

IC 30-4-3

Chapter 3. Rules Governing the Rights, Powers, Duties, Liabilities, and Remedies of the Parties to a Trust

IC 30-4-3-1

Repealed

(Repealed by P.L.238-2005, SEC.63.)

IC 30-4-3-1.3

Revocable trusts; powers of settlor; duties of trustees

Sec. 1.3. (a) While a trust is revocable and the settlor has the capacity to revoke the trust:

(1) the rights of the beneficiaries are subject to the control of;
and

(2) the duties of the trustee are owed exclusively to;
the settlor.

(b) A settlor is presumed to have capacity for the purposes of subsection (a) until the trustee receives from at least one (1) licensed physician written certification that the settlor lacks the capacity to revoke the trust.

(c) If a revocable trust has more than one (1) settlor, the duties of the trustee are owed to all of the settlors having capacity to revoke the trust.

(d) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

(e) If a trustee reasonably believes that a settlor of a revocable trust lacks capacity to revoke the trust, the trustee is authorized to provide information to the settlor's designated agent (even if the designated agent is one (1) of two (2) or more trustees) or to any beneficiary who, if the settlor were deceased, would be entitled to distributions from the trust.

(f) A person who becomes a successor trustee of a revocable trust upon the death, resignation, or incapacity of a trustee who was also a settlor is not liable for any act or failure to act by the settlor while the settlor was trustee.

(g) A successor trustee of a revocable trust who succeeds a trustee who was also a settlor of the trust does not have a duty to:

(1) investigate any act or failure to act by the predecessor trustee;

(2) review any accounting of the predecessor trustee; or

(3) take action on account of any breach of trust by the predecessor trustee.

As added by P.L.99-2013, SEC.9.

IC 30-4-3-1.5

Revocation or amendment of trust by settlor

Sec. 1.5. (a) This subsection applies to a trust created under an instrument executed after June 30, 2005. Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke

or amend the trust.

(b) This subsection applies to a revocable trust created or funded by at least two (2) settlors. Unless the terms of the trust provide otherwise:

(1) to the extent the trust consists of community property, the trust may be:

(A) revoked by either spouse acting alone; and

(B) amended only by the joint action of both spouses; and

(2) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the part of the trust property attributable to that settlor's contribution.

(c) The settlor may revoke or amend a revocable trust as follows:

(1) The settlor may comply with a method provided in the terms of the trust.

(2) If the terms of the trust do not provide a method or the terms of the trust provide a method that is not expressly made the exclusive method to revoke or amend the trust, the settlor may revoke or amend the trust by:

(A) executing a later will or codicil that:

(i) expressly refers to the trust; or

(ii) specifically devises property that would otherwise have passed according to the terms of the trust; or

(B) any other method that:

(i) is in writing; and

(ii) manifests clear and convincing evidence of the settlor's intent.

(d) If a revocable trust is revoked, the trustee shall deliver the trust property as the settlor directs.

(e) A settlor's powers with respect to revocation, amendment, and distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power of attorney.

(f) A guardian of a settlor may exercise the settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the guardianship.

(g) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been revoked or amended.

As added by P.L.238-2005, SEC.30.

IC 30-4-3-2

Power to restrain transfer of a beneficiary's interest

Sec. 2. (a) The settlor may provide in the terms of the trust that the interest of a beneficiary may not be either voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.

(b) Except as otherwise provided in subsection (c), if the settlor is also a beneficiary of the trust, a provision restraining the voluntary or

involuntary transfer of his beneficial interest will not prevent his creditors from satisfying claims from his interest in the trust estate.

(c) Subsection (a) applies to a trust that meets both of the following requirements, regardless of whether or not the settlor is also a beneficiary of the trust:

- (1) The trust is a qualified trust under 26 U.S.C. 401(a).
- (2) The limitations on each beneficiary's control over the beneficiary's interest in the trust complies with 29 U.S.C. 1056(d).

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

(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by P.L.287-1987, SEC.2.

IC 30-4-3-3

Powers of trustees

Sec. 3. (a) Except as provided in the terms of the trust and subject to subsection (c), a trustee has the power to perform without court authorization, except as provided in sections 4(b) and 5(a) of this chapter, every act necessary or appropriate for the purposes of the trust including, by way of illustration and not of limitation, the following powers:

- (1) The power to:
 - (A) deal with the trust estate;
 - (B) buy, sell, or exchange and convey or transfer all property (real, personal, or mixed) for cash or on credit and at public or private sale with or without notice; and
 - (C) invest and reinvest the trust estate.
- (2) The power to receive additions to the assets of the trust.
- (3) The power to acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest.
- (4) The power to manage real property in every way, including:
 - (A) the adjusting of boundaries;
 - (B) erecting, altering, or demolishing buildings;
 - (C) dedicating of streets, alleys, or other public uses;
 - (D) subdividing;
 - (E) developing;
 - (F) obtaining vacation of plats;
 - (G) granting of easements and rights-of-way;
 - (H) partitioning;
 - (I) entering into party wall agreements; and
 - (J) obtaining title insurance for trust property.
- (5) The power to:
 - (A) grant options concerning disposition of trust property, including the sale of covered security options; and
 - (B) take options for acquisition of trust property, including the purchase back of previously sold covered security options.

- (6) The power to enter into a lease as lessor or lessee, with or without option to renew.
- (7) The power to enter into arrangements for exploration and removal of minerals or other natural resources and enter into a pooling or unitization agreement.
- (8) The power to continue the operation or management of any business or other enterprise placed in trust.
- (9) The power to:
 - (A) borrow money, to be repaid from trust property or otherwise; and
 - (B) encumber, mortgage, pledge, or grant a security interest in trust property in connection with the exercise of any power.
- (10) The power to:
 - (A) advance money for the benefit of the trust estate and for all expenses or losses sustained in the administration of the trust; and
 - (B) collect any money advanced, without interest or with interest, at no more than the lowest rate prevailing when advanced.
- (11) The power to prosecute or defend actions, claims, or proceedings for the protection of:
 - (A) trust property; and
 - (B) the trustee in the performance of the trustee's duties.
- (12) The power to:
 - (A) pay or contest any claim;
 - (B) settle a claim by or against the trust by compromise or arbitration; and
 - (C) abandon or release, totally or partially, any claim belonging to the trust.
- (13) The power to insure the:
 - (A) trust estate against damage or loss; and
 - (B) trustee against liability with respect to third persons.
- (14) The power to pay taxes, assessments, and other expenses incurred in the:
 - (A) acquisition, retention, and maintenance of the trust property; and
 - (B) administration of the trust.
- (15) The power to:
 - (A) vote securities, in person or by a general or special proxy;
 - (B) hold the securities in the name of a nominee if the trustee is a corporate trustee; and
 - (C) effect or approve, and deposit securities in connection with, any change in the form of the corporation, including:
 - (i) dissolution;
 - (ii) liquidation;
 - (iii) reorganization;
 - (iv) acquisition; and
 - (v) merger.

