IC 29

TITLE 29. PROBATE

IC 29-1

ARTICLE 1. PROBATE CODE

IC 29-1-1

Chapter 1. General Provisions

IC 29-1-1-0.1

Application of certain amendments to chapter

Sec. 0.1. The amendments made to sections 9, 11, 12, and 20 of this chapter by P.L.118-1997 do not apply to an individual whose death occurs before July 1, 1997.

As added by P.L.220-2011, SEC.465.

IC 29-1-1-1

Short title

Sec. 1. This article shall be known and may be cited as the Probate Code.

(Formerly: Acts 1953, c.112, s.101.) As amended by Acts 1982, P.L.171, SEC.1.

IC 29-1-1-2

Procedure; prior proceedings or rights

Sec. 2. (a) The procedure herein prescribed shall govern all proceedings in probate brought after January 1, 1954; and also all further procedure in probate proceedings then pending, except to the extent that in the opinion of the court their application in particular proceedings or parts thereof would not be feasible or would work injustice, in which event the former procedure shall apply.

(b) No act done in any proceeding commenced before January 1, 1954, and no accrued right, shall be impaired by its provisions. When a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provision of the law in force at the time, such provision shall remain in force and be deemed a part of this article with respect to such right, and not withstanding any of the provisions of this article, the person or persons who shall be entitled to take or receive any property, right, power or interest on the final settlement and distribution of any estate pending or any trust being administered on January 1, 1954 shall be determined, and his or their rights, powers and interest shall be governed by the statutes and applicable decisions in force and effect immediately prior to January 1, 1954.

(c) If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

(Formerly: Acts 1953, c.112, s.102.) As amended by Acts 1982,

P.L.171, SEC.2.

IC 29-1-1-3
Definitions; rules of construction

Sec. 3. (a) The following definitions apply throughout this article, unless otherwise apparent from the context:

(1) "Child" includes an adopted child but does not include a grandchild or other more remote descendants, nor, except as provided in IC 29-1-2-5, a child born out of wedlock.

(2) "Claims" includes liabilities of a decedent which survive, whether arising in contract or in tort or otherwise, funeral expenses, the expense of a tombstone, expenses of administration, and all taxes imposed by reason of the person's death. However, for purposes of IC 29-1-2-1 and IC 29-1-3-1, the term does not include taxes imposed by reason of the person's death.

(3) "Court" means the court having probate jurisdiction.

(4) "Decedent" means one who dies testate or intestate.

(5) "Devise" or "legacy", when used as a noun, means a testamentary disposition of either real or personal property or both.

(6) "Devise", when used as a verb, means to dispose of either real or personal property or both by will.

(7) "Devisee" includes legatee, and "legatee" includes devisee.

(8) "Distributee" denotes those persons who are entitled to the real and personal property of a decedent under a will, under the statutes of intestate succession, or under IC 29-1-4-1.

(9) "Estate" denotes the real and personal property of the decedent or protected person, as from time to time changed in form by sale, reinvestment, or otherwise, and augmented by any accretions and additions thereto and substitutions therefor and diminished by any decreases and distributions therefrom.

(10) "Fiduciary" includes a:

(A) personal representative;

(B) guardian;

(C) conservator;

(D) trustee; and

(E) person designated in a protective order to act on behalf of a protected person.

(11) "Heirs" denotes those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate, unless otherwise defined or limited by the will.

(12) "Incapacitated" has the meaning set forth in IC 29-3-1-7.5.

(13) "Interested persons" means heirs, devisees, spouses, creditors, or any others having a property right in or claim against the estate of a decedent being administered. This meaning may vary at different stages and different parts of a proceeding and must be determined according to the particular

purpose and matter involved.

(14) "Issue" of a person, when used to refer to persons who take by intestate succession, includes all lawful lineal descendants except those who are lineal descendants of living lineal descendants of the intestate.

(15) "Lease" includes an oil and gas lease or other mineral lease.

(16) "Letters" includes letters testamentary, letters of administration, and letters of guardianship.

(17) "Minor" or "minor child" or "minority" refers to any person under the age of eighteen (18) years.

(18) "Mortgage" includes deed of trust, vendor's lien, and chattel mortgage.

(19) "Net estate" refers to the real and personal property of a decedent less the allowances provided under IC 29-1-4-1 and enforceable claims against the estate.

(20) "Person" includes natural persons and corporations.

(21) "Personal property" includes interests in goods, money, choses in action, evidences of debt, and chattels real.

(22) "Personal representative" includes executor, administrator, administrator with the will annexed, administrator de bonis non, and special administrator.

(23) "Probate estate" denotes the property transferred at the death of a decedent under the decedent's will or under IC 29-1-2, in the case of a decedent dying intestate.

(24) "Property" includes both real and personal property.

(25) "Protected person" has the meaning set forth in IC 29-3-1-13.

(26) "Real property" includes estates and interests in land, corporeal or incorporeal, legal or equitable, other than chattels real.

(27) "Will" includes all wills, testaments, and codicils. The term also includes a testamentary instrument which merely appoints an executor or revokes or revives another will.

(b) The following rules of construction apply throughout this article unless otherwise apparent from the context:

(1) The singular number includes the plural and the plural number includes the singular.

(2) The masculine gender includes the feminine and neuter.

(Formerly: Acts 1953, c.112, s.103; Acts 1973, P.L.287, SEC.1.) As amended by Acts 1979, P.L.268, SEC.1; P.L.146-1984, SEC.1; P.L.152-1987, SEC.8; P.L.33-1989, SEC.31; P.L.254-1997(ss), SEC.28; P.L.176-2003, SEC.2; P.L.99-2013, SEC.1.

IC 29-1-1-4

Legislative history

Sec. 4. The report of the probate code study commission established by IC 2-5-16 (before its repeal) made pursuant to Acts 1949, c. 302, s. 5 and Acts 1951, c. 347, s. 2 may be consulted by the courts to determine the underlying reasons, purposes, and policies of this article, and may be used as a guide in its construction and

application.
(Formerly: Acts 1953, c.112, s.104.) As amended by Acts 1982, P.L.171, SEC.3; P.L.53-2014, SEC.142.

IC 29-1-1-5
Repealed
(Repealed by Acts 1971, P.L.407, SEC.2.)

IC 29-1-1-6
Disqualification of judges
Sec. 6. When any judge or his spouse shall be related within the third degree of consanguinity, according to the civil law, to any of the parties or their attorneys, shall have drawn the will of the decedent, or shall be interested or have been counsel in any probate proceeding or any matter therein, the same shall be grounds for disqualifying such judge from acting in a controverted matter with respect to which his disqualification exists. When grounds for disqualification exist, the judge may refuse to act as judge therein; or, upon filing of a petition to disqualify such judge, stating the grounds therefor, by any person interested in the particular matter with respect to which his disqualification exists, the judge must not act therein. The grounds for disqualification stated herein are enumerated as additional grounds, and not in limitation of applicable grounds for disqualification provided by statute or by Supreme Court rule with respect to trial judges generally.
(Formerly: Acts 1953, c.112, s.106.)

IC 29-1-1-7
Rules and forms of procedure
Sec. 7. The court may promulgate rules and forms of procedure for probate proceedings, not inconsistent with the provisions of this article nor with such rules and forms as are promulgated by the supreme court. If in any probate proceeding a situation arises which is not provided for by any statute or rule of procedure, the court may formulate and declare a rule of procedure for that particular case.
(Formerly: Acts 1953, c.112, s.107.) As amended by Acts 1982, P.L.171, SEC.4.

IC 29-1-1-8
Repealed
(Repealed by Acts 1971, P.L.407, SEC.2.)

IC 29-1-1-9
Petitions
Sec. 9. Every application to the court, unless otherwise provided, shall be by petition signed and verified by or on behalf of the petitioner. No defect of form or substance in any petition, nor the absence of a petition, shall invalidate any proceedings. Interests to be affected shall be described in pleadings that give reasonable information to owners by name or class, by reference to the

instrument creating the interests, or in another appropriate manner.
(Formerly: Acts 1953, c.112, s.109.) As amended by P.L.118-1997, SEC.6.

IC 29-1-1-10
Notice of filings; objections or answers

Sec. 10. Where, pursuant to law, order of court, or the request of the moving party, notice of the filing of any report, account, claim, petition, motion or other pleading to interested persons is required before submission of the same to the court, any interested person, on or before the day set for hearing, may file written objections or answers thereto, and, upon special order or general rule of the court, objections or answers thereto must be filed in writing as a prerequisite of being heard by the court.
(Formerly: Acts 1953, c.112, s.110.)

IC 29-1-1-11
Notice to interested persons

Sec. 11. No notice to interested persons need be given except as specifically provided for in this article or as ordered by the court. When no notice is required by this article, the court may require such notice as it deems desirable by a general rule or by an order in a particular case. Notice is required as follows:

(1) Notice as prescribed by this chapter must be given to every interested person or to one who can bind an interested person as described in section 20(a)(1) through 20(a)(3) of this chapter or IC 29-3-2-4. Notice may be given both to a person and to another who may bind him.

(2) Notice is given to unborn or unascertained persons, who are not represented as described in section 20(a)(1) through 20(a)(3) of this chapter or IC 29-3-2-4, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

(Formerly: Acts 1953, c.112, s.111.) As amended by Acts 1982, P.L.171, SEC.5; P.L.118-1997, SEC.7.

IC 29-1-1-12
Service of notice

Sec. 12. (a) Unless waived and except as otherwise provided by law, all notices required by this article to be served upon any person shall be served as the court shall direct by rule or in a particular case, by:

(1) delivering a copy of the notice to the person or by leaving a copy of the notice at the person's last and usual place of residence, at least ten (10) days before the hearing, if the person is a resident of the state of Indiana;

(2) publication, if the person is a nonresident of the state of Indiana or if the person's residence is unknown, once each week for three (3) weeks consecutively in a newspaper printed and circulating in the county where the court is held, the first day of

publication to be at least thirty (30) days prior to the date set for hearing; or in case there is no newspaper printed in the county, then in a newspaper circulating in the county where the proceeding is pending, and designated by the judge or clerk;

(3) first class postage prepaid mail addressed to the person located in the United States, at the person's address stated in the petition for the hearing, to be posted by depositing in any United States post office in this state at least fourteen (14) days prior to the date set for hearing in the notice;

(4) personal service on nonresidents to be served by any officer authorized to serve process in the county of the nonresident, which notice shall be served at least fourteen (14) days prior to the date set for hearing in such notice; or

(5) any combination of two (2) or more of the above.

(b) In all cases where service by publication is ordered but personal service or service by registered mail is not ordered, all persons directed by the provisions of this article, or by order of the court, to be notified, whose names and addresses are known or can by reasonable diligence be ascertained by the party charged with the duty of giving notice, shall in addition to the published notice required by order, be served by a written notice by United States first class postage prepaid mail at least fourteen (14) days prior to the date set for hearing in the notice.

(c) The personal representative or party charged with the duty of giving notice shall furnish the clerk with sufficient copies of the notice, prepared for mailing, and the clerk shall mail the notice.

(Formerly: Acts 1953, c.112, s.112; Acts 1955, c.258, s.1; Acts 1961, c.50, s.2.) As amended by Acts 1982, P.L.171, SEC.6; P.L.118-1997, SEC.8; P.L.95-2007, SEC.3.

IC 29-1-1-13

Service by publication and mail; personal service

Sec. 13. Service by publication and by mail shall be made by the clerk at the instance of the party who requires such service to be made. Personal service may be made by any competent person unless otherwise directed by the court or the provisions of this article.

(Formerly: Acts 1953, c.112, s.113.) As amended by Acts 1982, P.L.171, SEC.7.

IC 29-1-1-14

Service upon attorney

Sec. 14. (a) If an attorney shall have entered his appearance in writing for any person in any probate proceeding or matter pending in the court, all notices required to be served on the person in such proceeding or matter may be served on the attorney and such service shall be in lieu of service upon the person for whom the attorney appears.

(b) Notices to the personal representative may similarly be served on his attorney of record.

(Formerly: Acts 1953, c.112, s.114.)

IC 29-1-1-15
Form of notice

Sec. 15. The form of such notice may be prescribed by the court by rule or order. A notice shall be deemed sufficient if it shall set forth the nature of the petition or paper filed or the action requested, and the time fixed for hearing thereof, or the time fixed for filing a responsive pleading. or objections thereto.
(Formerly: Acts 1953, c.112, s.115.)

IC 29-1-1-16
Proof of service; filing

Sec. 16. Proof of service in all cases requiring notice, whether by publication, mailing or otherwise, shall be filed before the hearing. Service made by a private person shall be proved by the affidavit of the person; service made by the clerk or other official shall be proved by certificate or return of service.
(Formerly: Acts 1953, c.112, s.116.)

IC 29-1-1-17
Proof of service as evidence

Sec. 17. Such proof of service shall be received in evidence in any court in this state, and be deemed sufficient proof of the matters and things therein contained.
(Formerly: Acts 1953, c.112, s.117.)

IC 29-1-1-18
Notices; proof of compliance

Sec. 18. Nothing contained in section 16 or section 17 of this chapter shall preclude any person from proving in any suit or proceeding that the provisions of this article respecting such notice have been complied with, although no such proof of service may have been filed as therein required.
(Formerly: Acts 1953, c.112, s.118.) As amended by Acts 1982, P.L.171, SEC.8.

IC 29-1-1-19
Notice of hearing; waiver

Sec. 19. Any person legally competent who is required to be served with notice of any hearing in a probate proceeding may in person or by attorney waive in writing issuance and service of notice of the hearing. A guardian of the estate or a guardian ad litem may make the waiver on behalf of a protected person. A consul or other representative of a foreign government, whose appearance has been entered as provided by law on behalf of a person residing in a foreign country, may make a waiver of notice on behalf of the person. Any person who submits to the jurisdiction of the court in any hearing shall be deemed to have waived notice.
(Formerly: Acts 1953, c.112, s.119.) As amended by P.L.33-1989, SEC.32.

IC 29-1-1-20

Incapacitated persons; unknown persons; guardians

Sec. 20. (a) In a proceeding involving estates of decedents or trusts, or in judicially supervised settlements, persons are bound by orders binding others in the following cases:

(1) Orders binding the sole holder or all co-holders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

(2) Orders binding a trustee bind beneficiaries of the trust in proceedings:

(A) to probate a will establishing or adding to a trust;

(B) to review the acts or accounts of a prior fiduciary; and

(C) involving creditors or other third parties.

(3) Orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no guardian of the estate or person has been appointed, a parent may represent the parent's minor child.

(4) An interested person:

(A) who is incapacitated;

(B) whose present name, existence, or residence upon diligent inquiry is unknown and cannot be ascertained; or

(C) who is not otherwise represented;

is bound by an order to the extent the person's interest is adequately represented by another party having a substantially identical interest in the proceeding.

(b) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding. Any guardian of the person or estate of the person having an interest may be appointed as a guardian ad litem.

(c) The compensation of a guardian or guardian ad litem and the guardian's expenses including attorney's fees for services rendered in any proceeding under this article may be allowed in such amount and ordered paid either out of the entire estate involved as an expense of administration, or out of the protected person's interest therein as the court in its discretion shall determine.

(d) Any adjudication involving the interests of persons considered represented under this section shall be lawful and binding upon all interested persons, whether born or unborn, whether notified or not notified, and whether represented or not, if the interested persons are of the same class or have interests similar to the predominant interests of any person notified or represented.

(Formerly: Acts 1953, c.112, s.120.) As amended by Acts 1982, P.L.171, SEC.9; P.L.33-1989, SEC.33; P.L.118-1997, SEC.9.

IC 29-1-1-21
Orders, judgments, or decrees; vacating or modifying

Sec. 21. For illegality, fraud or mistake, upon application filed within one (1) year after the discharge of the personal representative upon final settlement, the court may vacate or modify its orders, judgments and decrees or grant a rehearing therein. Before any such order, judgment or decree shall be vacated or modified, notice of such application and hearing shall be given to the personal representative and all interested persons as provided in section 12 of this chapter. No vacation or modification under this section shall affect any right acquired by any innocent person in reliance upon any such previous order, judgment or decree.
(Formerly: Acts 1953, c.112, s.121.) As amended by Acts 1982, P.L.171, SEC.10.

IC 29-1-1-22
Appeals; stay of proceedings

Sec. 22. Any person considering himself aggrieved by any decision of a court having probate jurisdiction in proceedings under this article may prosecute an appeal to the court having jurisdiction of such appeal. Such appeal shall be taken as appeals are taken in civil causes. Executors, administrators, guardians and fiduciaries may have a stay of proceedings without bond.
(Formerly: Acts 1953, c.112, s.122.) As amended by Acts 1982, P.L.171, SEC.11.

IC 29-1-1-23
Record of proceedings; dockets

Sec. 23. The following records of proceedings under this article shall be maintained in addition to other records as the court having probate jurisdiction shall provide for:

(1) An index in which estates of deceased persons shall be indexed under the name of the decedent, and those pertaining to guardianships under the name of the protected person. After the name of each shall be shown the docket number and page wherein entries pertaining to such decedent's or ward's estate appear.

(2) Decedent's and guardianship estate dockets, in which shall be listed in chronological order under the name of the decedent or protected person, all documents filed or issued and all orders, judgments, and decrees made pertaining to the estate, the date, and a reference to the volume and page of any other book in which any record shall have been made of such document.

(3) A record of wills, properly indexed, in which shall be recorded all wills admitted to probate and a record of the testimony of a witness examined, subscribed by the witness and attested by the clerk with the clerk's signature and seal of office.

The will with the testimony and attestation to be certified by the clerk to be a complete record.

(4) An order book, in which shall be entered all proceedings with respect to the estate in conformity with the law pertaining to order books of circuit courts of this state and with the rules of the court.

(Formerly: Acts 1953, c.112, s.123.) As amended by Acts 1982, P.L.171, SEC.12; P.L.33-1989, SEC.34; P.L.50-1991, SEC.18; P.L.4-1994, SEC.11; P.L.2-1995, SEC.115.

IC 29-1-1-24

Fraud; relief for injured parties

Sec. 24. Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this probate code or if fraud is used to avoid or circumvent the provisions or purposes of this probate code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud including restitution from any person (other than a bona fide purchaser) benefiting from the fraud, whether innocent or not. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

(Formerly: Acts 1975, P.L.288, SEC.1.)

IC 29-1-2

Chapter 2. Intestate Succession and Rights of Certain Interested Persons

IC 29-1-2-0.1

Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to section 10 of this chapter by P.L.118-1997 do not apply to an individual whose death occurs before July 1, 1997.

(2) The amendments made to section 1 of this chapter by P.L.176-2003 apply only to the estate of an individual who dies after June 30, 2003.

(3) The amendments made to section 1 of this chapter by P.L.238-2005 apply to the estate of a person who dies after June 30, 2004.

(4) The amendments made to section 1 of this chapter by P.L.61-2006 apply to the estate of an individual who dies after June 30, 2005.

As added by P.L.220-2011, SEC.466.

IC 29-1-2-1

Estate distribution

Sec. 1. (a) The estate of a person dying intestate shall descend and be distributed as provided in this section.

(b) Except as otherwise provided in subsection (c), the surviving spouse shall receive the following share:

(1) One-half (1/2) of the net estate if the intestate is survived by at least one (1) child or by the issue of at least one (1) deceased child.

(2) Three-fourths (3/4) of the net estate, if there is no surviving issue, but the intestate is survived by one (1) or both of the intestate's parents.

(3) All of the net estate, if there is no surviving issue or parent.

(c) If the surviving spouse is a second or other subsequent spouse who did not at any time have children by the decedent, and the decedent left surviving the decedent a child or children or the descendants of a child or children by a previous spouse, the surviving second or subsequent childless spouse shall take only an amount equal to twenty-five percent (25%) of the remainder of:

(1) the fair market value as of the date of death of the real property of the deceased spouse; minus

(2) the value of the liens and encumbrances on the real property of the deceased spouse.

The fee shall, at the decedent's death, vest at once in the decedent's surviving child or children, or the descendants of the decedent's child or children who may be dead. A second or subsequent childless spouse described in this subsection shall, however, receive the same share of the personal property of the decedent as is provided in

subsection (b) with respect to surviving spouses generally.

(d) The share of the net estate not distributable to the surviving spouse, or the entire net estate if there is no surviving spouse, shall descend and be distributed as follows:

(1) To the issue of the intestate, if they are all of the same degree of kinship to the intestate, they shall take equally, or if of unequal degree, then those of more remote degrees shall take by representation.

(2) Except as provided in subsection (e), if there is a surviving spouse but no surviving issue of the intestate, then to the surviving parents of the intestate.

(3) Except as provided in subsection (e), if there is no surviving spouse or issue of the intestate, then to the surviving parents, brothers, and sisters, and the issue of deceased brothers and sisters of the intestate. Each living parent of the intestate shall be treated as of the same degree as a brother or sister and shall be entitled to the same share as a brother or sister. However, the share of each parent shall be not less than one-fourth (1/4) of the decedent's net estate. Issue of deceased brothers and sisters shall take by representation.

(4) If there is no surviving parent or brother or sister of the intestate, then to the issue of brothers and sisters. If the distributees described in this subdivision are all in the same degree of kinship to the intestate, they shall take equally or, if of unequal degree, then those of more remote degrees shall take by representation.

(5) If there is no surviving issue or parent of the intestate or issue of a parent, then to the surviving grandparents of the intestate equally.

(6) If there is no surviving issue or parent or issue of a parent, or grandparent of the intestate, then the estate of the decedent shall be divided into that number of shares equal to the sum of:

(A) the number of brothers and sisters of the decedent's parents surviving the decedent; plus

(B) the number of deceased brothers and sisters of the decedent's parents leaving issue surviving both them and the decedent;

and one (1) of the shares shall pass to each of the brothers and sisters of the decedent's parents or their respective issue per stirpes.

(7) If interests in real estate go to a husband and wife under this subsection, the aggregate interests so descending shall be owned by them as tenants by the entireties. Interests in personal property so descending shall be owned as tenants in common.

(8) If there is no person mentioned in subdivisions (1) through (7), then to the state.

(e) A parent may not receive an intestate share of the estate of the parent's minor or adult child if the parent was convicted of causing the death of the child's other parent by:

(1) murder (IC 35-42-1-1);

(2) voluntary manslaughter (IC 35-42-1-3);
(3) another criminal act, if the death does not result from the operation of a vehicle; or
(4) a crime in any other jurisdiction in which the elements of the crime are substantially similar to the elements of a crime listed in subdivisions (1) through (3).

If a parent is disqualified from receiving an intestate share under this subsection, the estate of the deceased child shall be distributed as though the parent had predeceased the child.

(Formerly: Acts 1953, c.112, s.201; Acts 1965, c.405, s.1.) As amended by P.L.283-1987, SEC.1; P.L.5-1988, SEC.154; P.L.167-1988, SEC.1; P.L.176-2003, SEC.3; P.L.238-2005, SEC.3; P.L.61-2006, SEC.1; P.L.101-2008, SEC.5; P.L.1-2009, SEC.151; P.L.143-2009, SEC.8.

IC 29-1-2-2
Repealed

(Repealed by P.L.176-2003, SEC.7.)

IC 29-1-2-3
Repealed

(Repealed by Acts 1973, P.L.288, SEC.2.)

IC 29-1-2-3.1
Wife's interest in real property by reason of marriage; extinguishment

Sec. 3.1. A married man may, in his own name as if he were unmarried, sell, barter, exchange, mortgage, lease, contract to sell, convey or execute any instrument, contract or commitment of any kind whatsoever affecting or in relation to his real property, and the deed, mortgage, lease or other instrument, contract or commitment so executed by a married man without the joinder or assent of his wife shall have the same effect as if it had been executed by the husband joined by his competent wife. Any such act or instrument, or any sale, disposition, transfer or encumbrance of the husband's real property by virtue of any decree, execution or mortgage, even though the wife is not a party thereto, shall extinguish the right of the wife to her one-third of any of said real property and shall extinguish any other right, choate or inchoate, of the wife in said real property which arose or could arise by reason of the marital relationship.

(Formerly: Acts 1973, P.L.288, SEC.1.)

IC 29-1-2-4
Part not disposed of by will

Sec. 4. If part but not all of the estate of a decedent is validly disposed of by will, the part not disposed of by will shall be distributed as provided herein for intestate estates.

(Formerly: Acts 1953, c.112, s.204.)

IC 29-1-2-5

Kindred of half blood; inheritance

Sec. 5. Kindred of the half blood shall inherit the same share which they would have inherited if they had been of the whole blood. *(Formerly: Acts 1953, c.112, s.205.)*

IC 29-1-2-6

Afterborn children; inheritance

Sec. 6. Descendants of the intestate, begotten before his death but born thereafter, shall inherit as if they had been born in the lifetime of the intestate and had survived him. With this exception, the descent and distribution of intestate estates shall be determined by the relationships existing at the time of the death of the intestate. *(Formerly: Acts 1953, c.112, s.206.)*

IC 29-1-2-7

Illegitimate children; inheritance

Sec. 7. (a) For the purpose of inheritance (on the maternal side) to, through, and from a child born out of wedlock, the child shall be treated as if the child's mother were married to the child's father at the time of the child's birth, so that the child and the child's issue shall inherit from the child's mother and from the child's maternal kindred, both descendants and collaterals, in all degrees, and they may inherit from the child. The child shall also be treated as if the child's mother were married to the child's father at the time of the child's birth, for the purpose of determining homestead rights and the making of family allowances.

(b) For the purpose of inheritance (on the paternal side) to, through, and from a child born out of wedlock, the child shall be treated as if the child's father were married to the child's mother at the time of the child's birth, if one (1) of the following requirements is met:

(1) The paternity of a child who was at least twenty (20) years of age when the father died has been established by law in a cause of action that is filed during the father's lifetime.

