.L.2-2002, SEC.18.

IC 32-33-13-3

Enforcement by other action not prohibited

Sec. 3. This chapter does not preclude the remedy of enforcing the lien by any other action provided by law.

As added by P.L.2-2002, SEC.18.

IC 32-33-14

Chapter 14. Warehouseman's Lien

IC 32-33-14-1

Property and services subject to lien

Sec. 1. (a) All persons, firms, limited liability companies, and corporations engaged in the business of storing, warehousing, and forwarding goods, wares, and merchandise have a lien upon all goods, wares, and merchandise left with them for storage, warehousing, or forwarding, to the extent of the:

(1) value of the services of storage, warehousing, or forwarding;

(2) fair and reasonable charges for transporting the goods, wares, and merchandise to the place of storage, warehousing, or forwarding; and

(3) fair and reasonable charges for packing, crating, and otherwise placing the goods, wares, and merchandise in condition to be stored, warehoused, or forwarded.

(b) However, the goods subject to a lien under this section must remain in the possession of the person, firm, limited liability company, or corporation engaged in the business.

As added by P.L.2-2002, SEC.18.

IC 32-33-14-2

Sale of property; notice

Sec. 2. (a) If goods, wares, or merchandise have remained in the possession of a person, firm, limited liability company, or corporation described in section 1 of this chapter for a period of at least six (6) months without the payment of the charges due, the goods, wares, or merchandise, or as much of the goods, wares, or merchandise as is necessary, may be sold at public auction to pay the amount of the lien and the expenses of the sale.

(b) Before a sale under subsection (a), the person, firm, limited liability company, or corporation described in section 1 of this chapter must give public notice of the time and place of the sale by advertisements set up for a period of ten (10) days in three (3) public places in the city or township in which the goods, wares, or merchandise are located. One (1) of the advertisements must be:

(1) displayed in a conspicuous part of the place of business of the person, firm, limited liability company, or corporation; or

(2) if the value of the article or articles is at least ten dollars ($10), published for three (3) weeks successively in a newspaper published in the county or city in which the goods are located.

(c) The notice given under subsection (b) must:

(1) state the time, place, and date of sale;

(2) give a general description of the goods to be sold; and

(3) state the name of the person to whom a receipt for the goods was issued.

As added by P.L.2-2002, SEC.18.

IC 32-33-14-3

Proceeds of sale; disposition

Sec. 3. The proceeds of a sale under section 2 of this chapter, after payment of all lien charges, together with the expenses of notice and sale, shall, if the owner is absent from the sale, be deposited with the county treasurer of the county in which the sale occurred. A receipt shall be issued for the proceeds. The proceeds are subject to the order of the person legally entitled to the proceeds.

As added by P.L.2-2002, SEC.18.

IC 32-33-15

Chapter 15. Electronic Home Entertainment Equipment Lien

IC 32-33-15-1

Amount of lien

Sec. 1. A person who engages in the business of altering or repairing electronic home entertainment equipment has a lien on that equipment to the extent of the reasonable value of labor performed and materials used for which the person has not been paid.

As added by P.L.2-2002, SEC.18.

IC 32-33-15-2

Sale of equipment

Sec. 2. If the lienholder has not been paid within sixty (60) days after payment becomes overdue, the lienholder may sell the equipment at auction if:

(1) the equipment is still in the lienholder's possession; and

(2) the lienholder complies with section 3 of this chapter.

As added by P.L.2-2002, SEC.18.

IC 32-33-15-3

Notification

Sec. 3. (a) Before a lienholder may sell the equipment, the lienholder must, by certified mail, return receipt requested, notify the owner and any person whose security interest is perfected by filing concerning the following:

(1) The lienholder's intention to sell the equipment thirty (30) days after the owner's receipt of the notice.

(2) A description of the equipment to be sold.

(3) The time and place of the sale.

(4) An itemized statement describing the value of labor and materials provided and for which the lienholder has not been paid.

(b) If upon receipt of the notice the owner informs the lienholder in writing of the owner's objections regarding the quality of the workmanship or an alleged overcharge, the lienholder must foreclose by judicial proceeding.

(c) If there is no return of the receipt or if the postal service returns the notice as being nondeliverable, the lienholder shall publish notice of the lienholder's intention to sell the equipment in a newspaper of general circulation in the place where the equipment is being held for sale by the lienholder. The notice must include a description of the equipment and name of its owner.

As added by P.L.2-2002, SEC.18.

IC 32-33-15-4

Excess proceeds from sale

Sec. 4. If the sale is for a sum greater than the amount of the lien, any excess shall be paid to the owner and any prior lienholder.

As added by P.L.2-2002, SEC.18.

IC 32-33-16

Chapter 16. Liens on Dies, Molds, Forms, and Patterns

IC 32-33-16-0.5

Application

Sec. 0.5. This chapter does not apply to a special tool under IC 32-33-20.

As added by P.L.73-2009, SEC.3.

IC 32-33-16-1

"Customer" defined

Sec. 1. As used in this chapter, "customer" means any individual or entity who contracts with or causes a fabricator to use a die, mold, form, jig, or pattern to manufacture, assemble, or otherwise make a product.

As added by P.L.2-2002, SEC.18.

IC 32-33-16-2

"Fabricator" defined

Sec. 2. As used in this chapter, "fabricator" means any individual or entity, including a tool or die maker, who:

(1) manufactures or causes to be manufactured, assembles, or improves a die, mold, form, jig, or pattern for a customer; or

(2) uses or contracts to use a die, mold, form, jig, or pattern to manufacture, assemble, or otherwise make a product for a customer.

As added by P.L.2-2002, SEC.18.

IC 32-33-16-3

Lien; right to possession

Sec. 3. (a) A fabricator has a lien, dependent on possession, on any die, mold, form, jig, or pattern in the fabricator's possession belonging to the customer for the amount due the fabricator from the customer for fabrication work performed with the die, mold, form, jig, or pattern.

(b) A fabricator may retain possession of the die, mold, form, jig, or pattern until the amount due is paid.

As added by P.L.2-2002, SEC.18.

IC 32-33-16-4

Notice to enforce lien

Sec. 4. (a) Before enforcing a lien under this chapter, notice in writing must be given to the customer, whether delivered personally or sent by certified mail to the last known address of the customer.

(b) The notice required under subsection (a) must:

(1) state that a lien is claimed for the damages set forth or attached for the amount due for fabrication work or for making or improving the die, mold, form, jig, or pattern; and

(2) include a demand for payment.

As added by P.L.2-2002, SEC.18.

IC 32-33-16-5
Sale of die, mold, form, jig, or pattern at auction

Sec. 5. If the lienholder has not been paid the amount due within sixty (60) days after the notice provided for in section 4 of this chapter, the lienholder may sell the die, mold, form, jig, or pattern at auction if:

(1) the die, mold, form, jig, or pattern is still in the lienholder's possession; and

(2) the lienholder complies with section 6 of this chapter.

As added by P.L.2-2002, SEC.18.

IC 32-33-16-6
Notice to customer and persons having perfected security interests

Sec. 6. (a) Before a lienholder may sell the die, mold, form, jig, or pattern, the lienholder must, in writing, by certified mail, return receipt requested, notify the customer and any person whose security interest is perfected by filing of the following:

(1) The lienholder's intention to sell the die, mold, form, jig, or pattern thirty (30) days after the customer's receipt of the notice.

(2) A description of the die, mold, form, jig, or pattern to be sold.

(3) The time and place of the sale.

(4) An itemized statement for the amount due.

(b) If upon receipt of this notice the customer informs the lienholder in writing of the customer's objections regarding the amount due, the lienholder may file a complaint to foreclose the lien.

(c) If there is no return of the receipt of mailing, or if the postal service returns the notice as being nondeliverable, the lienholder must publish notice of the lienholder's intention to sell the die, mold, form, jig, or pattern in a newspaper of general circulation in the county where the die, mold, form, jig, or pattern is being held for sale by the lienholder. The notice must include a description of the die, mold, form, jig, or pattern and the name of the customer.

As added by P.L.2-2002, SEC.18.

IC 32-33-16-7
Disbursement of excess

Sec. 7. If the sale is for a sum greater than the amount of the lien plus all reasonable expenses of the sale, any excess shall be paid to the customer and any prior lienholder.

As added by P.L.2-2002, SEC.18.

IC 32-33-16-8
Sales in violation of federal patent or copyright law prohibited

Sec. 8. A sale may not be made under this chapter if the sale would be in violation of any right of a customer under federal patent or copyright law.

As added by P.L.2-2002, SEC.18.

IC 32-33-16-9

Actions for replevin not barred

Sec. 9. This chapter does not bar a customer from bringing action for replevin under IC 32-35-2.

As added by P.L.2-2002, SEC.18.

IC 32-33-17

Chapter 17. Corporate Employee's Liens

IC 32-33-17-1

Lien; applicability of law

Sec. 1. Unless otherwise provided in this article, corporate employee liens on personal property of a corporation for all work and labor done and performed by the employees of a corporation are governed by IC 32-28-12.

As added by P.L.2-2002, SEC.18.

IC 32-33-18
Chapter 18. Common Law Liens

IC 32-33-18-1
Lien procedure

Sec. 1. The procedures for filing and releasing common law liens on personal property are governed by IC 32-28-13.
As added by P.L.2-2002, SEC.18.

IC 32-33-19

Chapter 19. Duty to Satisfy Record

IC 32-33-19-1

Release, discharge, and satisfaction

Sec. 1. Unless otherwise provided in this article, if the debt or obligation, including interest on the debt or obligation, that a lien on personal property secures has been fully paid, lawfully tendered, and discharged, the owner, holder, or custodian of the mortgage shall:

(1) release;

(2) discharge; and

(3) satisfy of record;

the mortgage as provided in IC 32-28-1.

As added by P.L.2-2002, SEC.18. Amended by P.L.1-2003, SEC.87.

IC 32-33-20
Chapter 20. Special Tool Liens

IC 32-33-20-1
"Customer"

Sec. 1. As used in this chapter, "customer" means a person who:

(1) causes a special tool builder to design, develop, manufacture, assemble for sale, or otherwise make a special tool; or

(2) causes an end user to use a special tool.

As added by P.L.73-2009, SEC.4.

IC 32-33-20-2
"End user"

Sec. 2. As used in this chapter, "end user" means a person who uses a special tool as part of the person's manufacturing process.

As added by P.L.73-2009, SEC.4.

IC 32-33-20-3
"Special tool"

Sec. 3. As used in this chapter, "special tool" means tools, dies, jigs, gauges, gauging fixtures, special machinery, cutting tools, injection molds, or metal castings used in the design, development, manufacture, assembly or fabrication of parts.

As added by P.L.73-2009, SEC.4.

IC 32-33-20-4
"Special tool builder"

Sec. 4. As used in this chapter, "special tool builder" means a person who designs, develops, manufactures, or assembles special tools for sale.

As added by P.L.73-2009, SEC.4.

IC 32-33-20-5
Transfer of rights, title, and interest in a special tool to an end user

Sec. 5. (a) This section does not apply if an end user retains title to and possession of a special tool.

(b) Unless otherwise agreed in writing, if a customer does not claim possession of a special tool from an end user within three (3) years after the date the special tool is last used by the end user, at the option of the end user, all rights, title, and interest in the special tool may be transferred by operation of law to the end user for the purpose of destroying the special tool.

(c) After the three (3) year period described in subsection (b) expires, if an end user chooses to have all rights, title, and interest in a special tool transferred to the end user, the end user shall send written notice by registered mail, return receipt requested:

(1) to an address designated in writing by the customer; or

(2) if the customer has not designated an address in writing, to the customer's last known address;

that indicates the end user intends to terminate the customer's rights, title, and interest in the special tool by having all rights, title, and interest in the special tool transferred to the end user under this section.

(d) If a customer does not:

(1) claim possession of the special tool within one hundred twenty (120) days after the date the end user receives the return receipt of the notice sent under subsection (c); or

(2) make other arrangements with the end user for storage of the special tool within one hundred twenty (120) days after the date the end user receives the return receipt of the notice sent under subsection (c);

all rights, title, and interest of the customer in the special tool are transferred by operation of law to the end user for the purpose of destroying the special tool.

(e) This section may not be construed to:

(1) affect a right of a customer under a:

(A) federal patent or copyright law; or

(B) state or federal law concerning unfair competition; or

(2) grant a customer rights, title, or interest in a special tool.

As added by P.L.73-2009, SEC.4. Amended by P.L.1-2010, SEC.130.

IC 32-33-20-6

End user lien on a special tool

Sec. 6. (a) An end user has a lien, dependent on possession, on any special tool in the end user's possession belonging to a customer for the amount due the end user from the customer for:

(1) metal fabrication work performed with the special tool; or

(2) making or improving the special tool.

(b) An end user may retain possession of the special tool until the amount due is paid.

As added by P.L.73-2009, SEC.4.

IC 32-33-20-7

Notice to customer of end user lien

Sec. 7. (a) Before enforcing a lien created under section 6 of this chapter, the end user must give written notice to the customer that is:

(1) delivered personally; or

(2) sent by registered mail to the last known address of the customer.

(b) The notice required under subsection (a) must:

(1) state that a lien is claimed for the amount due for:

(A) metal fabrication work; or

(B) making or improving the special tool; and

(2) include a demand for payment.

As added by P.L.73-2009, SEC.4.

IC 32-33-20-8

Sale of special tool at public auction

Sec. 8. If an end user has not been paid the amount due within

ninety (90) days after the date the notice is received by the customer as provided in section 7 of this chapter, the end user may sell the special tool at a public auction if:

(1) the special tool is still in the end user's possession; and

(2) the end user complies with section 9 of this chapter.

As added by P.L.73-2009, SEC.4.

IC 32-33-20-9

Notice to customer of special tool sale

Sec. 9. (a) Before an end user may sell a special tool, the end user must notify:

(1) the customer; and

(2) any person whose security interest in the special tool is perfected by filing;

by registered mail, return receipt requested, that the end user intends to sell the special tool.

(b) The notice required under subsection (a) must include the following information:

(1) The end user's intention to sell the special tool sixty (60) days after the date the customer receives the notice.

(2) A description of the special tool to be sold.

(3) The date, time, and place of the sale.

(4) An itemized statement for the amount due.

(5) A statement that the product produced by the special tool complies with the quality and quantity ordered.

(c) If:

(1) there is no return of the receipt of the mailing; or

(2) the postal service returns the notice as being undeliverable;

the end user shall publish notice of the end user's intention to sell the special tool in a newspaper of general circulation in the place where the special tool is being held for sale by the end user and in the place of the customer's last known address. The notice must include a description of the special tool and the name of the customer.

(d) If a customer disagrees that the product produced by the special tool complies with the quality and quantity ordered, the customer shall notify the end user in writing by registered mail, return receipt requested, that the product produced by the special tool did not meet the quality or quantity of product ordered. An end user who receives a notice under this subsection may not sell the special tool until the dispute is resolved.

As added by P.L.73-2009, SEC.4.

IC 32-33-20-10

Proceeds of special tool sale

Sec. 10. (a) The proceeds of a sale of a special tool under section 8 of this chapter shall be paid as follows:

(1) The proceeds shall be paid first to the prior lienholder who has a perfected lien in an amount sufficient to satisfy the lienholder's interest.

(2) Any remainder after payment is made under subdivision (1)

shall be paid to the end user who possesses a lien under this chapter in an amount sufficient to extinguish that interest.

(3) Any remainder after payment is made under subdivision (2) shall be paid to the customer.

(b) A sale may not be made under this chapter if it would violate a right a customer has under federal patent or copyright law.

As added by P.L.73-2009, SEC.4.

IC 32-33-20-11

Special tool builder security interest on a special tool

Sec. 11. (a) A special tool builder has an unperfected purchase money security interest under IC 26-1-9.1 on a special tool that the special tool builder fabricates, repairs, or modifies.

(b) The amount of the lien is the amount that a customer or end user owes the special tool builder for the fabrication, repair, or modification of the special tool.

(c) A special tool builder may perfect its purchase money security interest in a special tool by filing a financing statement in accordance with IC 26-1-9.1-317(e).

As added by P.L.73-2009, SEC.4.

IC 32-33-20-12

Enforcement of special tool builder lien

Sec. 12. To enforce a lien that attaches under section 11 of this chapter, a special tool builder must give notice of the lien in writing to the customer and the end user. The notice must:

(1) be delivered personally or by certified mail, return receipt requested, to the last known address of the customer and to the last known address of the end user; and

(2) state:

(A) that a lien is claimed;

(B) the amount that the special tool builder claims it is owed for fabrication, repair, or modification of the special tool; and

(C) a demand for payment.

As added by P.L.73-2009, SEC.4.

IC 32-33-20-13

Special tool builder right to possession of a special tool

Sec. 13. (a) Subject to section 14 of this chapter, if a special tool builder has not been paid the amount claimed in the notice required under section 12 of this chapter within ninety (90) days after the date the notice required under section 12 of this chapter has been received by the customer and the end user, the special tool builder:

(1) has a right to possession of the special tool; and

(2) may enforce the right to possession of the special tool by judgment, foreclosure, or any available judicial procedure.

(b) The special tool builder may do one (1) or more of the following:

(1) Take possession of the special tool. The special tool builder

may take possession without judicial process if possession can be taken without breach of the peace.

(2) Sell the special tool in a public auction.

(c) A special tool builder is entitled to court costs and reasonable attorney's fees for expenses incurred under this section.

As added by P.L.73-2009, SEC.4.

IC 32-33-20-14

Notice by special tool builder; sale of a special tool

Sec. 14. (a) Before a special tool builder may enforce its security interest in a special tool for which the special tool builder claims a security interest under this chapter and for which the required notice has been sent under section 12 of this chapter, the special tool builder must notify the customer, the end user, and all other persons that have a perfected security interest in the special tool by certified mail, return receipt requested, of all the following:

(1) The special tool builder's intention to sell the special tool sixty (60) days after the receipt of the notice.

(2) A description of the special tool to be sold.

(3) The last known location of the special tool.

(4) The time and place of the sale.

(5) An itemized statement of the amount due.

(6) A statement that the special tool was accepted and the acceptance was not subsequently rejected.

(b) If:

(1) there is no return of the receipt of the mailing; or

(2) the postal service returns the notice as being undeliverable;

the special tool builder shall publish notice of the special tool builder's intention to sell the special tool in a newspaper of general circulation in the place where the special tool was last known to be located, in the place of the customer's last known address, and in the place of the end user's last known address. The published notice must include a description of the special tool and the name of the customer and the end user.

(c) If a customer or an end user against whom the lien is asserted disagrees that the special tool was accepted or that the acceptance was not subsequently rejected, the customer or end user shall notify the special tool builder in writing by certified mail, return receipt requested, that the special tool was not accepted or that the acceptance was subsequently rejected. A special tool builder who receives notice under this subsection may not sell the special tool until the dispute is resolved.

As added by P.L.73-2009, SEC.4.

IC 32-33-20-15

Proceeds of special tool sale

Sec. 15. (a) The proceeds of a sale of a special tool under section 13 of this chapter shall be paid as follows:

(1) The proceeds shall be paid first to the prior lienholder who has a perfected lien in an amount sufficient to satisfy the

lienholder's interest.