(16) The power to employ persons, including:

- (A) attorneys;
- (B) accountants;
- (C) investment advisors; and
- (D) agents;

to advise and assist the trustee in the performance of the trustee's duties.

(17) The power to effect distribution of property in cash, in kind, or partly in cash and partly in kind, in divided or undivided interests.

(18) The power to execute and deliver all instruments necessary or appropriate to accomplishing or facilitating the exercise of the trustee's powers.

(19) With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or another form of business or enterprise, the power to:

- (A) continue the business or enterprise; and
- (B) take any action that may be taken by shareholders, members, or property owners, including:
 - (i) merging;
 - (ii) dissolving; or
 - (iii) changing the form of business organization or contributing additional capital.

(20) With respect to possible liability for violation of environmental law, the power to:

- (A) inspect or investigate property:
 - (i) the trustee holds or has been asked to hold; or
 - (ii) owned or operated by an organization in which the trustee holds an interest or has been asked to hold an interest;

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

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

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

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

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

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

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

- (A) indemnification:
 - (i) for expenses; and
 - (ii) against liabilities; and

(B) take appropriate action to collect the proceeds.

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

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

(25) The power to:

- (A) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction;
- (B) confer on the appointed trustee all the appointing trustee's powers and duties;
- (C) require the appointed trustee to furnish security; and
- (D) remove the appointed trustee.

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

- (A) paying the amount directly to the beneficiary;
- (B) applying the amount for the beneficiary's benefit;
- (C) paying the amount to the beneficiary's guardian;
- (D) paying the amount to the beneficiary's custodian under IC 30-2-8.5 to create a custodianship or custodial trust;
- (E) paying the amount to an adult relative or another person having legal or physical care or custody of the beneficiary to be expended on the beneficiary's behalf, if the trustee does not know of a guardian, custodian, or custodial trustee; or
- (F) managing the amount as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution.

(27) The power to:

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

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

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

(c) In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for any trust, the trustee thereof shall exercise the judgment and care required by IC 30-4-3.5. Within the

limitations of the foregoing standard, the trustee is authorized to acquire and retain every kind of property, real, personal, or mixed, and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing, bonds, debentures, and other corporate obligations, stocks, preferred or common, and real estate mortgages, which persons of prudence, discretion, and intelligence acquire or retain for their own account, and within the limitations of the foregoing standard, the trustee is authorized to retain property properly acquired, without limitation as to time and without regard to its suitability for original purchase. Within the limitations of the foregoing standard, the trustee is authorized to sell covered security options and to purchase back previously sold covered security options.

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

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

(e) If the trust is terminated or partially terminated, the trustee may send to the beneficiaries a proposal for distribution. If the proposal for distribution informs the beneficiary that the beneficiary:

- (1) has a right to object to the proposed distribution; and
- (2) must object not later than thirty (30) days after the proposal for distribution was sent;

the right of the beneficiary to object to the proposed distribution terminates if the beneficiary fails to notify the trustee of an objection within the time limit set forth in subdivision (2).

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

- (1) an event occurs that makes the property distributable; and
- (2) the holder of a lien on the property receives payment on a claim based upon the obligation secured by the lien;

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

(g) For purposes of subsection (f), a general directive or authority in the trust for payment of debts does not imply an intent that the distribution of property subject to a lien be made free from the lien. *(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by Acts 1977,*

P.L.300, SEC.1; P.L.277-1983, SEC.1; P.L.137-1999, SEC.1; P.L.238-2005, SEC.31; P.L.51-2014, SEC.20.

IC 30-4-3-4

Exercise of powers by multiple, successor, or surviving trustees

Sec. 4. (Exercise of Powers by Multiple, Successor, or Surviving Trustees)

Unless the terms of the trust provide otherwise:

(a) Any power vested in two (2) trustees must be exercised by them jointly; any power vested in three (3) or more trustees must be exercised by a majority.

(b) If there are two (2) or more trustees and they are unable to exercise a power under subsection (a) of this section:

(1) If there is an immediate risk of irreparable damage to the trust property or the interest of any beneficiary before court approval could be obtained, any trustee may exercise the power and petition the court for approval after the power has been exercised; but

(2) if there is no immediate risk of irreparable damage to the trust property or the interest of any beneficiary, any trustee may petition the court for permission to exercise the power, but none may exercise the power prior to obtaining permission from the court.

(c) A co-trustee is excused from liability incurred because of the exercise by a majority of a power vested in three (3) or more trustees if he:

(1) refuses to join in the exercise of the power and mails a written dissent to any of the co-trustees; or

(2) if the power was exercised without his knowledge, mails a written dissent to any co-trustee within a reasonable time after being informed that it has been exercised.

(d) A successor trustee, additional trustee or surviving or remaining co-trustee may exercise all powers previously vested in the predecessor trustee or co-trustee.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-5

Conflict of interest in exercise of powers

Sec. 5. (a) If the duty of the trustee in the exercise of any power conflicts with the trustee's individual interest or the trustee's interest as trustee of another trust, the power may be exercised only under one (1) of the following circumstances:

(1) The trustee receives court authorization to exercise the power with notice to interested persons as the court may direct.

(2) The trustee gives notice of the proposed action in accordance with IC 30-2-14-16 and:

(A) the trustee receives the written authorization of all interested persons to the proposed action within the period specified in the notice of the proposed action; or

(B) a beneficiary objects to the proposed action within the period specified in the notice of the proposed action, but the trustee receives court authorization to exercise the power.

(3) The exercise of the power is specifically authorized by the terms of the trust.

(b) For purposes of this section, the interest of an affiliate of the trustee will be deemed to be the interest of the trustee.