(2) The paternity of a child who was less than twenty (20) years of age when the father died has been established by law in a cause of action that is filed:

(A) during the father's lifetime; or

(B) within five (5) months after the father's death.

(3) The paternity of a child born after the father died has been established by law in a cause of action that is filed within eleven (11) months after the father's death.

(4) The putative father marries the mother of the child and acknowledges the child to be his own.

(5) The putative father executes a paternity affidavit as set forth in IC 16-37-2-2.1.

(c) The testimony of the mother may be received in evidence to establish such paternity and acknowledgment, but no judgment shall be made upon the evidence of the mother alone. The evidence of the mother must be supported by corroborative evidence or

circumstances.

(d) If paternity is established as described in this section, the child shall be treated as if the child's father were married to the child's mother at the time of the child's birth, so that the child and the child's issue shall inherit from the child's father and from the child's paternal kindred, both descendants and collateral, in all degrees, and they may inherit from the child. The child shall also be treated as if the child's father were married to the child's mother at the time of the child's birth, for the purpose of determining homestead rights and the making of family allowances.

(Formerly: Acts 1953, c.112, s.207.) As amended by P.L.50-1987, SEC.3; P.L.261-1989, SEC.1; P.L.9-1999, SEC.1; P.L.165-2002, SEC.4.

IC 29-1-2-8

Adopted children; inheritance

Sec. 8. For all purposes of intestate succession, including succession by, through, or from a person, both lineal and collateral, an adopted child shall be treated as a natural child of the child's adopting parents, and the child shall cease to be treated as a child of the natural parents and of any previous adopting parents. However, if a natural parent of a child born in or out of wedlock marries the adopting parent, the adopted child shall inherit from the child's natural parent as though the child had not been adopted, and from the child's adoptive parent as though the child were the natural child. In addition, if a person who is related to a child within the sixth degree adopts such child, such child shall upon the occasion of each death in the child's family have the right of inheritance through the child's natural parents or adopting parents, whichever is greater in value in each case.

(Formerly: Acts 1953, c.112, s.208; Acts 1961, c.267, s.1; Acts 1965, c.405, s.2; Acts 1969, c.254, s.1.) As amended by P.L.152-1987, SEC.9.

IC 29-1-2-9

Relationship through two lines; share

Sec. 9. A person who is related to the intestate through two (2) lines of relationship, though under either one alone he might claim as next of kin, shall, nevertheless, be entitled to only one (1) share which shall be the share based on the relationship which would entitle him to the larger share.

(Formerly: Acts 1953, c.112, s.209.)

IC 29-1-2-10

Advancements; gratuitous inter vivos transfer

Sec. 10. (a) If a person dies intestate as to all his estate, property which he gave in his lifetime to any person who, if the intestate had died at the time of making the gift, would be entitled to inherit a part of his estate, shall be treated as an advancement against the heir's intestate share only if:

(1) the decedent declared in a writing or the heir acknowledged in a writing that the gift is an advancement; or

(2) the decedent's writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

To the extent that the advancement does not exceed the intestate share the advancement shall be taken into account in computing the estate to be distributed. Every gratuitous inter vivos transfer is deemed to be an absolute gift and not an advancement unless shown to be an advancement.

(b) The advancement shall be considered as of its value at the time when the advancee came into possession or enjoyment or at the time of the death of the intestate, whichever first occurs.

(c) If the advancee dies before the intestate, leaving a lineal heir who takes from the intestate, the advancement shall be taken into account in the same manner as if it had been made directly to such heir. If such heir is entitled to a lesser share in the estate than the advancee would have been entitled to had he survived the intestate, then the heir shall only be charged with such proportion of the advancement as the amount he would have inherited, had there been no advancement, bears to the amount which the advancee would have inherited, had there been no advancement.

(Formerly: Acts 1953, c.112, s.210.) As amended by P.L.118-1997, SEC.10.

IC 29-1-2-11
Dower and curtesy abolished

Sec. 11. The estates of dower and curtesy are hereby abolished.

(Formerly: Acts 1953, c.112, s.211.)

IC 29-1-2-12
Repealed

(Repealed by P.L.147-1984, SEC.2.)

IC 29-1-2-12.1
Constructive trust

Sec. 12.1. (a) A person is a constructive trustee of any property that is acquired by the person or that the person is otherwise entitled to receive as a result of an individual's death, including property from a trust, if that person has been found guilty, or guilty but mentally ill, of murder, causing suicide, or voluntary manslaughter, because of the individual's death. A judgment of conviction is conclusive in a subsequent civil action to have the person declared a constructive trustee.

(b) A civil action may be initiated to have a person declared a constructive trustee of property that is acquired by the person, or that the person is otherwise entitled to receive, including property from a trust, as a result of an individual's death, if:

(1) the person has been charged with murder, causing suicide,

or voluntary manslaughter, because of the individual's death; and

(2) the person has been found not responsible by reason of insanity at the time of the crime.

If a civil action is initiated under this subsection, the court shall declare that the person is a constructive trustee of the property if by a preponderance of the evidence it is determined that the person killed or caused the suicide of the individual.

(c) If a constructive trust is established under this section, the property that is subject to the trust may be used only to benefit those persons, other than the constructive trustee, legally entitled to the property, determined as if the constructive trustee had died immediately before the decedent. However, if any property that the constructive trustee acquired as a result of the decedent's death has been sold to an innocent purchaser for value who acted in good faith, that property is no longer subject to the constructive trust, but the property received from the purchaser under the transaction becomes subject to the constructive trust.

As added by P.L.147-1984, SEC.1. Amended by P.L.272-1985, SEC.1; P.L.238-2005, SEC.4.

IC 29-1-2-13

Waiver; intestate share

Sec. 13. (a) The intestate share or other expectancy to which the spouse or any other heir is entitled may be waived at any time by a written contract, agreement or waiver signed by the party waiving such share or expectancy. The promise of marriage, in the absence of fraud, is sufficient consideration in the case of an agreement made before marriage. In all other cases such contract, an agreement or waiver is binding upon the parties to the agreement if executed after a full disclosure of the nature and extent of such right, and if the thing or promise given to such party is a fair consideration under all the circumstances.

(b) Except as otherwise provided in the agreement, a waiver executed by the decedent's spouse is considered a waiver of the right to elect to take against the decedent's will. The written agreement may be filed in the same manner as is provided for the filing of an election under IC 29-1-3-3.

(Formerly: Acts 1953, c.112, s.213.) As amended by Acts 1982, P.L.171, SEC.13; P.L.283-1987, SEC.2; P.L.5-1988, SEC.155.

IC 29-1-2-14

Adultery; forfeiture of rights to estate or trust

Sec. 14. If either a husband or wife shall have left the other and shall be living at the time of his or her death in adultery, he or she as the case may be shall take no part of the estate or trust of the deceased husband or wife.

(Formerly: Acts 1953, c.112, s.214.) As amended by P.L.238-2005, SEC.5.

IC 29-1-2-15

Abandonment; forfeiture of rights to estate or trust

Sec. 15. If a person shall abandon his or her spouse without just cause, he or she shall take no part of his or her estate or trust.

(Formerly: Acts 1953, c.112, s.215; Acts 1975, P.L.289, SEC.1.) As amended by P.L.238-2005, SEC.6.

IC 29-1-3

Chapter 3. Taking Against a Will and Rights of Pretermitted Heirs

IC 29-1-3-0.1

Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to section 1 of this chapter by P.L.168-1988 do not apply to individuals who die before July 1, 1988.

(2) The amendments made to section 2 of this chapter by P.L.238-2005 apply to the estate of a person who dies after June 30, 2005.

(3) The amendments made to sections 1 and 7 of this chapter by P.L.176-2003 apply only to the estate of an individual who dies after June 30, 2003.

(4) The amendments made to section 1 of this chapter by P.L.61-2006 apply to the estate of an individual who dies after June 30, 2005.

As added by P.L.220-2011, SEC.467.

IC 29-1-3-1

Limitations and conditions

Sec. 1. (a) When a married individual dies testate as to any part of the individual's estate, the surviving spouse is entitled to take against the will under the limitations and conditions stated in this chapter. The surviving spouse, upon electing to take against the will, is entitled to one-half (1/2) of the net personal and real estate of the testator. However, if the surviving spouse is a second or other subsequent spouse who did not at any time have children by the decedent and the decedent left surviving a child or children or the descendants of a child or children by a previous spouse, the surviving second or subsequent childless spouse shall upon such election take one-third (1/3) of the net personal estate of the testator plus an amount equal to twenty-five percent (25%) of the remainder of:

(1) the fair market value as of the date of death of the real property of the testator; minus

(2) the value of the liens and encumbrances on the real property of the testator.

In determining the net estate of a deceased spouse for the purpose of computing the amount due the surviving spouse electing to take against the will, the court shall consider only such property as would have passed under the laws of descent and distribution.

(b) When the value of the property given the surviving spouse under the will is less than the amount the surviving spouse would receive by electing to take against the will, the surviving spouse may elect to retain any or all specific bequests or devises given to the surviving spouse in the will at their fair market value as of the time of the decedent's death and receive the balance due in cash or

property.

(c) Except as provided in subsection (b), in electing to take against the will, the surviving spouse is deemed to renounce all rights and interest of every kind and character in the personal and real property of the deceased spouse, and to accept the elected award in lieu thereof.

(d) When a surviving spouse elects to take against the will, the surviving spouse shall be deemed to take by descent, as a modified share, the part of the net estate as does not come to the surviving spouse by the terms of the will. Where by virtue of an election pursuant to this chapter it is determined that the surviving spouse has renounced the surviving spouse's rights in any devise, either in trust or otherwise, the will shall be construed with respect to the property so devised to the surviving spouse as if the surviving spouse had predeceased the testator.

(Formerly: Acts 1953, c.112, s.301.) As amended by Acts 1982, P.L.171, SEC.14; P.L.168-1988, SEC.1; P.L.176-2003, SEC.4; P.L.61-2006, SEC.2.

IC 29-1-3-2

Time

Sec. 2. (a) Except as provided in subsection (b), the election by a surviving spouse to take the share hereinbefore provided must be made not later than three (3) months after the date of the order admitting to probate the will against which the election is made.

(b) If, at the expiration of such period for making the election, litigation is pending to test the validity or determine the effect or construction of the will or to determine the existence of issue surviving the deceased, or to determine any other matter of law or fact which would affect the amount of the share to be received by the surviving spouse, the right of such surviving spouse to make an election shall not be barred until the expiration of thirty (30) days after the final determination of the litigation.

(Formerly: Acts 1953, c.112, s.302.) As amended by P.L.238-2005, SEC.7.

IC 29-1-3-3

Forms; recording; service

Sec. 3. (a) The election to take the share hereinbefore provided shall be in writing, signed and acknowledged by the surviving spouse or by the guardian of his estate and shall be filed in the office of the clerk of the court. It may be in the following form:

I, A.B., surviving wife (or husband) of C.D., late of the county of _____ and state of _____, do hereby elect to take my legal share in the estate of the said C.D. and I do hereby renounce provisions in the will of the said C.D. inconsistent herewith.

Signed,

(Signature)

(Acknowledgment)

(b) Said election shall be recorded by such clerk in the record of

wills, marginal reference being made from such record to the book and page in which such will is recorded, and from the record of such will to the book and page where such election is recorded.

(c) The clerk shall cause a copy of said election to be served upon the personal representative and his attorney of record by United States mail addressed to such persons at their respective addresses as shown by the petition for probate of will and appointment of personal representative.

(Formerly: Acts 1953, c.112, s.303; Acts 1969, c.67, s.1; Acts 1975, P.L.288, SEC.2.)

IC 29-1-3-4

Personal right; election by attorney in fact or guardian

Sec. 4. (a) Except as provided in subsection (b), the right of election of the surviving spouse is personal to the spouse. It is not transferable and cannot be exercised subsequent to the spouse's death. A person with a valid power of attorney for the surviving spouse may elect for the spouse if the power of attorney has general authority with respect to estates as provided in IC 30-5-5-15(a)(4). If the surviving spouse is a protected person, the court may order the guardian of the spouse's estate to elect for the spouse.

(b) The spousal election may be exercised subsequent to the spouse's death under the following circumstances:

(1) The surviving spouse died before the election could be made.

(2) The election is being made to recover Medicaid benefits that were paid on behalf of the deceased surviving spouse.

The office of Medicaid policy and planning may exercise the right of election under this subsection. The spousal election is only enforceable up to the amount of Medicaid benefits that were received and the amount may only be distributed to the office of Medicaid policy and planning.

(Formerly: Acts 1953, c.112, s.304.) As amended by P.L.33-1989, SEC.35; P.L.252-2001, SEC.10; P.L.246-2005, SEC.213.

IC 29-1-3-5

Binding effect; change

Sec. 5. An election by or on behalf of a surviving spouse to take the share provided in section 1 of this chapter once made shall be binding and shall not be subject to change except for such causes as would justify an equitable decree for the recission of a deed.

(Formerly: Acts 1953, c.112, s.305.) As amended by Acts 1982, P.L.171, SEC.15.

IC 29-1-3-6

Waiver of right

Sec. 6. (a) The right of election of a surviving spouse given under section 1 of this chapter may be waived before or after marriage by a written contract, agreement signed by the party waiving the right of election, after full disclosure of the nature and extent of such right, if

the thing or the promise given such party is a fair consideration under all the circumstances.

(b) The promise of marriage, in the absence of fraud, is sufficient consideration in the case of an agreement made before marriage. An agreement waiving a right of election may be filed in the same manner as provided for the filing of an election under section 3 of this chapter.

(Formerly: Acts 1953, c.112, s.306.) As amended by P.L.283-1987, SEC.3.

IC 29-1-3-7

Failure to elect; intestate succession

Sec. 7. When a surviving spouse makes no election to take against the will, he shall receive the benefit of all provisions in his favor in the will, if any, and shall share as heir, in accordance with IC 29-1-2-1, in any estate undisposed of by the will. The surviving spouse is not entitled to take any share against the will by virtue of the fact that the testator made no provisions for him therein, except as he shall elect pursuant to IC 29-1. By taking under the will or consenting thereto, he does not waive his right to the allowance, unless it clearly appears from the will that the provision therein made for him was intended to be in lieu of that right.

(Formerly: Acts 1953, c.112, s.307.) As amended by Acts 1977, P.L.296, SEC.1; P.L.176-2003, SEC.5.

IC 29-1-3-8

Afterborn or adopted children; omitted heirs

Sec. 8. (a) When a testator fails to provide in his will for any of his children born or adopted after the making of his last will, such child, whether born before or after the testator's death, shall receive a share in the estate of the testator equal in value to that which he would have received if the testator had died intestate, unless it appears from the will that such omission was intentional, or unless when the will was executed the testator had one (1) or more children known to him to be living and devised substantially all his estate to the spouse who survives him.

(b) If, at the time of the making of his will, the testator believes any of his children to be dead, and fails to provide for such child in his will, the child shall receive a share in the estate of the testator equal in value to that which he would have received if the testator had died intestate, unless it appears from the will or from other evidence that the testator would not have devised anything to such child had he known that the child was alive.

(Formerly: Acts 1953, c.112, s.308.)

IC 29-1-4

Chapter 4. Surviving Spouse and Family Allowances

IC 29-1-4-0.1

Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to section 1 of this chapter by P.L.118-1997 do not apply to an individual whose death occurs before July 1, 1997.

(2) The amendments made to section 1 of this chapter by P.L.252-2001 apply to the estate of an individual who dies after June 30, 2001.

As added by P.L.220-2011, SEC.468.

IC 29-1-4-1

Surviving spouse and family allowances

Sec. 1. (a) The surviving spouse of a decedent who was domiciled in Indiana at the decedent's death is entitled from the estate to an allowance of twenty-five thousand dollars ($25,000). If there is no surviving spouse, the decedent's children who are under eighteen (18) years of age at the time of the decedent's death are entitled to the same allowance to be divided equally among them.

(b) The allowance under subsection (a) may be claimed against:

(1) the personal property of the decedent's estate;

(2) the real property that is part of the decedent's estate; or

(3) a combination of personal property under subdivision (1) and real property under subdivision (2).

(c) Not later than ninety (90) days after the order commencing the estate administration, an individual entitled to the allowance may file with the court an election specifying whether the allowance is being claimed under subsection (b) against the personal property of the estate or the real property that is part of the estate, or a combination of both. An interested party may file an objection to the manner in which the allowance is being claimed not later than thirty (30) days after the date the election is filed with the court. The court shall rule on the objection after notice and a hearing. If an election is not filed within ninety (90) days after the order commencing the estate administration, the allowance must be satisfied according to the following order of preference:

(1) From the intangible personal property of the estate.

(2) From the tangible personal property of the estate.

(3) From the real property that is part of the estate.

(d) If the personal property of the estate is less than twenty-five thousand dollars ($25,000) in value, the spouse or decedent's children who are under eighteen (18) years of age at the time of the decedent's death, as the case may be, are entitled to any real estate of the estate to the extent necessary to make up the difference between the value of the personal property and twenty-five thousand dollars ($25,000). The amount of that difference is a lien on the real estate. However, no

real estate may be sold to satisfy the survivor's allowance unless the sale is approved:

(1) in an agreement signed by all interested persons; or

(2) by court order following notice to all interested persons.

(e) An allowance under this section is not chargeable against the distributive shares of either the surviving spouse or the children.

(f) For purposes of this section, the value of the real property that is part of a decedent's estate must be determined as of the date of the decedent's death.

(Formerly: Acts 1953, c.112, s.401; Acts 1973, P.L.287, SEC.2; Acts 1975, P.L.288, SEC.3.) As amended by Acts 1978, P.L.132, SEC.1; P.L.118-1997, SEC.11; P.L.42-1998, SEC.1; P.L.252-2001, SEC.11; P.L.143-2009, SEC.9.

IC 29-1-4-2
Repealed

(Repealed by Acts 1975, P.L.288, SEC.51.)

IC 29-1-4-3
Repealed

(Repealed by Acts 1975, P.L.288, SEC.51.)

IC 29-1-5

Chapter 5. Execution and Revocation of Wills

IC 29-1-5-1

Sound mind; age; armed forces

Sec. 1. Any person of sound mind who is eighteen (18) years of age or older, or who is younger and a member of the armed forces, or of the merchant marine of the United States, or its allies, may make a will.

(Formerly: Acts 1953, c.112, s.501; Acts 1971, P.L.404, SEC.1.)

IC 29-1-5-2

Writing; witnesses

Sec. 2. (a) All wills except nuncupative wills shall be executed in writing.

(b) Any person competent at the time of attestation to be a witness generally in this state may act as an attesting witness to the execution of a will and his subsequent incompetency shall not prevent the probate thereof.

(c) If any person shall be a subscribing witness to the execution of any will in which any interest is passed to him, and such will cannot be proved without his testimony or proof of his signature thereto as a witness, such will shall be void only as to him and persons claiming under him, and he shall be compelled to testify respecting the execution of such will as if no such interest had been passed to him; but if he would have been entitled to a distributive share of the testator's estate except for such will, then so much of said estate as said witness would have been thus entitled to, not exceeding the value of such interest passed to him by such will, shall be saved to him.

(d) No attesting witness is interested unless the will gives to him some personal and beneficial interest. The fact that a person is named in the will as executor, trustee, or guardian, or as counsel for the estate, personal representative, trustee or guardian does not make him an interested person.

(Formerly: Acts 1953, c.112, s.502.)

IC 29-1-5-3

Signatures; videotape

Sec. 3. (a) This section applies to a will executed before, on, or after July 1, 2003. A will, other than a nuncupative will, must be executed by the signature of the testator and of at least two (2) witnesses on:

(1) a will under subsection (b);

(2) a self-proving clause under section 3.1(c) of this chapter; or

(3) a self-proving clause under section 3.1(d) of this chapter.

(b) A will may be attested as follows:

(1) The testator, in the presence of two (2) or more attesting witnesses, shall signify to the witnesses that the instrument is the testator's will and either:

(A) sign the will;
(B) acknowledge the testator's signature already made; or
(C) at the testator's direction and in the testator's presence have someone else sign the testator's name.

(2) The attesting witnesses must sign in the presence of the testator and each other.

An attestation or self-proving clause is not required under this subsection for a valid will.

(c) A will that is executed substantially in compliance with subsection (b) will not be rendered invalid by the existence of:

(1) an attestation or self-proving clause or other language; or
(2) additional signatures;

not required by subsection (b).

(d) A will executed in accordance with subsection (b) is self-proved if the witness signatures follow an attestation or self-proving clause or other declaration indicating in substance the facts set forth in section 3.1(c) or 3.1(d) of this chapter.

(e) This section shall be construed in favor of effectuating the testator's intent to make a valid will.

(Formerly: Acts 1953, c.112, s.503; Acts 1975, P.L.288, SEC.4.) As amended by Acts 1978, P.L.132, SEC.2; P.L.273-1983, SEC.1; P.L.273-1985, SEC.1; P.L.262-1989, SEC.1; P.L.4-2003, SEC.1; P.L.176-2003, SEC.6.

IC 29-1-5-3.1
Self-proving clause

Sec. 3.1. (a) This section applies to a will executed before, on, or after July 1, 2003. When a will is executed, the will may be:

(1) attested; and
(2) made self-proving;

by incorporating into or attaching to the will a self-proving clause that meets the requirements of subsection (c) or (d). If the testator and witnesses sign a self-proving clause that meets the requirements of subsection (c) or (d) at the time the will is executed, no other signatures of the testator and witnesses are required for the will to be validly executed and self-proved.

(b) If a will is executed by the signatures of the testator and witnesses on an attestation clause under section 3(b) of this chapter, the will may be made self-proving at a later date by attaching to the will a self-proving clause signed by the testator and witnesses that meets the requirements of subsection (c) or (d).

(c) A self-proving clause must contain the acknowledgment of the will by the testator and the statements of the witnesses, each made under the laws of Indiana and evidenced by the signatures of the testator and witnesses (which may be made under the penalties for perjury) attached or annexed to the will in form and content substantially as follows:

We, the undersigned testator and the undersigned witnesses, respectively, whose names are signed to the attached or foregoing instrument declare:

(1) that the testator executed the instrument as the testator's will;
(2) that, in the presence of both witnesses, the testator signed or acknowledged the signature already made or directed another to sign for the testator in the testator's presence;
(3) that the testator executed the will as a free and voluntary act for the purposes expressed in it;
(4) that each of the witnesses, in the presence of the testator and of each other, signed the will as a witness;
(5) that the testator was of sound mind when the will was executed; and
(6) that to the best knowledge of each of the witnesses the testator was, at the time the will was executed, at least eighteen (18) years of age or was a member of the armed forces or of the merchant marine of the United States or its allies.

_____
Testator

____ _____
Date Witness

_____
Witness

(d) A will is attested and self-proved if the will includes or has attached a clause signed by the testator and the witnesses that indicates in substance that:
(1) the testator signified that the instrument is the testator's will;
(2) in the presence of at least two (2) witnesses, the testator signed the instrument or acknowledged the testator's signature already made or directed another to sign for the testator in the testator's presence;
(3) the testator executed the instrument freely and voluntarily for the purposes expressed in it;
(4) each of the witnesses, in the testator's presence and in the presence of all other witnesses, is executing the instrument as a witness;
(5) the testator was of sound mind when the will was executed; and
(6) the testator is, to the best of the knowledge of each of the witnesses, either:
(A) at least eighteen (18) years of age; or
(B) a member of the armed forces or the merchant marine of the United States or its allies.

(e) This section shall be construed in favor of effectuating the testator's intent to make a valid will.
As added by P.L.4-2003, SEC.2.

IC 29-1-5-3.2
Videotape

Sec. 3.2. Subject to the applicable Indiana Rules of Trial Procedure, a videotape may be admissible as evidence of the following:
(1) The proper execution of a will.

(2) The intentions of a testator.
(3) The mental state or capacity of a testator.
(4) The authenticity of a will.
(5) Matters that are determined by a court to be relevant to the probate of a will.

As added by P.L.4-2003, SEC.3.

IC 29-1-5-4
Nuncupative will; requisites; limitations

Sec. 4. (a) A nuncupative will may be made only by a person in imminent peril of death, whether from illness or otherwise, and shall be valid only if the testator died as a result of the impending peril, and must be

(1) Declared to be his will by the testator before two (2) disinterested witnesses;

(2) Reduced to writing by or under the direction of one (1) of the witnesses within thirty (30) days after such declaration; and

(3) Submitted for probate within six (6) months after the death of the testator.

(b) The nuncupative will may dispose of personal property only and to an aggregate value not exceeding one thousand ($1,000) dollars, except that in the case of persons in active military, air or naval service in time of war the aggregate amount may be ten thousand ($10,000) dollars.

(c) A nuncupative will does not revoke an existing written will. Such written will is changed only to the extent necessary to give effect to the nuncupative will.

(Formerly: Acts 1953, c.112, s.504.)

IC 29-1-5-5
Compliance with law

Sec. 5. A will is legally executed if the manner of its execution complies with the law, in force either at the time of execution or at the time of the testator's death, of

(1) This state, or

(2) The place of execution, or

(3) The domicile of the testator at the time of execution or at the time of his death.

(Formerly: Acts 1953, c.112, s.505.)