(2) Any remainder after payment is made under subdivision (1) shall be paid to the special tool builder who possesses a lien under this chapter in an amount sufficient to extinguish that interest.

(3) Any remainder after payment is made under subdivision (2) shall be paid to the customer.

(b) A sale may not be made or possession may not be obtained under section 13 of this chapter if the sale or possession would violate any right a customer or an end user has under federal patent, bankruptcy, or copyright law.

As added by P.L.73-2009, SEC.4.

IC 32-33-21

Chapter 21. Repeal of Laws Concerning Liens on Personal Property

IC 32-33-21-1

Repeal of ambulance lien law

Sec. 1. (a) Notwithstanding the repeal of IC 32-33-5 concerning ambulance liens on July 1, 2013, if a provider of emergency ambulance services perfects a lien under IC 32-33-5-4 before July 1, 2013:

(1) the lien remains valid; and

(2) the provisions of IC 32-33-5 in effect on June 30, 2013, continue to apply to the lien;

until the lien is released under IC 32-33-5 as in effect on June 30, 2013.

(b) The repeal of IC 32-33-5 may not be construed to affect or abridge a right of a provider of emergency ambulance services:

(1) to collect amounts claimed to be due the provider for emergency ambulance services; and

(2) that is conferred under any other law or contractual right.

(c) The repeal of IC 32-33-5 may not be construed to affect a patient's financial obligation under any other law or contract to pay the provider of emergency ambulance services the reasonable value of the services provided to the patient.

As added by P.L.173-2013, SEC.7.

IC 32-34

ARTICLE 34. LOST OR UNCLAIMED PERSONAL PROPERTY

IC 32-34-1

Chapter 1. Unclaimed Property Act

IC 32-34-1-1

Nonapplicability of foreign country property arising out of a foreign transaction; excepted property

Sec. 1. (a) This chapter does not apply to any property held, due, and owing in a foreign country and arising out of a foreign transaction.

(b) This chapter does not apply to:

(1) stocks;
(2) dividends;
(3) capital credits;
(4) patronage refunds;
(5) utility deposits;
(6) membership fees;
(7) account balances; or
(8) book equities;

for which the owner cannot be found and that are the result of distributable savings of a rural electric membership corporation formed under IC 8-1-13, a rural telephone cooperative corporation formed under IC 8-1-17, or an agricultural cooperative association formed under IC 15-12-1.

(c) This chapter does not apply to unclaimed overpayments of utility bills that become the property of a municipality under IC 36-9-23-28.5.

(d) This chapter does not apply to deposits required by a municipally owned utility (as defined in IC 8-1-2-1).

(e) This chapter does not apply to a business to business credit memorandum or a credit balance resulting from a business to business credit memorandum.

(f) This chapter does not apply to gift certificates or gift cards.

As added by P.L.2-2002, SEC.19. Amended by P.L.107-2003, SEC.1; P.L.2-2008, SEC.70.

IC 32-34-1-2

Citation of law as "unclaimed property act"

Sec. 2. This chapter may be cited as the "unclaimed property act".

As added by P.L.2-2002, SEC.19.

IC 32-34-1-3

"Administrator" defined

Sec. 3. As used in this chapter, "administrator" means the administrator of the unclaimed property law of another state.

As added by P.L.2-2002, SEC.19.

IC 32-34-1-4
"Apparent owner"

Sec. 4. As used in this chapter, "apparent owner" means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

As added by P.L.2-2002, SEC.19.

IC 32-34-1-5
"Business association"

Sec. 5. As used in this chapter, "business association" means the following:

(1) A corporation.
(2) A limited liability company.
(3) A joint stock company.
(4) An investment company.
(5) A partnership.
(6) A business trust.
(7) A trust company.
(8) A savings association.
(9) A savings bank.
(10) An industrial bank.
(11) A land bank.
(12) A safe deposit company.
(13) A safekeeping depository.
(14) A bank.
(15) A banking organization.
(16) A financial organization.
(17) An insurance company.
(18) A mutual fund.
(19) A credit union.
(20) A utility.
(21) A for profit or nonprofit business association consisting of two (2) or more individuals.

As added by P.L.2-2002, SEC.19.

IC 32-34-1-6
"Domicile"

Sec. 6. As used in this chapter, "domicile" means the following:

(1) The state of incorporation of a corporation.
(2) The state of the principal place of business of a holder other than a corporation.

As added by P.L.2-2002, SEC.19.

IC 32-34-1-7
"Financial institution"

Sec. 7. As used in this chapter, "financial institution" means a depository financial institution that is organized or reorganized under Indiana law, the law of another state, or United States law. The term includes any of the following:

(1) A commercial bank.

(2) A trust company.
(3) A savings bank.
(4) A savings association.
(5) A credit union.
(6) An industrial loan and investment company.
(7) Any other entity that has powers similar to the powers of an entity described in subdivisions (1) through (6).

As added by P.L.2-2002, SEC.19.

IC 32-34-1-8
"Holder"

Sec. 8. As used in this chapter, "holder" means a person obligated to deliver or pay to the owner property that is subject to this chapter.

As added by P.L.2-2002, SEC.19.

IC 32-34-1-9
"Insurance company"

Sec. 9. As used in this chapter, "insurance company" means an association, a corporation, or a fraternal or mutual benefit organization, whether or not for profit, that is engaged in the business of providing insurance, including the following:

(1) Accident insurance.
(2) Burial insurance.
(3) Casualty insurance.
(4) Credit life insurance.
(5) Contract performance insurance.
(6) Dental insurance.
(7) Fidelity insurance.
(8) Fire insurance.
(9) Health insurance.
(10) Hospitalization insurance.
(11) Illness insurance.
(12) Life insurance (including endowments and annuities).
(13) Malpractice insurance.
(14) Marine insurance.
(15) Mortgage insurance.
(16) Surety insurance.
(17) Wage protection insurance.

As added by P.L.2-2002, SEC.19.

IC 32-34-1-9.1
"Interest bearing property"

Sec. 9.1. As used in this chapter, "interest bearing property" means one (1) of the following:

(1) An interest bearing checking account.
(2) A savings account.
(3) A certificate of deposit.
(4) A money market account.

As added by P.L.56-2014, SEC.2.

IC 32-34-1-10
"Last known address"

Sec. 10. (a) As used in sections 26, 32, and 43 of this chapter, "last known address" means a description of the location of the apparent owner's residence or business sufficient for the purpose of the delivery of mail or the receipt of a communication by other means known to the holder.

(b) As used in sections 21 and 37 of this chapter, "last known address" means a description indicating that the apparent owner was located within Indiana, regardless of whether the description is sufficient to direct the delivery of mail.

As added by P.L.2-2002, SEC.19.

IC 32-34-1-11
"Mineral"

Sec. 11. As used in this chapter, "mineral" means any of the following:

(1) Gas.
(2) Oil.
(3) Coal.
(4) Other gaseous, liquid, and solid hydrocarbons.
(5) Shale.
(6) Oil shale.
(7) Cement material.
(8) Sand and gravel.
(9) Road material.
(10) Building stone.
(11) Chemical substance.
(12) Gemstone.
(13) Metallic, fissionable, and nonfissionable ores.
(14) Colloidal and other clay.
(15) Steam and other geothermal resource.
(16) Any other substance defined as a mineral under Indiana law.

As added by P.L.2-2002, SEC.19.

IC 32-34-1-12
"Mineral proceeds"

Sec. 12. As used in this chapter, "mineral proceeds" means proceeds currently payable and unclaimed and, upon the abandonment of those proceeds, all proceeds that would have become payable, including the following:

(1) Obligations to pay resulting from the extraction, production, or sale of minerals, including the following:
    (A) Net revenue interests.
    (B) Royalties.
    (C) Overriding royalties.
    (D) Extraction and production payments.
    (E) Joint operating agreements.
    (F) Pooling arrangements.

(2) Obligations for the acquisition and retention of a mineral lease, including the following:
(A) Bonuses.
(B) Delay rentals.
(C) Shut-in royalties.
(D) Minimum royalties.
As added by P.L.2-2002, SEC.19.

IC 32-34-1-13
"Money order"
Sec. 13. (a) As used in this chapter, "money order" includes an express money order and a personal money order on which the remitter is the purchaser.
(b) The term does not include the following:
(1) A bank money order on which the remitter is the purchaser.
(2) A bank money order or any other instrument sold by a banking or financial institution if the seller has obtained the name and address of the payee.
As added by P.L.2-2002, SEC.19.

IC 32-34-1-14
"Owner"
Sec. 14. (a) As used in this chapter, "owner" means:
(1) a person who has a legal or an equitable interest in property subject to this chapter; or
(2) the person's legal representative.
(b) The term includes the following:
(1) A depositor in the case of property that is a deposit.
(2) A beneficiary in the case of property that is a trust other than a deposit in trust.
(3) A creditor, claimant, or payee in the case of other property.
As added by P.L.2-2002, SEC.19.

IC 32-34-1-15
"Person"
Sec. 15. As used in this chapter, "person" means an individual, a corporation, a business trust, an estate, a trust, a partnership, an association, a joint venture, a government, a governmental subdivision, agency, or instrumentality, a public corporation, a joint or common owner, or any other legal or commercial entity.
As added by P.L.2-2002, SEC.19.

IC 32-34-1-16
"Political subdivision"
Sec. 16. (a) As used in section 47 of this chapter, "political subdivision" includes any Indiana municipality, county, civil township, civil incorporated city or town, public school corporation, state educational institution, or any other territorial subdivision of the state recognized or designated in any law, including the following:
(1) Judicial circuits.

(2) A public utility entity not privately owned.
(3) A special taxing district or entity.
(4) A public improvement district authority or entity authorized to levy taxes or assessments.

(b) The term does not include any retirement system supported entirely or in part by the state.

As added by P.L.2-2002, SEC.19. Amended by P.L.2-2007, SEC.366.

IC 32-34-1-17
"Property"

Sec. 17. (a) This section does not apply to section 24 of this chapter.

(b) As used in this chapter, "property" means an interest in intangible personal property, except an unliquidated claim, and all income or increment derived from the interest, including an interest that is referred to as or evidenced by:

(1) money, a check, a draft, a deposit, an interest, or a dividend;
(2) a credit balance, a customer overpayment, a security deposit, a refund, a credit memorandum other than a business to business credit memorandum, an unpaid wage, an unused airline ticket, mineral proceeds, or an unidentified remittance;
(3) stock and other ownership interest in a business association;
(4) a bond, debenture, note, or other evidence of indebtedness;
(5) money deposited to redeem stocks, bonds, coupons, and other securities or to make distributions;
(6) an amount due and payable under the terms of an insurance policy; and
(7) an amount distributable from a trust or custodial fund established under a plan to provide:
(A) health;
(B) welfare;
(C) pension;
(D) vacation;
(E) severance;
(F) retirement;
(G) death;
(H) stock purchase;
(I) profit sharing;
(J) employee savings;
(K) supplemental unemployment insurance; or
(L) similar;
benefits.

(c) The term does not include transactions between business entities and:

(1) a motor carrier (as defined in IC 8-2.1-17-10); or
(2) a carrier (as defined in 49 U.S.C. 13102(3)).

As added by P.L.2-2002, SEC.19. Amended by P.L.64-2010, SEC.1.

IC 32-34-1-18
"State"

Sec. 18. As used in this chapter, "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.
As added by P.L.2-2002, SEC.19.

IC 32-34-1-19
"Utility"

Sec. 19. As used in this chapter, "utility" means a person that owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications or for the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.
As added by P.L.2-2002, SEC.19.

IC 32-34-1-20
Owner indication of interest in property; presumption of abandonment

Sec. 20. (a) For purposes of this section, an indication of interest in the property by the owner:

(1) does not include a communication with an owner by an agent of the holder who has not identified in writing the property to the owner; and

(2) includes the following:

(A) With respect to an account or underlying shares of stock or other interest in a business association or financial organization:

(i) the cashing of a dividend check or other instrument of payment received; or

(ii) evidence that the distribution has been received if the distribution was made by electronic or similar means.

(B) A deposit to or withdrawal from a bank account.

(C) The payment of a premium with respect to a property interest in an insurance policy.

(D) The mailing of any correspondence in writing from a financial institution to the owner, including:

(i) a statement;

(ii) a report of interest paid or credited; or

(iii) any other written advice;

relating to a demand, savings, or matured time deposit account, including a deposit account that is automatically renewable, or any other account or other property the owner has with the financial institution if the correspondence is not returned to the financial institution for nondelivery.

(E) Any activity by the owner that concerns:

(i) another demand, savings, or matured time deposit account or other account that the owner has with a financial institution, including any activity by the owner that results in an increase or decrease in the amount of any other account; or

(ii) any other relationship with the financial institution, including the payment of any amounts due on a loan;

if the mailing address for the owner contained in the financial institution's books and records is the same for both an inactive account and for a related account.

(b) The application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent the policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy otherwise has become entitled to the proceeds before the depletion of the cash surrender value of the policy by the application of those provisions.

(c) Property that is held, issued, or owed in the ordinary course of a holder's business is presumed abandoned if the owner or apparent owner has not communicated in writing with the holder concerning the property or has not otherwise given an indication of interest in the property during the following times:

(1) For traveler's checks, fifteen (15) years after issuance.

(2) For money orders, seven (7) years after issuance.

(3) For consumer credits, three (3) years after the credit becomes payable.

(4) For amounts owed by an insurer on a life or an endowment insurance policy or an annuity contract:

(A) if the policy or contract has matured or terminated, three (3) years after the obligation to pay arose; or

(B) if the policy or contract is payable upon proof of death, three (3) years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based.

(5) For property distributable by a business association in a course of dissolution, one (1) year after the property becomes distributable.

(6) For property or proceeds held by a court or a court clerk, five (5) years after the property or proceeds become distributable. The property or proceeds must be treated as unclaimed property under IC 32-34-3.

(7) For property held by a state or other government, governmental subdivision or agency, or public corporation or other public authority, one (1) year after the property becomes distributable.

(8) For compensation for personal services, one (1) year after the compensation becomes payable.

(9) For deposits and refunds held for subscribers by utilities, one (1) year after the deposits or refunds became payable.

(10) For stock, dividends, profits, distributions, interest, redemption, payments on principal, or any other sum held or owed by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holders of the business association, or other interest in a business association, three (3) years after the earlier of:

(A) the date of the last dividend, stock split, or other

distribution unclaimed by the apparent owner; or

(B) the date of the second mailing of a statement of account or other notification or communication that was:

(i) returned as undeliverable; or

(ii) made after the holder discontinued mailings to the apparent owner.

(11) For property in an individual retirement account or another account or plan that is qualified for tax deferral under the Internal Revenue Code, three (3) years after the earliest of:

(A) the actual date of the distribution or attempted distribution;

(B) the distribution date as stated in the plan or trust agreement governing the plan; or

(C) the date specified in the Internal Revenue Code by which distribution must begin in order to avoid a tax penalty.

(12) For a demand, savings, or matured time deposit, including a deposit that is automatically renewable, three (3) years after maturity or three (3) years after the date of the last indication by the owner of interest in the property, whichever is earlier. Property that is automatically renewable is considered matured for purposes of this section upon the expiration of its initial period, unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder.

(13) For property payable or distributable in the course of a demutualization, rehabilitation, or related reorganization of a mutual insurance company, three (3) years after the earlier of:

(A) the date of last contact with the policyholder; or

(B) the date the property became payable or distributable.

(14) For all other property, the earlier of three (3) years after:

(A) the owner's right to demand the property; or

(B) the obligation to pay or distribute the property;

arose.

(d) Property is payable or distributed for purposes of this chapter notwithstanding the owner's failure to make demand or present an instrument or a document otherwise required to receive payment.

As added by P.L.2-2002, SEC.19. Amended by P.L.107-2003, SEC.2; P.L.224-2003, SEC.113; P.L.97-2004, SEC.109; P.L.85-2005, SEC.1; P.L.64-2010, SEC.2.

IC 32-34-1-21

Property subject to custody of state as unclaimed property

Sec. 21. (a) Except as provided in subsection (b) or (c) or another state statute, property located in Indiana or another state is subject to the custody of this state as unclaimed property if the property is presumed abandoned and if:

(1) the last known address of the apparent owner, as shown on the records of the holder, is in Indiana;

(2) the records of the holder do not reflect the identity of the

person entitled to the property and it is established that the last known address of the person entitled to the property is in Indiana;

(3) the records of the holder do not reflect the last known address of the apparent owner and it is established that:

(A) the last known address of the person entitled to the property is in Indiana; or

(B) the holder is a domiciliary or a government or governmental subdivision or agency of this state and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) the last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property and the holder is a domiciliary or a government or governmental subdivision or agency of this state;

(5) the last known address of the apparent owner, as shown on the records of the holder, is in a foreign country and the holder is a domiciliary or a government or governmental subdivision or agency of this state;

(6) the transaction out of which the property arose occurred in Indiana, the holder is a domiciliary of a state that does not provide for the escheat or custodial taking of the property, and the last known address of the apparent owner or other person entitled to the property is:

(A) unknown; or

(B) in a state that does not provide for the escheat or custodial taking of the property; or

(7) the property is a traveler's check or money order:

(A) purchased in Indiana; or

(B) for which the issuer of the traveler's check or money order has its principal place of business in Indiana and the issuer's records:

(i) do not show the state in which the instrument was purchased; or

(ii) show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property.

(b) Tangible property held in a safe deposit box or any other safekeeping depository in Indiana that is presumed abandoned is subject to the custody of this state regardless of the last known address of the apparent owner.

(c) Tangible property held in a safe deposit box or any other safekeeping depository in another state that is presumed abandoned is subject to the custody of this state if:

(1) the last known address of the owner is in Indiana; and

(2) the property is located in a state that does not provide for the escheat or custodial taking of the property.

As added by P.L.2-2002, SEC.19. Amended by P.L.46-2013, SEC.1.

IC 32-34-1-22
Dormancy charges

Sec. 22. (a) A holder may not deduct a charge from property that is presumed abandoned if the charge is imposed because the owner failed to claim the property within a specified time unless:

(1) there is a valid and enforceable written contract between the holder and the owner that allows the holder to impose the charge; and

(2) the holder regularly imposes the charge, and the charge is not regularly reversed or otherwise canceled.

(b) If a holder described in this section is a financial institution, the dormancy charges of the department of financial institutions apply.

As added by P.L.2-2002, SEC.19.

IC 32-34-1-23
Prima facie evidence of an obligation; attorney general's burden of proof; affirmative defenses

Sec. 23. (a) A record that a check, draft, or similar instrument was issued is prima facie evidence of an obligation.

(b) If the attorney general claims property from a holder who is also the issuer, the attorney general's burden of proof as to the existence and amount of the property and the abandonment of the property is satisfied by showing the following:

(1) That the instrument was issued.

(2) That the required period of time of abandonment has passed.

(c) For purposes of this section, the defenses of:

(1) payment;

(2) satisfaction;

(3) discharge; and

(4) want of consideration;

are affirmative defenses that must be established by the holder.

As added by P.L.2-2002, SEC.19.

IC 32-34-1-24
Property in safe deposit box or safekeeping depository

Sec. 24. If:

(1) tangible or intangible property that is held in a safe deposit box or any other safekeeping depository in Indiana in the ordinary course of the holder's business; or

(2) the proceeds resulting from the sale of the property described in subdivision (1) as authorized by other law;

remain unclaimed by the owner for more than three (3) years after expiration of the lease or rental period on the box or other depository, the property or proceeds are presumed abandoned.