(Formerly: Acts 1971, P.L. 416, SEC. 4.) As amended by P.L. 61-2006, SEC. 7.

IC 30-4-3-6

Duties of trustee

Sec. 6. (a) The trustee has a duty to administer a trust according to the terms of the trust.

(b) Unless the terms of the trust or the provisions of section 1.3 of this chapter provide otherwise, the trustee also has a duty to do the following:

(1) Administer the trust in a manner consistent with IC 30-4-3.5.

(2) Take possession of and maintain control over the trust property.

(3) Preserve the trust property.

(4) Make the trust property productive for both the income and remainder beneficiary. As used in this subdivision, "productive" includes the production of income or investment for potential appreciation.

(5) Keep the trust property separate from the trustee's individual property and separate from or clearly identifiable from property subject to another trust.

(6) Maintain clear and accurate accounts with respect to the trust estate.

(7) Keep the following beneficiaries reasonably informed about the administration of the trust and of the material facts necessary for the beneficiaries to protect their interests:

(A) A current income beneficiary.

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

(i) the terms of the trust instrument; or

(ii) the death of the settlor.

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

(8) Upon:

(A) the trust becoming irrevocable:

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

(ii) by the death of the settlor; and

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

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

(9) Take whatever action is reasonable to realize on claims

constituting part of the trust property.

(10) Defend actions involving the trust estate.

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

(12) Determine the trust beneficiaries by acting on information:

(A) the trustee, by reasonable inquiry, considers reliable; and

(B) with respect to heirship, relationship, survivorship, or any other issue relative to determining a trust beneficiary.

(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by P.L.198-1996, SEC.1; P.L.137-1999, SEC.2; P.L.238-2005, SEC.32; P.L.51-2014, SEC.21; P.L.83-2014, SEC.8.

IC 30-4-3-6.5

Liability of trustee for lack of knowledge of event affecting administration or distribution of trust

Sec. 6.5. If the happening of an event, including:

(1) marriage;

(2) divorce;

(3) performance of educational requirements; or

(4) death;

affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

As added by P.L.238-2005, SEC.33.

IC 30-4-3-7

Self-dealing; transactions between trusts

Sec. 7. (a) Unless the terms of the trust provide otherwise or the transaction is authorized under IC 28-1-12-8 or IC 28-6.1-6-26, the trustee has a duty:

(1) not to loan funds to the trustee or an affiliate;

(2) not to purchase or participate in the purchase of trust property from the trust for the trustee's own or an affiliate's account;

(3) not to sell or participate in the sale of the trustee's own or an affiliate's property to the trust; or

(4) if a corporate trustee, not to purchase for or retain in the trust its own or a parent or subsidiary corporation's stock, bonds, or other capital securities. However, the trustee may retain such securities already held in trusts created prior to September 2, 1971.

(b) Unless the terms of the trust provide otherwise, a corporate trustee may invest in, purchase for, or retain in the trust its own or an affiliate's obligations, including savings accounts and certificates of deposit, without the investment, purchase, or retention constituting a conflict of interest under section 5 of this chapter.

(c) Unless the terms of the trust provide otherwise, a corporate trustee does not violate subsection (a) by investing in, purchasing for, or retaining in the trust its own or an affiliate's obligations, including savings accounts and certificates of deposit, if the payment of each

obligation is fully insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or any insurer approved by the department of financial institutions under IC 28-7-1-31.5.

(d) If the terms of the trust permit the trustee to deal with a beneficiary for the trustee's own account, the trustee has a duty to deal fairly with and to disclose to the beneficiary all material facts related to the transaction which the trustee knows or should know.

(e) Unless the terms of the trust provide otherwise, the trustee may sell, exchange, or participate in the sale or exchange of trust property from one (1) trust to the trustee as trustee of another trust, provided the sale or exchange is fair and reasonable with respect to the beneficiaries of both trusts and the trustee discloses to the beneficiaries of both trusts all material facts related to the sale or exchange which the trustee knows or should know.

(f) This section does not prohibit a trustee from enforcing or fulfilling any enforceable contract or agreement:

- (1) executed during the settlor's lifetime; and
- (2) between the settlor and the trustee in the trustee's individual capacity.

(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by Acts 1982, P.L.171, SEC.118; P.L.174-1986, SEC.1; P.L.8-1991, SEC.34; P.L.176-1996, SEC.34; P.L.238-2005, SEC.34; P.L.202-2007, SEC.3; P.L.226-2007, SEC.22; P.L.89-2011, SEC.75.

IC 30-4-3-8

Duties of co-trustees

Sec. 8. (Duties of Co-Trustee)

Unless the terms of the trust provide otherwise, if there are two (2) or more trustees, each has a duty to:

- (a) participate in the administration of the trust;
- (b) take whatever action is reasonable to prevent a co-trustee from committing a breach of trust; and
- (c) take whatever action is reasonable to compel a co-trustee to redress a breach of trust.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-9

Duty of trustee under control of third persons

Sec. 9. (Duty of Trustee under Control of Third Person)

(a) If the terms of the trust give a person a power to direct the trustee in the administration of the trust and those terms expressly direct the trustee to rely, or relieve the trustee from liability if he does rely, on that person's directions, the trustee may do so and will incur no liability for any loss to the trust estate.

(b) If the terms of the trust give a person a power to direct the trustee in the administration of the trust, except as provided in subsection (a) of this section:

- (1) If the person holds the power as a fiduciary, the trustee has a duty to refuse to comply with any direction which he knows or

should know would constitute a breach of a duty owed by that person as a fiduciary.

(2) If the person holds the power solely for his own benefit, the trustee may refuse to comply only if the attempted exercise of the power violates the terms of the trust with respect to that power.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-10

Liability to third persons

Sec. 10. (Liability to Third Persons)

(a) Unless the terms of the contract or other non-negotiable obligation expressly provide otherwise, the trustee is not personally liable on a contract or other non-negotiable obligation with a third person made by him in the administration of the trust.

(b) When a third person is entitled to compensation for injury suffered in the course of the administration of the trust:

(1) If the injury is the result of the trustee's personal act or omission as trustee, the trustee will be personally liable and the injured party will be entitled to satisfaction of his claim from the trustee's individual property first and then, to the extent the claim is yet unsatisfied, from the trust estate.