IC 29-1-5-6
Revocation; revival

Sec. 6. No will in writing, nor any part thereof, except as in this article provided, shall be revoked, unless the testator, or some other person in his presence and by his direction, with intent to revoke, shall destroy or mutilate the same; or such testator shall execute other writing for that purpose, signed, subscribed and attested as required in section 3 or 3.1 of this chapter. A will can be revoked in part only by the execution of a writing as herein provided. And if, after the making of any will, the testator shall execute a second, a revocation

of the second shall not revive the first will, unless it shall appear by the terms of such revocation to have been his intent to revive it, or, unless, after such revocation, he shall duly republish the previous will.
(Formerly: Acts 1953, c.112, s.506.) As amended by Acts 1982, P.L.171, SEC.16; P.L.4-2003, SEC.4.

IC 29-1-5-7
Nuncupative will; revocation
Sec. 7. A nuncupative will or any part thereof can be revoked by another nuncupative will.
(Formerly: Acts 1953, c.112, s.507.)

IC 29-1-5-8
Revocation; divorce; annulment of marriage; change in circumstances
Sec. 8. If after making a will the testator is divorced, all provisions in the will in favor of the testator's spouse so divorced are thereby revoked. Annulment of the testator's marriage shall have the same effect as a divorce as hereinabove provided. With this exception, no written will, nor any part thereof, can be revoked by any change in the circumstances or condition of the testator.
(Formerly: Acts 1953, c.112, s.508.)

IC 29-1-5-9
Trust inter vivos; execution
Sec. 9. An instrument creating an inter vivos trust in order to be valid need not be executed as a testamentary instrument pursuant to section 3 or 3.1 of this chapter, even though such trust instrument reserves to the maker or settlor the power to revoke, or the power to alter or amend, or the power to control investments, or the power to consume the principal, or because it reserves to the maker or settlor any one or more of said powers.
(Formerly: Acts 1953, c.112, s.509.) As amended by Acts 1982, P.L.171, SEC.17; P.L.4-2003, SEC.5.

IC 29-1-6

Chapter 6. Construction of Wills, Renunciation of Interests, and Determination of Heirship

IC 29-1-6-0.1

Application of certain amendments to chapter

Sec. 0.1. The amendments made to section 1 of this chapter by P.L.118-1997 do not apply to an individual whose death occurs before July 1, 1997.

As added by P.L.220-2011, SEC.469.

IC 29-1-6-1

Construction of wills; rules

Sec. 1. In the absence of a contrary intent appearing in the will, wills shall be construed as to real and personal estate in accordance with the rules in this section.

(a) Any estate, right, or interest in land or other things acquired by the testator after the making of the testator's will shall pass as if title was vested in the testator at the time of making of the will.

(b) All devises of real estate shall pass the whole estate of the testator in the premises devised, although there are no words of inheritance or of perpetuity, whether or not at the time of the execution of the will the decedent was the owner of that particular interest in the real estate devised. Such devise shall also pass any interest which the testator may have at the time of the testator's death as vendor under a contract for the sale of such real estate.

(c) A devise of real or personal estate, whether directly or in trust, to the testator's or another designated person's "heirs", "next of kin", "relatives", or "family", or to "the persons thereunto entitled under the intestate laws" or to persons described by words of similar import, shall mean those persons (including the spouse) who would take under the intestate laws if the testator or other designated person were to die intestate at the time when such class is to be ascertained, domiciled in this state, and owning the estate so devised. With respect to a devise which does not take effect at the testator's death, the time when such class is to be ascertained shall be the time when the devise is to take effect in enjoyment.

(d) In construing a will making a devise to a person or persons described by relationship to the testator or to another, any person adopted prior to the person's twenty-first birthday before the death of the testator shall be considered the child of the adopting parent or parents and not the child of the natural or previous adopting parents. However, if a natural parent or previous adopting parent marries the adopting parent before the testator's death, the adopted person shall also be considered the child of such natural or previous adopting parent. Any person adopted after the person's twenty-first birthday by the testator shall be considered the child of the testator, but no other person shall be entitled to establish relationship to the testator through such child.

(e) In construing a will making a devise to a person described by

relationship to the testator or to another, a person born out of wedlock shall be considered the child of the child's mother, and also of the child's father, if, but only if, the child's right to inherit from the child's father is, or has been, established in the manner provided in IC 29-1-2-7.

(f) A will shall not operate as the exercise of a power of appointment which the testator may have with respect to any real or personal estate, unless by its terms the will specifically indicates that the testator intended to exercise the power.

(g) If a devise of real or personal property, not included in the residuary clause of the will, is void, is revoked, or lapses, it shall become a part of the residue, and shall pass to the residuary devisee. Whenever any estate, real or personal, shall be devised to any descendant of the testator, and such devisee shall die during the lifetime of the testator, whether before or after the execution of the will, leaving a descendant who shall survive such testator, such devise shall not lapse, but the property so devised shall vest in the surviving descendant of the devisee as if such devisee had survived the testator and died intestate. The word "descendant", as used in this section, includes children adopted during minority by the testator and by the testator's descendants and includes descendants of such adopted children. "Descendant" also includes children of the mother who are born out of wedlock, and children of the father who are born out of wedlock, if, but only if, such child's right to inherit from such father is, or has been, established in the manner provided in IC 29-1-2-7. This rule applies where the parent is a descendant of the testator as well as where the parent is the testator. Descendants of such children shall also be included.

(h) Except as provided in subsection (m), if a testator in the testator's will refers to a writing of any kind, such writing, whether subsequently amended or revoked, as it existed at the time of execution of the will, shall be given the same effect as if set forth at length in the will, if such writing is clearly identified in the will and is in existence both at the time of the execution of the will and at the testator's death.

(i) If a testator devises real or personal property upon such terms that the testator's intentions with respect to such devise can be determined at the testator's death only by reference to a fact or an event independent of the will, such devise shall be valid and effective if the testator's intention can be clearly ascertained by taking into consideration such fact or event even though occurring after the execution of the will.

(j) If a testator devises or bequeaths property to be added to a trust or trust fund which is clearly identified in the testator's will and which trust is in existence at the time of the death of the testator, such devise or bequest shall be valid and effective. Unless the will provides otherwise, the property so devised or bequeathed shall be subject to the terms and provisions of the instrument or instruments creating or governing the trust or trust fund, including any amendments or modifications in writing made at any time before or

after the execution of the will and before or after the death of the testator.

(k) If a testator devises securities in a will and the testator then owned securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities were acquired by the testator after the will was executed as a result of the testator's ownership of the described securities and are securities of any of the following types:

(1) Securities of the same organization acquired because of an action initiated by the organization or any successor, related, or acquiring organization, excluding any security acquired by exercise of purchase options.

(2) Securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization.

(3) Securities of the same organization acquired as a result of a plan of reinvestment.

Distributions in cash before death with respect to a described security are not part of the devise.

(l) For purposes of this subsection, "incapacitated principal" means a principal who is an incapacitated person. An adjudication of incapacity before death is not necessary. The acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal. If:

(1) specifically devised property is sold or mortgaged by; or

(2) a condemnation award, insurance proceeds, or recovery for injury to specifically devised property are paid to;

a guardian or an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.

(m) A written statement or list that:

(1) complies with this subsection; and

(2) is referred to in a will;

may be used to dispose of items of tangible personal property, other than property used in a trade or business, not otherwise specifically disposed of by the will. To be admissible under this subsection as evidence of the intended disposition, the writing must be signed by the testator and must describe the items and the beneficiaries with reasonable certainty. The writing may be prepared before or after the execution of the will. The writing may be altered by the testator after the writing is prepared. The writing may have no significance apart from the writing's effect on the dispositions made by the will. If more than one (1) otherwise effective writing exists, then, to the extent of a conflict among the writings, the provisions of the most recent writing revoke the inconsistent provisions of each earlier writing.

(Formerly: Acts 1953, c.112, s.601; Acts 1967, c.77, s.1; Acts 1973, P.L.287, SEC.4.) As amended by P.L.152-1987, SEC.10;

P.L.118-1997, SEC.12; P.L.238-2005, SEC.8; P.L.6-2010, SEC.6; P.L.36-2011, SEC.3; P.L.149-2012, SEC.6.

IC 29-1-6-2
Contest of wills; admission prevented; forfeiture of benefits

Sec. 2. If, in any will admitted to probate in any of the courts of this state, there is a provision or provisions providing that if any beneficiary thereunder shall take any proceeding to contest such will or to prevent the admission thereof to probate, or provisions to that effect, such beneficiary shall thereby forfeit any benefit which said will made for said beneficiary, such provision or provisions shall be void and of no force or effect.
(Formerly: Acts 1953, c.112, s.602.)

IC 29-1-6-3
Restraint of marriage

Sec. 3. A devise to a spouse with a condition in restraint of marriage shall stand, but the condition shall be void.
(Formerly: Acts 1953, c.112, s.603.)

IC 29-1-6-4
Repealed

(Repealed by P.L.293-1983, SEC.2.)

IC 29-1-6-5
Construction of wills; petition

Sec. 5. The court in which a will is probated shall have jurisdiction to construe it. Such construction may be made on a petition of the personal representative or of any other person interested in the will; or, if a construction of the will is necessary to the determination of an issue properly before the court, the court may construe the will in connection with the determination of such issue. When a petition for the construction of a will is filed during administration of the estate, notice of the hearing thereon shall be given to interested persons. If the estate has been closed prior to the filing of such petition, notice shall be given as in civil actions.
(Formerly: Acts 1953, c.112, s.605.)

IC 29-1-6-6
Determination of heirship; good faith purchasers

Sec. 6. (a) At any time during the administration of a decedent's estate, the personal representative or any interested person may petition the court to determine the heirs of said decedent and their respective interests in the estate or any part thereof. Upon the filing of the petition the court shall fix the time for the hearing thereof, notice of which shall be given to all persons known or believed to claim or have any interest in the estate or any part thereof as heir or through an heir of the decedent. In addition, notice by publication shall be given to all unknown heirs of the decedent.

(b) Upon the hearing of the petition, heirship may be determined

by competent evidence or, if there be no objection, by affidavit. A record shall be made of all oral evidence, and such record and all affidavits shall remain as part of the files in the estate proceeding.

(c) Upon satisfactory proof the court shall make a decree determining the heirs of the decedent and their respective interests in the estate or any part thereof.

(d) The decree of court as provided in subsection (c) shall be conclusive of the facts determined therein on any interested person who has been notified personally or by mail in accordance with the provisions of this article, subject to the right of appeal.

(e) All acts of the personal representative which were lawful when performed according to the facts determined by the decree as provided in subsection (c) shall be valid insofar as concerns the rights and liability of a purchaser, lessee or other person dealing with the personal representative for value and in good faith and insofar as concerns a personal representative who has acted in good faith.

(Formerly: Acts 1953, c.112, s.606.) As amended by Acts 1982, P.L.171, SEC.18.

IC 29-1-6-7
Repealed

(Repealed by P.L.1-1989, SEC.75.)

IC 29-1-7

Chapter 7. Probate and Grant of Administration

IC 29-1-7-0.1

Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to section 17 of this chapter by P.L.284-1987 do not apply to wills admitted to probate before April 21, 1987.

(2) The amendments made to sections 18 and 19 of this chapter by P.L.118-1997 do not apply to an individual whose death occurs before July 1, 1997.

(3) The amendments made to sections 7, 7.5, and 17 of this chapter by P.L.252-2001 apply to the estate of an individual who dies after June 30, 2001.

As added by P.L.220-2011, SEC.470.

IC 29-1-7-1

Venue; transfer of proceedings

Sec. 1. (a) The venue for the probate of a will and for the administration of an estate shall be:

(1) In the county in this state where the decedent had his domicile at the time of his death.

(2) When not domiciled in this state in any county in the state, where he left any property at the time of his decease; or into which county any property belonging to his estate may have come after his decease.

(b) If proceedings are commenced in more than one (1) county, they shall be stayed except in the county where first commenced until final determination of the venue by the court in the county where first commenced, and thereupon all proceedings in any county, other than the county where jurisdiction has been finally determined to exist, shall be dismissed. If the proper venue is finally determined to be in another county, the court, after making and retaining a true copy of the entire file, shall transmit the original to the proper county. The proceeding shall be deemed commenced by the filing of a petition; and the proceeding first legally commenced shall extend to all of the property of the estate in this state.

(c) If it appears to the court at any time before the decree of final distribution in any proceedings that the proceeding was commenced in the wrong county or that it would be for the best interests of the estate, the court, in its discretion, may order the proceeding with all papers, files and a certified copy of all orders therein transferred to another court having probate jurisdiction, which other court shall thereupon proceed to complete the administration proceedings as if originally commenced therein.

(Formerly: Acts 1953, c.112, s.701.)

IC 29-1-7-2

One proceeding in rem

Sec. 2. The probate of a will and the administration of the estate shall be considered one (1) proceeding for the purposes of jurisdiction. The entire proceeding and the administration of a decedent's estate is a proceeding in rem. This section applies to proceedings under IC 29-1-13-4, IC 29-1-13-16, and IC 29-1-14-10.
(Formerly: Acts 1953, c.112, s.702.) As amended by P.L.154-1990, SEC.1.

IC 29-1-7-3
Produce will in court; contempt; damages

Sec. 3. (a) After the death of a person, the person having custody of the decedent's will:

(1) may; or
(2) shall, upon written demand by the personal representative or upon court order;

deliver the will to the court which has jurisdiction of the administration of the decedent's estate.

(b) A verified written application may be filed by or on behalf of any interested person or any personal representative named, in any court having jurisdiction of the administration of the decedent's estate for an order of that court against any person who is alleged to have the custody of the will of the said person so dying, to produce said will before said court at the time fixed by said court in order that said will may be probated. Upon the filing of said application, the court shall cause notice to issue of the filing thereof to the person alleged in said petition to have the custody of said will. If, upon the hearing of said application, the court shall find the allegations thereof to be true, the court shall enter an order directing the person so named in said application to deliver said will within the time fixed in said order, to such person as the court shall designate, so that the same may be offered for probate.

(c) If the person against whom said order is issued shall, after said order shall have been served upon him, fail without just cause to so produce said will at the time so fixed therefor, he shall be guilty of contempt of court and may by said court be committed to the jail of the county in which said court is located, there to remain until he produces said will, or until said order to produce shall have been vacated, and said person so found guilty of contempt shall also be liable to any person interested in the probate of said will for all damages he may sustain by the failure of said person to comply with said order.
(Formerly: Acts 1953, c.112, s.703.) As amended by P.L.165-2002, SEC.5.

IC 29-1-7-3.1
Will depository

Sec. 3.1. (a) This section applies whether it is:

(1) known; or
(2) unknown;

whether a testator is living.

(b) As used in this section, "depositor" refers to a person who deposits a will with the circuit court clerk under this section.

(c) As used in this section, "will" refers to an original:

(1) will;

(2) codicil; or

(3) will and codicil.

(d) A person may deposit a will with the circuit court clerk of the county in which the testator resided when the testator executed the will. The circuit court clerk may assume, without inquiring into the facts, that the depositor's representation is accurate as to the county where the testator resided when the testator executed the will. Except as provided in subsection (e), the circuit court clerk shall collect a fee of twenty-five dollars ($25) for the deposit of the will. The circuit court clerk shall deposit the fee in the clerk's record perpetuation fund under IC 33-37-5-2.

(e) The circuit court:

(1) shall waive the fee under subsection (d) if:

(A) a court with probate jurisdiction of the county where the will is deposited certifies that the depositor deposits the will:

(i) as a participant; or

(ii) for a participant;

in a program of the supreme court, including the Judges and Lawyers Assistance Program established under Rule 31 of the supreme court Rules for Admission to the Bar and the Discipline of Attorneys; and

(B) the certification described in clause (A) accompanies the will when the will is deposited; and

(2) may waive the fee under subsection (d) if the depositor is no longer practicing law.

(f) Upon receipt of a will under this section, the circuit court clerk shall:

(1) provide the depositor with a receipt for the will;

(2) place the will in an envelope and seal the envelope securely in the presence of the depositor;

(3) designate on the envelope the:

(A) date of deposit;

(B) name of the testator; and

(C) name and address of the depositor; and

(4) index the will alphabetically by the name of the testator.

An envelope and will deposited under this section is not a public record under IC 5-14-3.

(g) During the testator's lifetime, the circuit court clerk shall:

(1) keep the envelope containing the will sealed; and

(2) deliver the envelope to:

(A) the testator; or

(B) a person authorized, in a writing signed by the testator, to receive the envelope.

(h) If the circuit court clerk has custody of the will after the death of the testator, the circuit court clerk may deliver the will to the court

that has jurisdiction of the administration of the decedent's estate as set forth in section 3 of this chapter.

(i) A circuit court clerk may destroy a will deposited under this section if:

(1) the circuit court clerk has not received notice of the death of the testator; and

(2) at least one hundred (100) years have passed since the date the will was deposited.

(j) A depositor that complies with this section is immune from civil liability for depositing the will.

As added by P.L.238-2005, SEC.9.

IC 29-1-7-4

Petitions; hearing

Sec. 4. (a) Any interested person or a personal representative named in the will may petition the court having jurisdiction of the administration of the decedent's estate:

(1) to have the will of such decedent, whether the same is written or is unwritten, is in his possession or not, is lost, destroyed, or without the state, probated;

(2) for the issuance of letters testamentary to the executor named in said will for the administration of said estate;

(3) for the appointment of an administrator with the will annexed if no executor is designated in said will or if the person so designated is not qualified, dead, or refuses to serve; or

(4) for the appointment of an administrator for the estate of any person dying intestate.

(b) A petition for probate may be combined with a petition for the issuance of letters testamentary, or as administrator with the will annexed, and a person interested in the probate of a will and in the administration of the estate may petition for both.

(c) No notice that a will is to be offered for probate or that it has been probated shall be required.

(d) No notice of the filing of, and hearing on, the petition described in this section shall be given to or served upon any person. If the petition described herein is filed in term time, it shall be heard forthwith by the court, and if filed in vacation, it shall be heard by the judge of said court if present, or in his absence by the clerk of the said court.

(e) If:

(1) an interested person petitions for the appointment of an administrator for the estate of a person dying intestate; and

(2) a petition to dissolve the marriage of the decedent and the decedent's spouse is pending in an Indiana court or the court of another state at the time of the decedent's death;

the court may not appoint the decedent's spouse to be the administrator of the decedent's estate.

(f) Subsection (e) does not apply to a petition for appointment of an administrator for the estate of a person dying intestate if the application of subsection (e) is waived in an agreement signed by

each person, except a person who is incapacitated or a minor, who is eligible for a distribution from the decedent's net estate under IC 29-1-2-1. A waiver may be submitted to the court at any time before the appointment of an administrator.
(Formerly: Acts 1953, c.112, s.704.) As amended by P.L.182-1999, SEC.1.

IC 29-1-7-4.5
Notice of delivery to consenting parties or to parties waiving notice of proceedings in the estate

Sec. 4.5. (a) Except as provided in subsection (b) and section 4 of this chapter, each petition or other document that a personal representative files in the court with:

(1) a written consent to the petition or other document; or

(2) a written waiver of notice of proceedings in the estate;

must contain a statement that the personal representative has delivered a copy of the petition or other document to each person whose written consent or waiver of notice of proceedings is presented to the court in support of the petition or other document.

(b) A petition or other document described in subsection (a) is not required to contain the statement of delivery otherwise required by subsection (a) if the written consent or written waiver filed with the petition or other document contains a statement by the person whose signature appears on the consent or waiver:

(1) identifying the petition or other document; and

(2) affirming that the person has:

(A) received a copy of the petition or other document; and

(B) had a reasonable time to read and understand the nature of the petition or other document before signing the consent or waiver.

(c) A person may appoint in writing an agent (who is not an interested person) to do the following under this section:

(1) Consent to petitions and other documents.

(2) Receive or waive notice of proceedings.

As added by P.L.6-2010, SEC.7. Amended by P.L.51-2014, SEC.1.

IC 29-1-7-5
Petition for probate; letters testamentary; administrator with will annexed; appointment of administrator

Sec. 5. A petition for the probate of a will and for the issuance of letters testamentary or for the appointment of an administrator with the will annexed, or for the appointment of an administrator, shall state:

(1) the name, domicile, and date of the death of the decedent, and whether the decedent is an adult or a minor;

(2) the name, and place of residence of each heir, and whether the heir is an adult or a minor, in the event the decedent left no will; and the name, and place of residence of each legatee and devisee, and whether each legatee and devisee is an adult or a minor, in the event the decedent left a will, so far as such are

known or can with reasonable diligence be ascertained by the personal representative;

(3) whether the person named in subdivision (1) died testate or intestate;

(4) if the decedent was not domiciled in the state at the time of death, a description of the property to be administered which is within the county in which the petition is filed;

(5) if the will sought to be probated is unwritten, lost, or was improperly destroyed or suppressed, a detailed statement of the provisions of said will so far as known;

(6) the name and place of residence or business address of the person, if any, designated as executor of the will;

(7) if the petition be for the appointment of an administrator with the will annexed, or of an administrator, the name and place of residence or business address of the person to be so appointed, together with a statement of the person's relationship to the decedent, and such other facts, if any, which entitle such person to be so appointed;

(8) the name and business address of the attorney who is to represent the personal representative; and

(9) if the person named in subdivision (1) died intestate, whether a petition to dissolve the marriage of the decedent and the decedent's spouse is pending in an Indiana court or the court of another state at the time of the decedent's death.

(Formerly: Acts 1953, c.112, s.705; Acts 1955, c.258, s.3.) As amended by Acts 1976, P.L.125, SEC.1; P.L.182-1999, SEC.2; P.L.238-2005, SEC.10.

IC 29-1-7-6

Notice of hearing; request; provision of relevant materials by personal representative

Sec. 6. (a) At any time after the issuance of letters, any person interested in the estate may serve upon the personal representative, or upon his attorney, and file with the clerk of the court where the proceedings are pending with a written admission or proof of such service, a written request, stating that he desires written notice by ordinary mail of the time and place of all hearings on the settlement of accounts, on final distribution, and on any other matters for which any notice is required by law, by rule of court, or by an order in the particular case. The applicant for such notice must include in his written request his post office address or that of his attorney. Unless the court otherwise directs, upon filing such request such person shall be entitled to notice of all hearings for which any notice is required as aforesaid, or of such of those hearings as he designates in his request.

(b) Upon petition by an interested person, the court having jurisdiction over the estate may, in its discretion, under such terms and conditions as the court considers appropriate, order the personal representative to provide that interested person with relevant materials specified in the court's order.

(Formerly: Acts 1953, c.112, s.706.) As amended by Acts 1979, P.L.268, SEC.2.

IC 29-1-7-7
Notice of administration

Sec. 7. (a) As soon as letters testamentary or of administration, general or special, supervised or unsupervised, have been issued, the clerk of the court shall publish notice of the estate administration.

(b) The notice required under subsection (a) shall be published in a newspaper of general circulation, printed in the English language and published in the county where the court is located, once each week for two (2) consecutive weeks. A copy of the notice, with proof of publication, shall be filed with the clerk of the court as a part of the administration of the estate within thirty (30) days after the publication. If no newspaper is published in the county, the notice shall be published in a newspaper published in an adjacent county.

(c) The notice required under subsection (a) shall be served by first class postage prepaid mail on each heir, devisee, legatee, and known creditor whose name and address is set forth in the petition for probate or letters, except as otherwise ordered by the court. The personal representative shall furnish sufficient copies of the notice, prepared for mailing, and the clerk of the court shall mail the notice upon the issuance of letters.

(d) The personal representative or the personal representative's agent shall serve notice on each creditor of the decedent:

(1) whose name is not set forth in the petition for probate or letters under subsection (c);

(2) who is known or reasonably ascertainable within one (1) month after the first publication of notice under subsection (a); and

(3) whose claim has not been paid or settled by the personal representative.

The notice may be served by mail or any other means reasonably calculated to ensure actual receipt of the notice by a creditor.

(e) Notice under subsection (d) shall be served within one (1) month after the first publication of notice under subsection (a) or as soon as possible after the elapse of one (1) month. If the personal representative or the personal representative's agent fails to give notice to a known or reasonably ascertainable creditor of the decedent under subsection (d) within one (1) month after the first publication of notice under subsection (a), the period during which the creditor may submit a claim against the estate includes an additional period ending two (2) months after the date notice is given to the creditor under subsection (d). However, a claim filed under IC 29-1-14-1(a) more than nine (9) months after the death of the decedent is barred.

(f) A schedule of creditors that received notice under subsection (d) shall be delivered to the clerk of the court as soon as possible after notice is given.

(g) The giving of notice to a creditor or the listing of a creditor on the schedule delivered to the clerk of the court does not constitute an

admission by the personal representative that the creditor has an allowable claim against the estate.

(h) If any person entitled to receive notice under this section is under a legal disability, the notice may be served upon or waived by the person's natural or legal guardian or by the person who has care and custody of the person.

(i) The notice shall read substantially as follows:

NOTICE OF ADMINISTRATION

In the _____ Court of _____ County, Indiana.

Notice is hereby given that _____ was, on the ____ day of _____, 20 __, appointed personal representative of the estate of _____, deceased, who died on the ___ day of _____, 20 __.

All persons who have claims against this estate, whether or not now due, must file the claim in the office of the clerk of this court within three (3) months from the date of the first publication of this notice, or within nine (9) months after the decedent's death, whichever is earlier, or the claims will be forever barred.

Dated at _____, Indiana, this ___ day of _____, 20 __.

_____
CLERK OF THE _____ COURT
FOR _____ COUNTY, INDIANA

(Formerly: Acts 1953, c.112, s.707; Acts 1955, c.258, s.4; Acts 1975, P.L.288, SEC.6.) As amended by P.L.154-1990, SEC.2; P.L.197-1996, SEC.1; P.L.252-2001, SEC.12; P.L.95-2007, SEC.4; P.L.143-2009, SEC.10.