As added by P.L.2-2002, SEC.19. Amended by P.L.46-2013, SEC.2.

IC 32-34-1-25
Voluntary dissolution of business association, banking organization, or financial institution

Sec. 25. Any:

(1) business association;

(2) banking organization; or

(3) financial institution;

that is organized under Indiana law or created in Indiana and that undergoes voluntary dissolution shall file a notice of the voluntary dissolution with the attorney general not later than ten (10) days after the adoption by the members or shareholders of the resolution to dissolve.

As added by P.L.2-2002, SEC.19.

IC 32-34-1-26

Report of property presumed abandoned

Sec. 26. (a) A holder of property that is presumed abandoned and that is subject to custody as unclaimed property under this chapter shall report in writing to the attorney general concerning the property. Items of value of less than fifty dollars ($50) may be reported by the holder in the aggregate.

(b) For each item with a value of at least fifty dollars ($50), the report required under subsection (a) must be verified and must include the following:

(1) The apparent owner's:

(A) name, if known;

(B) last known address, if any; and

(C) Social Security number or taxpayer identification number, if readily ascertainable.

(2) In the case of the contents of a safe deposit box or other safekeeping depository of tangible property:

(A) a description of the property;

(B) the place where the property is held and may be inspected by the attorney general; and

(C) any amount that is owed to the holder.

(3) The date:

(A) the property became payable, demandable, or returnable; and

(B) of the last transaction with the apparent owner with respect to the property.

(4) Other information that the attorney general requires by rules adopted under IC 4-22-2 as necessary for the administration of this chapter.

(c) If:

(1) a holder of property that is presumed abandoned and that is subject to custody as unclaimed property is a successor to another person who previously held the property for the apparent owner; or

(2) the holder has changed its name while holding the property;

the holder shall file with the report required by subsection (a) the former names of the holder, if any, and the known name and address of any previous holder of the property.

(d) The attorney general shall establish filing dates for the report

required by subsection (a).

(e) The holder of property that is presumed abandoned and that is subject to custody as unclaimed property under this chapter shall, not more than one hundred twenty (120) days or less than sixty (60) days before filing the report required by subsection (a), send written notice to the apparent owner of the property stating that the holder is in possession of property subject to this chapter if:

(1) the holder has a record of an address for the apparent owner that the holder's records do not show as inaccurate;

(2) the claim of the apparent owner is not barred by the statute of limitations; and

(3) the value of the property is at least fifty dollars ($50).

(f) Before the date of filing the report required by subsection (a), the holder may request the attorney general to extend the time for filing the report. The attorney general may grant the extension upon a showing of good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due. The making of an interim payment under this subsection suspends the accrual of interest on the amount.

(g) The holder shall file with the report an affidavit stating that the holder has complied with this section.

(h) The report required under this section shall be submitted electronically in a format approved by the attorney general.

As added by P.L.2-2002, SEC.19. Amended by P.L.107-2003, SEC.3; P.L.46-2013, SEC.3.

IC 32-34-1-27

Payment or delivery of property to attorney general; automatically renewable deposits; liability

Sec. 27. (a) Except as provided in subsections (b) and (c), on the date a report is filed under section 26 of this chapter, the holder shall pay or deliver to the attorney general the property that is described in the report as unclaimed.

(b) In the case of an automatically renewable deposit, if at the time of delivery under subsection (a) a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery is extended until the earliest date upon which a penalty or forfeiture would not result.

(c) Tangible property held in a safe deposit box or other safekeeping depository shall be delivered to the attorney general not later than thirty (30) days after the date the report describing the property under section 26 of this chapter is filed.

(d) If the property reported to the attorney general is a security or security entitlement under IC 26-1-8.1, the attorney general may make an endorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with IC 26-1-8.1.

(e) If the holder of property reported to the attorney general is the issuer of a certificated security, the attorney general has the right to

obtain a replacement certificate under IC 26-1-8.1-405, and an indemnity bond is not required.

(f) An issuer, the holder, and any transfer agent or other person acting under the instructions of and on behalf of the issuer in accordance with this section are not liable to the apparent owner and must be indemnified against the claims of any person in accordance with section 29 of this chapter.

(g) Payment or delivery of property shall be made in the manner specified by the attorney general.

As added by P.L.2-2002, SEC.19. Amended by P.L.46-2013, SEC.4; P.L.56-2014, SEC.3.

IC 32-34-1-28

Publication of notice requirements; exceptions

Sec. 28. (a) Except as provided in subsection (e), the attorney general shall publish a notice not later than November 30 of the year immediately following the year in which unclaimed property has been paid or delivered to the attorney general.

(b) Except as provided in subsection (c), the notice required by subsection (a) must be published at least once each week for two (2) successive weeks in a newspaper of general circulation published in the county in Indiana of the last known address of any person named in the notice.

(c) If the holder does not report an address for the apparent owner or reports an address outside Indiana, the attorney general shall publish the notice:

(1) at least once each week for two (2) successive weeks in a newspaper of general circulation published in:

(A) the county in which the holder has its principal place of business within Indiana; or

(B) any other county that the attorney general may reasonably select; or

(2) electronically on the attorney general's web site for a period that the attorney general may reasonably select, but in no case for a period less than two (2) weeks.

(d) The advertised notice required by this section must be in a form that, in the judgment of the attorney general, will attract the attention of the apparent owner of the unclaimed property and must contain the following information:

(1) The name of each person appearing to be an owner of property that is presumed abandoned, as set forth in the report filed by the holder.

(2) The last known address or location of each person appearing to be an owner of property that is presumed abandoned, if an address or a location is set forth in the report filed by the holder.

(3) A statement explaining that the property of the owner is presumed to be abandoned and has been taken into the protective custody of the attorney general.

(4) A statement that information about the abandoned property and its return to the owner is available, upon request, from the

attorney general, to a person having a legal or beneficial interest in the property.

(e) The attorney general is not required to publish the following in the notice:

(1) Any item with a value of less than one hundred dollars ($100).

(2) Information concerning a traveler's check, money order, or any similar instrument.

(3) Property reported as a result of a demutualization of an insurance company.

As added by P.L.2-2002, SEC.19. Amended by P.L.107-2003, SEC.4; P.L.81-2004, SEC.27; P.L.64-2007, SEC.2.

IC 32-34-1-28.5

Unclaimed property resulting from demutualization of insurance company; notice

Sec. 28.5. (a) The attorney general shall publish a notice not later than November 30 of the year immediately following the year in which unclaimed property as a result of a demutualization of an insurance company has been paid or delivered to the attorney general.

(b) The notice required by subsection (a) must be published at least once in a newspaper of general circulation published in the county of Indiana of the last known address of any person named in the notice.

(c) If the holder does not report an address for the apparent owner, the notice must be published in the county in which the holder has its principal place of business within Indiana or any other county that the attorney general may reasonably select.

(d) The advertised notice required by this section must be in a form that, in the judgment of the attorney general, will attract the attention of the apparent owner of the unclaimed property. The advertised notice is not subject to the rate prescribed in IC 5-3-1-1. The rate may not be higher than the rate set in IC 5-3-1-1.

(e) The advertised notice must contain the following information:

(1) The name of each person appearing to be an owner of property that is presumed abandoned, as set forth in the report filed by the holder.

(2) The last known address or location of each person appearing to be an owner of property that is presumed abandoned, if an address or a location is set forth in the report filed by the holder.

(3) A statement explaining that the property of the owner is presumed to be abandoned and has been taken into protective custody of the attorney general.

(4) A statement that information about the abandoned property and its return to the owner is available, upon request, from the attorney general, to a person having a legal or beneficial interest in the property.

(f) The attorney general is not required to include any item with a value of less than one hundred dollars ($100) in the notice.

As added by P.L.81-2004, SEC.28.

IC 32-34-1-29

Good faith payment or delivery; custody of state; immunity of holder; reimbursement by holder; reclamation for owner; reimbursement or payment of safe deposit box or safekeeping depository charges

Sec. 29. (a) For purposes of this section, payment or delivery is made in good faith if:

(1) payment or delivery was made in a reasonable attempt to comply with this chapter;

(2) the holder was not a fiduciary in breach of trust with respect to the property and had a reasonable basis for believing, based on the facts known at the time, that the property was abandoned; and

(3) there is not a showing that the records under which the delivery was made did not meet reasonable commercial standards of practice in the industry.

(b) Upon the payment or delivery of property to the attorney general, the state assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the attorney general in good faith is relieved of all liability with respect to the property after the payment and delivery.

(c) A holder who has paid money to the attorney general under this chapter may later make payment to a person who, in the opinion of the holder, appears to be entitled to the payment. The attorney general shall promptly reimburse the holder for the payment without imposing a fee or other charge if the holder files proof of payment and proof that the payee was entitled to the payment. If any reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that:

(1) the instrument was duly presented; and

(2) the payment was made to a person who appeared to be entitled to the payment.

The holder must be reimbursed for the payment made even if the payment was made to a person whose claim was barred under section 41 of this chapter.

(d) A holder who has delivered property, including a certificate of any interest in a business association, but not including money, to the attorney general under this chapter may reclaim the property without paying a fee or other charge if the property is still in the possession of the attorney general, upon filing proof that the apparent owner has claimed the property from the holder.

(e) The attorney general may accept the holder's affidavit as sufficient proof of the holder's right to recover the money and the property under this section.

(f) If the holder pays or delivers property to the attorney general in good faith and later:

(1) another person claims the property from the holder; or

(2) another state claims the money or property under that state's

laws relating to escheat or abandoned or unclaimed property; the attorney general, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim.

(g) Property removed from a safe deposit box or other safekeeping depository is received by the attorney general subject to the holder's right to be reimbursed for the cost of the opening and reasonable expenses incurred in determining the current addresses of any owners for whom the last previous address contained in the holder's records appears to be inaccurate. The property is subject to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The attorney general shall reimburse or pay the holder out of the proceeds remaining after deducting the attorney general's cost of selling the property.

As added by P.L.2-2002, SEC.19.

IC 32-34-1-30

Owner entitled to dividends, interest, or other increments realized; exception

Sec. 30. (a) If property, other than money, is paid or delivered to the attorney general under this chapter, the owner is entitled to receive from the attorney general any dividends, interest, or other increments realized or accruing on the property at or before delivery to the attorney general.

(b) Except as provided in section 30.1 of this chapter, the owner is not entitled to receive dividends, interest, or other increments accruing after delivery of the property to the attorney general under this chapter unless the property was paid or delivered under section 39(b) of this chapter.

As added by P.L.2-2002, SEC.19. Amended by P.L.56-2014, SEC.4.

IC 32-34-1-30.1

Payment of interest accruing on property

Sec. 30.1. (a) As used in this section, "index" means the Weekly National Rates and Rate Caps index published by the Federal Deposit Insurance Corporation or any other index selected by the attorney general under subsection (d).

(b) When interest bearing property is paid or delivered to the attorney general under this chapter, the owner is entitled to receive interest that accrues on the property from the date of payment or delivery, as determined under this section.

(c) When the attorney general approves a valid claim, the attorney general shall calculate and pay the owner simple interest, without compounding, based on the average commercial interest rates for similar interest bearing property types during the period the attorney general has held the property. However, if the attorney general has held the property for more than five (5) years, the attorney general shall use the average commercial interest rate for the five (5) years preceding the year in which the claim is filed.

(d) The attorney general shall use the index to determine the

average commercial interest rate earned by similar interest bearing property types. However, if the index is unavailable or, in the opinion of the attorney general, is no longer a reliable source for calculating interest earned by interest bearing property under this section, the attorney general may adopt a rule under IC 4-22-2 to select an alternate index for determining the average commercial interest rate.

(e) When the attorney general pays a claim for interest bearing property, the attorney general shall inform the owner of the rate used to calculate the interest paid on the claim. If the owner establishes to the satisfaction of the attorney general that the property would have earned a higher rate of interest if it had remained in the owner's custody in the same account, the attorney general shall pay interest based on the higher rate established by the owner.

As added by P.L.56-2014, SEC.5.

IC 32-34-1-31

Public sale of abandoned property by attorney general; sale of securities; transfer of certain property

Sec. 31. (a) Except as provided in subsections (b), (c), and (f), the attorney general, not later than three (3) years after the receipt of abandoned property, shall sell the property to the highest bidder at a commercially reasonable public sale that, in the judgment of the attorney general, affords the most favorable market for the property. The attorney general may decline the highest bid and reoffer the property for sale if, in the judgment of the attorney general, the bid is insufficient. If, in the judgment of the attorney general, the probable cost of the sale exceeds the value of the property, the attorney general is not required to offer the property for sale. A sale held under this section must be preceded, at least three (3) weeks before the sale, by one (1) publication of notice in a newspaper of general circulation published in the county in which the property is to be sold.

(b) If the property is of a type that is customarily sold on a recognized market or that is subject to widely distributed standard price quotations, and if, in the opinion of the attorney general, the probable cost of a public sale to the highest bidder would:

(1) exceed the value of the property; or

(2) result in a net loss;

the attorney general may sell the property privately, without notice by publication, at or above the prevailing price for the property at the time of the sale.

(c) Securities shall be sold as soon as reasonably possible following receipt. If a valid claim is made for any securities in the possession of the attorney general, the attorney general may:

(1) transfer the securities to the claimant; or

(2) pay the claimant the value of the securities as of the date the securities were delivered to the attorney general.

Notice of the sale of securities is not required. Securities listed on an established stock exchange must be sold at prices prevailing at the time of the sale on the stock exchange. Other securities may be sold

over the counter at prices prevailing at the time of sale or by any other method the attorney general considers reasonable.

(d) A purchaser of property at a sale conducted by the attorney general under this chapter takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The attorney general shall execute all documents necessary to complete the transfer of ownership.

(e) A person does not have a claim against the attorney general for any appreciation of property after the property is delivered to the attorney general, except in a case of intentional misconduct or malfeasance by the attorney general.

(f) If property is forwarded to the attorney general and the report concerning the property does not have all of the information required under section 26(b)(1) of this chapter or the total value of the property is ten dollars ($10) or less, the attorney general may immediately:

(1) sell the property and transmit the proceeds; or

(2) transfer the property;

to the state general fund.

As added by P.L.2-2002, SEC.19. Amended by P.L.107-2003, SEC.5; P.L.97-2004, SEC.110.

IC 32-34-1-32

Property custody fund; notice requirements; transfer of principal; claim by apparent owner

Sec. 32. (a) The property custody fund is established. Except as provided in section 31(f) of this chapter, any money received by the attorney general under section 39(b) of this chapter shall be delivered to the treasurer of state for deposit in the property custody fund. Subject to any claim of the owner allowed by the attorney general under this chapter, the money shall be held in the property custody fund for safekeeping until the date the money is presumed abandoned under sections 20 and 24 of this chapter and transferred to the abandoned property fund established by section 33 of this chapter in accordance with this section.

(b) The attorney general shall specify in the notice required by section 28 of this chapter the latest date the apparent owner may claim the property from the property custody fund. Notice must also be mailed to each person having a last known address listed in the report to the attorney general filed under section 26 of this chapter.

(c) Except as provided in subsection (d), not later than twenty-five (25) days after the date specified in the notice published under subsection (b), the treasurer of state, upon order of the attorney general, shall transfer the principal of the property to which the notice relates from property custody fund to the abandoned property fund.

(d) The attorney general may allow a claim of the apparent owner before the principal of the property in the property custody fund is transferred to the abandoned property fund under subsection (c). After the elapse of the twenty-five (25) days referred to in subsection (c), the funds are considered abandoned property instead of property

received under section 39(b) of this chapter for purposes of this chapter.
As added by P.L.2-2002, SEC.19. Amended by P.L.107-2003, SEC.6.

IC 32-34-1-33
Abandoned property fund; transfer of certain funds

Sec. 33. (a) The abandoned property fund is established. Except as provided in subsection (b) and sections 31 and 32 of this chapter, money received by the attorney general under this chapter, including the proceeds from the sale of abandoned property under section 31 of this chapter, shall be transferred by the attorney general to the treasurer of state for deposit in the abandoned property fund.

(b) Money received under this chapter that was originally drawn from a fund under the control of a local unit of government shall be transferred to the fund from which the money was originally drawn.
As added by P.L.2-2002, SEC.19. Amended by P.L.107-2003, SEC.7.

IC 32-34-1-34
Payment by treasurer; transfer if fund exceeds $500,000; payment of claims over $500,000; deposit recording requirements; earnings credited; interest transfers

Sec. 34. (a) Except as provided in sections 36(g) and 42(d) of this chapter, the treasurer of state shall, on order of the attorney general, pay the necessary costs of the following:

(1) Selling abandoned property.

(2) Mailing notices.

(3) Making publications required by this chapter.

(4) Paying other operating expenses and administrative expenses, including:

(A) salaries and wages reasonably incurred by the attorney general in the administration and enforcement of this chapter; and

(B) costs incurred in examining records of the holders of property and in collecting the property from the holders.

(b) If the balance of the principal of the abandoned property fund established by section 33 of this chapter exceeds five hundred thousand dollars ($500,000), the treasurer of state may, and at least once each fiscal year shall, transfer to the state general fund the balance of the principal of the abandoned property fund that exceeds five hundred thousand dollars ($500,000).

(c) If a claim is allowed or a refund is ordered under this chapter that is more than five hundred thousand dollars ($500,000), the treasurer of state shall transfer from the state general fund sufficient money to make prompt payment of the claim. There is annually appropriated to the treasurer of state from the state general fund the amount of money sufficient to implement this subsection.

(d) Before making a deposit into the abandoned property fund, the attorney general shall record the following:

(1) The name and last known address of each person appearing from the holder's reports to be entitled to the abandoned

property.

(2) The name and last known address of each insured person or annuitant.

(3) The number, the name of the corporation, and the amount due concerning any policy or contract listed in the report of a life insurance company.

(e) Except as provided in subsection (f), earnings on the property custody fund and the abandoned property fund shall be credited to each fund.

(f) On July 1 of each year, the interest balance in the property custody fund established by section 32 of this chapter and the interest balance in the abandoned property fund shall be transferred to the state general fund.

As added by P.L.2-2002, SEC.19. Amended by P.L.246-2005, SEC.217; P.L.46-2013, SEC.5.

IC 32-34-1-35

Custody of property custody fund and abandoned property fund; fund investment; appropriation

Sec. 35. (a) The treasurer of state shall keep safely the money in the property custody fund established by section 32 of this chapter and the abandoned property fund established by section 33 of this chapter. The money may not be transferred or assigned except as specifically authorized and directed in this chapter. At any time, upon certification of the attorney general and the treasurer of state that there is cash on deposit in either fund in excess of the cash requirements of the fund anticipated for the next succeeding semiannual fiscal period, the state board of finance may authorize the treasurer of state to invest and reinvest the money as authorized for other funds of the state by IC 5-13, including the purchase of certificates of deposit. However, an investment may not be made in a certificate of deposit with a maturity or redemption date that is more than six (6) months after the date of purchase, subscription, or deposit. Any interest or other accretions derived from investments made under this subsection become a part of the fund from which the money was invested.

(b) A sufficient amount of money from the abandoned property fund is appropriated to the treasurer of state to pay claims, costs, and expenses ordered paid from the abandoned property fund under this chapter.