(2) If the injury is the result of the act or omission of an agent of the trustee, and the agent was properly selected and supervised and there was no improper delegation of authority to the agent, the injured party will be entitled to satisfaction of his claim from the trust estate first and then, to the extent that the claim is yet unsatisfied, from the trustee's individual property.

(3) If the injury is the result of the act or omission of the settlor or his agent, and not that of the trustee or his agent, the injured party will be entitled to satisfaction of his claim from the trust estate and not from the trustee's individual property.

(4) The question of ultimate liability as between the trust estate and the trustee individually, if it is to be determined, shall be determined in a proceeding for accounting, surcharge or indemnification.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-11

Potential liability of trustee to beneficiary; remedies; removal of trustee

Sec. 11. (a) The trustee is accountable to the beneficiary for the trust estate.

(b) If the trustee commits a breach of trust, the trustee is liable to the beneficiary for:

(1) any loss or depreciation in the value of the trust property as a result of the breach;

(2) any profit made by the trustee through the breach;

(3) any reasonable profit which would have accrued on the trust property in the absence of a breach; and

(4) reasonable attorney's fees incurred by the beneficiary in

bringing an action on the breach.

(c) In the absence of a breach of trust, the trustee has no liability to the beneficiary either for any loss or depreciation in value of the trust property or for a failure to make a profit. However, if:

- (1) a loss or depreciation in value of the trust property; or
- (2) the trust's failure to make a profit;

is the result of a violation by the trustee of IC 28-1-12-8 or IC 28-6.1-6-26, one (1) or more beneficiaries of the trust may petition the court for any remedy described in subsection (b) or for removal of the trustee under section 22(a)(4) of this chapter, regardless of whether the transaction under IC 28-1-12-8 or IC 28-6.1-6-26 constitutes or involves a breach of trust. The court may award one (1) or more remedies described in subsection (b) or remove the trustee, or both, if the court determines that the remedy or the removal of the trustee is in the best interests of all beneficiaries of the trust. The burden of proof is on the one (1) or more petitioning beneficiaries to demonstrate that the remedy or the removal of the trustee is in the best interests of all beneficiaries of the trust.

(d) The trustee is liable to the beneficiary for acts of an agent which, if committed by the trustee, would be a breach of the trust if the trustee:

- (1) directs or permits the act of the agent;
- (2) delegates the authority to perform an act to the agent which the trustee is under a duty not to delegate;
- (3) fails to use reasonable care in the selection or retention of the agent;
- (4) fails to exercise proper supervision over the conduct of the agent;
- (5) approves, acquiesces in, or conceals the act of the agent; or
- (6) fails to use reasonable effort to compel the agent to reimburse the trust estate for any loss or to account to the trust estate for any profit.

(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by P.L.202-2007, SEC.4; P.L.226-2007, SEC.23; P.L.3-2008, SEC.228.

IC 30-4-3-12

Liability for breach of trust by co-trustee

Sec. 12. (Liability for Breach of Trust by Co-Trustee)

A trustee becomes liable to the beneficiary for a breach of trust committed by his co-trustee if he:

- (a) participates in the breach of trust;
- (b) improperly delegates the administration of the trust to the co-trustee;
- (c) approves, acquiesces in or conceals a breach of trust;
- (d) enables the co-trustee to commit a breach of trust by his failure to exercise care in the administration of the trust; or
- (e) fails to use reasonable effort to compel the co-trustee, or, if the co-trustee has died, his estate, to redress a breach of trust.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-13

Liability of a successor trustee

Sec. 13. (Liability of a Successor Trustee)

A successor trustee becomes liable for a breach of trust of his predecessor if he:

(a) fails to take whatever action is necessary to compel the predecessor trustee to deliver the trust property; or

(b) fails to make a reasonable effort to compel a redress of a breach of trust committed by the predecessor trustee.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-14

Contribution and indemnity

Sec. 14. (Contribution and Indemnity)

(a) Except as stated in subsection (b) of this section, if two (2) or more co-trustees are liable to the beneficiary, each co-trustee is entitled to contribution from the other, provided, however, that:

(1) if one (1) co-trustee is substantially more at fault than another, the co-trustee who is most at fault is not entitled to contribution, and the other co-trustee is entitled to indemnity from him; or

(2) if one (1) of the co-trustees receives a profit from the administration of the trust or a benefit from a breach of trust, the other co-trustee is entitled to indemnity from him to the extent of the profit or benefit received by that co-trustee.

(b) If a trustee commits a breach of trust in bad faith, he is not entitled to either contribution or indemnity from his co-trustee.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-15

Remedies of trustee against third persons

Sec. 15. (Remedies of the Trustee against Third Persons)

The trustee may maintain in his representative capacity a civil action for any legal or equitable remedy against a third person that he could maintain in his own right if he were the owner.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-16

Remedies among co-trustees

Sec. 16. (Remedies among Co-Trustees)

Any trustee may maintain an action against a co-trustee to:

(a) compel him to perform his duties under the trust;

(b) enjoin him from committing a breach of trust; or

(c) compel him to redress a breach of trust committed by him.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-17

Remedies of trustee against beneficiary

Sec. 17. (Remedies of Trustee against Beneficiary)

The trustee may maintain a civil action against a beneficiary for any legal or equitable remedy, including, among others, a charge

against the beneficiary's interest in the trust estate, in any case in which the beneficiary is liable under 30-4-3-20.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-18

Other remedies of the trustee

Sec. 18. (Other Remedies of the Trustee)

(a) If there is reasonable doubt with respect to any matter relating to the administration of the trust, the trustee is entitled to be instructed by the court.

(b) The trustee is entitled to a review and settlement by the court of the accounts of his administration.

(c) The trustee is entitled to a lien against the trust estate:

(1) for any advances made by him under 30-4-3-3(a) (10); and

(2) for the value of his services for which he is entitled to, but has not received, compensation as provided either under the terms of the trust or under 30-4-5-16.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-19

Relief of trustee's liability for breach of trust

Sec. 19. (Relief of Trustee's Liability for Breach of Trust)

(a) Unless the terms of the trust provide otherwise or unless if to do so would frustrate, impair or defeat the purposes of the trust, a beneficiary, except as provided in subsection (b) of this section, relieves the trustee from liability for breach of trust as to that beneficiary's interest if he:

(1) consents to or acquiesces in the act or omission which constitutes a breach of trust;

(2) agrees to release or discharge the trustee from liability for breach of trust after the act or omission constituting the breach occurs;

(3) elects, under an option to affirm or reject a transaction entered into as a breach of trust, to affirm the transaction; or

(4) participates in the act of the trustee which constitutes the breach of trust.