IC 29-1-7-7.5

Personal representative; reasonable diligence to discover creditors of decedent; affidavit; presumption of reasonable diligence

Sec. 7.5. (a) A personal representative shall exercise reasonable diligence to discover the reasonably ascertainable creditors of the decedent within one (1) month of the first publication of notice under section 7 of this chapter.

(b) A personal representative is considered to have exercised reasonable diligence under subsection (a) if the personal representative:

(1) conducts a review of the decedent's financial records that are reasonably available to the personal representative; and

(2) makes reasonable inquiries of the persons who are likely to have knowledge of the decedent's debts and are known to the personal representative.

(c) A personal representative may file an affidavit with the clerk of the court stating that the personal representative has complied with the requirements of subsection (b). In addition, a personal representative may petition the court for an order declaring that:

(1) the personal representative has complied with the requirements of subsection (b); and

(2) any creditors not known to the personal representative after complying with the requirements of subsection (b) are not

reasonably ascertainable.

(d) If a personal representative complies with the requirements of subsection (b), the personal representative is presumed to have exercised reasonable diligence to ascertain creditors of the decedent and creditors not discovered are presumed not reasonably ascertainable. The presumptions may be rebutted only by clear and convincing evidence.

As added by P.L.154-1990, SEC.3. Amended by P.L.252-2001, SEC.13.

IC 29-1-7-8

Death in doubt; search for alleged decedent

Sec. 8. Whenever there is any doubt that the person whose estate is to be administered is dead, the court, upon application of any interested person, may direct the personal representative to make search for the alleged decedent in any manner which the court may deem advisable, including any or all of the following methods:

(a) By inserting in one (1) or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;

(b) By notifying officers of justice and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;

(c) By engaging the services of an investigation agency.

(Formerly: Acts 1953, c.112, s.708.)

IC 29-1-7-9

Admission to probate; proof of will

Sec. 9. Before a written will shall be admitted to probate, the will shall be proved by one (1) or more of the subscribing witnesses, or if all of them are dead, out of the state, or have become incapacitated for any reason since attesting the will, then the will shall be admitted to probate upon proof of the handwriting of the testator or of one (1) of the subscribing witnesses.

(Formerly: Acts 1953, c.112, s.709.) As amended by P.L.33-1989, SEC.36.

IC 29-1-7-10

Absence of competent witnesses; handwriting; proof

Sec. 10. If none of the subscribing witnesses to a will can be found, or if all are dead, absent from the state, or incapacitated, one (1) or more of these situations shall be proved to the satisfaction of the court before evidence of the handwriting of the testator or of the subscribing witnesses provided for in section 9 of this chapter shall be admitted in evidence.

(Formerly: Acts 1953, c.112, s.710.) As amended by Acts 1982, P.L.171, SEC.19; P.L.33-1989, SEC.37.

IC 29-1-7-11

Repealed

(Repealed by Acts 1975, P.L.288, SEC.51.)

IC 29-1-7-12
Nuncupative wills; proof

Sec. 12. Proof of nuncupative wills is subject to the requirements of IC 29-1-5-4.

(Formerly: Acts 1953, c.112, s.712.) As amended by Acts 1982, P.L.171, SEC.20.

IC 29-1-7-13
Admission to probate; petitions; self-proved wills; signature requirement presumptions

Sec. 13. (a) When a will is offered for probate, if the court finds that the testator is dead and that the will was executed in all respects according to law, it shall be admitted to probate as the last will of the deceased, unless objections are filed as provided in section 16 of this chapter.

(b) On a petition for the qualification of an executor or for the appointment of an administrator the court shall grant letters accordingly or, on proper grounds, may deny the petition.

(c) If the will is self-proved, compliance with signature requirements for execution and other requirements of execution are presumed subject to rebuttal without the testimony of any witness upon filing the will and the acknowledgment and verifications annexed or attached to the will, unless there is proof of fraud or forgery affecting the acknowledgment or verification.

(Formerly: Acts 1953, c.112, s.713; Acts 1975, P.L.288, SEC.7.)

IC 29-1-7-14
Certificate of probate; evidence

Sec. 14. When proved as herein provided, every written will, if in the custody of the court, shall have endorsed thereon or annexed thereto a certificate by the court of such order of probate, which certificate shall give the number and page of the will record where it is recorded. If for any reason a written will is not in the custody of the court, or if the will is oral, the court shall find the contents thereof, and the order admitting the will to probate shall state the contents and a certificate shall be annexed as above provided. Every will certified as herein provided, or the record thereof, or a duly certified transcript of the record, may be read in evidence in all the courts within this state without further proof.

(Formerly: Acts 1953, c.112, s.714.)

IC 29-1-7-15
Repealed

(Repealed by Acts 1973, P.L.289, SEC.4.)

IC 29-1-7-15.1
Determination of intestacy; presentation of will for probate; time limits; sale of property

Sec. 15.1. (a) When it has been determined that a decedent died

intestate and letters of administration have been issued upon the decedent's estate, no will shall be probated unless it is presented for probate:

(1) before the court decrees final distribution of the estate; or

(2) in an unsupervised estate, before a closing statement has been filed.

(b) No real estate situate in Indiana of which any person may die seized shall be sold by the executor or administrator of the deceased person's estate to pay any debt or obligation of the deceased person, which is not a lien of record in the county in which the real estate is situate, or to pay any costs of administration of any decedent's estate, unless letters testamentary or of administration upon the decedent's estate are taken out within five (5) months after the decedent's death.

(c) The title of any real estate or interest therein purchased in good faith and for a valuable consideration from the heirs of any person who died seized of the real estate shall not be affected or impaired by any devise made by the person of the real estate so purchased, unless:

(1) the will containing the devise has been probated and recorded in the office of the clerk of the court having jurisdiction within five (5) months after the death of the testator; or

(2) an action to contest the will's validity is commenced within the time provided by law and, as a result, the will is ultimately probated.

(d) Except as provided in subsection (e), the will of the decedent shall not be admitted to probate unless the will is presented for probate before the latest of the following dates:

(1) Three (3) years after the individual's death.

(2) Sixty (60) days after the entry of an order denying the probate of a will of the decedent previously offered for probate and objected to under section 16 of this chapter.

(3) Sixty (60) days after entry of an order revoking probate of a will of the decedent previously admitted to probate and contested under section 17 of this chapter.

However, in the case of an individual presumed dead under IC 29-2-5-1, the three (3) year period commences with the date the individual's death has been established by appropriate legal action.

(e) This subsection applies with respect to the will of an individual who dies after June 30, 2011. If:

(1) no estate proceedings have been commenced for a decedent; and

(2) an asset of the decedent remains titled or registered in the name of the decedent;

the will of the decedent may be presented to the court for probate and admitted to probate at any time after the expiration of the deadline determined under subsection (d) for the sole purpose of transferring the asset described in subdivision (2). A will presented for probate under this subsection is subject to all rules governing the admission of wills to probate.

(Formerly: Acts 1973, P.L.289, SEC.1; Acts 1975, P.L.288, SEC.8.)

As amended by P.L.263-1989, SEC.1; P.L.238-2005, SEC.11; P.L.95-2007, SEC.5; P.L.36-2011, SEC.4.

IC 29-1-7-16
Objections to probate

Sec. 16. Prior to the admission of a will to probate, written objections to its probate alleging that such objections are not made for vexation or delay may be filed in the court having jurisdiction over the probate of the will by any interested person. No notice of the filing of such objection need be given. The clerk shall note such filing of an objection in the estate docket and copy such objections in the will record. If such will is thereafter offered for probate, it shall be impounded by the clerk, copied in the will record, and its probate continued for thirty (30) days. If an action to resist the probate of such will is not commenced within thirty (30) days, such will may be admitted to probate without notice.

(Formerly: Acts 1953, c.112, s.716.) As amended by Acts 1982, P.L.171, SEC.21; P.L.154-1990, SEC.4.

IC 29-1-7-17
Contest of wills; requisites; grounds

Sec. 17. Any interested person may contest the validity of any will in the court having jurisdiction over the probate of the will within three (3) months after the date of the order admitting the will to probate by filing in the court the person's allegations in writing verified by affidavit, setting forth:

(1) the unsoundness of mind of the testator;
(2) the undue execution of the will;
(3) that the will was executed under duress or was obtained by fraud; or
(4) any other valid objection to the will's validity or the probate of the will.

The executor and all other persons beneficially interested in the will shall be made defendants to the action.

(Formerly: Acts 1953, c.112, s.717; Acts 1975, P.L.288, SEC.9.) As amended by P.L.172-1986, SEC.1; P.L.284-1987, SEC.1; P.L.94-1989, SEC.2; P.L.154-1990, SEC.5; P.L.252-2001, SEC.14.

IC 29-1-7-18
Contest of wills; notice and service requirements

Sec. 18. (a) When an action is brought to contest the validity of any will as provided in this article, notice is served upon the defendants in the same manner as required by the Indiana Rules of Trial Procedure.

(b) A contesting party shall also serve a copy of the complaint on the counsel of record, if any, for the personal representative. The court may not enter a default judgment for the contesting party unless proof of service on the counsel for the personal representative is made to the court.

(Formerly: Acts 1953, c.112, s.718.) As amended by Acts 1982,

P.L.171, SEC.22; P.L.118-1997, SEC.13; P.L.51-2014, SEC.2.

IC 29-1-7-19
Contest of wills; bond of plaintiff

Sec. 19. At the time of filing a verified complaint under section 17 of this chapter, the plaintiff in the action, or some other person on the plaintiff's behalf, shall file a bond with sufficient sureties in an amount approved by the court, conditioned for the due prosecution of the proceedings and for the payment of all costs if in the proceedings judgment is rendered against the plaintiff.
(Formerly: Acts 1953, c.112, s.719.) As amended by Acts 1982, P.L.171, SEC.23; P.L.118-1997, SEC.14.

IC 29-1-7-20
Contest of wills; burden of proof

Sec. 20. In a suit:

(1) objecting to the probate of a will under section 16 of this chapter; or

(2) testing the validity of a will after probate under section 17 of this chapter, the burden of proof is upon the contestor.

(Formerly: Acts 1953, c.112, s.720.) As amended by Acts 1982, P.L.171, SEC.24; P.L.94-1989, SEC.3.

IC 29-1-7-21
Contest of wills; burden of proof

Sec. 21. If such determination be against the validity of such will or the competency of the proof, the court shall refuse or revoke the probate thereof; but if it be in favor of the validity and due execution of such will, probate thereof shall be admitted or ratified.
(Formerly: Acts 1953, c.112, s.721.)

IC 29-1-7-22
Revocation of probate

Sec. 22. Whenever the probate of any will shall be revoked as herein provided, the clerk of the proper court shall record such revocation in the record of wills and probate thereof and attest the same.
(Formerly: Acts 1953, c.112, s.722.)

IC 29-1-7-23
Real and personal property; devolution; charges against

Sec. 23. When a person dies, his real and personal property, passes to persons to whom it is devised by his last will, or, in the absence of such disposition, to the persons who succeed to his estate as his heirs; but it shall be subject to the possession of the personal representative and to the election of the surviving spouse and shall be chargeable with the expenses of administering the estate, the payment of other claims and the allowance is under IC 29-1-4-1, except as otherwise provided in IC 29-1.
(Formerly: Acts 1953, c.112, s.723.) As amended by Acts 1976,

P.L.125, SEC.2; Acts 1979, P.L.268, SEC.3.

IC 29-1-7-24
Probate of will; necessity to prove title to property

Sec. 24. Except as provided in IC 1971, 29-1-8-1, 2, and 3, and IC 1971, 29-1-13-2, no will is effective for the purpose of proving title to, or the right to the possession of, any real or personal property disposed of by the will, until it has been admitted to probate.
(Formerly: Acts 1953, c.112, s.724; Acts 1975, P.L.288, SEC.10.)

IC 29-1-7-25
Foreign wills; receipt and recording authorized

Sec. 25. (a) Any will that has been proved or allowed in any other state or in any foreign country, according to the laws of that state or country, may be received and recorded in this state:

(1) before the deadlines imposed by section 15.1(d) of this chapter, unless the will is probated for a purpose described in section 15.1(e) of this chapter; and

(2) in the manner and for the purpose stated in sections 26 and 27 of this chapter.

(b) A foreign will received and recorded for a purpose described in section 15.1(e) of this chapter may not be admitted to probate for any other purpose and is subject to all rules governing the admission of wills to probate.
(Formerly: Acts 1953, c.112, s.725.) As amended by Acts 1982, P.L.171, SEC.25; P.L.274-1983, SEC.1; P.L.149-2012, SEC.7.

IC 29-1-7-26
Foreign wills; certification

Sec. 26. Such will shall be duly certified under the seal of the court or officer taking such proof; or a copy of such will and the probate thereof shall be duly certified under the seal of his court or office by the clerk, prothonotary or surrogate who has the custody or probate thereof, and such certificate shall be attested and certified to be authentic and by the proper officer, by the presiding or sole judge of the court, by whose clerk or prothonotary such certificate shall have been made; or if such will was admitted to probate before any officer being his own clerk, his certificate of such will or record shall be attested and certified to be authentic, and by the proper officer, by the presiding or sole judge, chancellor or vice-chancellor of the court having supervision of the acts of such officer.
(Formerly: Acts 1953, c.112, s.726.)

IC 29-1-7-27
Foreign wills; filing and recording

Sec. 27. Such will or copy, and the probate thereof, may be produced by any person interested therein to the court of the county having jurisdiction in which there is any estate on which the will may operate; and if said court shall be satisfied that the instrument ought to be allowed as the last will of the deceased, such court shall order

the same to be filed and recorded by the clerk; and, thereupon, such will shall have the same effect as if it had been originally admitted to probate and recorded in this state.
(Formerly: Acts 1953, c.112, s.727.)

IC 29-1-7-28
Executed in Indiana; allowed in foreign state or country

Sec. 28. No will executed in this state and proved or allowed in any other state or country, shall be admitted to probate within this state unless executed according to the laws of this state.
(Formerly: Acts 1953, c.112, s.728.)

IC 29-1-7-29
Foreign wills; contest

Sec. 29. In all cases of foreign wills and testaments heretofore admitted or hereafter to be admitted to probate, or which have been or may be offered for record and filing in any county of this state, any person interested in the estate of the testator may contest such will or testament within the time, in the manner, and for any or all the causes prescribed by the laws of Indiana in cases of the contest of domestic wills.
(Formerly: Acts 1953, c.112, s.729.)

IC 29-1-7.5

Chapter 7.5. Unsupervised Administration and Claims Against Personal Representatives and Distributees

IC 29-1-7.5-0.1

Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to section 3.8 of this chapter by P.L.118-1997 do not apply to an individual whose death occurs before July 1, 1997.

(2) The amendments made to section 4 of this chapter by P.L.252-2001 apply to the estate of an individual who dies after June 30, 2001.

As added by P.L.220-2011, SEC.471.

IC 29-1-7.5-1

Persons entitled to petition; notice to creditors

Sec. 1. (a) Upon the filing of a petition under IC 29-1-7-5, the following persons may at any time petition the court for authority to have a decedent's estate administered without court supervision:

(1) The decedent's heirs at law if the decedent dies intestate.

(2) The legatees and devisees under the decedent's will.

(3) The personal representative.

(b) The clerk of the court shall give notice of the filing of a petition for unsupervised administration to creditors of the decedent as provided in IC 29-1-7-7(c) and IC 29-1-7-7(d).

(Formerly: Acts 1975, P.L.288, SEC.11.) As amended by P.L.154-1990, SEC.6.

IC 29-1-7.5-1.5

Notice to distributees

Sec. 1.5. (a) As soon as letters testamentary or letters of administration have been issued, the clerk of the court shall serve by mail notice of the petition on each of the decedent's heirs at law, if the decedent died intestate, or the devisees and legatees under the decedent's will. The mailing of notice under this subsection may not be waived.

(b) The notice required under subsection (a) shall read substantially as follows:

NOTICE OF UNSUPERVISED ADMINISTRATION TO BE MAILED TO A DISTRIBUTEE

In the _____ Court of _____ County, Indiana.

Notice is hereby given that _____, on the _____ day of _____, 20__, was appointed as the personal representative of the estate of _____, who died on the ____ day of _____, 20__, {leaving a will} {not leaving a will}. The estate will be administered without court supervision.

As an heir, a devisee, or a legatee of the estate (a "distributee"), you are advised of the following information:

(1) The personal representative has the authority to take actions concerning the estate without first consulting you.
(2) The personal representative may be serving without posting a bond with the court. You have the right to petition the court to set a bond for your protection. You also have the right to petition the court to remove a corporate personal representative not later than thirty (30) days after this notice if the ownership or control of the corporate personal representative has changed since the execution of the decedent's will.
(3) The personal representative will not obtain court approval of any action, including the amount of attorney's or personal representative's fees.
(4) Within two (2) months after the appointment of the personal representative, the personal representative must prepare an inventory of the estate's assets. You have the right to request and receive a copy of this inventory from the personal representative. However, if you do not participate in the residue of the estate and receive only a specific bequest in money or personal property that will be paid, you are entitled only to the information concerning your specific bequest and not to the assets of the estate as a whole.
(5) The personal representative is required to furnish you with a copy of the closing statement that will be filed with the court, and, if your interests are affected, with a full account in writing of the administration of the estate.
(6) You must file an objection to the closing statement within three (3) months after the closing statement is filed with the court if you want the court to consider your objection.
(7) If an objection to the closing statement is not filed with the court within three (3) months after the filing of the closing statement, the estate is closed and the court does not have a duty to audit or make an inquiry.

IF, AT ANY TIME BEFORE THE ESTATE IS CLOSED, YOU HAVE REASON TO BELIEVE THAT THE ADMINISTRATION OF THE ESTATE SHOULD BE SUPERVISED BY THE COURT, YOU HAVE THE RIGHT TO PETITION THE COURT FOR SUPERVISED ADMINISTRATION.

IF YOU DO NOT UNDERSTAND THIS NOTICE, YOU SHOULD ASK YOUR ATTORNEY TO EXPLAIN IT TO YOU.

The personal representative's address is _____, and telephone number is _____. The attorney for the personal representative is _____, whose address is _____ and telephone number is _____.

Dated at _____, Indiana, this _____ day of _____, 20__.

CLERK OF THE _____ COURT

As added by P.L.130-1992, SEC.1. Amended by P.L.2-2005, SEC.74; P.L.238-2005, SEC.12; P.L.143-2009, SEC.11.

IC 29-1-7.5-2

Conditions to grant of petition; collateral attack; revocation

Sec. 2. (a) The court may grant a petition for administration without court supervision if:

(1) all the persons referred to in either section 1(a)(1) or 1(a)(2) of this chapter have joined in the petition;

(2) the estate is solvent;

(3) the personal representative is qualified to administer the estate without court supervision;

(4) the heirs, or legatees and devisees, or the parent (as defined in IC 29-3-1-11), or if none, the guardian (as defined in IC 29-3-1-6) of an heir, legatee, or devisee, as the case may be, freely consent to and understand the significance of administration without court supervision; and

(5) the will does not request supervised administration.

(b) As an alternative to the requirements of subsection (a), the court may also grant a petition for administration without court supervision if:

(1) the decedent in the will authorized the administration of the estate to be unsupervised;

(2) the estate is solvent; and

(3) the personal representative is qualified to administer the estate without court supervision.

(c) Once a petition for administration without court supervision has been granted under subsection (a) or (b), a personal representative's authority, under such order, shall not be subject to any requirement of court approval or confirmation or be open to collateral attack on account of any defect or irregularity in the proceedings resulting in issuance of the order of no supervision, if the court issuing the order had jurisdiction of the estate.

(d) The court may, on its own motion or the motion of an interested person, revoke an order of unsupervised administration and require an administration on terms and conditions which the court specifies if the court finds that such a revocation is in the best interests of the estate, creditors, taxing authorities, heirs, legatees, or devisees.

(Formerly: Acts 1975, P.L.288, SEC.11.) As amended by Acts 1977, P.L.297, SEC.1; Acts 1978, P.L.132, SEC.3; Acts 1982, P.L.172, SEC.1; P.L.169-1988, SEC.3; P.L.264-1989, SEC.1; P.L.182-1999, SEC.3.

IC 29-1-7.5-2.5

Personal representative's bond

Sec. 2.5. (a) Except as provided in subsection (c), a personal representative is not required to execute and file a bond relating to the duties of the personal representative's office under this chapter unless:

(1) the will provides for the execution and filing of a bond; or

(2) the court finds, on the court's own motion or on motion by an interested person, that a bond is necessary to protect creditors, heirs, devisees, and legatees.

(b) If a bond is required under subsection (a):

(1) the amount of the bond shall be determined by the court; and

(2) the bond shall be administered;

under IC 29-1-11.

(c) If a personal representative is not an Indiana resident or ceases to be an Indiana resident, the personal representative shall execute and file a bond under IC 29-1-10-1. The amount of the bond may be adjusted at the court's discretion.

As added by P.L.130-1992, SEC.2.

IC 29-1-7.5-3

Powers of personal representative to act without order of court

Sec. 3. (a) Subject to section 2(d) of this chapter, a personal representative who administers an estate under this chapter may do the following without order of the court:

(1) Retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment.

(2) Receive assets from fiduciaries or other sources.

(3) Perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as the personal representative may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(A) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(B) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement.

(4) Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances.

(5) If funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments which would be reasonable for use by trustees generally.

(6) Acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the

character of, or abandon an estate asset.
(7) Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings.
(8) Subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration.
(9) Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration.
(10) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.
(11) Abandon property when, in the opinion of the personal representatives, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate.
(12) Vote stocks or other securities in person or by general or limited proxy.
(13) Pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims.
(14) Hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held.
(15) Hold, manage, safeguard, and control the estate's real and personal property, insure the assets of the estate against damage, loss, and liability, and insure the personal representative personally against liability as to third persons.
(16) Borrow money with or without security to be repaid from the estate assets or otherwise and advance money for the protection of the estate.
(17) Effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, the personal representative may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien.
(18) Pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate.
(19) Hold an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or another domestic or foreign form of business or enterprise.
(20) Continue a business.
(21) Take any action that may be taken by shareholders,

partners, members, or property owners, including contributing additional capital to or merging, consolidating, reorganizing, recapitalizing, dissolving, or otherwise changing the form of the business organization.

(22) Allocate items of income or expense to either estate income or principal, as permitted or provided by IC 30-2-14.

(23) Employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of the personal representative's administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one (1) or more agents to perform any act of administration, whether or not discretionary.

(24) Do any of the following concerning a claim or demand made in favor of or against the estate for the protection of the estate and of the personal representative in the performance of the personal representative's duties:

(A) Release, assign, settle, compromise, or contest the claim or demand.

(B) Participate in mediation or submit to arbitration to resolve any dispute concerning the claim or demand.

(C) Extend the time for payment of the claim or demand.

(D) Abandon the claim or demand.

(25) Sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances.

(26) Select a settlement option under any qualified or nonqualified benefit or retirement plan, annuity, or life insurance payable to the estate, and take appropriate action to collect the proceeds.

(27) Inspect and investigate property held, directly or indirectly, by the personal representative for the purpose of:

(A) determining the application of environmental law with respect to the property; and

(B) doing the following:

(i) Take action to prevent, abate, or remedy an actual or a potential violation of an environmental law affecting the property, whether taken before or after the assertion of a claim or the initiation of governmental enforcement by federal, state, or local authorities.

(ii) Compromise claims against the estate that may be asserted for an alleged violation of environmental law.

(iii) Pay the expense of inspection, review, abatement, or remedial action to comply with the environmental law.

(28) Distribute assets of the estate upon such terms as the personal representative may impose. To the extent practicable, taking into account the decedent's probable intention, the power to distribute assets includes the power to:

(A) pay an amount to a distributee who is under a legal

disability or whom the personal representative reasonably believes to be incapacitated by:

(i) paying the amount directly to the distributee or applying the amount for the distributee's use and benefit;

(ii) paying the amount to the guardian appointed for the distributee;

(iii) paying the amount to a custodian under the Indiana Uniform Transfers to Minors Act (IC 30-2-8.5) or a custodial trustee under the Uniform Custodial Trust Act (IC 30-2-8.6); or

(iv) paying the amount to the trustee of a trust established by the decedent or by the personal representative under subsection (b); and

(B) make distributions of estate income and principal in kind, in cash, or partly in each, in shares of differing composition.

(29) Perform any other act necessary or appropriate to administer the estate.

(b) A personal representative who administers an estate under this chapter may, without court order, establish a trust to make distributions to a distributee who is under a legal disability or whom the personal representative reasonably believes is incapacitated. In establishing a trust under this subsection, a personal representative may exercise:

(1) the authority given to custodians under the Indiana Uniform Transfers to Minors Act (IC 30-2-8.5) to create a trust that satisfies the requirements of Section 2503(c) of the Internal Revenue Code and the regulations adopted under that Section; or

(2) the authority given to an attorney in fact under IC 30-5-5-15(a)(3) to establish a revocable trust for the benefit of a principal.

(Formerly: Acts 1975, P.L.288, SEC.11.) As amended by Acts 1976, P.L.125, SEC.3; Acts 1981, P.L.260, SEC.1; P.L.182-1999, SEC.4; P.L.84-2002, SEC.1; P.L.61-2006, SEC.3; P.L.95-2007, SEC.6.

IC 29-1-7.5-3.2
Inventories

Sec. 3.2. (a) Not more than two (2) months after the appointment of a personal representative under this chapter, the personal representative shall prepare a verified inventory of the decedent's probate estate. The inventory may consist of at least one (1) written instrument.

(b) The inventory required under subsection (a) must indicate the fair market value of each item of property belonging to the probate estate, including a statement of all known liens and other charges on any item. The property must be classified in the inventory as follows:

(1) Real property, with plat or survey description, and if a homestead, designated as a homestead.