(c) A sufficient amount of money from the property custody fund is annually appropriated to the treasurer of state to pay claims ordered paid from the property custody fund under this chapter.

As added by P.L.2-2002, SEC.19.

IC 32-34-1-36

Filing claim with attorney general; requirements; delivery of property to identified owner; deduction of costs

Sec. 36. (a) Except as provided in subsection (f), a person, except another state, claiming an interest in property paid or delivered to the

attorney general may file a claim on a form prescribed by the attorney general and verified by the claimant. To be considered by the attorney general, the claim must meet the requirements established by the attorney general.

(b) Not later than ninety (90) days after a claim that meets the requirements established by the attorney general is filed under subsection (a), the attorney general shall:

(1) consider the claim; and

(2) give written notice to the claimant that the claim is granted or that the claim is denied in whole or in part.

(c) Not later than thirty (30) days after a claim is granted, the attorney general shall pay over or deliver to the claimant the property, or the net proceeds of the sale of property if the property has been sold by the attorney general, together with any additional amount to which the claimant may be entitled under section 30 of this chapter.

(d) A holder who pays the owner for property that has been delivered to the state and that, if claimed from the attorney general by the owner, would be subject to an increment under section 30 of this chapter shall recover the amount of the increment from the attorney general.

(e) A person may file a claim under subsection (a) at any time within twenty-five (25) years after the date on which the property was first presumed abandoned under this chapter, notwithstanding the expiration of any other time specified by statute, contract, or court order during which an action or a proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property.

(f) The attorney general may pay over or deliver to the owner the property, or the net proceeds of the sale of property if the property has been sold by the attorney general, together with any additional amount to which the claimant may be entitled under section 30 of this chapter, without the owner filing a claim under subsection (a) if the attorney general identifies the owner.

(g) The following costs may be deducted from the value of the property before the net proceeds are paid to the owner:

(1) Costs of selling the property, including tangible property and securities.

(2) Costs of identifying and recovering the property, including:

(A) costs of an examination under section 42 of this chapter; or

(B) costs incurred in connection with an interstate agreement under section 44 of this chapter.

As added by P.L.2-2002, SEC.19. Amended by P.L.107-2003, SEC.8; P.L.46-2013, SEC.6.

IC 32-34-1-36.5

Filing disclaimer; transfer of disclaimed property

Sec. 36.5. (a) An owner of property that is delivered to the attorney general may disclaim the property by filing a disclaimer of property with the attorney general in the form and manner required

by the attorney general.

(b) If the property is disclaimed under subsection (a), the attorney general may immediately:

(1) sell the property and transmit the proceeds; or

(2) transfer the property;

to the state general fund.

As added by P.L.107-2003, SEC.9.

IC 32-34-1-37

Recovery of property by another state; procedure

Sec. 37. (a) At any time within twenty-five (25) years after the date on which the property was presumed abandoned under this chapter, notwithstanding the expiration of any other time specified by statute, contract, or court order during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, another state may recover the property if any of the following subdivisions apply:

(1) All of the following apply:

(A) The property was delivered to the custody of this state because the records of the holder did not reflect the last known address of the apparent owner when the property was presumed abandoned under this chapter.

(B) The other state establishes that the last known address of the apparent owner or other person entitled to the property was in that state.

(C) Under the laws of that state the property escheated to or was subject to a claim of abandonment by that state.

(2) The property was paid or delivered to the custody of this state because the laws of the other state did not provide for the escheat or custodial taking of the property, and under the laws of that state subsequently enacted, the property has escheated to or become subject to a claim of abandonment by that state.

(3) All of the following apply:

(A) The records of the holder did not accurately identify the owner of the property.

(B) The last known address of the owner is in the other state.

(C) Under the laws of the other state, the property escheated to or was subject to a claim of abandonment by that state.

(4) The property was subject to custody by this state under section 21(7) of this chapter and, under the laws of the state of domicile of the holder, the property has escheated to or become subject to a claim of abandonment by that state.

(5) All of the following apply:

(A) The property is a sum payable on a traveler's check, money order, or similar instrument that was delivered into the custody of this state under section 21(7) of this chapter.

(B) The instrument was purchased in the other state.

(C) Under the laws of the other state, the property escheated to or is subject to a claim of abandonment by that state.

(b) A claim of another state to recover escheated or abandoned

property must be presented in a form prescribed by the attorney general. The attorney general shall consider the claim and give written notice not more than ninety (90) days after the presentation of the claim to the other state that the claim is granted or denied in whole or in part. The attorney general shall allow the claim upon a determination that the other state is entitled to the abandoned property under subsection (a).

(c) The attorney general shall require another state, before recovering property under this section, to agree to indemnify this state and its officers and employees against any liability on a claim for the property.

As added by P.L.2-2002, SEC.19.

IC 32-34-1-38

Court action by person

Sec. 38. A person who, under this chapter:

(1) has been aggrieved by a decision of the attorney general; or

(2) has filed a claim that has not been acted upon within ninety (90) days after its filing;

may maintain an original action to establish the claim in a court with jurisdiction and name the attorney general as a defendant.

As added by P.L.2-2002, SEC.19.

IC 32-34-1-39

Authority to decline receipt of property; delivery of property before presumption of abandonment

Sec. 39. (a) The attorney general may decline to receive property reported under this chapter if the attorney general considers the property to have a value less than the expenses of the notice and the sale of the property.

(b) A holder, with the written consent of the attorney general and upon conditions and terms prescribed by the attorney general, may report and deliver property before the property is presumed abandoned. Property delivered to the attorney general under this subsection must be held in the property custody fund established under section 32 of this chapter, and the property is not presumed abandoned until the property otherwise would be presumed abandoned under this chapter.

As added by P.L.2-2002, SEC.19.

IC 32-34-1-40

Destruction or disposition of property with no substantial commercial value; immunity

Sec. 40. (a) If the attorney general determines after an investigation that property delivered under this chapter does not have any substantial commercial value, the attorney general may destroy or otherwise dispose of the property at any time.

(b) An action or a proceeding may not be maintained against the state, an officer of the state, or the holder for or on account of any acts taken by the attorney general under this section, except for acts

constituting intentional misconduct or malfeasance.
As added by P.L.2-2002, SEC.19.

IC 32-34-1-41
Presumption of abandonment; expiration of period to commence claim or recovery action; effect on reporting and delivery requirements; limitation of actions

Sec. 41. (a) The expiration of any time specified by contract, statute, or court order, during which:

(1) a claim for money or property can be made; or

(2) an action or a proceeding may be commenced or enforced to obtain payment of a claim for money or to recover property;

does not preclude the money or property from being presumed abandoned or affect any duty to file a report or to pay or deliver abandoned property to the attorney general as required by this chapter.

(b) An action or a proceeding may not be commenced by the attorney general to enforce the provisions of this chapter more than ten (10) years after the holder:

(1) specifically reported the property to the attorney general; or

(2) gave express notice to the attorney general of a dispute regarding the property.

In the absence of a report, the period of limitations is tolled. The period of limitations is also tolled by the filing of a false or fraudulent report.
As added by P.L.2-2002, SEC.19.

IC 32-34-1-42
Request for verified report; examination of records to determine compliance; assessment of cost of examination

Sec. 42. (a) The attorney general may require a person who has not filed a report, or a person who the attorney general believes has filed an inaccurate, an incomplete, or a false report, to file a verified report in a form prescribed by the attorney general stating the following:

(1) Whether the person is holding any unclaimed property reportable or deliverable under this chapter.

(2) Describing any property not previously reported or as to which the attorney general has made inquiry.

(3) Specifically identifying and stating the amounts of property that may be in issue.

(b) The attorney general, at reasonable times and upon reasonable notice, may examine the records of a person to determine whether the person has complied with this chapter. The attorney general may conduct the examination even if the person believes the person is not in possession of any property reportable or deliverable under this chapter. When making an examination under this chapter, the attorney general may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners.

(c) The attorney general may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association that is the holder of property presumed abandoned if the attorney general has given the notice required by subsection (b) to both the business association and the agent at least ninety (90) days before the examination.

(d) If an examination of the records of a person under subsection (b) results in the disclosure of property reportable and deliverable under this chapter, the attorney general may assess the cost of the examination against the holder at a reasonable rate established by the attorney general. The cost of an examination of the records of an agent of a business association under subsection (c) may be imposed only against the business association.

(e) If a holder fails to maintain the records required under section 43 of this chapter and the available records of the holder are insufficient to permit the preparation of a report, the attorney general may require the holder to report and pay an amount that may reasonably be estimated from any available records of the holder or on the basis of any other reasonable estimating technique that the attorney general may select.

As added by P.L.2-2002, SEC.19. Amended by P.L.64-2007, SEC.3.

IC 32-34-1-43

Records retention; maintenance of records by business associations that sell traveler's checks

Sec. 43. (a) Except as provided in subsection (b) and subject to any rules adopted by the attorney general under IC 4-22-2, a holder required to file a report under section 26 of this chapter for any property for which the holder has the last known address of the owner shall maintain a record of the information required to be in the report for at least ten (10) years after the property becomes reportable.

(b) A business association that sells in Indiana traveler's checks, money orders, or other similar written instruments, other than third party bank checks on which the business association is directly liable, or that provides those instruments to others for sale in Indiana, shall maintain a record of outstanding instruments indicating the state and date of issue for at least three (3) years after the date the property is reportable.

As added by P.L.2-2002, SEC.19.

IC 32-34-1-44

Interstate agreements; interstate enforcement and actions; document confidentiality

Sec. 44. (a) The attorney general may enter into an agreement with other states to exchange information relating to unclaimed property or the possible existence of unclaimed property. The agreements may permit other states, or a person acting on behalf of a state, to examine records as authorized in section 42 of this chapter. The attorney general may, by rule, require the reporting of information needed to enable compliance with any agreements made under this section and

prescribe the form.

(b) The attorney general may join with other states to seek enforcement of this chapter against a person who is or may be holding property reportable under this chapter.

(c) At the request of another state, the attorney general may commence an action on behalf of the administrator of the other state to enforce in Indiana the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the attorney general in maintaining the action.

(d) The attorney general may request that the attorney general of another state or any other attorney commence an action in that state on behalf of the attorney general. The attorney general may retain another attorney to commence an action in Indiana on behalf of the attorney general. This state shall pay all expenses, including attorney's fees, in maintaining an action under this subsection. With the attorney general's approval, the expenses and attorney's fees may be paid from money received under this chapter. The attorney general may agree to pay the person bringing the action attorney's fees based in whole or in part on a percentage of the value of any property recovered in the action. Expenses or attorney's fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under this chapter.

(e) Any documents and working papers obtained or compiled by the attorney general or the attorney general's agents, employees, or designated representatives in the course of conducting an audit under section 42 of this chapter are confidential and are not public records except:

(1) when used by the attorney general to maintain an action to collect unclaimed property or otherwise enforce this chapter;

(2) when used in joint audits conducted with or under agreements with other states, the federal government, or other governmental entities; or

(3) under subpoena or court order.

The documents and working papers may be disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this subsection if the other state is bound to keep the documents and papers confidential.

(f) The attorney general's final completed audit reports are public records, available for inspection and copying under IC 5-14-3. A final report may not contain confidential documentation or working papers unless an exception under subsection (e) applies.

As added by P.L.2-2002, SEC.19.

IC 32-34-1-45

Violations

Sec. 45. (a) Except as provided in subsection (b), a holder that fails to pay or deliver the property within the time required by this chapter shall pay to the attorney general interest for the time the holder is delinquent. Interest shall accrue under this subsection at the

following rates:

(1) The annual interest rate for a period of one (1) year or less after the time required by this chapter for payment or delivery of the property is:

(A) the one (1) year Treasury Bill rate published in the Wall Street Journal or its successor on the third Tuesday of the month in which the remittance was due; plus

(B) one (1) percentage point.

(2) The interest rate for each year after the initial year to which subdivision (1) applies is:

(A) the one (1) year Treasury Bill rate published in the Wall Street Journal or its successor on the third Tuesday of the month immediately preceding the anniversary; plus

(B) one (1) percentage point.

As used in this subdivision, "anniversary" means the anniversary of the date on which the property was originally due to be paid or delivered under this chapter.

(b) The attorney general may waive the payment of interest described in subsection (a), in whole or part.

(c) A holder who willfully refuses, after written demand by the attorney general, to pay or deliver property to the attorney general as required under this chapter commits a Class B misdemeanor.

As added by P.L.2-2002, SEC.19. Amended by P.L.85-2005, SEC.2; P.L.229-2011, SEC.261.

IC 32-34-1-46

Fee agreement to locate, deliver, or recover owner's property

Sec. 46. (a) This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or to contest the attorney general's denial of a claim. An agreement by an owner that:

(1) has the primary purpose of paying compensation to locate, deliver, recover, or assist in the recovery of property presumed abandoned under this chapter; and

(2) is entered into not earlier than the date the property was presumed abandoned and not later than twenty-four (24) months after the date the property is paid or delivered to the attorney general;

is void and unenforceable.

(b) An agreement by an owner that has the primary purpose of locating, delivering, recovering, or assisting in the recovery of property is valid only if:

(1) the fee or compensation agreed upon is not more than ten percent (10%) of the amount collected, unless the amount collected is fifty dollars ($50) or less;

(2) the agreement is in writing;

(3) the agreement is signed by the apparent owner;

(4) the agreement clearly sets forth:

(A) the nature and value of the property; and

(B) the value of the apparent owner's share after the fee or

compensation has been deducted; and

(5) the agreement contains the provision set forth in subsection (d).

(c) This section does not prevent an owner from asserting at any time that an agreement to locate property is otherwise invalid.

(d) This subsection applies to a person who locates, delivers, recovers, or assists in the recovery of property reported under this chapter for a fee or compensation. An advertisement, a written communication, or an agreement concerning the location, delivery, recovery, or assistance in the recovery of property reported under this chapter must contain a provision stating that, by law, any contract provision requiring the payment of a fee for finding property held by the attorney general for less than twenty-four (24) months is void, and that fees are limited to not more than ten percent (10%) of the amount collected unless the amount collected is fifty dollars ($50) or less.

(e) Subsections (b)(4) and (d) do not apply to attorney's fees.

(f) If an agreement covered by this section:

(1) applies to mineral proceeds; and

(2) contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned;

the provision is void and unenforceable.

(g) An agreement covered by this section that provides for compensation that is unconscionable is unenforceable except by the owner. An owner who has agreed to pay compensation that is unconscionable, or the attorney general on behalf of the owner, may maintain an action to reduce the compensation to a conscionable amount. The court may award reasonable attorney's fees to an owner who prevails in the action.

As added by P.L.2-2002, SEC.19.

IC 32-34-1-47

Cooperation of state and public agencies

Sec. 47. All officers, agencies, boards, bureaus, commissions, divisions, and departments of the state, including any body politic and corporate created by the state for public purposes, and every political subdivision of the state shall do the following:

(1) Cooperate with the attorney general upon the attorney general's request to further the purposes of this chapter.

(2) Make their records available to the attorney general for the purposes of discovering property that is presumed to be abandoned under this chapter.

(3) Compile from their records, upon the attorney general's request, reports that would aid the attorney general in identifying the holders of property presumed to be abandoned under this chapter and in discovering property that is presumed to be abandoned.

As added by P.L.2-2002, SEC.19.

IC 32-34-1-48
Employment of independent consultants

Sec. 48. The attorney general may employ the services of any independent consultants and other persons possessing specialized skills or knowledge that the attorney general considers necessary or appropriate for the administration of this chapter, including consultants in the following areas:

(1) Upkeep.
(2) Management.
(3) Sale.
(4) Conveyance of property.
(5) Determination of any sources of unreported abandoned property.

As added by P.L.2-2002, SEC.19.

IC 32-34-1-49
Duty to report, pay, or deliver property arising before July 1, 1996

Sec. 49. This chapter does not relieve a holder of a duty that arose before July 1, 1996, to report, pay, or deliver property. Except as provided in section 41(b) of this chapter, a holder that did not comply with the law in effect before July 1, 1996, is subject to the applicable enforcement and penalty provisions that existed and that are continued in effect for the purpose of this section.

As added by P.L.2-2002, SEC.19.

IC 32-34-1-50
General purpose of uniformity among states

Sec. 50. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

As added by P.L.2-2002, SEC.19.

IC 32-34-1-51
Maintenance of action in court for enforcement

Sec. 51. The attorney general may maintain an action in a court of competent jurisdiction to enforce this chapter.

As added by P.L.2-2002, SEC.19.

IC 32-34-1-52
Rules

Sec. 52. The attorney general may adopt rules under IC 4-22-2 to carry out the purposes of this chapter.

As added by P.L.2-2002, SEC.19.

IC 32-34-2

Chapter 2. Sale of Unclaimed Property in Hotels

IC 32-34-2-1

Auction sale of unclaimed property; notice; record; refund

Sec. 1. (a) After a proprietor, manager, or lessee of a hotel in Indiana holds an unclaimed article for at least three (3) months, whether or not a receipt or check for the article was given to the person who left the article, the proprietor, manager, or lessee may sell the article at a public auction, and, out of the proceeds, retain any balance due from the person leaving the article, the expenses of advertising the sale, and the expenses of the sale.

(b) A proprietor, manager, or lessee may not sell the article until:

(1) notice of the sale is sent to the owner by mail, if the name and address of the owner are known; and

(2) two (2) weeks after the publication of a notice of the sale is made in a newspaper published at or nearest the place where the article was left and where the sale will take place.

(c) The notice must contain a description of the article and the time and place of the sale.

(d) A proprietor, manager, or lessee shall record the amount received at the sale for each article sold and the balance, if any, remaining after the balance due and the expenses of the sale have been paid.

(e) At any time within one (1) year after the sale, a proprietor, manager, or lessee shall refund the balance referred to in subsection (d) to the owner of the article or to the owner's heirs or assigns upon presentation of satisfactory proof of ownership.

As added by P.L.2-2002, SEC.19.

IC 32-34-2-2

Disposition of unclaimed balance

Sec. 2. If the balance is not claimed by the owner within one (1) year after the sale conducted under section 1 of this chapter, the balance must be paid to the county treasurer for the use of the school fund.

As added by P.L.2-2002, SEC.19.

IC 32-34-3

Chapter 3. Unclaimed Money in Possession of a Court Clerk

IC 32-34-3-1

"Clerk" defined

Sec. 1. As used in this chapter, "clerk" means any person performing the duties of a clerk of any court, whether designated specifically as the clerk of that court or not.

As added by P.L.2-2002, SEC.19.

IC 32-34-3-2

Collection by attorney general; disposition by treasurer of state

Sec. 2. (a) Except for money related to child support, the attorney general may collect all money that remains in the office of a clerk for at least five (5) years after being distributable without being claimed by the person entitled to the money.

(b) The attorney general may collect all money related to child support that remains in the office of a clerk for at least ten (10) years after being distributable without being claimed by the person entitled to the money.

(c) Clerks shall deliver the money described in subsections (a) and (b) to the attorney general upon demand, and the attorney general shall:

(1) make a record of the money collected; and

(2) turn it over to the treasurer of state.

(d) The treasurer of state shall deposit the money in the abandoned property fund established by IC 32-34-1-31.