(b) The consent, acquiescence, agreement to release or discharge, affirmance, or participation by a beneficiary will not relieve the trustee from liability if:

(1) at the time it was given the beneficiary was under an incapacity;

(2) at the time it was given the beneficiary did not know of his rights or all of the material facts which the trustee knew or should have known;

(3) it was induced by the trustee's improper conduct;

(4) the trustee had an adverse interest in the transaction and the transaction was not fair and reasonable; or

(5) the trustee pays or delivers a beneficiary's interest to that beneficiary contrary to the terms of a trust with protective provisions.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-20

Liability of beneficiary

Sec. 20. (Liability of Beneficiary)

(a) A beneficiary is liable for loss to the trust estate if he has:

(1) misappropriated or otherwise wrongfully dealt with the trust property;

(2) expressly consented to, participated in or agreed with the trustee to be liable for a breach of trust committed by the trustee;

(3) failed to repay an advance or loan of trust funds;

(4) failed to repay a distribution or disbursement from the trust estate in excess of that to which he is entitled; or

(5) breached a contract to pay money or deliver property to the trustee to be held by the trustee as part of the trust estate.

(b) Unless the terms of the trust provide otherwise a beneficiary of a trust is liable to the extent of his interest in the trust estate for the amount of any debt owed the trust estate by him.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-21

Remedies of beneficiary against third persons

Sec. 21. (Remedies of the Beneficiary against Third Persons)

If the trustee has a claim against a third person for which he may maintain a civil action under 30-4-3-15 but he is unable, unwilling or neglects to commence the action within a reasonable time not to exceed thirty (30) days after written demand, any beneficiary may commence the action in his own right for the benefit of all the beneficiaries.

(Formerly: Acts 1971, P.L.416, SEC.4; Acts 1972, P.L.11, SEC.13.)

IC 30-4-3-22

Remedies of the beneficiary against the trustee

Sec. 22. (Remedies of the Beneficiary against the Trustee)

(a) A beneficiary of a trust may maintain an action:

(1) to compel the trustee to perform his duties;

(2) to enjoin the trustee from committing an act which may be a breach of trust;

(3) to compel the trustee to redress a breach of trust; or

(4) to remove a trustee for cause and to appoint a successor trustee.

(b) If the trustee acquires property and wrongfully holds it outside the trust, a beneficiary is entitled at his option to either:

(1) require the property to be transferred to the trust or

(2) impose an equitable lien upon it to secure his claim for damages for breach of trust.

(c) If the trustee commingles the trust funds or property with his own funds or property or converts the trust fund or property into another form which is wrongfully held outside the trust:

(1) if the fund or property can be traced and identified, the beneficiary is entitled to restoration of the fund or property to the trust; or

(2) if the fund or property cannot be traced and identified,

(A) In a case of commingling of funds or property, the beneficiary is entitled to a lien against the trustee's individual property from the date and in the amount of the fund or the value of the property at the time of the commingling.

(B) In a case of conversion of property, the beneficiary is entitled to a lien against the trustee's individual property from the date and according to the value of the property at the time of the conversion.

(d) If the trustee is also a beneficiary, the other beneficiaries will be entitled to a charge against the trustee's beneficial interest to secure their claims against him for a breach of trust.

(e) If a beneficiary successfully maintains an action under subsection (a) of this section or is entitled to a judgment under subsections (b), (c), or (d) of this section, he is entitled to a judgment for reasonable attorney's fees.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-23

Remedy of a beneficiary against a co-beneficiary

Sec. 23. (Remedy of a Beneficiary against a Co-Beneficiary)

(a) If no recovery can be made from the trustee for a breach of trust, a beneficiary may maintain an action against a co-beneficiary who consented to the breach for a redress of the breach, if the co-beneficiary:

(1) knows or should have known that the act of the trustee to which he consented constituted a breach of trust;

(2) agreed with the trustee or the other beneficiaries to be liable for any loss which might result from the act constituting the breach; or

(3) participated in the act constituting the breach.

(b) The consenting co-beneficiary shall be personally liable for any loss for which the other beneficiaries are entitled to redress under subsection (a) of this section and his beneficial interest in the trust estate may be charged for the amount of the loss if the court deems it proper to do so.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-24

Repealed

(Repealed by P.L.238-2005, SEC.63.)

IC 30-4-3-24.4

Modification or termination of trust by court

Sec. 24.4. (a) The court may modify the administrative or dispositive terms of a trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

(b) The court may modify the administrative terms of a trust or terminate the trust if:

- (1) the purpose of the trust has been fulfilled; or
- (2) continuation of the trust on the trust's existing terms would:
 - (A) be illegal, impossible, impracticable, or wasteful; or
 - (B) impair the trust's administration.

(c) If the trust terminates under this section, the court shall direct the trustee to distribute the trust property in a manner consistent with the purposes of the trust.

(d) The court may modify the terms of a trust to give the settlor the power to revoke and modify the trust if the:

- (1) settlor intended to reserve the power;
- (2) settlor believed the power was reserved; and
- (3) power was omitted from the terms of the trust by mistake.

As added by P.L.238-2005, SEC.35.

IC 30-4-3-24.5

Termination by trustee of trust with value less than \$75,000

Sec. 24.5. (a) This section does not apply to an easement for conservation or preservation.

(b) This subsection applies to a trust consisting of trust property having a total value of less than seventy-five thousand dollars (\$75,000). Unless the terms of the trust provide otherwise, the trustee may terminate the trust:

- (1) if the trustee concludes the value of the trust property is insufficient to justify the cost of administration; and
- (2) after providing notice of the trust termination to qualified beneficiaries.

(c) The court may:

- (1) modify or terminate a trust; or
- (2) remove the trustee and appoint a different trustee;

if the court determines that the value of the trust property is insufficient to justify the cost of administration. If a trust terminates under this subsection, the court shall direct the trustee to distribute the trust property in a manner consistent with the purposes of the trust.