(2) Furniture and household goods.

(3) Emblements and annual crops raised by labor.

(4) Corporate stocks, including the class, the par value or that the stock has no par value, and if preferred stock, the dividend rate.

(5) Mortgages, bonds, notes, or other written evidences of debt or of ownership described by the name of the debtor, recording data, and other identification.

(6) Bank accounts, money, and insurance policies if payable to the estate of the decedent or to the decedent's personal representative.

(7) All other personal property accurately identified, including the decedent's proportionate share in any partnership. However, no inventory of the partnership property is required.

(c) In preparing the inventory required under subsection (a), the personal representative may employ a disinterested appraiser to ascertain the fair market value as of the date of the decedent's death of an asset that has a value that may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The name and address of any appraiser must be indicated on the inventory with the item or items the appraiser appraised.

(d) The personal representative shall furnish a copy of the inventory required under subsection (a), or a supplement or amendment to the inventory, to a distributee who requests a copy.

(e) The personal representative may certify to the court that the inventory required under subsection (a), a supplement, or an amendment to the inventory has been prepared and is available. However, the court may not require the personal representative to file a copy of the inventory, a supplement, or an amendment to the inventory with the court.

As added by P.L.130-1992, SEC.3. Amended by P.L.182-1999, SEC.5; P.L.99-2013, SEC.2.

IC 29-1-7.5-3.4

Distribution of real property

Sec. 3.4. (a) This section applies to the distribution of real property by a personal representative to a devisee or heir under this chapter.

(b) The conveyance subscribed by the personal representative under this section is sufficient to distribute all title in the real property to the devisee or heir if the conveyance includes substantially the following language:

"A.B. is the personal representative of the estate of C.D., deceased. This estate is pending as Cause Number _____ in _____ County, Indiana. The personal representative, by virtue of the power given a personal representative under Indiana law, hereby distributes to E.F. the following described real estate: (insert description)."

As added by P.L.130-1992, SEC.4.

IC 29-1-7.5-3.6

Conveyance of real property

Sec. 3.6. (a) This section applies to a conveyance of real property by a personal representative under this chapter.

(b) The conveyance subscribed by the personal representative is sufficient to convey all title in the real property to the grantee if the conveyance includes substantially the following language:

"A.B. is the personal representative of the estate of C.D., deceased. This estate is pending as Cause Number _____ in _____ County, Indiana. The personal representative, by virtue of the power given a personal representative under Indiana law, for good and sufficient consideration conveys to E.F. the following described real estate: (insert description)."

As added by P.L.130-1992, SEC.5.

IC 29-1-7.5-3.8

Prompt closing of estates

Sec. 3.8. (a) A personal representative shall close an estate administered under this chapter as promptly as possible.

(b) If a personal representative does not file a closing statement under section 4 of this chapter within one (1) year after the appointment of the personal representative, the personal representative shall file a statement with the court indicating why the estate has not been closed.

As added by P.L.130-1992, SEC.6. Amended by P.L.118-1997, SEC.15.

IC 29-1-7.5-4

Closing estate; procedures; termination of appointment of personal representative

Sec. 4. (a) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than three (3) months after the date of the first published notice to creditors under IC 29-1-7-7(b), a verified statement stating that the personal representative, or a prior personal representative, has done the following:

(1) Published notice to creditors as provided in IC 29-1-7-7(b), and that the first publication occurred more than three (3) months prior to the date of the statement.

(2) Provided notice to creditors as required under IC 29-1-7-7(c) and IC 29-1-7-7(d).

(3) Fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims which were presented, expenses of administration and estate, inheritance, and other death taxes, except as specified in the statement. If any claims remain undischarged, the statement shall:

(A) state whether the personal representative has distributed the estate, subject to possible liability, with the agreement of the distributees; or

(B) detail other arrangements which have been made to accommodate outstanding liabilities.

(4) Executed and recorded a personal representative's deed for any real estate owned by the decedent.

(5) Distributed all the assets of the estate to the persons entitled to receive the assets.

(6) Sent a copy of the statement to all distributees of the estate and to all creditors or other claimants of whom the personal representative has actual knowledge whose claims are neither paid nor barred and has furnished a full account in writing of the personal representative's administration to the distributees whose interests are affected.

(7) Provided the court with the names and addresses of all distributees, creditors, and claimants to whom the personal representative has sent a copy of the statement under subdivision (6).

(b) If no proceedings involving the personal representative are pending in the court three (3) months after the closing statement is filed, the appointment of the personal representative terminates and the estate is closed by operation of law.

(Formerly: Acts 1975, P.L.288, SEC.11.) As amended by P.L.154-1990, SEC.7; P.L.130-1992, SEC.7; P.L.252-2001, SEC.15.

IC 29-1-7.5-4.5

Uncontested closing statements; audits and inquiries

Sec. 4.5. If, after three (3) months following the date that the closing statement required under section 4 of this chapter is filed, an objection to the closing statement has not been filed, the court does not have a duty to audit or make an inquiry.

As added by P.L.130-1992, SEC.8.

IC 29-1-7.5-5

Undischarged claims; actions against distributees; contribution

Sec. 5. After assets of an estate have been distributed, and subject to section 7 of this chapter, an undischarged claim not barred may be prosecuted in a proceeding against one (1) or more distributees. No distributee is liable to claimants for amounts in excess of the value of his distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who fails to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.

(Formerly: Acts 1975, P.L.288, SEC.11.) As amended by P.L.1-1993, SEC.213.

IC 29-1-7.5-6

Claims against personal representatives; limitation

Sec. 6. Unless previously barred by adjudication and except as

provided in the closing statement, all claims against the personal representative, including claims by a person under a disability, are barred unless a proceeding to assert the same is commenced within three (3) months after the filing of the closing statement. The rights thus barred do not include rights to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.
(Formerly: Acts 1975, P.L.288, SEC.11.) As amended by Acts 1978, P.L.132, SEC.4.

IC 29-1-7.5-7
Claims against distributees; limitation

Sec. 7. Unless otherwise barred, the claim of any claimant, including a claimant under a disability, to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee, including an heir or devisee under a disability, or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of (a) three (3) years after the decedent's death, or (b) one (1) year after the closing statement is filed.
(Formerly: Acts 1975, P.L.288, SEC.11.) As amended by Acts 1978, P.L.132, SEC.5.

IC 29-1-7.5-8
Subsequently discovered estate; appointment of personal representative

Sec. 8. If other property of the estate is discovered after the estate has been settled and the personal representative discharged or three (3) months after a closing statement has been filed, the court upon petition of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this title apply as appropriate; but no claim previously barred may be asserted in the subsequent administration.
(Formerly: Acts 1975, P.L.288, SEC.11.)

IC 29-1-8

Chapter 8. Dispensing With Administration

IC 29-1-8-0.1

Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to sections 1 and 3 of this chapter by P.L.118-1997 do not apply to an individual whose death occurs before July 1, 1997.

(2) The amendments made to sections 1 and 4.5 of this chapter by P.L.61-2006 apply to the estate of an individual who dies after June 30, 2006.

As added by P.L.220-2011, SEC.472.

IC 29-1-8-1

Small estates; affidavit of conditions; motor vehicle transfers; securities; insurance death benefits; safe deposit boxes

Sec. 1. (a) Forty-five (45) days after the death of a decedent and upon being presented an affidavit that complies with subsection (b), a person:

(1) indebted to the decedent; or

(2) having possession of personal property or an instrument evidencing a debt, an obligation, a stock, or a chose in action belonging to the decedent;

shall make payment of the indebtedness or deliver the personal property or the instrument evidencing a debt, an obligation, a stock, or a chose in action to a distributee claiming to be entitled to payment or delivery of property of the decedent as alleged in the affidavit.

(b) The affidavit required by subsection (a) must be an affidavit made by or on behalf of the distributee and must state the following:

(1) That the value of the gross probate estate, wherever located (less liens and encumbrances), does not exceed fifty thousand dollars ($50,000).

(2) That forty-five (45) days have elapsed since the death of the decedent.

(3) That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction.

(4) The name and address of each distributee that is entitled to a share of the property and the part of the property to which each distributee is entitled.

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

(6) That the affiant is entitled to payment or delivery of the property on behalf of each distributee identified in the affidavit.

(c) If a motor vehicle or watercraft (as defined in IC 9-13-2-198.5) is part of the estate, nothing in this section shall prohibit a transfer of the certificate of title to the motor vehicle if five (5) days have

elapsed since the death of the decedent and no appointment of a personal representative is contemplated. A transfer under this subsection shall be made by the bureau of motor vehicles upon receipt of an affidavit containing a statement of the conditions required by subsection (b)(1) and (b)(6). The affidavit must be duly executed by the distributees of the estate.

(d) A transfer agent of a security shall change the registered ownership on the books of a corporation from the decedent to a distributee upon the presentation of an affidavit as provided in subsection (a).

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

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

(Formerly: Acts 1953, c.112, s.801; Acts 1965, c.379, s.2; Acts 1971, P.L.406, SEC.1; Acts 1975, P.L.288, SEC.12.) As amended by Acts 1977, P.L.2, SEC.80; Acts 1977, P.L.298, SEC.1; P.L.71-1991, SEC.15; P.L.77-1992, SEC.5; P.L.118-1997, SEC.16; P.L.59-2000, SEC.1; P.L.61-2006, SEC.4; P.L.51-2014, SEC.3.

IC 29-1-8-1.5

Affidavit to obtain date of death values for personal property, accounts, and intangible property belonging to a decedent; form of affidavit; duty to furnish information to the affiant

Sec. 1.5. (a) This section does not apply to the following:

(1) Real property owned by a decedent.

(2) The contents of a safe deposit box rented by a decedent from a financial institution organized or reorganized under the law of any state (as defined in IC 28-2-17-19) or the United States.

(b) After the death of a decedent, a person:

(1) indebted to the decedent; or

(2) having possession of:

(A) personal property;

(B) an instrument evidencing a debt;

(C) an obligation;

(D) a chose in action;

(E) a life insurance policy;

(F) a bank account; or

(G) intangible property, including annuities, fixed income investments, mutual funds, cash, money market accounts, or stocks;

belonging to the decedent;

shall furnish the date of death value of the indebtedness or property and the names of the known beneficiaries of property described in this subsection to a person who presents an affidavit containing the

information required by subsection (c).

(c) An affidavit presented under subsection (b) must state:

(1) the name, address, Social Security number, and date of death of the decedent;

(2) the name and address of the affiant, and the relationship of the affiant to the decedent;

(3) that the disclosure of the date of death value is necessary to determine whether the decedent's estate can be administered under the summary procedures set forth in this chapter; and

(4) that the affiant is answerable and accountable for the information received to the decedent's personal representative, if any, or to any other person having a superior right to the property or indebtedness.

(d) A person presented with an affidavit under subsection (b) must provide the requested information within three (3) business days after being presented with the affidavit.

(e) A person who acts in good faith reliance on an affidavit presented under subsection (b) is immune from liability for the disclosure of the requested information.

(f) A person who:

(1) is presented with an affidavit under subsection (b); and

(2) refuses to provide the requested information within three (3) business days after being presented with the affidavit;

is liable to the estate of the decedent.

(g) A plaintiff who prevails in an action to compel a person presented with an affidavit under subsection (b) to accept the authority of the affiant or in an action for damages arising from a person's refusal to provide the information requested in an affidavit presented under subsection (b) shall recover the following:

(1) Three (3) times the amount of the actual damages.

(2) Attorney's fees and court costs.

(3) Prejudgment interest on the actual damages from the date the affidavit was presented to the person.

As added by P.L.95-2007, SEC.7.

IC 29-1-8-2

Personal property; payments; delivery; transfer; release

Sec. 2. The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other

person having a superior right.
(Formerly: Acts 1953, c.112, s.802; Acts 1975, P.L.288, SEC.13.)

IC 29-1-8-3
Disbursement and distribution of estate

Sec. 3. (a) If it appears that the value of a decedent's gross probate estate, less liens and encumbrances, does not exceed the sum of:

(1) twenty-five thousand dollars ($25,000), for the estate of an individual who dies before July 1, 2007, and fifty thousand dollars ($50,000), for the estate of an individual who dies after June 30, 2007;
(2) the costs and expenses of administration; and
(3) reasonable funeral expenses;

the personal representative or a person acting on behalf of the distributees, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled to it and file a closing statement as provided in section 4 of this chapter.

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

(1) The legal description of the real property.
(2) The following statement:
(A) If the individual dies after June 30, 2007, the following statement: "It appears that the decedent's gross probate estate, less liens and encumbrances, does not exceed the sum of the following: fifty thousand dollars ($50,000), the costs and expenses of administration, and reasonable funeral expenses.".
(B) If the individual dies before July 1, 2007, the following statement: "It appears that the decedent's gross probate estate, less liens and encumbrances, does not exceed the sum of the following: twenty-five thousand dollars ($25,000), the costs and expenses of administration, and reasonable funeral expenses.".
(3) The name of each person entitled to at least a part interest in the real property as a result of a decedent's death, the share to which each person is entitled, and whether the share is a divided or undivided interest.
(4) A statement which explains how each person's share has been determined.

(Formerly: Acts 1953, c.112, s.803; Acts 1959, c.239, s.1; Acts 1965, c.379, s.3; Acts 1971, P.L.406, SEC.2; Acts 1975, P.L.288, SEC.14.) As amended by P.L.146-1984, SEC.2; P.L.118-1997, SEC.17; P.L.42-1998, SEC.2; P.L.95-2007, SEC.8; P.L.220-2011, SEC.473.

IC 29-1-8-4
Closing of estate; statement

Sec. 4. (a) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a

personal representative or a person acting on behalf of the distributees may close an estate administered under the summary procedures of section 3 of this chapter by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(1) to the best knowledge of the personal representative or person acting on behalf of the distributees the value of the gross probate estate, less liens and encumbrances, did not exceed the sum of:

(A) twenty-five thousand dollars ($25,000), for the estate of an individual who dies before July 1, 2007, and fifty thousand dollars ($50,000), for the estate of an individual who dies after June 30, 2007;

(B) the costs and expenses of administration; and

(C) reasonable funeral expenses;

(2) the personal representative or person acting on behalf of the distributees has fully administered the estate by disbursing and distributing it to the persons entitled to it; and

(3) the personal representative or person acting on behalf of the distributees has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom the personal representative or person acting on behalf of the distributees is aware and has furnished a full account in writing of the administration to the distributees whose interests are affected.

(b) If no actions, claims, objections, or proceedings involving the personal representative or person acting on behalf of the distributees are filed in the court within three (3) months after the closing statement is filed, the appointment of the personal representative or the duties of the person acting on behalf of the distributees terminate.

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

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

(Formerly: Acts 1953, c.112, s.804; Acts 1971, P.L.406, SEC.3; Acts 1975, P.L.288, SEC.15.) As amended by Acts 1976, P.L.125, SEC.4; Acts 1977, P.L.297, SEC.2; P.L.146-1984, SEC.3; P.L.95-2007, SEC.9; P.L.220-2011, SEC.474.

IC 29-1-8-4.5

Affidavit of entitlement to property; enforcement action; remedies

Sec. 4.5. (a) A distributee entitled to payment or delivery of the property belonging to the decedent or someone acting on a distributee's behalf may present to the court having jurisdiction over the decedent's estate an affidavit containing a statement of the conditions required under section 1(b) of this chapter. Upon receipt of the affidavit, the court may, without notice and hearing, enter an order that the distributees identified in the affidavit are entitled to payment or delivery of the property.

(b) A court may, upon notice and hearing, award attorney's fees and costs to a person bringing an action under subsection (a) if the person indebted to the decedent or holding property of the decedent, other than an insurer regulated under IC 27:

(1) acted in bad faith in refusing to pay or deliver the property belonging to the decedent; or

(2) refused to respond within thirty (30) business days after receiving an affidavit from the person bringing an action under this section, if the affidavit is consistent with section 1 of this chapter.

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

(1) the insurer failed to respond pursuant to IC 27 after receiving an affidavit from the person; and

(2) the affidavit is consistent with section 1 of this chapter.

As added by Acts 1978, P.L.132, SEC.6. Amended by P.L.61-2006, SEC.5; P.L.51-2014, SEC.4.

IC 29-1-8-5
Repealed

(Repealed by Acts 1975, P.L.288, SEC.51.)

IC 29-1-8-6
Repealed

(Repealed by Acts 1975, P.L.288, SEC.51.)

IC 29-1-8-7
Repealed

(Repealed by Acts 1975, P.L.288, SEC.51.)

IC 29-1-8-8
Payment of claims; accounting; closing administration

Sec. 8. Whenever, after the inventory has been filed by a personal representative, it is established that the estate of a decedent, exclusive allowance to the surviving spouse or dependent children, does not exceed an amount sufficient to pay the claims of classes 1 to 6 inclusive, the personal representative upon order of the court shall pay the same in the order provided and thereafter present his account with an application for the settlement and allowance thereof. Thereupon, the court, with or without notice, may adjust, correct, settle, allow or disallow such account, and, if the account is settled and allowed, decree final distribution, discharge the personal representative and close the administration.

(Formerly: Acts 1953, c.112, s.808; Acts 1975, P.L.288, SEC.16.)

IC 29-1-8-9
Prepaid funeral expenses; last illness expense

Sec. 9. This article shall not be construed to prevent the application by any person, association or corporation of all or any

portion of any obligation owed to a decedent's estate and designed, intended or created for the purpose of paying the funeral expenses or expenses of the last illness of the deceased from directly applying the proceeds of such obligation for such purpose. The payment of such expenses by the obligor or person holding such funds shall be a complete defense to the extent of such payment to the demand of any person on behalf of such estate or any other claimant.

(Formerly: Acts 1953, c.112, s.809.) As amended by Acts 1982, P.L.171, SEC.26.

IC 29-1-9

Chapter 9. Adjudicated Compromise of Controversies

IC 29-1-9-0.1

Application of certain amendments to chapter

Sec. 0.1. The amendments made to section 2 of this chapter by P.L.118-1997 do not apply to an individual whose death occurs before July 1, 1997.

As added by P.L.220-2011, SEC.475.

IC 29-1-9-1

Persons represented; creditors; taxing authorities

Sec. 1. The compromise of any contest or controversy as to:

(a) admission to probate of any instrument offered as the last will of any decedent,

(b) the construction, validity or effect of any such instrument,

(c) the rights or interests in the estate of the decedent of any person, whether claiming under a will or as heir,

(d) the rights or interests of any beneficiary of any testamentary trust, or

(e) the administration of the estate of any decedent or of any testamentary trust,

whether or not there is or may be any person interested who is a minor or otherwise without legal capacity to act in person or whose present existence or whereabouts cannot be ascertained, or whether or not there is any inalienable estate or future contingent interest which may be affected by such compromise, shall, if made in accordance with the provisions of this article, be lawful and binding upon all the parties thereto, whether born or unborn, ascertained or unascertained, including such as are represented by trustees, guardians of estates and guardians ad litem; but no such compromise shall in any way impair the rights of creditors or of taxing authorities.

(Formerly: Acts 1953, c.112, s.901.) As amended by Acts 1982, P.L.171, SEC.27.

IC 29-1-9-2

Terms of agreement; execution; guardian ad litem

Sec. 2. (a) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons having interests or claims which will or may be affected by the compromise, except those who may be living but whose present existence or whereabouts is unknown and cannot after diligent search be ascertained.

(b) Any interested person may then submit the agreement to the court for its approval and for the purpose of directing the agreement's execution by the personal representative of the estate, by the trustees of every testamentary trust which will be affected by the compromise, and by the guardians of the estates of minors, of incapacitated persons, of unborn and unascertained persons, and of persons whose present existence or whereabouts is unknown and cannot after

diligent search be ascertained, who might be affected by the compromise.

(c) IC 29-1-1-20 applies if there is any person who, if living, has an interest which may be affected by the compromise, but whose present existence or whereabouts cannot after diligent search be ascertained, or who is a minor or incapacitated and has no guardian of the estate, or if there is any future contingent interest which might be taken by any person not then in being and which might be affected by the compromise.

(Formerly: Acts 1953, c.112, s.902.) As amended by P.L.33-1989, SEC.38; P.L.118-1997, SEC.18.

IC 29-1-9-3

Notice; order approving agreement

Sec. 3. Upon due notice, in the manner directed by the court, to all interested persons in being, or to their guardians, and to the guardians of all unborn persons who may take contingent interests by the compromise, and to the personal representative of the estate and to all trustees of testamentary trusts which would be affected by the compromise, the court shall, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries is just and reasonable, make an order approving the agreement and directing the fiduciaries and guardians ad litem to execute such agreement. Upon the making of such order and the execution of the agreement, all further disposition of the estate shall be in accordance with the terms of the agreement.

(Formerly: Acts 1953, c.112, s.903.)

IC 29-1-10

Chapter 10. Personal Representatives

IC 29-1-10-0.1

Application of certain amendments to chapter

Sec. 0.1. The amendments made to section 1 of this chapter by P.L.118-1997 do not apply to an individual whose death occurs before July 1, 1997.

As added by P.L.220-2011, SEC.476.

IC 29-1-10-1

Letters testamentary; letters of general administration; persons to whom granted; order; qualifications

Sec. 1. (a) Domiciliary letters testamentary or domiciliary letters of general administration may be granted to one (1) or more of the persons mentioned in this subsection, natural or corporate, who are not disqualified, in the following order:

(1) To the executor or executors designated in a will that has been admitted to probate.

(2) To a surviving spouse who is a devisee in a will that has been admitted to probate.

(3) To a devisee in a will that has been admitted to probate.

(4) To the surviving spouse, or to the person or persons nominated by the surviving spouse or to the surviving spouse and the person or persons nominated by the surviving spouse.

(5) To:

(A) an heir;

(B) the person or persons nominated by an heir; or

(C) an heir and the person or persons nominated by an heir.

(6) If there is not a person listed in subdivisions (1) through (5), then to any other qualified person.

(b) No person is qualified to serve as a domiciliary personal representative who is:

(1) under eighteen (18) years of age;

(2) incapacitated unless the incapacity is caused only by:

(A) physical illness;

(B) physical impairment; or

(C) physical infirmity;

(3) a convicted felon, either under the laws of the United States or of any state or territory of the United States;

(4) a resident corporation not authorized to act as a fiduciary in this state; or

(5) a person whom the court finds unsuitable.

(c) A nonresident individual or corporate fiduciary may qualify and serve as a joint personal representative with a resident personal representative only by:

(1) filing with the court that has jurisdiction of the administration of the decedent's estate a bond in an amount:

(A) not less than:

(i) the probable value of the estate's personal property; plus

(ii) the estimated rents and profits to be derived from the property in the estate during the probate period; and

(B) not greater than the probable gross value of the estate; and

(2) otherwise meeting the qualifications of subsection (b).

(d) A nonresident individual who otherwise qualifies under subsection (b) may qualify to serve as a personal representative in Indiana only by filing with the court that has jurisdiction of the administration of the decedent's estate:

(1) notice in writing of the individual's acceptance of the appointment as personal representative;

(2) notice of the appointment of a resident agent to accept service of process, notices, and other documents; and

(3) a bond in an amount:

(A) not less than:

(i) the probable value of the estate's personal property; plus

(ii) the estimated rents and profits to be derived from the property in the estate during the probate period; and

(B) not greater than the probable gross value of the estate.

(e) If a personal representative becomes a nonresident of this state, the representative remains qualified to serve only if the representative files with the court that has jurisdiction of the administration of the estate a bond in an amount:

(1) not less than:

(A) the probable value of the estate's personal property; plus

(B) the estimated rents and profits to be derived from the property in the estate during the probate period; and

(2) not greater than the probable gross value of the estate.

(f) A nonresident individual who satisfies the conditions of subsection (d) or (e) submits personally to the jurisdiction of the court in any proceeding that relates to the estate of the decedent.

(Formerly: Acts 1953, c.112, s.1001; Acts 1973, P.L.287, SEC.5; Acts 1975, P.L.289, SEC.2.) As amended by Acts 1982, P.L.173, SEC.1; P.L.33-1989, SEC.39; P.L.118-1997, SEC.19.

IC 29-1-10-2

Letters; renouncing right

Sec. 2. Any person entitled to letters testamentary or to general letters of administration may renounce his right thereto in writing, which renunciation shall be filed with the clerk.

(Formerly: Acts 1953, c.112, s.1002.)

IC 29-1-10-3

Letters; issuance; conditions

Sec. 3. Letters testamentary, of administration, of administration with the will annexed, de bonis non, and all other letters special or otherwise, shall be issued to the person entitled to receive the same when:

(a) Said person, if an individual, has taken and subscribed before the clerk or any other officer authorized to administer oaths, an oath

or affirmation that he will faithfully discharge the duties of his trust according to law and has given such bond as may be required and the bond has been approved by the court.

(b) Some officer of the corporation, if the person is a corporation, has taken and subscribed before the clerk or any other officer authorized to administer oaths, an oath or affirmation that said bank or trust company will faithfully discharge the duties of its trust according to law, has filed an acceptance of the appointment, duly executed and acknowledged by one (1) of its officers and, if a bond is required to be filed by it, shall have filed such bond as may be required and the bond shall have been approved by the court. The oath and, if a bank or trust company, also the acceptance shall be filed and recorded as a part of the proceedings of the estate.

(Formerly: Acts 1953, c.112, s.1003; Acts 1971, P.L.407, SEC.1.)

IC 29-1-10-4

Letters; evidence of authority

Sec. 4. Letters issued to a personal representative, attested by the clerk, and under the seal of the court issuing them, shall be conclusive evidence of the authority of the person to whom they are issued until superseded or revoked, and shall extend to all the estate, personal and real, of the decedent within the state. The record of such letters and duly certified transcripts thereof, may be given in evidence with like effect as the originals.