As added by P.L.2-2002, SEC.19.

IC 32-34-3-3

Claims; procedure; payment

Sec. 3. (a) Within five (5) years after a sum of money is deposited in the abandoned property fund in accordance with section 2(d) of this chapter, a person may make a claim to the money by filing an application in the court whose clerk originally held the sum.

(b) If the proof presented by the claimant satisfies the court that the claim is valid, the court shall order payment of the money to the claimant. If presented with a certified copy of the court's order, the attorney general shall direct the treasurer to return the sum of money to the claimant.

As added by P.L.2-2002, SEC.19. Amended by P.L.23-2008, SEC.1.

IC 32-34-3-4

Unclaimed money; limitations on claiming money

Sec. 4. (a) If a sum of money remains in the abandoned property fund for at least five (5) years after the date the money is deposited in the fund under section 2(d) of this chapter without any order directing the return of the money:

(1) title to the sum vests in and escheats to the state; and

(2) the sum shall be deposited in the state general fund.

(b) Any claimant who does not file an application with the court within five (5) years after the sum is deposited in the unclaimed funds account is barred from asserting a claim.
As added by P.L.2-2002, SEC.19. Amended by P.L.246-2005, SEC.218.

IC 32-34-3-5
Action by attorney general against clerk for failure to deliver money

Sec. 5. The attorney general may bring an action against a clerk who fails to deliver a sum of money to the attorney general upon demand under section 2 of this chapter. In that action, the attorney general may recover from the clerk, individually or upon the clerk's bond, the sum demanded plus a ten percent (10%) penalty. The sum demanded plus the penalty is collectible without relief from valuation or appraisement laws.
As added by P.L.2-2002, SEC.19.

IC 32-34-4

Chapter 4. Unclaimed Property in Possession of Repossessors of Motor Vehicles or Watercraft

IC 32-34-4-1

"Creditor" defined

Sec. 1. As used in this chapter, "creditor" means the person who has lawfully repossessed a vehicle.

As added by P.L.2-2002, SEC.19.

IC 32-34-4-2

"Debtor" defined

Sec. 2. As used in this chapter, "debtor" means the person from whom a vehicle is repossessed.

As added by P.L.2-2002, SEC.19.

IC 32-34-4-3

"Value" defined

Sec. 3. As used in this chapter, "value" means the amount of money that a reasonable person would estimate a willing buyer would pay for an item of personal property.

As added by P.L.2-2002, SEC.19.

IC 32-34-4-4

"Vehicle" defined

Sec. 4. As used in this chapter, "vehicle" means a motor vehicle or a watercraft.

As added by P.L.2-2002, SEC.19.

IC 32-34-4-5

Property having aggregate value of at least $10; notice to debtor

Sec. 5. (a) If items of personal property having an estimated aggregate value of at least ten dollars ($10) are discovered within a vehicle that has been lawfully repossessed, the creditor must notify the debtor as follows:

(1) The notice must be written.

(2) The notice must list each item of personal property having an estimated value greater than five dollars ($5).

(3) The notice must include the estimated aggregate value of all of the items of personal property.

(4) The notice must include a statement that if the debtor does not claim the property within thirty (30) days after the notice was sent, the personal property will become the property of the creditor with no right of redemption by the debtor.

(5) The notice must be sent by certified mail.

(b) If the debtor does not claim the items of personal property included in a notice given under subsection (a) not more than thirty (30) days after the notice was mailed, the items of personal property become the property of the creditor with no right of redemption by the debtor.

As added by P.L.2-2002, SEC.19.

IC 32-34-4-6
Property having aggregate value of less than $10

Sec. 6. If items of personal property having an aggregate value of less than ten dollars ($10) are discovered within a vehicle that has been lawfully repossessed, the items of personal property are the property of the creditor with no right of redemption by the debtor.
As added by P.L.2-2002, SEC.19.

IC 32-34-5

Chapter 5. Property Loaned to Museums

IC 32-34-5-1

"Lender" defined

Sec. 1. As used in this chapter, "lender" means a person whose name appears on the records of a museum as the person legally entitled to, or claiming to be legally entitled to, property held by the museum.

As added by P.L.2-2002, SEC.19.

IC 32-34-5-2

"Lender's address" defined

Sec. 2. As used in this chapter, "lender's address" means the most recent address of a lender as shown on the museum's records pertaining to property on loan from the lender.

As added by P.L.2-2002, SEC.19.

IC 32-34-5-3

"Loan" defined

Sec. 3. As used in this chapter, "loan" means a deposit of property not accompanied by a transfer of title to the property.

As added by P.L.2-2002, SEC.19.

IC 32-34-5-4

"Museum" defined

Sec. 4. As used in this chapter, "museum" means an institution located in Indiana that:

(1) is operated by a person primarily for education, scientific, historic preservation, or aesthetic purposes; and

(2) owns, borrows, cares for, exhibits, studies, archives, or catalogs property.

As added by P.L.2-2002, SEC.19.

IC 32-34-5-5

"Permanent loan" defined

Sec. 5. As used in this chapter, "permanent loan" means a loan of property to a museum for an indefinite period.

As added by P.L.2-2002, SEC.19.

IC 32-34-5-6

"Person" defined

Sec. 6. As used in this chapter, "person" means an individual, a nonprofit corporation, a trustee or legal representative, the state, a political subdivision (as defined in IC 36-1-2-13), an agency of the state or a political subdivision, or a group of those persons acting in concert.

As added by P.L.2-2002, SEC.19.

IC 32-34-5-7

"Property" defined

Sec. 7. As used in this chapter, "property" means a tangible object under a museum's care that has intrinsic historic, artistic, scientific, or cultural value.

As added by P.L.2-2002, SEC.19.

IC 32-34-5-8

"Undocumented property" defined

Sec. 8. As used in this chapter, "undocumented property" means property in the possession of a museum for which the museum cannot determine the owner by reference to the museum's records.

As added by P.L.2-2002, SEC.19.

IC 32-34-5-9

Mailing notice

Sec. 9. A notice given by a museum under this chapter must be mailed to the lender's last known address by certified mail. Proper notice is given if the museum receives proof of receipt of the notice not more than thirty (30) days after the notice was mailed.

As added by P.L.2-2002, SEC.19.

IC 32-34-5-10

Notice by publication

Sec. 10. (a) A museum may give notice by publication under this chapter if the museum does not:

(1) know the identity of the lender;

(2) have an address last known for the lender; or

(3) receive proof of receipt of the notice by the person to whom the notice was sent within thirty (30) days after the notice was mailed.

(b) Notice by publication under subsection (a) must be given at least once a week for two (2) consecutive weeks in a newspaper of general circulation in:

(1) the county in which the museum is located; and

(2) the county of the lender's last known address, if the identity of the lender is known.

As added by P.L.2-2002, SEC.19.

IC 32-34-5-11

Notice; contents

Sec. 11. In addition to any other information that may be required or seem appropriate, a notice given by a museum under this chapter must contain the following:

(1) The name of the lender, if known.

(2) The last known address of the lender.

(3) A brief description of the property on loan.

(4) The date of the loan, if known.

(5) The name of the museum.

(6) The name, address, and telephone number of the person or office to be contacted regarding the property.

As added by P.L.2-2002, SEC.19.

IC 32-34-5-12
Acquiring title for property on permanent loan or loaned for specified time; notice

Sec. 12. A museum may acquire title in the following manner to property that is on permanent loan to the museum or that was loaned for a specified term that has expired:

(1) The museum must give notice that the museum is terminating the loan of the property.

(2) The notice that the loan of the property is terminated must include a statement containing substantially the following information:

"The records at (name of museum) indicate that you have property on loan to it. The museum hereby terminates the loan. If you desire to claim the property, you must contact the museum, establish your ownership of the property, and make arrangements to collect the property. If you do not contact the museum, you will be considered to have donated the property to the museum.".

(3) If the lender does not respond to the notice of termination within one (1) year after receipt of the notice by filing a notice of intent to preserve an interest in the property on loan, clear and unrestricted title is transferred to the museum three hundred sixty-five (365) days after the notice was received.

As added by P.L.2-2002, SEC.19.

IC 32-34-5-13
Acquiring title for undocumented property; notice

Sec. 13. A museum may acquire title to undocumented property held by the museum for at least seven (7) years as follows:

(1) The museum must give notice that the museum is asserting title to the undocumented property.

(2) The notice that the museum is asserting title to the property must include a statement containing substantially the following information:

"The records of (name of museum) fail to indicate the owner of record of certain property in its possession. The museum hereby asserts title to the following property: (general description of property). If you claim ownership or other legal interest in this property, you must contact the museum, establish ownership of the property, and make arrangements to collect the property. If you fail to do so within three (3) years, you will be considered to have waived any claim you may have had to the property.".

(3) If a lender does not respond to the notice within three (3) years by giving a written notice of intent to retain an interest in the property on loan, the museum's title to the property becomes absolute.

As added by P.L.2-2002, SEC.19.

IC 32-34-5-14
Conservation measures; application without lender's permission or formal notice

Sec. 14. Unless there is a written loan agreement to the contrary, a museum may apply conservation measures to property on loan to the museum without the lender's permission or formal notice:

(1) if:

(A) action is required to protect the property on loan or other property in the custody of the museum; or

(B) the property on loan is a hazard to the health and safety of the public or the museum staff; and

(2) if:

(A) the museum is unable to reach the lender at the lender's last known address within three (3) days before the time the museum determines action is necessary; or

(B) the lender does not respond or will not agree to the protective measures the museum recommends and does not terminate the loan and retrieve the property within three (3) days.

As added by P.L.2-2002, SEC.19.

IC 32-34-5-15
Conservation measures; liens; liability of museum

Sec. 15. If a museum applies conservation measures to property under section 14 of this chapter or with the agreement of the lender, unless the agreement provides otherwise, the museum:

(1) acquires a lien on the property in the amount of the costs incurred by the museum; and

(2) is not liable for injury to or loss of the property if the museum:

(A) had a reasonable belief at the time the action was taken that the action was necessary to protect the property on loan or other property in the custody of the museum, or that the property on loan was a hazard to the health and safety of the public or the museum staff; and

(B) exercised reasonable care in the choice and application of conservation measures.

As added by P.L.2-2002, SEC.19.

IC 32-34-5-16
Presumption of gift to museum

Sec. 16. Property that:

(1) is found in or on property controlled by the museum;

(2) is from an unknown source; and

(3) might reasonably be assumed to have been intended as a gift to the museum;

is conclusively presumed to be a gift to the museum if ownership of the property is not claimed by a person or individual within ninety (90) days after its discovery.

As added by P.L.2-2002, SEC.19.

IC 32-34-6

Chapter 6. Transfer of Property Interests in Molds

IC 32-34-6-1

Inapplicability of chapter; rights, title, or interest not granted

Sec. 1. (a) This chapter does not apply where a fabricator retains title to and possession of a die, mold, form, jig, or pattern.

(b) This chapter does not grant a customer any rights, title, or interest to a die, mold, form, jig, or pattern.

As added by P.L.2-2002, SEC.19.

IC 32-34-6-2

"Customer" defined

Sec. 2. As used in this chapter, "customer" means an individual or entity who contracts with or causes a fabricator:

(1) to fabricate, cast, or otherwise make a die, mold, form, jig, or pattern; or

(2) to use a die, mold, form, jig, or pattern to manufacture, assemble, or otherwise make a product.

As added by P.L.2-2002, SEC.19.

IC 32-34-6-3

"Fabricator" defined

Sec. 3. As used in this chapter, "fabricator" means an individual or entity, including a tool or die maker, who:

(1) manufactures, causes to be manufactured, assembles, or improves a die, mold, form, jig, or pattern for a customer; or

(2) uses a die, mold, form, jig, or pattern to manufacture, assemble, or otherwise make a product for a customer.

As added by P.L.2-2002, SEC.19.

IC 32-34-6-4

"Within three (3) years after the last prior use" defined

Sec. 4. As used in this chapter, "within three (3) years after the last prior use" includes any period after the last prior use of a die, mold, form, jig, or pattern, regardless of whether the period was before July 1, 1994.

As added by P.L.2-2002, SEC.19.

IC 32-34-6-5

Transfer of rights of customer to fabricator after three years

Sec. 5. If a customer does not take possession of the customer's die, mold, form, jig, or pattern from a fabricator within three (3) years after the last prior use of the die, mold, form, jig, or pattern, the customer's rights, title, and interest in the customer's die, mold, form, jig, or pattern are transferred to the fabricator pursuant to the procedures of this chapter for purposes of destruction of the die, mold, form, jig, or pattern.

As added by P.L.2-2002, SEC.19.

IC 32-34-6-6

Choice of fabricator to transfer rights, title, and interest to fabricator for destruction; procedure for transfer

Sec. 6. (a) After the three (3) year period specified in section 4 of this chapter has expired, a fabricator may choose to have all rights, title, and interest in the die, mold, form, jig, or pattern transferred to the fabricator for purposes of destruction. A fabricator seeking a transfer under this subsection must send written notice by registered mail, return receipt requested, to:

(1) the customer's address as set out in any written agreement between the fabricator and the customer; and

(2) the customer's last known address;

indicating that the fabricator intends to terminate the customer's rights, title, and interest by having the rights, title, and interest transferred to the fabricator under this chapter.

(b) If a customer:

(1) does not take possession of the particular die, mold, form, jig, or pattern within ninety (90) days after the date on which the notice was sent under subsection (a); or

(2) does not make other contractual arrangements with the fabricator for taking possession or for storage of the die, mold, form, jig, or pattern;

all rights, title, and interest of the customer to the mold transfer by operation of this chapter to the fabricator for the purpose of destruction. The fabricator may then destroy the die, mold, or form.

As added by P.L.2-2002, SEC.19.

IC 32-34-6-7

Inapplicability; agreements; patent or copyright law or unfair competition law

Sec. 7. Nothing in this chapter affects:

(1) a written agreement between the fabricator and customer concerning possession of the die, mold, form, jig, or pattern; or

(2) any right of the customer under federal patent or copyright law or any state or federal law pertaining to unfair competition.

As added by P.L.2-2002, SEC.19.

IC 32-34-7

Chapter 7. Transfer of Property Interests in Silk Screens

IC 32-34-7-1

Inapplicability

Sec. 1. (a) This chapter does not apply where a silk screen maker or silk screen user retains title to and possession of a silk screen.

(b) This chapter does not grant a customer any rights or title to or interest in a silk screen.

As added by P.L.2-2002, SEC.19.

IC 32-34-7-2

"Customer" defined

Sec. 2. As used in this chapter, "customer" means an individual or entity that causes another individual or entity to make a silk screen or to use a silk screen to manufacture, assemble, or make a product.

As added by P.L.2-2002, SEC.19.

IC 32-34-7-3

"Silk screen maker" defined

Sec. 3. As used in this chapter, "silk screen maker" means an individual or entity that makes a silk screen.

As added by P.L.2-2002, SEC.19.

IC 32-34-7-4

"Silk screen user" defined

Sec. 4. As used in this chapter, "silk screen user" means an individual or entity that uses a silk screen to manufacture, assemble, or make a product.

As added by P.L.2-2002, SEC.19.

IC 32-34-7-5

Transfer of customer's rights, title, and interest

Sec. 5. If a customer does not take possession of the customer's silk screen from a silk screen maker or silk screen user within three (3) years after the silk screen's last use, the customer's rights, title, and interest in the customer's silk screen are transferred to the silk screen maker or silk screen user pursuant to the procedures of this chapter for purposes of destruction of the silk screen.

As added by P.L.2-2002, SEC.19.

IC 32-34-7-6

Notice to customer of transfer; requisites

Sec. 6. (a) After the three (3) year period specified in section 5 of this chapter has expired, a silk screen maker or silk screen user may choose to have all rights, title, and interest in any silk screen transferred to the silk screen maker or silk screen user for purposes of destruction. A silk screen maker or silk screen user seeking a transfer under this subsection must send written notice by registered mail, return receipt requested, to:

(1) the customer's address as set out in any written agreement between the silk screen maker or silk screen user and the customer; and

(2) the customer's last known address;

indicating that the silk screen maker or silk screen user intends to terminate the customer's rights, title, and interest by having all the rights, title, and interest transferred to the silk screen maker or silk screen user under this chapter.

(b) If a customer:

(1) does not take possession of the particular silk screen within ninety (90) days after the date on which the notice was sent under subsection (a); or

(2) does not make other contractual arrangements with the silk screen maker or silk screen user for taking possession or for storage of the silk screen;

all rights, title, and interest of the customer to the silk screen transfer by operation of this chapter to the silk screen maker or silk screen user for the purpose of destruction. The silk screen maker or silk screen user may then destroy the silk screen.

As added by P.L.2-2002, SEC.19.

IC 32-34-7-7

Agreements and patents, copyrights, or unfair competition laws not affected by chapter

Sec. 7. This chapter does not affect:

(1) a written agreement between the silk screen maker or silk screen user and the customer concerning possession of the silk screen; or

(2) any rights of the customer under federal patent or copyright law or any state or federal law pertaining to unfair competition.

As added by P.L.2-2002, SEC.19.

IC 32-34-7-8

Commencement of time period

Sec. 8. For silk screens in existence on June 1, 1983, the three (3) year period specified in this chapter begins on the last date that the silk screen was used, regardless of whether that date was before June 1, 1983.

As added by P.L.2-2002, SEC.19.

IC 32-34-8

Chapter 8. Finding Strays or Property Adrift

IC 32-34-8-1

Advertisement for animal or article found

Sec. 1. A person who finds a stray horse, mule, ass, sheep, hog, cattle, or goat, or any other article of value, shall, within five (5) days after finding the animal or article, advertise the animal or article in writing in three (3) of the most public places in the township where the animal or article was found, stating the time the animal or article was found and giving a description of the animal or article.

As added by P.L.2-2002, SEC.19.

IC 32-34-8-2

Unclaimed property; report to court; warrant and appointment for appraisal

Sec. 2. (a) If the owner does not claim the property described in section 1 of this chapter within fifteen (15) days after the date the property is found, the finder shall report the property to a court with jurisdiction in the county where the property was found.

(b) The court shall issue a warrant to three (3) householders of the neighborhood not related to the finder (unless persons not related to the finder are not available) directing any two (2) of the householders to appraise the property. The appointed householders shall appraise the property and provide in writing to the court a report containing the following information:

(1) A clear description of the property.

(2) The householders' valuation of the property.

(3) A declaration under oath that the appraisal and description were made without partiality, favor, or affection.

As added by P.L.2-2002, SEC.19.

IC 32-34-8-3

Oath of finder

Sec. 3. The finder must, at the time the householders make the report required by section 2(b) of this chapter, state under oath that the finder has no knowledge that the marks, brands, or appearance of the property have been altered by the finder or any other person since the property was lost, except for the changes stated in the householders' written report.

As added by P.L.2-2002, SEC.19.

IC 32-34-8-4

Unclaimed stray horse, mule, or ass taken to pound

Sec. 4. The finder of an unclaimed stray horse, mule, or ass that is at least two (2) years of age shall take the animal to the pound of the proper county and keep the animal at the pound from 11 a.m. until 3 p.m. on the first day of each of the two (2) succeeding terms of the circuit court after finding the stray.

As added by P.L.2-2002, SEC.19.