(d) If a trust terminates under subsection (b), the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

As added by P.L.238-2005, SEC.36.

IC 30-4-3-25

Rescission and reformation

Sec. 25. (Rescission and Reformation)

Upon petition by an interested party, the court may rescind or reform a trust according to the same general rules applying to rescission or reformation of non-trust transfers of property.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-25.5

Distribution of terminated trust; payment of federal and state taxes

Sec. 25.5. (a) This section applies beginning October 1, 2009.

(b) Except as provided in subsection (d), when a trust created to comply with 42 U.S.C. 1396p(d)(4)(A) is terminated, the trustee shall not distribute trust property to any person entitled to payment from the trust until the office of Medicaid policy and planning has been fully reimbursed for assistance rendered to the person for whom the trust was created.

(c) The primary purpose of a trust described in subsection (b) is to ensure that the state is repaid Medicaid benefits provided in return for exempting the trust from the general requirements of 42 U.S.C. 1396(d).

(d) A trustee may pay federal and state taxes from the trust before reimbursing the office of Medicaid policy and planning.

As added by P.L.14-2009, SEC.3.

IC 30-4-3-26

Power to direct a deviation from the terms of the trust

Sec. 26. (Power to Direct a Deviation from the Terms of the Trust)

(a) Upon petition by the trustee or a beneficiary, the court shall direct or permit the trustee to deviate from a term of the trust if, owing to circumstances not known to the settlor and not anticipated by him, compliance would defeat or substantially impair the accomplishment of the purposes of the trust. In that case, if necessary to carry out the purposes of the trust, the court may direct or permit the trustee to do acts which are not authorized or are forbidden by the terms of the trust, or may prohibit the trustee from performing acts required by the terms of the trust.

(b) The trustee may deviate from the terms of the trust as provided in subsection (a) of this section, without first obtaining the permission of the court, if there is an emergency or if he reasonably believes that there is an emergency, and before deviating he has no opportunity to apply to the court for permission to deviate.

(c) The trustee is liable for any loss or damage which results if he fails to apply to the court for permission to deviate from the terms of the trust, when he knows or should know that, owing to circumstances not known to the settlor and not anticipated by him, compliance will defeat or substantially impair the accomplishment of the purposes of the trust.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-27

Cy pres doctrine

Sec. 27. (a) If property is given to a trust for a benevolent public purpose and the property is to be applied to a particular charitable purpose, and it is or becomes impossible, impracticable, wasteful, or illegal to carry out the particular purpose, and if the settlor manifested a more general intention to devote the property to charitable purposes, the trust need not fail, but the court may direct the application of the property to some charitable purpose which falls within the general charitable intention of the settlor.

(b) The terms of a charitable trust that would result in the

distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection (a) to apply the cy pres doctrine to modify or terminate the trust only if, when the provision takes effect:

- (1) the trust property is to revert to the settlor and the settlor is still alive; or
- (2) less than twenty-one (21) years have elapsed since the trust was created.

(c) A living heir of the settlor or a living beneficiary named in the original trust agreement may present evidence to the court of:

- (1) the heir's or beneficiary's opinion of the settlor's intent; and
- (2) the heir's or beneficiary's wishes;

regarding the property given in trust.

(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by P.L.41-2000, SEC.3; P.L.238-2005, SEC.37.

IC 30-4-3-28

Repealed

(Repealed by P.L.238-2005, SEC.63.)

IC 30-4-3-29

Removal, resignation, and appointment of trustees

Sec. 29. (a) A trustee may be removed as follows:

- (1) By the court.
- (2) By the person, if any, who by the terms of the trust is authorized to remove the trustee.
- (3) Unless the terms of the trust instrument provide otherwise, by a beneficiary of the trust whose petition is granted by the court under subsection (d).

(b) Unless the terms of the trust requires a different time, the trustee may resign:

- (1) if the trustee gives at least thirty (30) days notice to:
 - (A) the qualified beneficiaries;
 - (B) the settlor, if living; and
 - (C) all cotrustees; or
- (2) with the approval of the court.

In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property. Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

(c) For good cause shown, the court may at any time appoint a temporary trustee for such period of time, and to perform such duties, as the court may direct.

(d) This subsection applies only to a trust executed after June 30, 1996. A beneficiary of a trust may petition the court for the removal of a corporate trustee if there has been a change in control of the corporate trustee after the date of the execution of the trust. The court may remove the corporate trustee if the court determines the removal is in the best interests of all the beneficiaries of the trust. For

purposes of this subsection a change in control of the corporate trustee occurs whenever a person or group of persons acting in concert acquires the beneficial ownership of an aggregate of at least twenty-five percent (25%) of the outstanding shares of voting stock of:

- (1) a trustee; or
- (2) a corporation controlling a trustee;

after June 30, 1996.

(e) A trustee who has resigned or been removed shall expeditiously deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to the trust property. A trustee who has resigned or been removed has the duties of trustee and the powers necessary to protect the trust property:

- (1) unless a cotrustee remains in the office of trustee or the court orders otherwise; and
- (2) until the trust property is delivered to a successor trustee or other person entitled to the trust property.

(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by P.L.199-1996, SEC.1; P.L.165-2002, SEC.6; P.L.238-2005, SEC.38.

IC 30-4-3-29.5

Corporate trustee that acquires trust due to change in control

Sec. 29.5. (a) Except as provided in subsection (b) and unless the trust instrument provides otherwise, a corporate trustee that acquires a trust as a result of a change in control may not:

- (1) decline to accept the trust property;
- (2) resign as trustee; or
- (3) otherwise refuse to administer the trust;

based upon the amount of property or funds held in the trust estate.

(b) A court may, at the court's discretion, allow a trustee described in subsection (a) to resign if:

- (1) the trustee petitions the court; and
- (2) the court determines that the trustee's resignation will be in the best interests of all the beneficiaries of the trust.

As added by P.L.199-1996, SEC.2.