(Formerly: Acts 1953, c.112, s.1004.)

IC 29-1-10-5

Actions or proceedings; evidence of authority

Sec. 5. In any action or proceeding brought by the personal representative in such representative capacity, it shall not be necessary for him to make profert of his letters, nor shall his right to sue as such personal representative be questioned, unless the opposite party shall file a plea denying such right, with his affidavit to the truth thereof thereunto attached, in which case a copy of the letters issued to such personal representative, duly authenticated, shall be all the evidence necessary to establish such right.

(Formerly: Acts 1953, c.112, s.1005.)

IC 29-1-10-6

Removal of personal representatives for reasons other than a change in control of a corporate fiduciary

Sec. 6. (a) This section does not apply to the removal of a corporate fiduciary after a change in control of the corporate fiduciary.

(b) When the personal representative becomes incapacitated (unless the incapacity is caused only by a physical illness, infirmity, or impairment), disqualified, unsuitable or incapable of discharging the representative's duties, has mismanaged the estate, failed to perform any duty imposed by law or by any lawful order of the court, or has ceased to be domiciled in Indiana, the court may remove the

representative in accordance with either of the following:

(1) The court on its own motion may, or on petition of any person interested in the estate shall, order the representative to appear and show cause why the representative should not be removed. The order shall set forth in substance the alleged grounds upon which such removal is based, the time and place of the hearing, and may be served upon the personal representative in the same manner as a notice is served under this article.

(2) The court may without motion, petition or application, for any such cause, in cases of emergency, remove such personal representative instantly without notice or citation.

(c) The removal of a personal representative after letters are duly issued does not invalidate official acts performed prior to removal.

(Formerly: Acts 1953, c.112, s.1006.) As amended by Acts 1982, P.L.171, SEC.28; P.L.33-1989, SEC.40; P.L.143-2009, SEC.12.

IC 29-1-10-6.5

Removal of personal representative following a change in control of a corporate fiduciary

Sec. 6.5. (a) This section does not apply to the removal of a personal representative under section 6 of this chapter.

(b) An interested person may petition the court for the removal of a corporate fiduciary appointed by the court as personal representative if there has been a change in the control of the corporate fiduciary and either of the following applies:

(1) The change in the control of the corporate fiduciary occurred after the date of the execution of the decedent's will but before the decedent's death.

(2) The change in the control of the corporate fiduciary occurred after the corporate fiduciary was appointed and during the administration of the decedent's estate.

(c) A petition described in subsection (b) must be filed:

(1) not later than thirty (30) days after an interested person receives notice under IC 29-1-7-7(c) or IC 29-1-7.5-1.5, in the case of a change of control described in subsection (b)(1); or

(2) not later than a reasonable time after the change of control, in the case of a change of control described in subsection (b)(2).

(d) The court may remove the corporate fiduciary if the court determines, after a hearing, that the removal is in the best interests of all interested persons. The court may replace the corporate fiduciary with another corporate fiduciary or an individual.

(e) For purposes of this section, a change in control of a corporate fiduciary occurs whenever a person or group of persons acting in concert acquires the beneficial ownership of a total of at least twenty-five percent (25%) of the outstanding voting stock of:

(1) a corporate fiduciary; or

(2) a corporation controlling a corporate fiduciary.

(f) The removal of a corporate fiduciary after letters are duly issued does not invalidate official acts performed before the removal.

(g) If a corporate fiduciary is replaced under this section, the corporate fiduciary is entitled to receive reasonable compensation for services rendered before the removal.
As added by P.L.143-2009, SEC.13. Amended by P.L.6-2010, SEC.8.

IC 29-1-10-7
Successor representatives; appointment
Sec. 7. When a personal representative dies, is removed by the court, or resigns and such resignation is accepted by the court, the court may, and if he was the sole or last surviving personal representative and administration is not completed, the court shall appoint another personal representative in his place.
(Formerly: Acts 1953, c.112, s.1007.)

IC 29-1-10-8
Successor representatives; rights and powers
Sec. 8. When a successor personal representative or an administrator with the will annexed is appointed, he shall have all the rights and powers of his predecessor or of the executor designated in the will, except that he shall not exercise powers given in the will which by its terms are personal to the executor therein designated.
(Formerly: Acts 1953, c.112, s.1008.)

IC 29-1-10-9
Joint representatives; powers; survivor
Sec. 9. Every power exercisable by joint personal representative may be exercised by the survivor of them when one is dead or by the other when one appointment is terminated by order of the court, unless the power is given in the will and its terms otherwise provide as to the exercise of such power.
(Formerly: Acts 1953, c.112, s.1009.)

IC 29-1-10-10
Joint representatives; powers
Sec. 10. Where there are two (2) or more personal representatives, the following powers can be exercised, except as otherwise provided in section 11 of this chapter, only by all of them:
(a) the institution of a suit on behalf of the estate;
(b) the employment of an attorney;
(c) the carrying on the business of the deceased;
(d) the voting of corporate shares of the estate;
(e) the exercise of those powers given by the will which, by the terms of the will, are to be exercised only by all of the personal representatives, or by all the survivors of them.
All other powers can be exercised by any one of the personal representatives, unless the will otherwise provides.
(Formerly: Acts 1953, c.112, s.1010.) As amended by Acts 1982, P.L.171, SEC.29.

IC 29-1-10-11

Joint representatives; powers; voting shares of stock

Sec. 11. (a) Where powers possessed by two (2) or more personal representatives are to be exercised by them jointly, the will of the majority shall control the manner in which such power shall be exercised unless the will otherwise provides.

Where the personal representatives, or a majority of them, cannot agree, or where they are equally divided upon the manner in which such power shall be exercised, other than in the voting of shares of stock, the court shall, upon petition filed by any of such personal representatives or by any party in interest, direct the manner in which such power shall be exercised, and such power shall be exercised only in accordance with such direction.

(b) Shares of stock held by personal representatives may be voted by the personal representatives in such manner as the instrument or order appointing such personal representatives may direct. In the absence of such direction or the inability of the personal representatives to act in accordance therewith, the following provisions shall apply:

(1) Where shares of stock are held jointly by two (2) or more personal representatives, such shares shall be voted in accordance with the will of the majority.

(2) Where the personal representatives or a majority of them cannot agree, or where they are equally divided upon the question of voting such shares of stock, the court shall, upon petition filed by any of such personal representatives or by any party in interest, direct the voting of such shares as it may deem for the best interest of the beneficiaries, and such shares shall be voted in accordance with such direction.

(Formerly: Acts 1953, c.112, s.1011.)

IC 29-1-10-12

Voting corporate shares

Sec. 12. The personal representative may vote shares of corporate stock in person, or by proxy, discretionary or otherwise and with or without right of substitution and revocation.

(Formerly: Acts 1953, c.112, s.1012.)

IC 29-1-10-12.5

Protection of persons dealing in good faith

Sec. 12.5. A person who in good faith either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. No provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or

jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is in addition to that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.
As added by Acts 1977, P.L.297, SEC.3.

IC 29-1-10-13
Compensation; attorney's services

Sec. 13. If a testator by will makes provision for the compensation of his personal representative, that shall be taken as his full compensation unless he files in the court a written instrument renouncing all claims for the compensation provided by the will before qualifying as personal representative. The personal representative, when no compensation is provided in the will, or when he renounces all claim to the compensation provided in the will, shall be allowed such compensation for his services as the court shall deem just and reasonable. Additional compensation may be allowed for his services as attorney and for other services not required of a personal representative. An attorney performing services for the estate at the instance of the personal representative shall have such compensation therefor out of the estate as the court shall deem just and reasonable. Such compensation may be allowed at the final settlement; but at any time during administration a personal representative or his attorney may apply to the court for an allowance upon the compensation of the personal representative and upon attorney's fees.
(Formerly: Acts 1953, c.112, s.1013.)

IC 29-1-10-14
Actions on probate; expenses and attorney's fees

Sec. 14. When any person designated as executor in a will, or the administrator with the will annexed, or if at any time there be no such representative, then any devisee therein, defends it or prosecutes any proceedings in good faith and with just cause for the purpose of having it admitted to probate, whether successful or not, he shall be allowed out of the estate his necessary expenses and disbursements including reasonable attorney's fees in such proceedings.
(Formerly: Acts 1953, c.112, s.1014.)

IC 29-1-10-15
Special administrator; appointment; appeal of order

Sec. 15. A special administrator may be appointed by the court if:

(a) from any cause delay is necessarily occasioned in granting letters, or

(b) before the expiration of the time allowed by law for issuing letters, any competent person shall file his affidavit with the clerk that anyone is intermeddling with the estate or that there is no one having authority to take care of the same, or

(c) if any person shall have died testate and objections to the probate of his will shall have been filed as provided by law.

The appointment of a special administrator may be for a specified time to perform duties respecting specific property, or to perform particular acts as shall be stated in the order of appointment. The fact that a person has been designated as executor in a decedent's will shall not disqualify him from being appointed special administrator of such decedent's estate or any portion thereof.

The special administrator shall make such reports as the court shall direct, and shall account to the court upon the termination of his authority. Otherwise, and except as the provisions of this article by terms apply to general personal representatives, and except as ordered by the court, the law and procedure relating to personal representatives in this article shall apply to special administrators. The order appointing a special administrator shall not be appealable. *(Formerly: Acts 1953, c.112, s.1015.) As amended by Acts 1982, P.L.171, SEC.30.*

IC 29-1-10-16
Pending will contest; administration of estate

Sec. 16. Prior to the adjudication of a pending will contest any general personal representative or any special administrator, within the limits of his authority, shall proceed to administer the estate pursuant to the law respecting intestate estates, so far as the same may be done consistent with the terms of any such will.
(Formerly: Acts 1953, c.112, s.1016.)

IC 29-1-10-17
Damages for wrongful death

Sec. 17. An administrator collecting damages for personal injury resulting in the death of any decedent, may, at any time, file in the court where he was appointed his final report with respect to such proceeds, and the same may be approved by the court, and it shall not be necessary to publish any notice of the final settlement of such estate unless the same is ordered by the court. In the event that said administrator was appointed for the sole purpose of collecting such damages it shall not be necessary to publish any notice of the issuance of letters of administration.
(Formerly: Acts 1953, c.112, s.1017.)

IC 29-1-10-18
Wrongful death; nonresident; appointment of administrator

Sec. 18. Any court having probate jurisdiction in the state of Indiana may appoint an administrator for the estate of a nonresident for the sole purpose of bringing an action to recover damages for the wrongful death of such nonresident. The appointment may be made in the county in which the death occurred; or in the county in which the injury causing the death was received; or in the county in which any party defendant to the suit resides. The appointment shall in no way depend upon whether or not the decedent left assets.

(Formerly: Acts 1953, c.112, s.1018.)

IC 29-1-10-19
Termination of authority; validity of prior acts

Sec. 19. All acts of personal representatives whose authority shall subsequently be terminated because an estate found to be intestate is later found to be testate, or vice versa, because of a revocation of letters, or for any other cause, which acts were lawful when performed, according to the authority under which such personal representative was acting, shall be valid insofar as concerns the rights and liabilities of a purchaser, lessee, or encumbrancer, for value in good faith or a personal representative who has acted in good faith. No person delivering or transferring property to a personal representative or to any other person by authority of the letters issued to such personal representative or upon court order or pursuant to a will under which such a personal representative is acting, shall be held accountable by virtue of such acts performed prior to such termination of authority if such acts were lawful in accordance with the apparent authority of such letters, court order or will.
(Formerly: Acts 1953, c.112, s.1019.)

IC 29-1-10-20
Duties of an estate lawyer

Sec. 20. (a) As used in this section, "estate lawyer" refers to a lawyer performing services for an estate at the request of the estate's personal representative.

(b) Except as otherwise provided in a written agreement between the estate lawyer and an interested person, an estate lawyer:

(1) represents and owes a duty only to the personal representative;

(2) does not have a duty to collect, possess, manage, maintain, monitor, or account for estate assets, unless otherwise required by a specific order of the court; and

(3) is not liable for any loss suffered by the estate, except to the extent the loss was caused by the estate lawyer's breach of a duty owed to the personal representative.

(c) If a provision of a court's local probate rule conflicts with this section, this section controls.
As added by P.L.99-2013, SEC.3.

IC 29-1-10-21
Authority of personal representatives; circumstances in which a court order may allow an action that the personal representative is prohibited from taking

Sec. 21. (a) All authority to act with respect to an estate administered under IC 29-1-7 and IC 29-1-7.5 is vested exclusively in the personal representative.

(b) If this article prohibits an action by the personal representative, the prohibition restricts the personal representative, regardless of court order, unless:

(1) a majority in interest of the distributees expressly consent to the proposed action; or

(2) the statute imposing the restriction expressly permits a court to approve the prohibited action.

As added by P.L.99-2013, SEC.4.

IC 29-1-11

Chapter 11. Bond of Personal Representative

IC 29-1-11-1

Conditions requiring execution and filing

Sec. 1. A personal representative is not required to execute and file a bond relating to the duties of his office unless:

(1) the will provides for the execution and filing of such a bond; or

(2) the court finds, on its own motion or on petition by an interested person, that a bond is necessary to protect creditors, heirs, legatees, or devisees.

(Formerly: Acts 1953, c.112, s.1101; Acts 1971, P.L.408, SEC.1; Acts 1975, P.L.288, SEC.17.)

IC 29-1-11-2

Deposit of money or assets; withdrawal

Sec. 2. It shall be lawful for the personal representative to agree with his surety for the deposit of any or all money and other assets of the estate with a bank, safe deposit or trust company, authorized by law to do business as such, or other depository approved by the court, if such deposit is otherwise proper, in such manner as to prevent the withdrawal of such moneys or other assets without the written consent of the surety, or on order of the court made on such notice to the surety as the court may direct.

(Formerly: Acts 1953, c.112, s.1102.)

IC 29-1-11-3

Run to state; joint and several liability; conflict of laws

Sec. 3. The bond of the personal representative shall run to the state of Indiana to the use of all persons for whose benefit it was given under the provision of this article and shall be for the security and benefit of such persons. The sureties shall be jointly and severally liable with the personal representative and with each other. The provisions of this section shall not change the rights of the sureties under other statutes or under the law.

(Formerly: Acts 1953, c.112, s.1103.) As amended by Acts 1982, P.L.171, SEC.31.

IC 29-1-11-4

Joint representatives; personal representative as surety

Sec. 4. When two (2) or more persons are appointed personal representatives of the same estate and are required by the provisions of this article to give a bond, the court may require either a separate bond from each or one (1) bond from all of them. No personal representative shall be deemed a surety for another personal representative unless the terms of the bond so provide.

(Formerly: Acts 1953, c.112, s.1104.) As amended by Acts 1982, P.L.171, SEC.32.

IC 29-1-11-5
Affidavit of surety; value of property

Sec. 5. Each personal surety shall execute and file with the court an affidavit that he owns real property, subject to execution, of a value over and above his liabilities, equal to the amount of the bond, and shall include in such affidavit the total amount of his obligations as surety on other official or statutory bonds.

If the amount of the bond exceeds $1,000, the affidavit shall also state:

(a) An adequate description of the real property within this state offered by him as security.

(b) The total amount of the liens, unpaid taxes, other bonds executed and other encumbrances on the property so offered by him as security.

(c) The assessed and market value of such property and the value of the surety's equity over and above all encumbrances, liens, and unpaid taxes.

(d) That the equity in such property so offered is equal to the amount of the bond.

The only provision of this section which shall apply in counties in this state having a population of less than fifty thousand (50,000) according to the last preceding United States census, is the provision that each personal surety shall execute and file with the court an affidavit that he owns real property, subject to execution, of a value over and above his liabilities, including contingent liabilities equal to the amount of the bond.

(Formerly: Acts 1953, c.112, s.1105.)

IC 29-1-11-6
Sufficiency; value of assets; evidence of title

Sec. 6. No bond of a personal representative shall be deemed sufficient unless it shall have been examined and approved as required by law, and the approval endorsed thereon in writing. Before giving approval the court, judge, commissioner, or clerk may require evidence as to the value and character of the assets of personal sureties, including an abstract, certificate or other satisfactory evidence of title of every tract of real property which is offered as security. In the event that the bond is not approved, the personal representative shall, within such time as may be directed, secure a bond with satisfactory surety or sureties.

(Formerly: Acts 1953, c.112, s.1106.)

IC 29-1-11-7
Failure to give bond; successor; revocation of letters

Sec. 7. If at any time a personal representative fails to give a bond as required by the court, within the time fixed by the court, some other person shall be appointed in his stead. If letters have been issued, they shall be revoked.

(Formerly: Acts 1953, c.112, s.1107.)

IC 29-1-11-8
Repealed

(Repealed by Acts 1975, P.L.288, SEC.51.)

IC 29-1-11-9
New bond; release of surety; accounting

Sec. 9. (a) Any surety upon any bond of any personal representative or other fiduciary may petition the court approving such bond to be released therefrom. Ten (10) days' notice thereof shall be given the principal in said bond. Upon proof of such notice, the court shall notify the principal to file a new bond within fifteen (15) days with penalty and surety to the approval of the court. Upon failure to file such a new bond with the time fixed, the principal shall be forthwith removed by the court. In either event the principal shall file an accounting covering his acts to date. As soon as said new bond is filed or said principal removed, the surety shall be released from any liability for the acts or omissions of the principal thereafter occurring, but shall remain liable for his prior acts and omissions.

(b) Any principal in any bond given by any executor, administrator, guardian or fiduciary may apply to the court approving such bond to terminate further liability on such bond and to release the surety or sureties thereon from all further liability and offer a new bond in an amount and with sureties as required by law and file an accounting covering his acts to the date thereof. Ten (10) days' notice of such application shall be given the sureties. Upon the approval of the accounting and the new bond, the court shall enter an order discharging the original sureties from all liability upon said bond for acts or omissions of the principal thereafter occurring, but they shall remain liable on said former bond for prior acts and omissions.
(Formerly: Acts 1953, c.112, s.1109.)

IC 29-1-11-10
Breach of obligation; damages; intervention

Sec. 10. (a) The court may, on breach of the obligation of the bond of the personal representative, after notice to the obligors in the bond and to such other persons as the court directs, determine the damages as a part of the proceeding for the administration of the estate, and by appropriate proceeding enforce the collection thereof from those liable on the bond. Such determination and enforcement may be made by the court upon its own motion or upon application of a successor personal representative, or of any other personal representative, or of any other interested person. The court may hear the application at time of settling the accounts of the defaulting personal representative or at such other time as the court may direct. Damages shall be assessed on behalf of all interested persons and may be paid over to the successor or other non-defaulting personal representative and distributed as other assets held by the personal representative in his official capacity.

(b) The bond of the personal representative shall not be void upon the first recovery, but may be proceeded upon from time to time until

the whole penalty is exhausted.

(c) If the court has already determined the liability of the personal representative, the sureties shall not be permitted thereafter to deny such liability in any action or hearing to determine their liability; but the surety may intervene in any hearing to determine the liability of the personal representative.

(Formerly: Acts 1953, c.112, s.1110.)

IC 29-1-11-11

Validity; bound to full extent; action on defective bond

Sec. 11. No surety bond entered into under the provisions of this article shall be void for want of form or substance or recital or condition nor the principal or surety be discharged, but the principal and surety shall be bound by such bond to the full extent contemplated by the law requiring the same and the sureties to the amount specified in the bond. In all actions on a defective bond the plaintiff or relator may suggest the defect in his complaint and recover to the same extent as if such bond complied with the law requiring the same.

(Formerly: Acts 1953, c.112, s.1111.) As amended by Acts 1982, P.L.171, SEC.33.

IC 29-1-12

Chapter 12. Inventory

IC 29-1-12-1

Classification of properties; appraisers; copies of inventories to interested persons

Sec. 1. (a) Within two (2) months after the appointment of a personal representative, unless a longer time is granted by the court, the personal representative shall prepare a verified inventory of the decedent's probate estate. The verified inventory must:

(1) consist of at least one (1) written instrument;

(2) indicate the fair market value of each item of property; and

(3) include a statement of all known liens and other charges on any item.

(b) Property listed in the inventory required by subsection (a) must be classified as follows:

(1) Real property, with plat or survey description, and if a homestead, designated as a homestead.

(2) Furniture and household goods.

(3) Emblements and annual crops raised by labor.

(4) Corporate stocks including the class, the par value or that it has no par value, if preferred stock the dividend rate.

(5) Mortgages, bonds, notes or other written evidences of debt or of ownership described by name of debtor, recording data, and other identification.

(6) Bank accounts, money, and insurance policies if payable to the estate of the decedent or to the decedent's personal representative.

(7) All other personal property accurately identified, including the decedent's proportionate share in any partnership, but no inventory of the partnership property shall be required.

(c) The personal representative may employ a disinterested appraiser to assist in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The name and address of any appraiser must be indicated on the inventory with the item or items appraised by the appraiser.

(d) The personal representative shall furnish a copy of the inventory, or any supplement or amendment to it, to interested persons who request it, unless the personal representative has filed the original of the inventory, or any supplement or amendment to it, with the court.

(Formerly: Acts 1953, c.112, s.1201; Acts 1971, P.L.409, SEC.1; Acts 1975, P.L.288, SEC.18.) As amended by P.L.99-2013, SEC.5.

IC 29-1-12-2

Repealed

(Repealed by Acts 1975, P.L.289, SEC.3.)

IC 29-1-12-3
Distant places or types of property; separate inventory and appraisement

Sec. 3. When such estate is situated in places distant from each other or is composed of different types of property, the personal representative may prepare the inventory in separate instruments for each place or type of property.
(Formerly: Acts 1953, c.112, s.1203; Acts 1971, P.L.409, SEC.2; Acts 1975, P.L.288, SEC.19.)

IC 29-1-12-4
Repealed

(Repealed by Acts 1975, P.L.288, SEC.51.)

IC 29-1-12-5
Right of action against executor; insolvent personal representative

Sec. 5. The naming of any person as executor in a will shall not operate as a discharge or bequest of any right of action which the testator had against such executor, but such right of action, if it survives, shall be included among the assets of the decedent in the inventory. If the personal representative is or becomes insolvent, debts owed by him to the decedent shall not be deemed assets in his hands in determining the liability on his bond.
(Formerly: Acts 1953, c.112, s.1205.)

IC 29-1-12-6
Evidence

Sec. 6. Inventories and appraisements may be given in evidence in all proceedings, but shall not be conclusive, and other evidence may be introduced to vary the effect thereof.
(Formerly: Acts 1953, c.112, s.1206.)

IC 29-1-13

Chapter 13. Collection and Management of Assets

IC 29-1-13-1

Possession of property; duties of personal representative

Sec. 1. Every personal representative shall have a right to take, and shall take, possession of all the real and personal property of the decedent. The personal representative:

(1) shall pay the taxes and collect the rents and earnings thereon until the estate is settled or until delivered by order of the court to the distributees;

(2) shall keep in tenantable repair the buildings and fixtures under the personal representative's control;

(3) may protect the buildings and fixtures under the personal representative's control by insurance; and

(4) may maintain an action:

(A) for the possession of real property; or

(B) to determine the title to real property.

(Formerly: Acts 1953, c.112, s.1301; Acts 1973, P.L.287, SEC.7.) As amended by Acts 1976, P.L.125, SEC.5; Acts 1979, P.L.268, SEC.4; P.L.95-2007, SEC.10.

IC 29-1-13-1.1

Electronically stored documents of deceased

Sec. 1.1. (a) As used in this section, "custodian" means any person who electronically stores the documents or information of another person.

(b) A custodian shall provide to the personal representative of the estate of a deceased person, who was domiciled in Indiana at the time of the person's death, access to or copies of any documents or information of the deceased person stored electronically by the custodian upon receipt by the custodian of:

(1) a written request for access or copies made by the personal representative, accompanied by a copy of the death certificate and a certified copy of the personal representative's letters testamentary; or

(2) an order of a court having probate jurisdiction of the deceased person's estate.

(c) A custodian may not destroy or dispose of the electronically stored documents or information of the deceased person for two (2) years after the custodian receives a request or order under subsection (b).

(d) Nothing in this section shall be construed to require a custodian to disclose any information:

(1) in violation of any applicable federal law; or

(2) to which the deceased person would not have been permitted access in the ordinary course of business by the custodian.

As added by P.L.12-2007, SEC.1.

IC 29-1-13-1.5

Access to safe deposit box; duties of financial institutions

Sec. 1.5. (a) Upon the death of an individual, a financial institution shall grant access in the following order of priority to a safe deposit box leased by the individual at the time of the individual's death:

(1) A surviving joint lessee of the safe deposit box, upon the presentation of proof of the individual's status as a joint lessee.

(2) The personal representative of the individual's estate, upon the presentation of letters testamentary or letters of administration.

(3) The personal representative named in the individual's will, upon the presentation of an affidavit meeting the requirements of subsection (c) if a probate estate has not been opened.

(4) The trustee of a trust created by the individual that was revocable during the individual's life, upon the presentation of an affidavit meeting the requirements of subsection (c) if a probate estate has not been opened.

(5) Any other individual, upon the presentation of a court order directing access to the safe deposit box.

(b) A person granted access to a safe deposit box under subsection (a) may exercise the following rights:

(1) The right to open the safe deposit box.

(2) The right to remove the contents of the safe deposit box.

(3) The right to cancel the lease for the safe deposit box.

(c) An affidavit required by subsection (a)(3) or (a)(4) must contain the following information:

(1) The name of the individual leasing the safe deposit box and the date of the individual's death.

(2) A statement as to whether the individual died testate or intestate.