IC 32-34-8-5
Description, valuation, and fee

Sec. 5. A court receiving the property report prepared under section 2 (b) of this chapter shall, within ten (10) days, transmit to the clerk of the circuit court a copy of the description and valuation of the property, together with the proper fee. The clerk shall enter the description and appraisal in a book to be kept for that purpose.
As added by P.L.2-2002, SEC.19.

IC 32-34-8-6
Advertisement; value exceeding $10

Sec. 6. Property described in section 1 of this chapter that is greater than ten dollars ($10) in value must be advertised in a newspaper of the county, if there be one, and if not, in a paper in Indiana nearest the county where the property was found. The clerk shall forward to the printer a copy of the register that is marked on the outside, "Stray Property," together with a fee of one dollar ($1) out of which the printer shall pay postage.
As added by P.L.2-2002, SEC.19.

IC 32-34-8-7
Title to property

Sec. 7. If the provisions of this chapter are complied with, title to:

(1) an article described in section 1 of this chapter that is not more than twelve dollars ($12) in value and that remains unclaimed or unproven by the owner within ninety (90) days after the property is found; or

(2) a stray animal described in section 1 of this chapter that is equal to or less than ten dollars ($10) in value and that remains unclaimed or unproven by the owner within one (1) year after the property is found;

vests in the finder.
As added by P.L.2-2002, SEC.19.

IC 32-34-8-8
Unclaimed property and strays reported to court

Sec. 8. If:

(1) an article described in section 1 of this chapter has an appraised value greater than twelve dollars ($12) and is not claimed and proven within ninety (90) days after the day the article is found; or

(2) a stray animal other than a horse, a mule, or an ass has an appraised value greater than ten dollars ($10) and is not claimed and proven within six (6) months after the animal is found;

the finder shall report that information to a court with jurisdiction where the property was initially found not later than five (5) days after the expiration of the time specified in this section.
As added by P.L.2-2002, SEC.19.

IC 32-34-8-9

Sale of property; proceeds distribution; receipts

Sec. 9. (a) The court shall issue a warrant to the sheriff to sell the property at auction, giving ten (10) days notice in writing of the time and place of sale and describing the property to be sold.

(b) The sheriff shall, within five (5) days after the sale, return the order and proceeds of sale to the court, retaining one dollar ($1) for the sheriff's services.

(c) The court shall immediately pay over to the county treasurer the proceeds of sale, after deducting the proper amount to be paid to the finder, fifty cents ($0.50) for the fee of the judge of the court and, for every mile that the judge must travel in making the return, a sum for mileage equal to that sum per mile paid to state officers and employees.

(d) The court shall receive from the treasurer duplicate receipts and file one (1) receipt in the office of the clerk of the circuit court and one (1) receipt with the county auditor.

As added by P.L.2-2002, SEC.19.

IC 32-34-8-10

Sale of horse, mule, or ass if value exceeds $20; proceeds distribution; receipts

Sec. 10. (a) If a horse, a mule, or an ass that has an appraised value greater than twenty dollars ($20) remains unclaimed or unproven twelve (12) months after the date the horse, mule, or ass was found, the finder shall deliver the horse, mule, or ass to the sheriff of the proper county on the first day of the term of the circuit court after the expiration of the twelve (12) month period.

(b) The sheriff shall sell the horse, mule, or ass delivered under subsection (a) at a public sale.

(c) After retaining one dollar ($1) for the sheriff's services and paying to the finder the charges as provided by this chapter, the sheriff shall pay the proceeds of the sale to the treasurer of the county within five (5) days after the sale.

(d) The sheriff shall receive from the treasurer duplicate receipts and file one (1) receipt in the clerk's office and the other receipt with the county auditor.

As added by P.L.2-2002, SEC.19.

IC 32-34-8-11

County stray fund

Sec. 11. The county treasurer shall enter all sums paid under this chapter to the credit of the county stray fund.

As added by P.L.2-2002, SEC.19.

IC 32-34-8-12

Finder's fee

Sec. 12. (a) The finder's fee is as follows:

(1) For each horse, mule or ass, one dollar ($1).

(2) For each head of neat cattle, fifty cents ($0.50).

(3) For each sheep, goat, or hog more than six (6) months old,

ten cents ($0.10).

(b) If the owner reclaims and proves the property before the property is posted, the finder is allowed half of the appropriate amount listed in subsection (a).

As added by P.L.2-2002, SEC.19.

IC 32-34-8-13

Reward of finder; right to jury determination

Sec. 13. (a) The finder of an article described in section 1 of this chapter is allowed a reasonable sum, as determined by a court with jurisdiction where the property was initially found.

(b) Either the claimant or the finder may have a jury determine what amount is just and reasonable for finding and taking care of the property.

As added by P.L.2-2002, SEC.19.

IC 32-34-8-14

Court fees

Sec. 14. (a) If the property described in section 13 of this chapter is greater than three dollars ($3) in value, the finder of the property shall pay to the court, at the time of reporting, fifty cents ($0.50) for the judge of the court, fifty cents ($0.50) for the clerk, and one dollar ($1) for the printer where printing is required.

(b) If the value of the property described in section 13 of this chapter is less than three dollars ($3), the court may not make a return to the clerk and the fee is twenty-five cents ($0.25).

As added by P.L.2-2002, SEC.19.

IC 32-34-8-15

Register of stray animals and found articles

Sec. 15. (a) The clerk shall keep a register of stray animals and found articles.

(b) If several strays or articles are found by one (1) person, there may be only one (1) entry, one (1) advertisement, one (1) fee of the clerk, and one (1) fee of the judge.

As added by P.L.2-2002, SEC.19.

IC 32-34-8-16

Compensation for finder

Sec. 16. If found property is sold or reclaimed, the finder is allowed just and reasonable compensation for keeping the property as determined by the court with jurisdiction where the property was initially found. The finder shall:

(1) keep account of the time a stray animal is kept by the finder; and

(2) state the time to the court under oath.

As added by P.L.2-2002, SEC.19.

IC 32-34-8-17

Compensation for services of animal

Sec. 17. (a) If an animal is found under the provisions of this chapter and worked by the finder, a reasonable compensation shall be allowed for the services of the animal. The compensation shall be deducted from the cost of keeping the animal.

(b) The finder, if required, shall verify, under oath, the time the animal worked.

As added by P.L.2-2002, SEC.19.

IC 32-34-8-18

Reclaiming property; proof

Sec. 18. (a) At any time before sale, the owner may have the property by proving ownership in the court where the finding was reported under this chapter and paying the charges required by this chapter.

(b) At any time up to two (2) years after the date of sale, the owner may reclaim the money paid into the treasury by proper proof before the county auditor.

As added by P.L.2-2002, SEC.19.

IC 32-34-8-19

Limitations; time and place of taking up animals

Sec. 19. (a) Except as provided in subsection (c), a person may not:

(1) take up any horse or stock under this chapter except at the person's place of residence; or

(2) drive any horse or stock out of the woods and take them up under this chapter.

(b) Except as provided in subsection (c), an animal may not be taken up under this chapter between the first day of April and the first day of November unless the animal is found in the enclosure of the person who takes up the animal.

(c) When any animal may be in the act of escaping from the owner, it may be taken up at any time, wherever found.

As added by P.L.2-2002, SEC.19.

IC 32-34-8-20

Limitation on removal of property from county

Sec. 20. The finder, until the finder becomes the property's owner, may not take the found property or allow the property to be taken out of the county where the property was found for longer than three (3) days at any time.

As added by P.L.2-2002, SEC.19.

IC 32-34-8-21

Fatted hogs

Sec. 21. (a) Fatted hogs that are found may, at the option of the finder, be killed one (1) month after posting.

(b) If fatted hogs are killed under subsection (a), the finder shall, immediately after killing the hogs, pay the hogs' appraised values, deducting costs and charges (to be liquidated as in other cases) to the

county treasurer for the use of the owner.
As added by P.L.2-2002, SEC.19.

IC 32-34-8-22
Stock hogs

Sec. 22. Stock hogs that are found may, at the option of the finder, be purchased by the finder, six (6) months after posting, at the hogs' appraised value, deducting the costs allowed by this chapter for finding the hogs but without an allowance for keeping the hogs.
As added by P.L.2-2002, SEC.19.

IC 32-34-8-23
Shipwrecked property; inapplicability

Sec. 23. (a) Sections 1 through 22 of this chapter do not apply to property described in this section.

(b) If, upon any navigable waters within or bordering Indiana, cargo that is shipped as freight, the baggage of passengers, or a part of either of a vessel is cast adrift, afloat, or ashore by a wreck, accident, or mischance of the vessel, the cargo or part of the cargo found and secured by a person may be reclaimed by the captain, clerk, or officer navigating the vessel, the super cargo, or the owner or agent of the owner of the cargo or baggage.

(c) If the property described in this section is not claimed within seven (7) days after the property is found, the finder of the property shall advertise the property as required for articles described in section 1 of this chapter.
As added by P.L.2-2002, SEC.19.

IC 32-34-8-24
Shipwrecked property; surrender upon proof; finder's compensation

Sec. 24. A person who finds property described in section 23 of this chapter shall surrender the property to a claimant upon proof, or circumstances satisfactory to the finder, of the right of the claimant to the property, and after the payment by the claimant of reasonable compensation for services or expenses in connection with the finding and preserving of the property.
As added by P.L.2-2002, SEC.19.

IC 32-34-8-25
Refusal to return property; summary proceedings

Sec. 25. If a person with possession of the property refuses to return the property to the claimant or claims unreasonable compensation for the services and expenses in the finding and preservation of the property, the claimant may have a summary proceeding before:

(1) the court where the property was reported under this chapter if the property was reported; and

(2) any court with jurisdiction where the property is located if the property was not reported to a court under this chapter;

for the recovery of the property.
As added by P.L.2-2002, SEC.19.

IC 32-34-8-26
Affidavit of claimant; summons of finder or person in possession of property

Sec. 26. (a) The claimant must file before the court specified under section 25 of this chapter an affidavit of the facts attending the wreck or accident, enumerating as nearly as possible the articles or packages in the possession of the finder and the claimant's right to recover the property.

(b) The court shall summon the person who found or is in possession of the property to appear before the court at a place and at the earliest practicable time, as designated in the writ, but not more than three (3) days after the date of the writ.
As added by P.L.2-2002, SEC.19.

IC 32-34-8-27
Hearing

Sec. 27. (a) The court shall hear and determine the matters in controversy in the most speedy manner practicable, as other proceedings are determined before the court.

(b) The court may fix the amount of compensation the claimant must pay and award a writ, or writs, for the delivery of the property to the claimant upon payment of the compensation.
As added by P.L.2-2002, SEC.19.

IC 32-34-8-28
Rules of trial procedure govern

Sec. 28. (a) The trial described in section 27 of this chapter is governed by the Indiana rules of trial procedure, except as to continuances.

(b) Appeals may be taken by either party upon the same terms and under the same rules as appeals in other civil cases are taken.
As added by P.L.2-2002, SEC.19.

IC 32-34-8-29
Appraiser compensation

Sec. 29. An appraiser appraising property in accordance with section 2 of this chapter shall receive compensation for the appraisal services in the sum of fifty cents ($0.50) to be paid the same manner as other expenses involved in the finding of strays.
As added by P.L.2-2002, SEC.19.

IC 32-34-9

Chapter 9. Drifting Boats and Timber

IC 32-34-9-1

"Timber" defined

Sec. 1. As used in this chapter, "timber" means trees, whether standing, down, or prepared for sale, sawlogs and all other logs, cross and railroad ties, boards, planks, staves and heading, and other trees cut or prepared for market.

As added by P.L.2-2002, SEC.19.

IC 32-34-9-2

Property found and secured; compensation; lien; sale

Sec. 2. (a) A person who finds and secures any boats, fleets of timber, rafts, platforms, sawlogs, or other logs or trees prepared for the purpose of sale, or any cross or railroad ties, boards, planks, staves, heading, or other timber prepared for market that is the property of another and that is found adrift in the waters of Indiana without a boom or other arrangement provided by the owner to preserve the logs or timber below the point at which they are found, whether the logs or timber have a brand or not, is entitled to receive from the owner the following compensation:

(1) For each freight boat or other heavy boat, two dollars ($2) per ton for all cargo.

(2) For each jack-boat, skiff, or canoe, one dollar ($1).

(3) For each fleet of timber, fifty dollars ($50).

(4) For each raft of not less than forty (40) logs, fifteen dollars ($15).

(5) For each platform of at least ten (10) logs, four dollars ($4).

(6) For each sawlog or other log or tree prepared for sale, fifty cents ($0.50).

(7) For each cross or railroad tie, fifteen cents ($0.15).

(8) For boards or planks caught in rafts or a large body:

(A) one dollar ($1) per one thousand (1,000) board feet for a quantity twenty thousand (20,000) board feet or less; or

(B) fifty cents ($0.50) per one thousand (1,000) board feet for a quantity greater than twenty thousand (20,000) board feet.

(9) For loose and scattered boards or planks, five dollars and fifty cents ($5.50) per one thousand (1,000) board feet.

(10) For staves and heading, four dollars ($4) per one thousand (1,000) pieces that are merchantable.

(b) The compensation due under subsection (a) is payable by the owner, if required, upon the delivery to the owner of the logs or timber.

(c) The finder has a lien upon the property found for the charges provided in subsection (a).

(d) If the owner of the property fails to pay the compensation due under subsection (a) within sixty (60) days after the day the property is found, the property may be sold at the request of the person to

whom the compensation is due by a constable, sheriff, or other officer of the county in which the property was found. The sale must be at the courthouse door at public auction to the highest bidder, upon thirty (30) days written or printed notice that gives the time and place of sale and a written or printed description of the property and any marks or brands on the property. The notice of the sale must be posted at the front door of the courthouse of the county in which the sale is to be made and at two (2) other public places in the county where the property is located. It is the duty of the constable or other officer making the sale to pay to the finder the finder's legal fees and charges after deducting the constable's or other officer's commission. The commission charged may be the same as if the constable or other officer had sold the same property under execution. If any sale money remains after payment of the charges and fees described in this section, the constable or other officer shall pay the remainder to the clerk of the circuit court in the county in which the sale occurred and obtain a receipt for the amount. If the constable or other officer fails to perform the constable's or other officer's duties under this chapter, the constable or other officer is liable on the constable's or other officer's official bond to the party aggrieved.

(e) If the owner, within one (1) year after the date of the sale, appears before the county judge of the county where the money is deposited with the clerk and establishes the owner's right to the satisfaction of the court to the money, the money must, upon the order of the county judge, be paid over to the owner by the clerk; otherwise, it shall be paid into the state general fund.

(f) This chapter may not be construed to permit a person to recover under subsection (a) for any fleet of timber, raft or platform, sawlog, or other log or tree prepared for the purpose of sale, or any cross or railroad tie, board, plank, stave, heading, or other timber prepared for the market that is above any boom or other arrangement made by the owner to preserve the logs or timber.

As added by P.L.2-2002, SEC.19. Amended by P.L.246-2005, SEC.219.

IC 32-34-9-3

Finder compensation

Sec. 3. A person who finds a fleet, raft or platform, as described in this chapter, is entitled to reasonable compensation for keeping and caring for the property in addition to the fees set forth in section 1 of this chapter. The compensation may not exceed the following rates:

(1) For each fleet, four dollars ($4) per day.

(2) For each raft, one dollar ($1) per day.

(3) For each platform, fifty cents ($0.50) per day.

As added by P.L.2-2002, SEC.19.

IC 32-34-9-4

Additional compensation; sawlogs or other logs or trees

Sec. 4. If a person finds any sawlog or other log or trees prepared for sale as described in this chapter and the property remains in the

person's possession more than thirty (30) days after the time the person found the property to the time the owner offers to pay the charges described in section 1 of this chapter, the finder is entitled to charge, in addition to the fee set forth in section 1 of this chapter, twenty-five cents ($0.25) for every sawlog or other log or tree prepared for sale that remains in the person's possession as described in this section.
As added by P.L.2-2002, SEC.19.

IC 32-34-9-5
Hiding property or failure to float property upon demand

Sec. 5. If the finder of any property described in this chapter:

(1) hides the property;

(2) allows the property to get aground so that the finder cannot immediately, upon the demand of the property's owner or the owner's agents, put the property afloat; or

(3) fails to put the property afloat upon demand;

the finder may not collect or receive any compensation for finding or caring for the property and, in addition to any other duties imposed by this chapter, is responsible to the owner for the value of the property as if the property were afloat.
As added by P.L.2-2002, SEC.19.

IC 32-34-9-6
Brand adopted by timber dealer

Sec. 6. A person, firm, or corporation that deals in timber in any form is considered a timber dealer and may adopt a brand in the manner and with the effect described in this chapter.
As added by P.L.2-2002, SEC.19.

IC 32-34-9-7
Brand adopted by dealer; form; acknowledgment; posting

Sec. 7. (a) A timber dealer desiring to adopt a brand may do so by the execution of a writing in the following form:

Brand - Notice is hereby given that I (or we, as the case may be) have adopted the following brand in my (or our) business as a timber dealer: (Here insert the words, letters, figures, etc., constituting the brand, or if the brand is any device other than words, letters, or figures, insert a facsimile of the brand.) Dated this ____ day of _____ A.D. _____.

(b) The writing must be acknowledged or proved for the record in the same manner as deeds are acknowledged or proven and must be recorded in the office of the clerk of the county in which the timber dealer maintains a principal office or place of business.

(c) A copy of the writing must be posted at the timber dealer's principal place of business, at the courthouse door in the county where the timber dealer carries on business, and at the public places in the county.
As added by P.L.2-2002, SEC.19.

IC 32-34-9-8
Brand as exclusive trademark

Sec. 8. A brand adopted in accordance with this chapter is the exclusive trademark of the person adopting the brand, and the brand constitutes property under IC 35-31.5-2-253.

As added by P.L.2-2002, SEC.19. Amended by P.L.114-2012, SEC.57.

IC 32-34-9-9
Impressing brand on timber

Sec. 9. A person who owns a brand shall cause the brand to be plainly stamped, branded, or otherwise impressed upon each piece of timber upon which the brand is placed.

As added by P.L.2-2002, SEC.19.

IC 32-34-9-10
Contract for sale of standing trees or standing timber

Sec. 10. A contract for the sale of standing trees or standing timber may not be enforced by a legal action unless the contract or some memorandum of the contract is in writing and signed by the person to be charged or the person's duly authorized agent.

As added by P.L.2-2002, SEC.19.

IC 32-34-9-11
Branded timber; title

Sec. 11. (a) If timber is branded by the seller or by another person with the seller's consent with the brand of the purchaser or another person or corporation, the title to the timber passes at once to the person or corporation whose brand is placed on the timber.

(b) Placement of a brand on timber as described in subsection (a) does not affect the rights of the contracting parties regarding the payment of the purchase money for the timber.

As added by P.L.2-2002, SEC.19.

IC 32-34-9-12
Prior brands and trademarks; validity

Sec. 12. (a) This chapter does not affect the validity and effect of a brand or trademark adopted and recorded under the law in effect before March 11, 1901.

(b) A brand or trademark described in subsection (a) is valid for all purposes, civil and criminal, as if the brand or trademark had been adopted and recorded under this chapter.

As added by P.L.2-2002, SEC.19.