IC 30-4-3-30

Effect of this article on the court's equity powers

Sec. 30. (Effect of This Article on the Court's Equity Powers)

Except as otherwise provided in this article, the article shall not be construed to limit the general equity powers of the court over the administration of trusts.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-31

Judicial modification of trusts for benevolent public purpose and certain transfers not in trust; federal compliance

Sec. 31. (a) This section is enacted for the purpose of confirming the power of Indiana courts to modify trusts for a benevolent public purpose, and transfers not in trust as described in Section

170(f)(3)(A) of the Internal Revenue Code, to effect compliance with Sections 170, 664, 2055, 2106, and 2522 of the Internal Revenue Code so that these trusts and transfers may obtain the income tax exemption afforded by Section 664 of the Internal Revenue Code and donors or other contributors of gifts or contributions to these trusts and transfers may secure the income, estate, and gift tax charitable deductions granted by Sections 170, 2055, 2106, and 2522 of the Internal Revenue Code.

(b) Upon petition, any court of general or probate jurisdiction in Indiana may, in its discretion, modify the instrument of an inter vivos or testamentary trust for a benevolent public purpose, or transfer not in trust as described in Section 170(f)(3)(A) of the Internal Revenue Code, so that the trust or transfer complies with and conforms to the provisions of Sections 170, 664, 2055, 2106, and 2522 of the Internal Revenue Code and regulations thereunder from the date of the trust's or transfer's creation, if consent to the modification is given by:

- (1) all beneficiaries of the trust or transfer; and
- (2) the settlor of the trust or transfer if the settlor is living at the date of modification.

(Formerly: Acts 1973, P.L.294, SEC.1.) As amended by Acts 1977, P.L.301, SEC.1; Acts 1982, P.L.180, SEC.1; P.L.2-1987, SEC.46; P.L.41-2000, SEC.4.

IC 30-4-3-32

Trustee's liability for breach of trust

Sec. 32. (a) Except as stated in subsections (b) and (c), the trustee, by provisions of the trust, can be relieved of liability for breach of trust.

(b) A provision in the trust instrument is not effective to relieve the trustee of liability for breach of trust committed in bad faith, intentionally, or with reckless indifference to the interest of the beneficiary, or of liability for any profit that the trustee has derived from a breach of trust.

(c) A provision that relieves the trustee of liability for breach of trust is ineffective if it is inserted in the trust instrument as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

As added by P.L.149-1984, SEC.1.

IC 30-4-3-33

Trustee vacancies; priority for filling vacancy

Sec. 33. (a) In addition to the terms of a trust regarding the circumstances under which a trustee vacancy occurs, a trustee vacancy occurs if:

- (1) a person designated as trustee does not accept being trustee;
- (2) a person designated as trustee cannot be identified or does not exist;
- (3) a trustee resigns;
- (4) a trustee is disqualified or removed;
- (5) a trustee dies; or

(6) the person designated as trustee lacks capacity.

(b) Except as provided in the terms of a trust, if a trust has at least two (2) cotrustees and at least one (1) cotrustee remains in office, a cotrustee vacancy is not required to be filled. A cotrustee vacancy must be filled if the trust has no remaining cotrustee.

(c) Except as provided in the terms of a trust, a trustee vacancy of a noncharitable trust that is required to be filled must be filled according to the following priority:

(1) A person designated in the terms of the trust to act as successor trustee.

(2) A person appointed by a majority of the qualified beneficiaries.

(3) A person appointed by the court.

(d) Except as provided in the terms of a trust, a trustee vacancy of a charitable trust that is required to be filled must be filled according to the following priority:

(1) A person designated in the terms of the trust to be successor trustee.

(2) A person:

(A) selected by the charitable organizations expressly designated to receive distributions under the terms of the trust; and

(B) whose selection is approved by the attorney general.

(3) A person appointed by the court.

(e) Regardless of whether a trustee vacancy exists or is required to be filled, the court may appoint an additional trustee or a special fiduciary if the court considers the appointment necessary for the administration of the trust.

As added by P.L.238-2005, SEC.39.

IC 30-4-3-34

Petition to determine heirs and interests in trust estate

Sec. 34. (a) At any time during the administration of a trust, a trustee or any interested person may petition the court to determine the:

(1) heirs of:

(A) the settlor; or

(B) any person named in the trust; and

(2) respective interests of the persons described in subdivision

(1) in the trust estate or any part of the trust estate.

(b) If a petition is filed under this section, the court shall fix the time for a hearing on the petition. Notice of the hearing shall be given in the following manner:

(1) Personally or by mail to persons who are named in the trust and:

(A) are known to claim;

(B) are believed to claim; or

(C) have;

an interest in the trust estate or any part of the trust estate as heir or through an heir of the settlor.

(2) By publication to any unknown heirs.

(c) When a hearing is held on the petition, the issues set forth in the petition under subsection (a) may be determined by:

- (1) competent evidence; or
- (2) affidavit, if there are no objections.

A record shall be made of the oral evidence. The record and affidavits must be a part of the files in the trust proceeding.

(d) If there is satisfactory proof, the court shall make a decree that determines the issues set forth in the petition under subsection (a). The court's decree is conclusive of the facts determined by the court with regard to any interested person who has been notified personally or by mail in accordance with subsection (b)(1), subject to the interested person's right of appeal.

(e) An act of the trustee is valid with regard to the rights and liabilities of a purchaser, a lessee, or other person who deals with the trustee for value and in good faith, if the trustee acts in:

- (1) accordance with the facts as determined by the court's decree under subsection (d);
- (2) accordance with the law; and
- (3) good faith.

As added by P.L.238-2005, SEC.40.

IC 30-4-3-35

Matrimonial trusts; election; effect of the death of a spouse or the dissolution of the marriage; revocation

Sec. 35. (a) This section is intended to ensure that if real property is transferred to one (1) or more revocable trusts created by a husband and wife for estate planning purposes, the husband and wife will maintain real estate ownership protections equivalent to those they would have if they owned that real property in an estate by the entireties including an estate by the entireties created under IC 32-17-3-1.

(b) As used in this section, "joint matrimonial trust" means a single inter vivos trust established under this section by settlors who are husband and wife.

(c) As used in this section, "matrimonial property" means real property that:

- (1) is subject to a written election to treat the property as matrimonial property under this section; and
- (2) is owned by a matrimonial trust.

(d) As used in this section, "matrimonial trust" means a trust established under this section to own matrimonial property.

(e) As used in this section, "separate matrimonial trust" means a separate trust that is also a matrimonial trust.

(f) As used in this section, "separate trust" means a trust established by one (1) individual.

(g) A matrimonial trust may be established:

- (1) jointly by a husband and wife; or
- (2) in two (2) or more separate trusts.