(3) The name of the county in which the individual was domiciled at the time of the individual's death.

(4) A statement that no application or petition for the appointment of a personal representative has been granted or is pending in any jurisdiction.

(5) A statement under the penalty of perjury that the affiant is qualified under subsection (a)(3) or (a)(4) to obtain access to the safe deposit box leased by the individual.

(d) Except as provided in subsection (h), a financial institution that is presented with a request for access to a safe deposit box by a person described in subsection (a):

(1) shall grant access to the safe deposit box within three (3) business days of the presentation of the appropriate documentation required by subsection (a); and

(2) is liable to:

(A) the estate of the individual leasing the safe deposit box; or

(B) an individual entitled to access to the safe deposit box under subsection (a);

if it fails to grant access to the safe deposit box within three (3) business days of the presentation of the appropriate

documentation required by subsection (a).

(e) A financial institution that provides access to a safe deposit box under this section is discharged and released from liability and responsibility for the assets held in the safe deposit box. The financial institution is not required to:

(1) inquire into the truth of any statement in an affidavit presented under this section; or

(2) participate in the disposition of the assets held in the safe deposit box.

(f) A plaintiff who prevails in an action:

(1) to compel a financial institution presented with a request for access to a safe deposit box in accordance with this section to accept the authority of the person requesting access; or

(2) for damages arising from a financial institution's refusal to grant the requested access;

is entitled to recover the amounts specified in subsection (g).

(g) A prevailing plaintiff described in subsection (f) is entitled to the following:

(1) Three (3) times the amount of the actual damages.

(2) Attorney's fees and court costs.

(3) Prejudgment interest on the actual damages calculated from the date that the appropriate documentation was presented to the financial institution under subsection (a).

(h) If a financial institution requires the services of a locksmith or other contractor to gain access to a safe deposit box, the financial institution has five (5) additional business days to comply with the requirements of subsection (d).

As added by P.L.101-2008, SEC.6.

IC 29-1-13-2

Preserving estate; action to prevent loss

Sec. 2. No executor named in the will shall interfere with the estate entrusted to him further than to preserve the same until the issuing of letters; but, for that purpose, he may prosecute any suit to prevent the loss of any part thereof.

(Formerly: Acts 1953, c.112, s.1302.)

IC 29-1-13-3

Actions; trespass; waste; costs; examine party

Sec. 3. Every personal representative shall have full power to maintain any suit in any court of competent jurisdiction, in his name as such personal representative, for any demand of whatever nature due the decedent or his estate or for the recovery of possession of any property of the estate or for trespass or waste committed on the estate of the decedent in his lifetime, or while in the possession of the personal representative; but he shall not be liable, in his individual capacity, for any costs in such suit, and shall have power, at his option, to examine the opposite party under oath, touching such demand.

(Formerly: Acts 1953, c.112, s.1303.)

IC 29-1-13-4
Fraudulent conveyances; recovery

Sec. 4. The real and personal property liable for the payment of debts of a decedent shall include all property transferred by him with intent to defraud his creditors or any of them, or transferred by any other means which is in law void as against his creditors or any of them; and the right to recover such property, so far as necessary for the payment of the debts of the decedent, shall be in the personal representative, who shall take such steps as may be necessary to recover the same. Such property shall constitute general assets for the payment of all creditors; but no property so transferred shall be taken from anyone who purchased it for a valuable consideration, in good faith and without knowledge of the fraud.
(Formerly: Acts 1953, c.112, s.1304.)

IC 29-1-13-5
Compromise; debtor or obligor

Sec. 5. When it appears for the best interest of the estate, the personal representative may on order of the court effect a fair and reasonable compromise with any debtor or other obligor, or extend, renew or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of such encumbered assets from the owner thereof in satisfaction of the indebtedness secured by such lien, if it appears for the best interest of the estate and if the court shall so order. In the absence of prior authorization or subsequent approval of the court, no compromise shall bind the estate.
(Formerly: Acts 1953, c.112, s.1305.)

IC 29-1-13-6
Real estate interest as personal assets; proceeds from sale of real estate

Sec. 6. (a) Unless foreclosure shall have been completed and redemption period shall have expired prior to the death of a decedent, real property mortgages, the interest in the mortgaged premises conveyed thereby, and the debt secured thereby, or any real property acquired by the personal representative in settlement of a debt or liability, or any real property sold by the decedent on written contract, the purchase price of which shall not have been paid in full prior to the death of the decedent, shall be deemed personal assets in the hands of his personal representative and be distributed and accounted for as such, but any sale, mortgage, lease or exchange of any of such real property made after the death of the decedent shall be made pursuant to IC 29-1-15, unless otherwise provided in the will of the decedent.

(b) In all cases of a sale of real property by a personal representative, upon order of the court the surplus of the proceeds of such sale remaining on the final settlement of the account shall be

considered as real property and disposed of among the persons and in the same proportions as the real property would have been if it had not been sold.
(Formerly: Acts 1953, c.112, s.1306.) As amended by Acts 1982, P.L.171, SEC.34.

IC 29-1-13-7
Mortgages; release and discharge

Sec. 7. When, in any case, a mortgage to the decedent is redeemed, or the debt secured thereby is or has been paid to the decedent or to his personal representative, the latter shall release and discharge the mortgage.
(Formerly: Acts 1953, c.112, s.1307.)

IC 29-1-13-8
Valueless property; abandonment

Sec. 8. When any property is valueless, or is so encumbered, or is in such condition that it is of no benefit to the estate, the court may order the personal representative to abandon it.
(Formerly: Acts 1953, c.112, s.1308.)

IC 29-1-13-9
Embezzlement; conversion

Sec. 9. If a person embezzles or converts to the person's own use the personal property of a decedent before the appointment of a personal representative, the person is liable to the estate for the value of the property embezzled or converted.
(Formerly: Acts 1953, c.112, s.1309.) As amended by P.L.154-1990, SEC.8.

IC 29-1-13-10
Petitions; concealment; embezzlement; conversion; adverse interest; attachment

Sec. 10. (a) Upon the filing of a petition by the personal representative or any other person interested in the estate alleging that any person has, or is suspected to have, concealed, embezzled, converted or disposed, of any real or personal property belonging to the estate of a decedent, or has possession or knowledge of any such property or of any instruments in writing relating to such property, the court having probate jurisdiction, upon such notice as it may direct, may order such person to appear before it for disclosure, and may finally adjudicate the rights of the parties before the court with respect to such property. Insofar as concerns parties claiming an interest adverse to the estate, such procedure for disclosure or to determine title is an independent proceeding and not with IC 29-1-7-2.

(b) Any person so ordered to appear who fails or refuses to appear, or who refuses to answer concerning such property or to deliver up any such property in which no interest adverse to the estate is claimed by him, may be attached and imprisoned in the discretion of the

court.
(Formerly: Acts 1953, c.112, s.1310.) As amended by Acts 1982, P.L.171, SEC.35.

IC 29-1-13-11
Business of decedent; continuing

Sec. 11. Upon a showing of advantage to the estate, the court may authorize the personal representative to continue any business of the decedent for the benefit of the estate; but if the decedent died testate and his estate is solvent, the order of the court shall be subject to the provisions of the will. The order may be with or without notice. If notice is not given to all interested persons before the order is made, notice of the order shall be given within five (5) days after the order, and any such person not previously notified by publication or otherwise may show cause why the order should be revoked or modified. The order may provide:

(a) For the conduct of the business solely by the personal representative or jointly with one (1) or more of the decedents' surviving partners, or as a corporation to be formed by the personal representative alone or acting with others;

(b) The extent of the liability of the estate, or any part thereof, or the personal representative, for obligations incurred in the continuation of the business;

(c) As to whether liabilities incurred in the conduct of the business are to be chargeable solely to the part of the estate set aside for use in the business or to the estate as a whole; and

(d) As to the period of time for which the business may be conducted, and such other conditions, restrictions, regulations and requirements as the court may order.
(Formerly: Acts 1953, c.112, s.1311.)

IC 29-1-13-12
Conveyance or lease after death of decedent

Sec. 12. (a) When any person legally bound to make a conveyance or lease dies before making the same, the court, with or without notice, may direct the personal representative to make the conveyance or lease to the person entitled thereto. A petition for this purpose may be made by any person claiming to be entitled to such conveyance or lease, or by the personal representative, or by any other person interested in the estate or claiming an interest in the real property or contract, and shall show the description of the land and the facts upon which such claim for conveyance or lease is based. Upon satisfactory proofs the court may order the personal representative to execute and deliver an instrument of conveyance or lease to the person entitled thereto upon performance of the contract. A certified copy of the order may be recorded with the deed of conveyance or lease in the office of the recorder of the county where the land lies, and shall be prima facie evidence of the due appointment and qualification of the personal representative, the correctness of the proceedings and the authority of the personal

representative.

(b) If a personal representative has been given power by will to make a conveyance or lease, he may, in lieu of the foregoing procedure, and without order of the court, execute a conveyance or lease, pursuant to and in accordance with such power, to the person entitled thereto upon performance of the contract. A certified copy of the will and a certified copy of the personal representative's letters may be recorded with the deed of conveyance or lease in the office of the recorder of the county where the land lies, and shall be prima facie evidence of the due appointment and qualification of the personal representative and his authority to execute the deed of conveyance or lease.

(c) If the contract for a lease or conveyance requires the giving of warranties, the deed or lease to be given by the personal representative shall contain the warranties required. Such warranties shall be binding on the estate as though made by the decedent but shall not bind the personal representative personally.

(Formerly: Acts 1953, c.112, s.1312.)

IC 29-1-13-13

Contracts; performance by personal representative

Sec. 13. If at the time of his death the decedent was obligated by the terms of any contract to further performance thereunder, his personal representative may, if it appears feasible and in the best interests of the estate, proceed to carry out the terms of such contract. In the event that the performance of such contract shall necessitate the expenditure of funds of the estate, or shall require the utilization of assets other than property which is itself the subject matter of such contract, such personal representative shall request and receive instructions from the court regarding the performance thereof.

(Formerly: Acts 1953, c.112, s.1313.)

IC 29-1-13-14

Investment of funds

Sec. 14. Subject to his primary duty to preserve the estate for prompt distribution, and to the terms of the will, if any, the personal representative may with the approval of the court whenever it is reasonable to do so, invest the funds of the estate and make then productive. Such investments shall be restricted to the kinds of investments permitted to trustees by the laws of this state.

(Formerly: Acts 1953, c.112, s.1314.)

IC 29-1-13-15

Deposit of funds

Sec. 15. Whenever it is consistent with a proper administration of the estate, the personal representative may deposit, as a fiduciary, the funds of the estate in a bank in this state as a general deposit, either in a checking account or in a savings account. If the personal representative is a bank or trust company, it may make such deposit in its own bank.

(Formerly: Acts 1953, c.112, s.1315.)

IC 29-1-13-16
Collection of indebtedness; secure possession of property; special administrator appointed

Sec. 16. Whenever any interested person files with the court having jurisdiction of an estate a petition showing that such person has reason to believe and does believe that the personal representative of the estate or any other person is indebted to the estate, or that any property is in the possession of the personal representative of the estate or of any other person, and that diligent effort is not being made to collect such indebtedness or to secure possession of such property for the estate, the court shall hold a hearing upon such petition and shall determine what action, if any, shall be taken. Should the court decide that there is sufficient merit in the petitioner's claim to warrant action, it shall direct the personal representative to take such action as the court deems necessary; provided, however, where the person claimed to be indebted to the estate or having in his possession property belonging to the estate is the personal representative or where the court is of the opinion that the personal representative would not or could not for any reason prosecute such action with sufficient vigor, it shall appoint a special administrator to take such action as it shall direct.
(Formerly: Acts 1953, c.112, s.1316.)

IC 29-1-13-17
Action to enforce a written demand or instruction from a personal representative

Sec. 17. (a) If a person fails to comply with a personal representative's written demand or instruction that is consistent with this article regarding the property of the decedent, the personal representative may bring an enforcement proceeding to compel compliance with the written demand or instruction.

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

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

(2) refused to respond to the written demand or instruction within thirty (30) business days after receiving the demand or instruction, if the demand or instruction is consistent with this article.

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

(1) the insurer failed to respond pursuant to IC 27 after receiving a written demand or instruction from the personal representative; and

(2) the written demand or instruction is consistent with this

article.

As added by P.L.51-2014, SEC.5.

IC 29-1-14

Chapter 14. Claims Against the Estate

IC 29-1-14-0.1

Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to sections 2, 13, 17, and 19 of this chapter by P.L.118-1997 do not apply to an individual whose death occurs before July 1, 1997.

(2) The amendments made to sections 1, 2, 8, 10, 16, 18, 19, and 21 of this chapter by P.L.252-2001 apply to the estate of an individual who dies after June 30, 2001.

As added by P.L.220-2011, SEC.477.

IC 29-1-14-1

Limitations; filing; claims barred or not; liens; tort claims

Sec. 1. (a) Except as provided in IC 29-1-7-7, all claims against a decedent's estate, other than expenses of administration and claims of the United States, the state, or a subdivision of the state, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or otherwise, shall be forever barred against the estate, the personal representative, the heirs, devisees, and legatees of the decedent, unless filed with the court in which such estate is being administered within:

(1) three (3) months after the date of the first published notice to creditors; or

(2) three (3) months after the court has revoked probate of a will, in accordance with IC 29-1-7-21, if the claimant was named as a beneficiary in that revoked will;

whichever is later.

(b) No claim shall be allowed which was barred by any statute of limitations at the time of decedent's death.

(c) No claim shall be barred by the statute of limitations which was not barred at the time of the decedent's death, if the claim shall be filed within:

(1) three (3) months after the date of the first published notice to creditors; or

(2) three (3) months after the court has revoked probate of a will, in accordance with IC 29-1-7-21, if the claimant was named as a beneficiary in that revoked will;

whichever is later.

(d) All claims barrable under subsection (a) shall be barred if not filed within nine (9) months after the death of the decedent.

(e) Nothing in this section shall affect or prevent any action or proceeding to enforce any mortgage, pledge, or other lien upon property of the estate.

(f) Nothing in this section shall affect or prevent the enforcement of a claim for injury to person or damage to property arising out of negligence against the estate of a deceased tort feasor within the

period of the statute of limitations provided for the tort action. A tort claim against the estate of the tort feasor may be opened or reopened and suit filed against the special representative of the estate within the period of the statute of limitations of the tort. Any recovery against the tort feasor's estate shall not affect any interest in the assets of the estate unless the suit was filed within the time allowed for filing claims against the estate. The rules of pleading and procedure in such cases shall be the same as apply in ordinary civil actions.
(Formerly: Acts 1953, c.112, s.1401; Acts 1961, c.287, s.1; Acts 1975, P.L.288, SEC.20.) As amended by Acts 1980, P.L.179, SEC.1; P.L.154-1990, SEC.9; P.L.252-2001, SEC.16.

IC 29-1-14-2
Actions; definite statement; personal representative actions; deductions from claims

Sec. 2. No action shall be brought by complaint and summons against the personal representative of an estate for the recovery of any claim against the decedent or the decedent's estate, except in the enforcement of claims for injury to person or damage to property arising out of negligence as provided in section 1 of this chapter, but the holder thereof, whether such claim be due or not, shall file a succinct definite statement thereof in the office of the clerk of the court in which the letters were issued. The clerk shall send by United States mail or by personal service an exact copy of such statement to the personal representative of the estate. Any claims of the personal representative against the decedent shall be made out and filed in the office of the clerk of the court in which the letters were issued. If any claim against the decedent is founded upon any written instrument, alleged to have been executed by the decedent, the original or a complete copy thereof, shall be filed with the statement, unless it is lost or destroyed, in which case its loss or destruction must be stated in the claim. The statement shall set forth all credits and deductions to which the estate is entitled and shall be accompanied by the affidavit of the claimant or the claimant's agent or attorney, that the claim, after deducting all credits, set-offs, and deductions to which the estate is entitled, is justly due and wholly unpaid, or if not yet due, when it will or may become due, and no claim shall be received unless accompanied by such affidavit. If the claim is secured by a lien on any real or personal property, such lien shall be particularly set forth in such statement, and a reference given to where the lien, if of record, will be found. If the claim is contingent, the nature of the contingency shall also be stated. No statement of claim need be filed as provided in this section as to those claims which are paid by the personal representative within three (3) months after the date of the first published notice to creditors or the period allowed under IC 29-1-7-7. However, in instances where a cause of action was properly filed and commenced against a decedent prior to the decedent's death, the same shall be continued against the personal representative or successors in interest of the deceased, who shall be substituted as the party or parties defendant in such action, and in

such instance it shall not be necessary for the claimant to file a claim as herein provided. In any action thus continued the recovery, if any, shall be limited as otherwise provided by law.
(Formerly: Acts 1953, c.112, s.1402; Acts 1959, c.179, s.1; Acts 1961, c.287, s.2; Acts 1965, c.144, s.1; Acts 1975, P.L.288, SEC.21.) As amended by P.L.118-1997, SEC.20; P.L.252-2001, SEC.17.

IC 29-1-14-3
Future claims; payment; bonds

Sec. 3. Upon proof of a claim which will become due at some future time, the court shall allow it at the present value thereof, and payment may be made as in the case of an absolute claim which has been allowed: Provided, if the obligation upon which such claim was founded was entered into before January 1, 1954, payment may be made as above, if the creditors agree thereto. If payment is not made as above provided, the court may order the personal representative to retain in his hands sufficient funds to satisfy the claim upon maturity; or if the distributees shall give a bond to be approved by the court for the payment of the creditor's claim in accordance with the terms thereof, the court may order such bond to be given in satisfaction of such claim and the estate may be closed.
(Formerly: Acts 1953, c.112, s.1403.) As amended by Acts 1982, P.L.171, SEC.36.

IC 29-1-14-4
Actions; joint contracts and judgment

Sec. 4. No action shall be brought by complaint and summons against any personal representative and any other person or persons, or his or their legal representatives, upon any contract executed jointly, or jointly and severally, by the deceased and such other person or persons, or upon any joint judgment founded thereon; but the holder of said contract or judgment shall enforce the collection thereof against the estate of the decedent only by filing his claim as provided in section 2 of this chapter.
(Formerly: Acts 1953, c.112, s.1404.) As amended by Acts 1982, P.L.171, SEC.37.

IC 29-1-14-5
Joint contracts and judgments deemed joint and several

Sec. 5. Every contract executed jointly by the decedent with any other person or persons, and every joint judgment founded on such contract, shall be deemed to be joint and several for the purpose contemplated in section 4 of this chapter; and the amount due thereon shall be allowed against the estate of the decedent as if the contract were joint and several.
(Formerly: Acts 1953, c.112, s.1405.) As amended by Acts 1982, P.L.171, SEC.38.

IC 29-1-14-6
Secured claims, allowance, and payment

Sec. 6. The allowance and payment of secured claims shall be made in accordance with the "Uniform Act Governing Secured Creditors Dividends in Liquidation Proceedings," IC 30-2-7.
(Formerly: Acts 1953, c.112, s.1406.) As amended by Acts 1982, P.L.171, SEC.39.

IC 29-1-14-7
Contingent claims; payment; bond of distributee

Sec. 7. Contingent claims which cannot be allowed as absolute debts shall, nevertheless, be filed in the court. If allowed as a contingent claim, the allowance shall state the nature of the contingency. If such claim shall become absolute before distribution of the estate, it shall be paid in the same manner as absolute claims of the same class. In all other cases the court may provide for the payment of contingent claims in any one of the following methods.

(a) The creditor and personal representative may determine, by agreement, arbitration or compromise, the value thereof, according to its probable present worth, and upon approval thereof by the court, it may be allowed and paid in the same manner as an absolute claim.

(b) The court may order the personal representative to make distribution of the estate but to retain in his hands sufficient funds to pay the claim if and when the same becomes absolute; but for this purpose the estate shall not be kept open longer than two (2) years after distribution of the remainder of the estate has been made; and if such claim has not become absolute within that time, distribution shall be made to the distributees of the funds so retained, after paying any costs and expenses accruing during such period and such distributees shall be liable to the creditor to the extent of the estate received by them, if such contingent claim thereafter becomes absolute. When distribution is so made to distributees, the court may require such distributees to give bond for the satisfaction of their liability to the contingent creditor.

(c) The court may order distribution of the estate as though such contingent claim did not exist, but the distributees shall be liable to the creditor to the extent of the estate received by them, if the contingent claim thereafter becomes absolute; and the court may require such distributees to give bond for the performance of their liability to the contingent creditor.
(Formerly: Acts 1953, c.112, s.1407.)

IC 29-1-14-8
Contingent claims; liability of distributees; contribution

Sec. 8. If a contingent claim shall have been filed and allowed against an estate, and all the assets of the estate including the fund, if any, set apart for the payment thereof, shall have been distributed, and the claim shall thereafter become absolute, the creditor shall have the right to recover thereon in the court having probate jurisdiction against those distributees whose distributive shares have been increased by reason of the fact that the amount of said claim as finally determined was not paid out prior to final distribution, provided an

action therefor shall be commenced within three (3) months after the claim becomes absolute. Such distributees shall be jointly and severally liable, but no distributee shall be liable for an amount exceeding the amount of the estate or fund so distributed to him. If more than one (1) distributee is liable to the creditor, the distributee shall make all distributees who can be reached by process parties to the action. By its judgment the court shall determine the amount of the liability of each of the defendants as between themselves, but if any be insolvent or unable to pay his proportion, or beyond the reach of process, the others, to the extent of their respective liabilities, shall nevertheless be liable to the creditor for the whole amount of the debt. If any person liable for the debt fails to pay the person's just proportion to the creditor, the person shall be liable to indemnify all who, by reason of such failure on the person's part, have paid more than their just proportion of the debt, the indemnity to be recovered in the same action or in separate actions.
(Formerly: Acts 1953, c.112, s.1408; Acts 1975, P.L.288, SEC.22.) As amended by P.L.252-2001, SEC.18; P.L.1-2002, SEC.124.

IC 29-1-14-9
Classification of claims; preferences

Sec. 9. (a) All claims shall be classified in one (1) of the following classes. If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(1) Costs and expenses of administration.

(2) Reasonable funeral expenses. However, in any estate in which the decedent was a recipient of public assistance under IC 12-1-1 through IC 12-1-12 (before its repeal) or any of the following, the amount of funeral expenses having priority over any claim for the recovery of public assistance shall not exceed the limitations provided for under IC 12-14-6, IC 12-14-17, and IC 12-14-21:

TANF assistance.
TANF burials.
TANF IMPACT/J.O.B.S.
Temporary Assistance to Other Needy Families (TAONF) assistance.
ARCH.
Blind relief.
Child care.
Child welfare adoption assistance.
Child welfare adoption opportunities.
Child welfare assistance.
Child welfare child care improvement.
Child welfare child abuse.
Child welfare child abuse and neglect prevention.
Child welfare children's victim advocacy program.
Child welfare foster care assistance.
Child welfare independent living.

Child welfare medical assistance to wards.
Child welfare program review action group (PRAG).
Child welfare special needs adoption.
Food Stamp administration.
Health care for indigent (HCI).
ICES.
IMPACT (food stamps).
Title IV-D (ISETS or a successor statewide automated support enforcement system).
Title IV-D child support administration.
Title IV-D child support enforcement (parent locator).
Medicaid assistance.
Medical services for inmates and patients (590).
Room and board assistance (RBA).
Refugee social service.
Refugee resettlement.
Repatriated citizens.
SSI burials and disabled examinations.
Title XIX certification.

(3) Allowances made under IC 29-1-4-1.

(4) All debts and taxes having preference under the laws of the United States.

(5) Reasonable and necessary medical expenses of the last sickness of the decedent, including compensation of persons attending the decedent.

(6) All debts and taxes having preference under the laws of this state; but no personal representative shall be required to pay any taxes on any property of the decedent unless such taxes are due and payable before possession thereof is delivered by the personal representative pursuant to the provisions of IC 29-1.

(7) All other claims allowed.

(b) No preference shall be given in the payment of any claim over any other claim of the same class, nor shall a claim due and payable be entitled to a preference over claims not due.

(Formerly: Acts 1953, c.112, s.1409; Acts 1955, c.258, s.5; Acts 1965, c.371, s.1; Acts 1975, P.L.288, SEC.23.) As amended by Acts 1976, P.L.125, SEC.6; Acts 1979, P.L.268, SEC.5; P.L.2-1992, SEC.788; P.L.161-2007, SEC.39; P.L.149-2012, SEC.8; P.L.99-2013, SEC.6.

IC 29-1-14-10

Allowance; disallowance; expenses of administration

Sec. 10. (a) On or before three (3) months and fifteen (15) days after the date of the first published notice to creditors, the personal representative shall allow or disallow each claim filed within three (3) months after the date of the first published notice to creditors by making appropriate notations on the margin of the claim and allowance docket showing the action taken as to the claim. If a personal representative determines that the personal representative should not allow a claim in full, the claim shall be noted

"disallowed". The clerk of the court shall give written notice to a creditor if a claim has been disallowed in full or in part. All claims that are disallowed, or are neither allowed nor disallowed within three (3) months and fifteen (15) days, shall be set for trial in the probate court upon the petition of either party to the claim. The personal representative shall make an appropriate notation of any compromise or adjustment on the margin of the claim and allowance docket. If the personal representative, after allowing a claim and before paying it, determines that the claim should not have been allowed, the personal representative shall change the notation on the claim and allowance docket from "allowed" to "disallowed" and give written notice to the creditor. If a claim has been paid in full or in part, the creditor shall:

(1) release the claim to the extent that the claim has been paid; and

(2) give written notice to the clerk of the court of the release.