IC 32-34-9-13
Finding timber; compensation; violation

Sec. 13. (a) If timber prepared for market is found on any of the streams of Indiana, the timber shall be held and disposed of as provided in this chapter. The finder of the timber shall receive as compensation for the finder's services only the fees provided for in

section 2 of this chapter.

(b) A person who knowingly violates this section commits a Level 6 felony.

As added by P.L.2-2002, SEC.19. Amended by P.L.158-2013, SEC.335.

IC 32-34-10
Chapter 10. Sale of Abandoned Watercraft

IC 32-34-10-0.2
Application of prior law
Sec. 0.2. The addition of IC 32-8-40 (before its repeal, now codified in this chapter) by P.L.110-2001 applies to all watercraft located on the property of a marina after January 1, 2001.
As added by P.L.220-2011, SEC.529.

IC 32-34-10-1
"Marina operator" defined
Sec. 1. As used in this chapter, "marina operator" means a person, a firm, a corporation, a limited liability company, a municipality, or another unit of government that is engaged in the business of operating a marina.
As added by P.L.2-2002, SEC.19.

IC 32-34-10-2
Sale of watercraft by marina operator; recovery of maintenance costs
Sec. 2. A marina operator may:
(1) sell a watercraft that has been left without permission at the marina for more than six (6) months; and
(2) recover the operator's reasonable maintenance, repair, dockage, storage, and other charges if the conditions set forth in section 3 of this chapter are met.
As added by P.L.2-2002, SEC.19.

IC 32-34-10-3
Six month period before sale
Sec. 3. The minimum six (6) month period specified in section 2 of this chapter begins the day written notice is sent by the marina operator to the last known address of the owner of the watercraft or personally delivered to the owner of the watercraft. If the notice is mailed, the marina operator must send notice by certified mail, return receipt requested. Notice, by mail or personally delivered, must include a description of the watercraft and a conspicuous statement that the watercraft is at the marina without permission of the marina.
As added by P.L.2-2002, SEC.19.

IC 32-34-10-4
Sale of watercraft and recovery of maintenance costs; procedure
Sec. 4. To sell a watercraft and recover charges under section 2 of this chapter, a marina operator must do all of the following:
(1) Perform a search of watercraft titles for the name and address of the owner of the watercraft and the name and address of any person holding a lien or security interest on the watercraft. The search required by this subdivision must be conducted in the following order:

(A) First, in the records of the state of registration as indicated on the exterior of the watercraft.

(B) Second, in the United States Coast Guard registration records maintained by the National Vessel Documentation Center.

(C) Third, in the records of the bureau of motor vehicles.

(2) After receiving the results of the search required by subdivision (1), give notice by certified mail, return receipt requested, or in person, to the last known address of the owner of the watercraft, to any lien holder with a perfected security interest in the watercraft, and to all other persons known to claim an interest in the watercraft. The notice must include an itemized statement of the charges, a description of the watercraft, a demand for payment within a specified time not less than ten (10) days after receipt of the notice, and a conspicuous statement that unless the charges are paid within that time, the watercraft will be advertised for sale and sold by auction at a specified time and place.

(3) Advertise that the watercraft will be sold at public auction in conformity with the provisions of IC 26-1-7-210 and IC 26-1-2-328. The advertisement of sale must be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the county where the watercraft has been left without permission. The advertisement must include a description of the watercraft, the name of the person on whose account the watercraft is being held, and the time and place of the sale. The sale must take place at least fifteen (15) days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten (10) days before the sale in not less than six (6) conspicuous places in the neighborhood of the proposed sale.

(4) Conduct an auction sale, not less than thirty (30) days after the return receipt is received by the marina operator, on the marina property where the watercraft was left without permission.

(5) Provide a reasonable time before the sale for prospective purchasers to examine the watercraft.

(6) Sell the watercraft to the highest bidder.

(7) Immediately after the auction sale, execute an affidavit of sale in triplicate on a form prescribed by the bureau of motor vehicles stating:

(A) that the requirements of this section have been met;

(B) the length of time that the watercraft was left on the marina property without permission;

(C) the expenses incurred by the marina operator, including the expenses of the sale;

(D) the name and address of the purchaser of the watercraft at the auction sale; and

(E) the amount of the winning bid.

As added by P.L.2-2002, SEC.19.

IC 32-34-10-5
Affidavit of sale

Sec. 5. Upon payment of the bid price by the purchaser, the marina operator shall provide the purchaser with the affidavit of sale described in this chapter.
As added by P.L.2-2002, SEC.19.

IC 32-34-10-6
Affidavit of sale as proof of ownership

Sec. 6. The affidavit of sale under this chapter constitutes proof of ownership and right to possession under IC 9-31-2-16.
As added by P.L.2-2002, SEC.19.

IC 32-34-10-7
Certificate of title

Sec. 7. After the purchaser:

(1) presents the bureau of motor vehicles with the affidavit of sale;
(2) completes an application for title; and
(3) pays any applicable fee;

the bureau shall issue to the purchaser a certificate of title to the watercraft.
As added by P.L.2-2002, SEC.19.

IC 32-34-10-8
Excess funds after sale of watercraft

Sec. 8. If a boat is sold under this chapter for an amount of money that is greater than the charges owed to the marina operator plus all reasonable expenses of sale, the marina operator shall pay the excess in the following order:

(1) For the satisfaction of obligations held by secured parties with respect to the watercraft, in the order in which security interests in the watercraft were perfected.
(2) To the owner of the watercraft.

As added by P.L.2-2002, SEC.19.

IC 32-35

ARTICLE 35. CAUSES OF ACTION CONCERNING PERSONAL PROPERTY

IC 32-35-1

Chapter 1. Statute of Limitations

IC 32-35-1-1

Cause of action; limitations

Sec. 1. Unless otherwise provided in this title or another law, a cause of action concerning personal property must be brought within the time periods specified in IC 34-11.

As added by P.L.2-2002, SEC.20.

IC 32-35-2
Chapter 2. Replevin

IC 32-35-2-1
Grounds for action

Sec. 1. If any personal goods, including tangible personal property constituting or representing choses in action, are:

(1) wrongfully taken or unlawfully detained from the owner or person claiming possession of the property; or

(2) taken on execution or attachment and claimed by any person other than the defendant;

the owner or claimant may bring an action for the possession of the property.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-2
Claim for immediate delivery

Sec. 2. A plaintiff may, at the time of issuing the summons, or at any time before final judgment, claim the immediate delivery of property described in section 1 of this chapter.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-3
Filing affidavit

Sec. 3. If a plaintiff claims delivery under section 2 of this chapter, the plaintiff or someone representing the plaintiff shall file an affidavit.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-4
Contents of affidavit

Sec. 4. An affidavit filed under section 3 of this chapter must:

(1) show that the plaintiff is:

(A) the owner of the property; or

(B) lawfully entitled to the possession of the property;

(2) show that:

(A) the property was not:

(i) taken for a tax, assessment, or fine under a statute; or

(ii) seized under an execution or attachment against the property of the plaintiff; or

(B) if the property was seized under an execution or attachment, the property was exempt by statute from seizure;

(3) show that the property:

(A) has been wrongfully taken and is unlawfully detained by the defendant; or

(B) is unlawfully detained;

(4) include a particular description of the property;

(5) state the estimated value of the property; and

(6) identify the county in which the property is believed to be detained.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-5
Issuance of show cause order

Sec. 5. If a plaintiff files an affidavit under section 3 of this chapter, the clerk shall issue an order for a time fixed by the judge directing the defendant to appear for the purpose of controverting plaintiff's affidavit or to otherwise show cause why:

(1) a prejudgment order for possession should not issue; and

(2) the property should not be delivered to plaintiff.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-6
Date, time, and place for hearing

Sec. 6. (a) An order issued under section 5 of this chapter must set forth the date, time, and place for the hearing and direct the time within which service shall be made upon the defendant.

(b) The hearing shall be scheduled not sooner than five (5) days, Sundays and holidays excluded, after the date of service.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-7
Notice to defendant

Sec. 7. An order to show cause issued under section 5 of this chapter must inform the defendant that:

(1) the defendant may:

(A) file affidavits on the defendant’s behalf with the court;

(B) appear and present testimony on the defendant’s behalf at the time of the hearing; and

(C) file with the court a written undertaking to stay the delivery of the property in accordance with this article; and

(2) if the defendant fails to appear, plaintiff may be granted a judgment of possession.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-8
Order for possession after examining pleadings and evidence

Sec. 8. The court may issue an order for possession under this chapter after examining the complaint, affidavits, and other evidence or testimony that the court may require.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-9
Order for possession before hearing; grounds

Sec. 9. The court may issue an order for possession under this chapter before the hearing if probable cause appears that any of the following subdivisions apply:

(1) The defendant gained possession of the property by theft or criminal conversion.

(2) The property consists of one (1) or more negotiable

instruments or credit cards.

(3) By reason of specific, competent evidence shown by testimony within the personal knowledge of an affiant or witness, the property is:

(A) perishable, and will perish before any noticed hearing can be had;

(B) in immediate danger of destruction, serious harm, concealment, removal from Indiana, or sale to an innocent purchaser; or

(C) held by a person who threatens to destroy, harm, or conceal the property, remove the property from Indiana, or sell the property to an innocent purchaser.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-10

Order for possession without notice; grounds

Sec. 10. Before the court may issue an order for possession without notice under section 12 of this chapter, the plaintiff or the plaintiff's attorney must file an affidavit or certificate showing:

(1) the efforts, if any, that have been made to give notice; and

(2) the reasons why notice of the application for the order cannot be given.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-11

Application to shorten time for show cause hearing

Sec. 11. (a) If an order of possession was issued before a hearing under this chapter (or IC 34-1-9.1-4 or IC 34-21-4-4 before their repeal), the defendant or other person from whom possession of the property was taken may apply to the court for an order shortening the time for hearing on the order to show cause.

(b) The court may, upon an application made under subsection (a):

(1) shorten the time until the hearing; and

(2) direct that the matter shall be heard on not less than forty-eight (48) hours notice to the plaintiff.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-12

Sheriff or other executing officer to hold property

Sec. 12. An order of possession issued under this chapter without notice shall direct the sheriff or other executing officer to hold the property until further order of the court.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-13

Issuance of preliminary order and temporary restraining order

Sec. 13. Under any of the circumstances set forth in this chapter, or instead of the immediate issuance of an order of possession under this chapter, the judge may, in addition to issuing a preliminary order, issue a temporary restraining order directed to the defendant

prohibiting certain acts with respect to the property if the issuance of the order appears to be necessary for the preservation of the rights of the parties and the status of the property.
As added by P.L.2-2002, SEC.20.

IC 32-35-2-14
Hearing on preliminary order

Sec. 14. Upon the hearing on the preliminary order under this chapter, the court shall:

(1) consider the showing made by the parties appearing; and

(2) make a preliminary determination which party, with reasonable probability, is entitled to possession, use, and disposition of the property, pending final adjudication of the claims of the parties.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-15
Prejudgment order of possession

Sec. 15. If the court determines, in an action under this chapter, that a prejudgment order of possession in the plaintiff's favor should issue, the court shall issue the order.
As added by P.L.2-2002, SEC.20.

IC 32-35-2-16
Appointment of receiver

Sec. 16. If the property claimed by the plaintiff in an action under this chapter has a peculiar value that cannot be compensated by damages, the court may, instead of issuing an order of possession, appoint a receiver to take possession of and hold the property until further order of the court.
As added by P.L.2-2002, SEC.20.

IC 32-35-2-17
Failure of defendant to appear

Sec. 17. If the defendant in an action under this chapter fails to appear, the court may enter its final judgment with respect to possession as in other cases where there is a default for a failure to appear.
As added by P.L.2-2002, SEC.20.

IC 32-35-2-18
Order of possession; contents

Sec. 18. An order of possession issued under this chapter must:

(1) be directed to the sheriff or other officer charged with the execution of the order within whose jurisdiction the property is believed to be located;

(2) describe the property to be seized; and

(3) direct the executing officer to:

(A) seize the property if it is found;

(B) take the property into custody; and

(C) deliver the property to the plaintiff, unless:
(i) the order was issued without notice; or
(ii) the defendant files a written undertaking in accordance with section 7(1)(C) of this chapter within a time fixed by the court.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-19
Final judgment; contents

Sec. 19. If the order issued in an action under this chapter is a final judgment:

(1) the court does not need to fix a time for the defendant to file a written undertaking;
(2) the order must direct immediate delivery to the plaintiff;
(3) a copy of any written undertaking filed by the plaintiff must be attached to the order; and
(4) the order must inform the defendant that the defendant has the right to:
(A) except to the surety upon the undertaking; or
(B) file a written undertaking for the redelivery of the property as provided in section 7(1)(C) of this chapter.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-20
Final judgment to supersede all preceding orders

Sec. 20. Any:

(1) order for possession;
(2) temporary restraining order;
(3) prejudgment order for possession; or
(4) other preliminary transfer of possession;

issued under this article (or IC 34-1-9.1 or IC 34-21 before their repeal) is superseded by the final judgment rendered in an action under this chapter.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-21
Plaintiff's bond required

Sec. 21. (a) Except as provided in subsection (c), the court may not issue an order of possession, with or without notice, in the plaintiff's favor in an action under this chapter until the plaintiff has filed with the court a written undertaking:

(1) in an amount fixed by the court; and
(2) executed by a surety to be approved by the court;

to the effect that the plaintiff and the surety are bound to the defendant for the value of the property, as determined by the court, along with other damages the defendant may suffer if the property has been wrongfully taken from the defendant.

(b) The amount of the bond may not be less than the value of the property.

(c) If the defendant has failed to appear and final judgment is

entered, no written undertaking is required.
As added by P.L.2-2002, SEC.20.

IC 32-35-2-22
Return of property to defendant; bond

Sec. 22. (a) In an action under this chapter, the defendant:

(1) at any time before the hearing on the preliminary order; or

(2) if final judgment has not been entered, within the time fixed in the order of possession;

may require the return of the property upon filing with the court a written undertaking executed by a surety to be approved by the court.

(b) The written undertaking must provide that the defendant is bound:

(1) as to the value of the property, as determined by the court, for the delivery of the property to the plaintiff, if delivery is ultimately ordered; and

(2) for the payment to plaintiff of the sum that may be recovered against the defendant in the action for the defendant's wrongful detention of the property.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-23
Service of notice by defendant of filing of bond

Sec. 23. At the time of filing an undertaking under section 22 of this chapter, the defendant must:

(1) serve upon the executing officer and the plaintiff or the plaintiff's attorney a notice of filing of the undertaking; and

(2) file proof of service of the notice referred to in subdivision (1) with the court.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-24
Effect of defendant's bond on show cause proceedings

Sec. 24. If the defendant files an undertaking under section 22 of this chapter before the hearing of the order to show cause, proceedings under the order to show cause terminate, unless exception is taken to the surety.
As added by P.L.2-2002, SEC.20.

IC 32-35-2-25
Redelivery of property to defendant from executing officer

Sec. 25. If the property is in the custody of the executing officer at the time the defendant files an undertaking under section 22 of this chapter, the property shall be redelivered to the defendant not later than five (5) days after the date of service of notice of the filing of the undertaking upon the plaintiff or the plaintiff's attorney.
As added by P.L.2-2002, SEC.20.

IC 32-35-2-26
Action in replevin against officer; procedure

Sec. 26. (a) If:

(1) any officer, by virtue of any writ of attachment or execution lawfully issued to the officer, attaches or levies upon any personal property as the property of the attachment or execution defendant; and

(2) any other person, firm, limited liability company, or corporation brings an action in replevin against the officer for the possession of any part of the property attached or levied upon;

as soon as process is served upon the officer, the officer may notify the attachment or execution plaintiff, if a resident of the officer's county, and if not a resident of the officer's county, then the attorney of the plaintiff, in writing, of the replevin suit, giving a general description of the property claimed by the replevin plaintiff in the suit, and may demand of the attachment or execution plaintiff a bond to indemnify the officer against any loss for attorney's fees incurred in the defense of the replevin suit and payment of any judgment for damages and costs.

(b) Upon failure of the attachment or execution plaintiff to execute the bond to the officer within five (5) days after the time of service of the notice described in subsection (a) with good and sufficient surety, the officer may deliver up any part of the property sued for in the replevin suit to the replevin plaintiff.

(c) If the bond demanded under subsection (a) is not given and the officer delivers the property to the replevin plaintiff, the attachment or execution plaintiff is estopped from maintaining any action whatever against the officer for the value of the property delivered up or for damages for failing to make any defense in the replevin suit. However, if the action in replevin is pending in the circuit court, the bond shall be approved by the clerk of the circuit court.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-27

Delivery to defendant in open court

Sec. 27. If the defendant or the defendant's attorney is in open court at the time the order of possession is issued under this chapter, a copy of the order shall be delivered promptly to the defendant and the delivery shall be noted in the order book.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-28

Service by sheriff or other executing officer

Sec. 28. If the defendant and the defendant's attorney are not present in open court when the order of possession is issued under this chapter, sufficient copies of the order shall be delivered to the sheriff or other executing officer. The executing officer shall, without delay, serve upon the defendant a copy of the order of possession:

(1) by delivering the order of possession to:

(A) the defendant personally; or

(B) the defendant's agent from whose possession the property

is taken;

(2) if the defendant or the defendant's agent cannot be found, by leaving it at the usual place of abode of either with some person of suitable age and discretion; or

(3) if neither the defendant nor the defendant's agent has any known usual place of abode, by mailing it to the defendant's last known address.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-29

Taking immediate custody of property; exception for vehicle or boat used as defendant's dwelling

Sec. 29. (a) Upon serving on the defendant a copy of the order of possession under section 28 of this chapter, the executing officer, except as provided in subsection (b), shall immediately take the property into custody if the property is in the possession or control of the defendant or the defendant's agent.

(b) If the property is a housetrailer, recreational vehicle, motor or mobile home, or boat and is being used as the principal dwelling of a defendant, at the expiration of forty-eight (48) hours after the order of possession is served, the officer shall immediately remove the property's occupants and take the property into custody.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-30

Taking possession of building or enclosure

Sec. 30. If the property or any part of the property that is subject to an order of possession issued under this chapter is:

(1) in a building or enclosure; and

(2) not voluntarily delivered;

the executing officer shall cause the building or enclosure to be broken open in a manner the officer reasonably believes will cause the least damage to the building or enclosure and take possession of the property.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-31

Safekeeping and delivery of property; expenses

Sec. 31. An executing officer who has taken property subject to an order of possession issued under this chapter shall:

(1) keep it in a secure place; and

(2) deliver it to the party entitled to the property upon receiving actual, reasonable, and necessary expenses for keeping the property.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-32

Order of possession; endorsement and return to court

Sec. 32. After taking property subject to an order of possession issued under this chapter, an executing officer shall:

(1) note the executing officer's proceedings in writing upon the order of possession; and

(2) return the order of possession to the court in which the action is pending;

within five (5) days after taking the property mentioned in the order.
As added by P.L.2-2002, SEC.20.

IC 32-35-2-33
Judgment for plaintiff; contents

Sec. 33. In an action to recover the possession of personal property, judgment for the plaintiff may be for:

(1) the delivery of the property, or the value of the property in case delivery is not possible; and

(2) damages for the detention of the property.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-34
Judgment for defendant; contents

Sec. 34. In an action to recover the possession of personal property, if the property has been delivered to the plaintiff and the defendant claims a return of the property, judgment for the defendant may be for:

(1) the return of the property, or its value, in case return is not possible; and

(2) damages for the taking and withholding of the property.