(h) A husband and wife may elect to treat real property as

matrimonial property with a written statement of the election:

(1) in an instrument or instruments conveying the real property to a matrimonial trust or trusts; or

(2) in a separate writing that must be recorded in the county where the real property is situated and indexed in the records of the county recorder's office to the instrument or instruments that convey the real property to a matrimonial trust or trusts.

(i) A guardian of a husband or wife may make an election under this section:

(1) without the approval of the court if the guardian has unlimited powers under IC 29-3-8-4; and

(2) with the approval of the court in all other cases.

(j) An attorney in fact of a husband and wife may join in the making of an election under this section under the powers conferred upon the attorney in fact by IC 30-5-5-2 if the power of attorney is recorded in the county where the real property is situated and indexed in the records of the county recorder's office to the instrument or instruments that convey the real property to a matrimonial trust or trusts.

(k) The terms of a separate matrimonial trust or a joint matrimonial trust may (but are not required to) restrict the sale or transfer of the matrimonial property for:

(1) the lifetime of the settlor who dies first;

(2) the lifetime of the surviving settlor; or

(3) another defined time period.

(l) An interest in matrimonial property is not severable during the marriage of the husband and wife unless:

(1) both the husband and wife join in the severance in writing; or

(2) a third party owns and forecloses a mortgage or other lien against the interests of both the husband and wife in the matrimonial property.

(m) Notwithstanding any other provision of this section, the legal rights of a lienholder that exist at the time of an election to treat the real property subject to the lien as matrimonial property may not be subject to a severance described in subsection (l) without the lienholder's written consent.

(n) To the extent that a matrimonial trust continues to be a matrimonial trust after the death of a settlor (as provided by subsections (p) and (r));

(1) real property held or owned in a separate trust and for which an earlier election was made under this section continues to be matrimonial property; and

(2) an unsecured creditor or judgment lien creditor who has a claim only against the deceased settlor but not against the surviving settlor cannot enforce that claim against the deceased settlor's interest or the surviving settlor's interest in the matrimonial property.

(o) After the death of a settlor of a matrimonial trust (whether separate or joint), the issue of whether the surviving settlor's interest

in the matrimonial property will be exposed to the claims of the surviving settlor's existing creditors or new creditors must be determined according to:

- (1) the nature and extent of the surviving settlor's interest in the matrimonial property under the terms of the deceased settlor's separate trust or the joint trust;
- (2) all other relevant facts and circumstances; and
- (3) pertinent principles of nontrust law outside this article.

(p) Matrimonial property held in a separate matrimonial trust or in a joint matrimonial trust continues to be matrimonial property after the death of one (1) settlor:

- (1) if the settlors reserved a life estate in the matrimonial property for each settlor when they conveyed the matrimonial property to the matrimonial trust or trusts; or
- (2) if the deceased settlor's separate trust provides to the surviving settlor:

- (A) a life estate;
- (B) an interest that qualifies for a deduction from the gross estate of the decedent under Section 2056 of the Internal Revenue Code regardless of whether an election is made to qualify the interest for the deduction; or
- (C) in some respect the current right to occupy or receive rent, royalties, or other kinds of income with respect to the matrimonial property.

(q) A separate matrimonial trust established by a deceased settlor ceases to be a matrimonial trust upon the termination of payments to the surviving settlor as a result of the surviving settlor's death or as a result of the surviving settlor's valid disclaimer of all interests in the matrimonial property held in the deceased settlor's trust.

(r) A separate matrimonial trust established by a settlor who remains alive continues to be a matrimonial trust during that settlor's remaining lifetime, so long as the settlor retains the right to use or occupy matrimonial property held in the settlor's separate trust.

(s) A matrimonial trust ceases to be a matrimonial trust upon the dissolution of the marriage of the settlors.

(t) A husband and wife may revoke a matrimonial trust by together executing a writing expressing the revocation.

As added by P.L.6-2010, SEC.18. Amended by P.L.36-2011, SEC.9; P.L.99-2013, SEC.10.

IC 30-4-3-36

Trust decanting; notice; rules of construction

Sec. 36. (a) Unless a trust expressly provides otherwise, a trustee who has discretion under the terms of a trust (referred to in this section as the "first trust") to invade the principal of the trust to make distributions to or for the benefit of one (1) or more persons may instead exercise the power by appointing all or part of the principal of the first trust in favor of a trustee of another trust (referred to in this section as the "second trust") for the benefit of one (1) or more persons under the same trust instrument or under a different trust

instrument as long as:

- (1) the beneficiaries of the second trust are the same as the beneficiaries of the first trust;
- (2) the second trust does not reduce any income, annuity, or unitrust interest in the assets of the first trust; and
- (3) if any contributions to the first trust qualified for a marital or charitable deduction for purposes of the federal income, gift, or estate taxes, the second trust does not contain any provision that, if included in the first trust, would have prevented the first trust from qualifying for a deduction or reduced the amount of a deduction.

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

- (1) in writing;
- (2) signed and acknowledged by the trustee; and
- (3) filed with the records of the first trust.

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

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

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

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

(g) This section may not be construed to abridge the right of any trustee who has a power of invasion to appoint property in further trust that arises under the terms of the first trust, under any other provision of this article or any other statute, or under common law.
As added by P.L. 6-2010, SEC. 19. Amended by P.L. 51-2014, SEC. 22.

IC 30-4-3-37

Unclaimed trust shares; disposition procedures

Sec. 37. (a) If a beneficiary of a trust cannot be found after a reasonable search, the trustee may file a petition setting out the facts of the unsuccessful search. The court may order the trustee to sell the shares of the trust to which the beneficiary is entitled and to pay the proceeds to the clerk of the court. The clerk shall hold the proceeds for the use and benefit of the person or persons thereafter determined by law to be entitled to the proceeds.

(b) If a trustee pays any money to the clerk of the court under this section, the trustee shall file a receipt with the court. Filing the receipt is sufficient to discharge the trustee in the same manner and to the same extent as though the trustee had paid or distributed the appropriate share of the trust to the unlocated beneficiary.

(c) This section does not apply to stocks, dividends, capital credits, patronage, refunds, utility deposits, membership fees, account balances, or book equities for which the owner cannot be found 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.

As added by P.L.6-2010, SEC.20.