As added by P.L.2-2002, SEC.20.

IC 32-35-2-35
Assessment of value of property and damages

Sec. 35. In actions for the recovery of specific personal property, the jury must assess:

(1) the value of the property; and

(2) the damages for the taking or detention of the property;

when the jury's verdict results in a judgment for the recovery or return of the property.
As added by P.L.2-2002, SEC.20.

IC 32-36

ARTICLE 36. PUBLICITY

IC 32-36-1

Chapter 1. Rights of Publicity

IC 32-36-1-0.2

Application of certain amendments to prior law

Sec. 0.2. The amendments made to IC 32-13-1-8 (before its repeal, now codified at section 8 of this chapter) by P.L.54-2001 apply only to written consents obtained after July 1, 2001.

As added by P.L.220-2011, SEC.530.

IC 32-36-1-1

Application of chapter

Sec. 1. (a) This chapter applies to an act or event that occurs within Indiana, regardless of a personality's domicile, residence, or citizenship.

(b) This chapter does not affect rights and privileges recognized under any other law that apply to a news reporting or an entertainment medium.

(c) This chapter does not apply to the following:

(1) The use of a personality's name, voice, signature, photograph, image, likeness, distinctive appearance, gestures, or mannerisms in any of the following:

(A) Literary works, theatrical works, musical compositions, film, radio, or television programs.

(B) Material that has political or newsworthy value.

(C) Original works of fine art.

(D) Promotional material or an advertisement for a news reporting or an entertainment medium that:

(i) uses all or part of a past edition of the medium's own broadcast or publication; and

(ii) does not convey or reasonably suggest that a personality endorses the news reporting or entertainment medium.

(E) An advertisement or commercial announcement for a use described in this subdivision.

(2) The use of a personality's name to truthfully identify the personality as:

(A) the author of a written work; or

(B) a performer of a recorded performance;

under circumstances in which the written work or recorded performance is otherwise rightfully reproduced, exhibited, or broadcast.

(3) The use of a personality's:

(A) name;

(B) voice;

(C) signature;

(D) photograph;

(E) image;
(F) likeness;
(G) distinctive appearance;
(H) gestures; or
(I) mannerisms;

in connection with the broadcast or reporting of an event or a topic of general or public interest.

(4) A personality whose:

(A) name;
(B) voice;
(C) signature;
(D) photograph;
(E) image;
(F) likeness;
(G) distinctive appearance;
(H) gesture; or
(I) mannerisms;

have commercial value solely because the personality has been formally charged with or convicted of a crime.

As added by P.L.2-2002, SEC.21. Amended by P.L.149-2012, SEC.17.

IC 32-36-1-2
"Commercial purpose" defined

Sec. 2. As used in this chapter, "commercial purpose" means the use of an aspect of a personality's right of publicity as follows:

(1) On or in connection with a product, merchandise, goods, services, or commercial activities.

(2) For advertising or soliciting purchases of products, merchandise, goods, services, or for promoting commercial activities.

(3) For the purpose of fundraising.

As added by P.L.2-2002, SEC.21.

IC 32-36-1-3
"Name" defined

Sec. 3. As used in this chapter, "name" means the actual or assumed name of a living or deceased natural person that is intended to identify the person.

As added by P.L.2-2002, SEC.21.

IC 32-36-1-4
"News reporting or an entertainment medium" defined

Sec. 4. As used in this chapter, "news reporting or an entertainment medium" means a medium that publishes, broadcasts, or disseminates advertising in the normal course of its business, including the following:

(1) Newspapers.

(2) Magazines.

(3) Radio and television networks and stations.

(4) Cable television systems.
As added by P.L.2-2002, SEC.21.

IC 32-36-1-5
"Person" defined

Sec. 5. As used in this chapter, "person" means a natural person, a partnership, a firm, a corporation, or an unincorporated association.
As added by P.L.2-2002, SEC.21.

IC 32-36-1-6
"Personality" defined

Sec. 6. As used in this chapter, "personality" means a living or deceased natural person whose:

(1) name;
(2) voice;
(3) signature;
(4) photograph;
(5) image;
(6) likeness;
(7) distinctive appearance;
(8) gesture; or
(9) mannerisms;

has commercial value, whether or not the person uses or authorizes the use of the person's rights of publicity for a commercial purpose during the person's lifetime.
As added by P.L.2-2002, SEC.21.

IC 32-36-1-7
"Right of publicity" defined

Sec. 7. As used in this chapter, "right of publicity" means a personality's property interest in the personality's:

(1) name;
(2) voice;
(3) signature;
(4) photograph;
(5) image;
(6) likeness;
(7) distinctive appearance;
(8) gestures; or
(9) mannerisms.

As added by P.L.2-2002, SEC.21.

IC 32-36-1-8
Consent required for commercial use of a personality's right of publicity; application to the rights of a deceased personality

Sec. 8. (a) A person may not use an aspect of a personality's right of publicity for a commercial purpose during the personality's lifetime or for one hundred (100) years after the date of the personality's death without having obtained previous written consent from a person specified in section 17 of this chapter. If a personality

is deceased, the following apply to the rights described in this subsection:

(1) The rights apply to the personality whether the personality died before, on, or after July 1, 1994.

(2) If the personality died before July 1, 1994, the rights are considered to have existed on and after the date the personality died.

(3) Consistent with section 1(a) of this chapter, a claim for a violation of a personality's right of publicity may not be asserted under this chapter unless the alleged act or event of violation occurs within Indiana.

(4) A claim for a violation of a personality's right of publicity may not be asserted under this chapter unless the alleged act or event of violation occurs after June 30, 1994.

(b) A written consent solicited or negotiated by an athlete agent (as defined in IC 25-5.2-1-2) from a student athlete (as defined in IC 25-5.2-1-2) is void if the athlete agent obtained the consent as the result of an agency contract that:

(1) was void under IC 25-5.2-2-2 or under the law of the state where the agency contract was entered into; or

(2) was voided by the student athlete under IC 25-5.2-2-8 or a similar law in the state where the agency contract was entered into.

As added by P.L.2-2002, SEC.21. Amended by P.L.149-2012, SEC.18; P.L.158-2013, SEC.336.

IC 32-36-1-9
Jurisdictional acts

Sec. 9. A person who:

(1) engages in conduct within Indiana that is prohibited under section 8 of this chapter;

(2) creates or causes to be created within Indiana goods, merchandise, or other materials prohibited under section 8 of this chapter;

(3) transports or causes to be transported into Indiana goods, merchandise, or other materials created or used in violation of section 8 of this chapter; or

(4) knowingly causes advertising or promotional material created or used in violation of section 8 of this chapter to be published, distributed, exhibited, or disseminated within Indiana;

submits to the jurisdiction of Indiana courts.

As added by P.L.2-2002, SEC.21.

IC 32-36-1-10
Damages

Sec. 10. A person who violates section 8 of this chapter may be liable for any of the following:

(1) Damages in the amount of:

(A) one thousand dollars ($1,000); or

(B) actual damages, including profits derived from the unauthorized use;

whichever is greater.

(2) Treble or punitive damages, as the injured party may elect, if the violation under section 8 of this chapter is knowing, willful, or intentional.

As added by P.L.2-2002, SEC.21.

IC 32-36-1-11

Profits derived from unauthorized use; proof

Sec. 11. In establishing the amount of the profits under section 10(1)(B) of this chapter:

(1) the plaintiff is required to prove the gross revenue attributable to the unauthorized use; and

(2) the defendant is required to prove properly deductible expenses.

As added by P.L.2-2002, SEC.21.

IC 32-36-1-12

Additional remedies

Sec. 12. In addition to any damages awarded under section 10 of this chapter, the court:

(1) shall award to the prevailing party reasonable attorney's fees, costs, and expenses relating to an action under this chapter; and

(2) may order temporary or permanent injunctive relief, except as provided by section 13 of this chapter.

As added by P.L.2-2002, SEC.21.

IC 32-36-1-13

Injunctive relief; enforceability against news reporting or entertainment medium

Sec. 13. Injunctive relief is not enforceable against a news reporting or an entertainment medium that has:

(1) contracted with a person for the publication or broadcast of an advertisement; and

(2) incorporated the advertisement in tangible form into material that has been prepared for broadcast or publication.

As added by P.L.2-2002, SEC.21.

IC 32-36-1-14

Impoundment of materials pending resolution of action

Sec. 14. (a) This section does not apply to a news reporting or an entertainment medium.

(b) During any period that an action under this chapter is pending, a court may order the impoundment of:

(1) goods, merchandise, or other materials claimed to have been made or used in violation of section 8 of this chapter; and

(2) plates, molds, matrices, masters, tapes, negatives, or other items from which goods, merchandise, or other materials described in subdivision (1) may be manufactured or

reproduced.

(c) The court may order impoundment under subsection (b) upon terms that the court considers reasonable.

As added by P.L.2-2002, SEC.21.

IC 32-36-1-15

Destruction or other disposition of offending materials

Sec. 15. (a) This section does not apply to a news reporting or an entertainment medium.

(b) As part of a final judgment or decree, a court may order the destruction or other reasonable disposition of items described in section 14(b) of this chapter.

As added by P.L.2-2002, SEC.21.

IC 32-36-1-16

Property rights

Sec. 16. The rights recognized under this chapter are property rights, freely transferable and descendible, in whole or in part, by the following:

(1) Contract.

(2) License.

(3) Gift.

(4) Trust.

(5) Testamentary document.

(6) Operation of the laws of intestate succession applicable to the state administering the estate and property of an intestate deceased personality, regardless of whether the state recognizes the property rights set forth under this chapter.

As added by P.L.2-2002, SEC.21.

IC 32-36-1-17

Exercise and enforcement of rights and remedies

Sec. 17. (a) The written consent required by section 8 of this chapter and the rights and remedies set forth in this chapter may be exercised and enforced by:

(1) a personality; or

(2) a person to whom the recognized rights of a personality have been transferred under section 16 of this chapter.

(b) If a transfer of a personality's recognized rights has not occurred under section 16 of this chapter, a person to whom the personality's recognized rights are transferred under section 18 of this chapter may exercise and enforce the rights under this chapter and seek the remedies provided in this chapter.

As added by P.L.2-2002, SEC.21.

IC 32-36-1-18

Exercise and enforcement of rights and remedies following death of intestate personality; fractional interests

Sec. 18. (a) Subject to sections 16 and 17 of this chapter, after the death of an intestate personality, the rights and remedies of this

chapter may be exercised and enforced by a person who possesses a total of not less than one-half (1/2) interest of the personality's recognized rights.

(b) A person described in subsection (a) shall account to any other person in whom the personality's recognized rights have vested to the extent that the other person's interest may appear.

As added by P.L.2-2002, SEC.21.

IC 32-36-1-19

Termination of untransferred rights following personality's death

Sec. 19. If:

(1) a deceased personality's recognized rights under this chapter were not transferred by:

(A) contract;

(B) license;

(C) gift;

(D) trust; or

(E) testamentary document; and

(2) there are no surviving persons as described in section 17 of this chapter to whom the deceased personality's recognized rights pass by intestate succession;

the deceased personality's rights set forth in this chapter terminate.

As added by P.L.2-2002, SEC.21.

IC 32-36-1-20

Rights and remedies supplemental to others provided by law

Sec. 20. The rights and remedies provided for in this chapter are supplemental to any other rights and remedies provided by law.

As added by P.L.2-2002, SEC.21.

IC 32-37

ARTICLE 37. COPYRIGHT

IC 32-37-1

Chapter 1. Application

IC 32-37-1-1

Exceptions

Sec. 1. This article does not apply to the following:

(1) A contract between a performing rights society and:

(A) a broadcaster licensed by the Federal Communications Commission;

(B) a cable television operator or programmer; or

(C) another transmission service.

(2) An investigation by a law enforcement agency.

(3) An investigation by a law enforcement agency or other person concerning a suspected violation of IC 24-4-10-4, IC 35-43-4-2, or IC 35-43-5-4(10).

As added by P.L.2-2002, SEC.22. Amended by P.L.181-2005, SEC.2.

IC 32-37-2
Chapter 2. Definitions

IC 32-37-2-1
Applicability
Sec. 1. The definitions in this chapter apply throughout this article.
As added by P.L.2-2002, SEC.22.

IC 32-37-2-2
"Copyright owner"
Sec. 2. (a) "Copyright owner" means the owner of a copyright, enforceable under 17 U.S.C. 101 et seq., of a nondramatic musical work.
(b) The term does not include the owner of a copyright in a motion picture or an audiovisual work, or in part of a motion picture or an audiovisual work.
As added by P.L.2-2002, SEC.22.

IC 32-37-2-3
"Performing rights society"
Sec. 3. (a) "Performing rights society" means an association or a corporation that licenses the public performance of nondramatic musical works on behalf of copyright owners.
(b) The term includes the following:
(1) The American Society of Composers, Authors, and Publishers (ASCAP).
(2) Broadcast Music, Inc. (BMI).
(3) SESAC, Inc.
As added by P.L.2-2002, SEC.22.

IC 32-37-2-4
"Proprietor"
Sec. 4. "Proprietor" means the owner of:
(1) a professional office;
(2) a retail establishment;
(3) a restaurant;
(4) a bar;
(5) a tavern; or
(6) an establishment similar to an establishment listed under subdivisions (1) through (5);
that is located in Indiana, in which the public may assemble, and in which nondramatic musical works may be performed, broadcast, or otherwise transmitted.
As added by P.L.2-2002, SEC.22.

IC 32-37-2-5
"Royalty"
Sec. 5. "Royalty" means a fee payable to a performing rights society for public performance rights.
As added by P.L.2-2002, SEC.22.

IC 32-37-3

Chapter 3. Contract Requirements

IC 32-37-3-1

Written information to be provided; request for additional information

Sec. 1. (a) At least seventy-two (72) hours before the execution of a contract between a performing rights society and a proprietor, the performing rights society shall provide the proprietor with the following written information:

(1) A schedule of the rates and terms of royalties under the contract.

(2) A toll free telephone number from which the proprietor may obtain answers to inquiries concerning musical works and copyright owners represented by the performing rights society.

(3) Notice that the performing rights society is in compliance with:

(A) state and federal law; and

(B) orders of courts having jurisdiction over:

(i) rates and terms of royalties; and

(ii) the licensing for public performance of copyrighted nondramatic musical works.

(b) At the request of the proprietor or a representative of the proprietor, not less than seventy-two (72) hours before the execution of a contract between a performing rights society and a proprietor, the performing rights society shall provide the proprietor with the following additional information or specify how the proprietor may, at the proprietor's expense, obtain the following additional information:

(1) The most recent available list of the members or affiliates represented by the society.

(2) The most recent available list of the copyrighted musical works in the performing rights society's repertory.

As added by P.L.2-2002, SEC.22.

IC 32-37-3-2

Requirements for contract

Sec. 2. A contract executed, issued, or renewed in Indiana between a performing rights society and a proprietor must be in a writing signed by the parties and must include the following information:

(1) The name and business address of the proprietor.

(2) The name and address of the performing rights society.

(3) The name and location of each place of business to which the contract applies.

(4) The duration of the contract.

(5) The schedule of rates and terms of the royalties to be collected under the contract, including, if applicable, the sliding scale or schedule or the increase or decrease of the rates during the term of the contract.

As added by P.L.2-2002, SEC.22.

IC 32-37-4
Chapter 4. Prohibitions

IC 32-37-4-1
Prohibited acts

Sec. 1. A performing rights society or an agent or employee of a performing rights society may not:

(1) enter into a contract unless the contract is executed in accordance with the provisions of this article;

(2) enter a proprietor's business premises to discuss a contract for the performance of copyrighted works or the payment of royalties without first disclosing:

(A) that the individual is an agent of a performing rights society; and

(B) the purpose of the discussion;

(3) engage in any coercive conduct, act, or practice that substantially disrupts a proprietor's business; or

(4) use or attempt to use any unfair or deceptive act or practice in dealing with a proprietor.

As added by P.L.2-2002, SEC.22.

IC 32-37-5
Chapter 5. Remedies

IC 32-37-5-1
Available remedies

Sec. 1. A person who suffers a loss as a result of a violation of this article may:

(1) bring an action to recover:
(A) actual damages; and
(B) reasonable attorney's fees;
(2) seek an injunction; and
(3) seek any other remedy available at law or in equity.

As added by P.L.2-2002, SEC.22.

IC 32-38

ARTICLE 38. TITLE INSURANCE AND TRANSFERS TO CERTAIN TRUSTS

IC 32-38-1

Chapter 1. Application

IC 32-38-1-1

Applicability

Sec. 1. This article applies to a policy or commitment issued after June 30, 2007.

As added by P.L.95-2007, SEC.19.

IC 32-38-2
Chapter 2. Definitions

IC 32-38-2-1
Applicability of definitions
Sec. 1. The definitions in IC 27-7-3-2 apply throughout this article.
As added by P.L.95-2007, SEC.19.

IC 32-38-2-2
"Commitment"
Sec. 2. "Commitment" means a commitment for title insurance.
As added by P.L.95-2007, SEC.19.

IC 32-38-2-3
"Estate"
Sec. 3. "Estate" has the meaning set forth in IC 29-1-1-3.
As added by P.L.95-2007, SEC.19.

IC 32-38-2-4
"Named insured owner"
Sec. 4. "Named insured owner" means the person identified in a policy or commitment as the insured owner or the proposed insured owner of an interest in real property that is insured or proposed to be insured under the policy or commitment.
As added by P.L.95-2007, SEC.19.

IC 32-38-2-5
"Personal representative"
Sec. 5. "Personal representative" has the meaning set forth in IC 29-1-1-3.
As added by P.L.95-2007, SEC.19.

IC 32-38-2-6
"Policy"
Sec. 6. "Policy" means a title insurance policy.
As added by P.L.95-2007, SEC.19.

IC 32-38-2-7
"Power of appointment"
Sec. 7. "Power of appointment" means a power of appointment described in IC 32-17-6.
As added by P.L.95-2007, SEC.19.

IC 32-38-2-8
"Trust"
Sec. 8. "Trust" has the meaning set forth in IC 30-4-1-1.
As added by P.L.95-2007, SEC.19.

IC 32-38-3

Chapter 3. Transfers to Certain Trusts

IC 32-38-3-1

Trustee considered insured owner; conditions

Sec. 1. The trustee of a trust is considered to be the insured owner under a policy or commitment that insures or proposes to insure an interest in real property that is transferred to the trust if:

(1) the transferee of the interest in real property is the trustee of the trust, the trust was established by the named insured owner, and the transferor is the named insured owner;

(2) the named insured owner reserves the right to amend or revoke the trust during the named insured owner's lifetime;

(3) the named insured owner is a natural person; and

(4) the transfer of the interest in real property is made by the named insured owner personally or by:

(A) the named insured owner's attorney in fact;

(B) the named insured owner's guardian or other similar person in a guardianship or protective proceeding in which the named insured owner is an incapacitated or a protected person; or

(C) the personal representative of the deceased named insured owner's estate under the terms and conditions of the named insured owner's last will and testament;

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

As added by P.L.95-2007, SEC.19.