(b) Claims for expenses of administration may be allowed upon application of the claimant or of the personal representative, or may be allowed at any accounting, regardless of whether or not they have been paid by the personal representative.

(Formerly: Acts 1953, c.112, s.1410; Acts 1975, P.L.288, SEC.24.) As amended by P.L.154-1990, SEC.10; P.L.252-2001, SEC.19.

IC 29-1-14-11

Inquiry into correctness; liability on bond

Sec. 11. Before allowing or paying claims against the estate he represents, it shall be the duty of every personal representative to inquire into the correctness of all claims against the estate and make all available defenses thereto, and if he fails so to do, he shall be liable on his bond, at the suit of any person interested in the estate, for all damages sustained by the estate in consequence of such neglect.

(Formerly: Acts 1953, c.112, s.1411.)

IC 29-1-14-12

Trial; pleading; dismissal

Sec. 12. (a) When any claim is transferred for trial, it shall not be necessary for the personal representative to plead any matter by way of answer, except a set-off or counter-claim, to which the plaintiff shall reply. If the personal representative pleads any other matter by way of defense, the claimant shall reply thereto; the sufficiency of the statement of the claim, or any subsequent pleading, may be tested by appropriate pleadings, and if objection be made that the assignor of a claim not assigned by endorsement is not a party to the action, leave shall be given the claimant to amend by making him a party to answer to his interest in the claim and to sue out process against the assignor to answer in that behalf. And if it shall be shown to the court that any person is bound with the decedent in any contract which is the foundation of the claim, the court shall direct that the claim be amended by making such person a defendant in the action, and process shall be issued against and served upon him, and thereafter

the action shall be prosecuted against him as a codefendant with such personal representative and judgment shall be rendered accordingly.

(b) If any claimant fails to attend and prosecute his claim at the time the same shall be set down for trial, the court shall dismiss the claim; and any subsequent prosecution of the claim against the estate shall be at the costs of the claimant, unless good cause for such failure to prosecute be shown.

(Formerly: Acts 1953, c.112, s.1412.) As amended by Acts 1978, P.L.132, SEC.7.

IC 29-1-14-13

Trial of claims; judgment; set-off or counterclaim

Sec. 13. The trial of a claim under this chapter shall be conducted as in ordinary civil cases, and if the finding is for the claimant the court shall allow the claim in full or in part, and costs, to be paid out of the assets of the estate under section 19 of this chapter. If the claim sued on is secured by a lien upon property of the deceased, the date and extent shall be ascertained and fixed by the finding and judgment. If the finding is in favor of the personal representative upon a set-off or counter-claim, judgment shall be rendered thereon as in ordinary cases. If a set-off or counter-claim is pleaded, and the claim is afterward dismissed, the personal representative may nevertheless proceed to trial and judgment on the set-off or counter-claim.

(Formerly: Acts 1953, c.112, s.1413.) As amended by P.L.118-1997, SEC.21.

IC 29-1-14-14

Petitions; defend claims; objections to payment

Sec. 14. (a) In all cases when a claim is filed against the estate, and before it is paid, any person interested in the estate, upon written petition to the court, shall be allowed, at his expense, to defend such claim, and until such claim is adjudicated the personal representative shall not pay the same.

(b) In all cases when a claim against the estate is paid by the personal representative, without payment thereof having been ordered by the court, whether or not such claim has been filed, any person interested in the estate may raise whatever objections he may have to the payment of such claim by filing his objections to the next account of the personal representative, as provided in IC 29-1-16-7.

(Formerly: Acts 1953, c.112, s.1414.) As amended by Acts 1982, P.L.171, SEC.40.

IC 29-1-14-15

Execution; final process; payment; mortgages, pledges, or liens; enforcement

Sec. 15. No execution or other final process shall be issued on any allowance or judgment rendered upon a claim against a decedent's estate for the collection thereof out of the assets of the estate, but all such claims shall be paid by the personal representative in full or pro

rata, in due course of administration; provided, however, the provisions of this section shall not be construed to prevent the enforcement of mortgages, pledges or other liens upon real or personal property in an appropriate proceeding.
(Formerly: Acts 1953, c.112, s.1415.)

IC 29-1-14-16
Liens and mortgages, enforcement; sale of real estate; exception

Sec. 16. Unless an earlier date is authorized by the judge of the court having jurisdiction of the decedent's estate no proceedings shall be instituted before the end of three (3) months from the death of the decedent to enforce the lien of any judgment rendered against the decedent in his lifetime upon real estate or to enforce any decree specifically directing the sale of such real estate to discharge any lien or liability created or suffered by the decedent, nor shall any suit be brought before that time against the heirs or devisees of the deceased to foreclose any mortgage or other lien thereon; and in case of suit to foreclose any mortgage or other lien thereon, the personal representative shall be made a party defendant thereto; and if the personal representative shall be diligently prosecuting his proceedings to sell the real estate of the deceased for the purpose of making assets to discharge such liens, further proceedings for the sale thereof by the holders of liens thereon shall be stayed, upon the application of the personal representative. This section does not apply to cases where, before the end of the three (3) months, the real estate shall have been sold by the personal representative subject to liens thereon, nor to mortgages and judgments in favor of the state.
(Formerly: Acts 1953, c.112, s.1416; Acts 1975, P.L.288, SEC.25.) As amended by P.L.252-2001, SEC.20.

IC 29-1-14-17
Personal representative claims

Sec. 17. (a) Whenever a claim in favor of a personal representative against the estate the personal representative represents that accrued before the death of the decedent is filed against an estate, with the affidavit of the claimant attached, the claim shall not be acted upon by the personal representative unless all interested persons who would be affected by the allowance of the claim consent in writing to it. If all interested persons do not consent to the payment of that claim, the judge shall appoint a special personal representative who shall examine the nature of the claim. If the special personal representative determines that the claim is just, the special personal representative shall allow the claim. If the special personal representative believes it is in the best interests of the estate to oppose the claim, the special personal representative may:

(1) employ counsel to represent the special personal representative;
(2) disallow the claim; and
(3) ask the court to set the claim for trial.

The special personal representative and the special personal

representative's counsel shall be paid out of the estate fees for services that the court determines reasonable and appropriate.

(b) Claims of personal representatives shall not be deemed civil actions or proceedings for the purpose of determining court costs, unless the court arranges for active opposition provided in this section.

(Formerly: Acts 1953, c.112, s.1417.) As amended by Acts 1978, P.L.132, SEC.8; P.L.118-1997, SEC.22.

IC 29-1-14-18

Compromise of claims

Sec. 18. The personal representative may, if it appears for the best interests of the estate, compromise any claim against the estate, whether due or not due, absolute or contingent, liquidated or unliquidated, but if such claim is not filed such compromise must be consummated within three (3) months after the date of the first published notice to creditors. In the absence of prior authorization or subsequent approval by the court, no compromise shall bind the estate.

(Formerly: Acts 1953, c.112, s.1418; Acts 1975, P.L.288, SEC.26.) As amended by P.L.252-2001, SEC.21.

IC 29-1-14-19

Payment of claims; bond or security of creditor; report of insolvency

Sec. 19. (a) The personal representative at any time shall pay the claims as the court shall order if the claims are filed within three (3) months after the date of the first published notice to creditors or the period allowed under IC 29-1-7-7, if applicable, and the court may require bond or security to be given by the creditor to refund such part of such payment as may be necessary to make payment in accordance with this title.

(b) Prior to the expiration of three (3) months after the date of the first published notice to creditors or the period allowed under IC 29-1-7-7, the personal representative, if the estate clearly is solvent, may pay any claims that the personal representative believes are just and correct, whether or not the claims have been filed. The personal representative may require bond or security to be given by the creditor to refund any part of the payment as the court may subsequently order. The personal representative, following all such payments, shall include them in the personal representative's next account and they shall be considered proper payments under this title if they are approved by the court as a part of the account.

(c) Upon the expiration of three (3) months after the date of the first published notice to creditors or the period allowed under IC 29-1-7-7 and the final adjudication of all claims filed against the estate, the personal representative shall proceed to pay the claims that have been allowed against the estate in accordance with this title that the personal representative has not paid.

(d) If it appears at any time that the estate is or may be insolvent,

that there are insufficient funds on hand, or that there is other good or sufficient cause, the personal representative may report that fact to the court and apply for any necessary order.
(Formerly: Acts 1953, c.112, s.1419; Acts 1975, P.L.288, SEC.27.) As amended by P.L.154-1990, SEC.11; P.L.118-1997, SEC.23; P.L.252-2001, SEC.22.

IC 29-1-14-20
Mortgage; pledge; lien; payment; renewal; extension

Sec. 20. When any assets of the estate are encumbered by mortgage, pledge or other lien, the personal representative may pay such encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance or may convey or transfer such assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim, if it appears to be for the best interest of the estate. As to any such conveyance or transfer the personal representative must obtain prior authorization of the court and as to any such payment, renewal or extension the personal representative must obtain prior authorization or subsequent approval of the court. The making of such payment shall not increase the share of the distributee entitled to such encumbered assets unless otherwise provided by will.
(Formerly: Acts 1953, c.112, s.1420.)

IC 29-1-14-21
Adverse claims; notice; trial

Sec. 21. When any person claims any interest in any property in the possession of the personal representative adverse to the estate, the person may file, prior to the expiration of three (3) months after the date of the first published notice to creditors, a petition with the court having jurisdiction of the estate setting out the facts concerning such interest, and thereupon the court shall cause such notice to be given to such parties as it deems proper, and the case shall be set for trial and tried as in ordinary civil actions.
(Formerly: Acts 1953, c.112, s.1421; Acts 1975, P.L.288, SEC.28.) As amended by P.L.252-2001, SEC.23.

IC 29-1-15

Chapter 15. Sales, Mortgages, Leases, Exchanges–Personal and Real Property

IC 29-1-15-1

Priorities; wills; orders of court

Sec. 1. In determining what property of the estate shall be sold, mortgaged, leased or exchanged for any purpose provided in section 3 of this chapter, there shall be no priority as between real and personal property, except as provided by the will, if any, or by order of the court or by the provisions of IC 29-1-17-3.

(Formerly: Acts 1953, c.112, s.1501.) As amended by Acts 1982, P.L.171, SEC.41.

IC 29-1-15-2

Powers under will; optional procedure

Sec. 2. When the personal representative, under the terms of any will, is given the power to sell, mortgage, lease or exchange property of the estate or is given any other power with respect to the administration of the estate, he may proceed in accordance with such power without order of the court or he may proceed under the provisions of this article, as he may determine.

(Formerly: Acts 1953, c.112, s.1502.) As amended by Acts 1982, P.L.171, SEC.42.

IC 29-1-15-3

Payment of claims, expenses, and taxes; distribution of estate

Sec. 3. Any real or personal property belonging to an estate may be sold, mortgaged, leased or exchanged under court order when necessary for any of the following purposes:

(a) for the payment of claims allowed against the estate;

(b) For the payment of any allowances made under IC 29-1-4-1;

(c) For the payment of any legacy given by the will of the decedent;

(d) For the payment of expenses of administration;

(e) For the payment of any gift, estate, inheritance or transfer taxes assessed upon the transfer of the estate or due from the decedent or his estate;

(f) For making distribution of the estate or any part thereof;

(g) For any other purpose in the best interests of the estate.

(Formerly: Acts 1953, c.112, s.1503; Acts 1973, P.L.287, SEC.8.) As amended by Acts 1979, P.L.268, SEC.6.

IC 29-1-15-4

Order not granted; bond given by interested person

Sec. 4. An order authorizing a personal representative to sell, mortgage or lease real or personal property for the payment of obligations of the estate shall not be granted if any of the persons interested in the estate shall execute and file in the court a bond in such sum and with such sureties as the court may approve,

conditioned to pay all obligations of the estate to the extent that the other property of the estate is insufficient therefor, within such time as the court shall direct. An action may be maintained on such bond by the personal representative on behalf of any person interested in the estate who is prejudiced by breach of any obligation of the bond.
(Formerly: Acts 1953, c.112, s.1504.)

IC 29-1-15-5
Credit sales

Sec. 5. In all sales of real or personal property, the court may authorize credit to be given by the personal representative for a term and for an amount of the purchase price each in the discretion of the court, the payment of which shall be secured by notes or bonds with approved sureties or by a purchase money mortgage. If credit is authorized, the the order shall specify the time of payment, the minimum rate of interest on deferred payments and the manner in which such payments shall be secured. If the estate is solvent, credit may be extended by the personal representative for a time longer than one (1) year with the written consent of the distributees affected thereby.
(Formerly: Acts 1953, c.112, s.1505; Acts 1971, P.L.410, SEC.1.)

IC 29-1-15-6
Purchasers, mortgagees, pledgees, or lienors; allowance of claims

Sec. 6. At any sale of real or personal property upon which there is a mortgage, pledge or other lien, the holder thereof may become the purchaser and may apply the amount of his lien on the purchase price in the following manner. If no claim thereon has been filed or allowed, the court, at the hearing on the report of sale and for confirmation of the sale, may examine into the validity and enforceability of the lien or charge and the amount due thereunder and secured thereby and may authorize the personal representative to accept the receipt of such purchaser for the amount due thereunder and secured thereby as payment pro tanto. If such mortgage, pledge or other lien is a valid claim against the estate and has been allowed, the receipt of the purchaser for the amount due him from the proceeds of the sale is a payment pro tanto. If the amount for which the property is purchased, whether or not such claim was filed or allowed, is insufficient to defray the expenses and discharge his mortgage, pledge or other lien, the purchaser must pay an amount sufficient to pay the balance of such expenses and the amount credited to the payment of his claim shall be reduced accordingly. Nothing permitted under the terms of this section shall be deemed to be an allowance of a claim based upon such mortgage, pledge or other lien.
(Formerly: Acts 1953, c.112, s.1506.)

IC 29-1-15-7
Collateral attack; irregularity in proceedings

Sec. 7. No proceedings for sale, mortgage, lease, exchange or

conveyance by a personal representative of property belonging to the estate shall be subject to collateral attack on account of any irregularity in the proceedings if the court which ordered the same had jurisdiction of the estate.
(Formerly: Acts 1953, c.112, s.1507.)

IC 29-1-15-8
Petition; stock; bonds; securities

Sec. 8. A personal representative may sell, mortgage or lease any personal property belonging to the estate upon filing a petition setting forth the reasons therefor and describing the property involved. The petition shall be heard without notice unless the court shall otherwise direct. After hearing the petition, the court may order the sale, mortgage or lease of the property described or any part thereof, at either public or private offering and upon such terms and conditions as the court may deem best for the interests of the estate. Where any part of the personal property consists of the corporate stocks, bonds or other securities of any corporation, public or private, which are listed or admitted to trading on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, the Pacific Coast Stock Exchange, or any other recognized stock exchange, or of securities which are obligations of the government of the United States, any of such securities may be sold for cash at the market price thereof at the time of sale whether such price be more or less than the appraised or inventoried value of such securities, and without notice and without any requirement for the reappraisement of such securities.
(Formerly: Acts 1953, c.112, s.1508; Acts 1961, c.50, s.1.)

IC 29-1-15-9
Perishable properties; family allowance; title to property; approval

Sec. 9. Perishable property and other personal property which will depreciate in value if not disposed of promptly, or which will incur loss or expense by being kept, and so much other other personal property as may be necessary to provide allowance to the surviving spouse and children pending the receipt of other sufficient funds, may be sold without notice, and title shall pass without prior authorization; but the personal representative shall be responsible for the actual value of the property unless, after making a report of such sale, and on a proper showing, the court shall approve the sale.
(Formerly: Acts 1953, c.112, s.1509.)

IC 29-1-15-10
Unit sales, mortgages, or leases

Sec. 10. Whenever it is for the best interests of the estate, real and personal property of the estate may be sold, mortgaged or leased as a unit, but the provisions of this article with respect to the sale, mortgage or lease of real property shall apply so far as may be.
(Formerly: Acts 1953, c.112, s.1510.) As amended by Acts 1982, P.L.171, SEC.43.

IC 29-1-15-11
Petition; sale, mortgage, or lease of real property; order of court

Sec. 11. A personal representative may file a petition to sell, mortgage or lease any real property belonging to the estate. The petition shall set forth the reasons for the application and describe the property involved. He may apply for different authority as to separate parts of the property; or he may apply in the alternative for authority to sell, mortgage or lease. Upon the filing of the petition, the court shall fix the time and place for the hearing thereof. Notice of the hearing, unless waived, shall be given to all heirs and lienholders, except holders of liens created by said heirs, whose liens are to be extinguished or transferred to the proceeds of said sale in case of intestacy and to all devisees and lienholders, except holders of liens created by said devisees, whose liens are to be extinguished or transferred to the proceeds of said sale in case of testacy, and the notice shall state briefly the nature of the application and shall be given as provided IC 1971, 29-1-1-12. However, as to any real property valued at not more than one thousand dollars ($1,000.00) exclusive of any liens the court may, in its discretion, hear and act upon the petition without notice to heirs or devisees. At the hearing and upon satisfactory proofs, the court may order the sale, mortgage or lease of the property described or any part thereof. When a claim secured by a mortgage on real property is, under the provisions of this probate code, payable at the time of distribution of the estate or prior thereto, the court with the consent of the mortgagee may, nevertheless, order the sale of the real property subject to the mortgage, but such consent shall release the estate should a deficiency later appear.

(Formerly: Acts 1953, c.112, s.1511; Acts 1955, c.258, s.6; Acts 1961, c.15, s.1; Acts 1975, P.L.288, SEC.29.)

IC 29-1-15-12
Conflicting titles; process and notice

Sec. 12. Upon any petition to sell or mortgage real property the court shall have power to investigate and determine all questions of conflicting and controverted title, remove clouds from any title or interest involved, and invest purchasers or mortgagees with a good and indefeasible title to the property sold or mortgaged. When the petition to sell or mortgage seeks such relief notice shall be given as in civil actions of like nature and the court is authorized to issue appropriate process and notices in order to obtain jurisdiction to so proceed against adverse parties.

(Formerly: Acts 1953, c.112, s.1512.)

IC 29-1-15-13
Court order; description of property; sequence of parcels; private sale, public auction; terms

Sec. 13. The order shall describe the property to be sold, mortgaged or leased and may designate the sequence in which the several parcels shall be sold, mortgaged or leased. An order for sale

shall direct whether the property shall be sold at private sale or public auction, and, if the latter, the place or places of sale. If real property is to be sold at private sale it shall direct that the same shall not be sold for less than the fair market value, or if at public sale for not less than two-thirds (2/3) of the fair market value; or if real property is to be leased, it shall direct that the same shall not be leased for less than the fair market rental value. An order of sale shall direct whether the sale shall be for cash or for cash and deferred payments, and the terms on which such deferred payments are to be made. If real property is to be mortgaged, it shall fix the maximum amount of principal, the maximum rate of interest, the earliest and latest date of maturity, and shall direct the purpose for which the proceeds Shall be used. An order for sale, mortgage or lease shall remain in force until terminated by the court, but no sale or lease shall be made after one (1) year from the date of the order unless the real property or rental value thereof shall have been reappraised under order of the court within three (3) months preceding the sale or lease.
(Formerly: Acts 1953, c.112, s.1513; Acts 1975, P.L.288, SEC.30.)

IC 29-1-15-14
Fair market value; appraisal; reappraisal

Sec. 14. The value of the property for the purposes of a sale of real property pursuant to section 3 and subsequent sections of this chapter shall be the fair market value filed with the inventory unless the court directs that the property be appraised or reappraised, as the case may be. In the event appraisal is ordered by the court, or in the case of a lease pursuant to such sections of the probate code, the property shall be appraised at its fair market value or its fair market rental value, as the case may be, in a manner considered appropriate by the court.
(Formerly: Acts 1953, c.112, s.1514; Acts 1975, P.L.288, SEC.31.)

IC 29-1-15-15
Real property sales; notice

Sec. 15. In all sales of real property the sale may be made with or without notice as directed by the court. Where notice is ordered the personal representative shall give such notice as the court orders.
(Formerly: Acts 1953, c.112, s.1515; Acts 1955, c.258, s.7; Acts 1975, P.L.288, SEC.32.) As amended by Acts 1978, P.L.132, SEC.9.

IC 29-1-15-16
Repealed

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

IC 29-1-15-16.5
Acquisition of beneficial interest in real property of estate by personal representative

Sec. 16.5. (a) This section applies to a supervised or an unsupervised estate.

(b) Unless authorized by:

(1) a will;

(2) a trust;
(3) the consent of all heirs, legatees, or beneficiaries;
(4) an adjudicated compromise agreement approved by the court under IC 29-1-9; or
(5) an order of the court issued after notice and hearing to all interested persons to ensure that adequate consideration is received by the estate for the interest acquired;

any sale (including an auction sale), encumbrance, lease, or rental of real property that is an asset of the estate is void if the sale, encumbrance, lease, or rental of the real property causes the personal representative to directly or indirectly acquire a beneficial interest in the real property.

(c) This section does not prohibit a personal representative from enforcing or fulfilling any enforceable contract or agreement:
(1) executed during the decedent's lifetime; and
(2) between the decedent and the personal representative in the personal representative's individual capacity.

As added by P.L.238-2005, SEC.13. Amended by P.L.99-2013, SEC.7.

IC 29-1-15-17
Execution of conveyance or lease; certified copy of order; power given under will

Sec. 17. Whenever a personal representative executes a deed, mortgage, lease or other conveyance under a power given the personal representative in any will, a certified copy of the will giving such power and a certified copy of the personal representative's letters may be recorded with the deed, mortgage, lease, or other instrument executed by the personal representative pursuant to and in accordance with such power, and such certified copies shall be prima facie evidence of the due appointment and qualification of the personal representative and the personal representative's authority to execute said deed, mortgage, lease, or other instrument.

(Formerly: Acts 1953, c.112, s.1517.) As amended by Acts 1982, P.L.171, SEC.45; P.L.238-2005, SEC.14.

IC 29-1-15-18
Forms for conveyances

Sec. 18. (a) Whenever a personal representative shall be ordered by the court to execute a conveyance of the real estate of a decedent, a conveyance subscribed by the personal representative shall vest in the grantee all the title in the real estate ordered by the court to be conveyed as completely as if all the proceedings of the court preliminary to such conveyance has been fully recited therein, if such conveyance includes substantially the following:

"A.B., as personal representative of C.D., deceased, by order of the _____ Court of _____ County, Indiana, dated _____, for good and sufficient consideration, conveys to E.F. the following real estate: (insert description)."

(b) Whenever the personal representative, by the provisions

contained in the will, shall be required or authorized, without the intervention of a court, to execute a conveyance of the real estate of a decedent, a conveyance subscribed by the personal representative shall be sufficient to convey all the title in the real estate to the grantee, if such conveyance includes substantially the following:

"A.B., as personal representative of C.D., deceased, by virtue of the decedent's said will, for good and sufficient consideration, conveys to E.F. the following described real estate: (insert description)."

(Formerly: Acts 1953, c.112, s.1518; Acts 1975, P.L.288, SEC.33.) As amended by Acts 1979, P.L.268, SEC.7; P.L.130-1992, SEC.9.

IC 29-1-15-19

Irregularity or defect in proceedings; guardians; good faith purchasers

Sec. 19. (a) No sale of any real estate made by a personal representative or guardian under the provisions of IC 29-1, shall be voided on account of any irregularity or defect in the proceedings, if it shall appear:

(1) that the sale was authorized by the court having the jurisdiction of the parties and the subject-matter;

(2) that notice of the time and place of sale was given in the manner provided by law; and

(3) that the premises were sold accordingly and are held by or under one who purchased them in good faith.

(b) No sale of any real estate, made by a personal representative pursuant to a power given him by any will, shall be voided on account of any irregularity or defect if it shall appear:

(1) that the personal representative acted in substantial conformity with the terms and conditions of the power given him by the will; and

(2) that the premises are held by or under one who purchased them in good faith.

(c) No sale involving real estate that is made by an unsupervised personal representative under IC 29-1-7.5 is voided on account of any irregularity or defect if it appears that:

(1) the personal representative acted in substantial conformity with the terms and conditions of the power given in IC 29-1-7.5; and

(2) the premises are held by or under one who purchased them in good faith.

(Formerly: Acts 1953, c.112, s.1519.) As amended by Acts 1978, P.L.132, SEC.10.

IC 29-1-15-20

Lien of state for inheritance or estate taxes

Sec. 20. The lien of the state for inheritance or estate taxes shall not extend to any interest acquired by a purchaser, mortgagee, or lessee through any transfer made by a personal representative under a power contained in a will, under IC 29-1-7.5-3, or under order of

the court.
(Formerly: Acts 1953, c.112, s.1520.) As amended by Acts 1976, P.L.125, SEC.7.

IC 29-1-15-21
Fees and expenses

Sec. 21. In connection with the sale, mortgage, lease or exchange of property, the court may authorize the personal representative to pay, out of the proceeds realized therefrom or out of the estate, the customary and reasonable auctioneers' and brokers' fees and any necessary expenses for abstracting, title insurance, survey, revenue stamps and other necessary costs and expenses in connection therewith.
(Formerly: Acts 1953, c.112, s.1521.)

IC 29-1-15-22
Platting real property

Sec. 22. When it is for the best interests of the estate in order to dispose of real property, the court upon application by the personal representative or any other interested person, may authorize the personal representative, either alone or together with other owners, to plat any land belonging to the estate in accordance with the statutes in regard to platting.
(Formerly: Acts 1953, c.112, s.1522.)

IC 29-1-15-23
Exchange of property; terms and conditions

Sec. 23. Whenever it shall appear upon the petition of the personal representative or of any person interested in the estate to be to the best interests of the estate to exchange any real or personal property of the estate for other property, the court may authorize the exchange upon such terms and conditions as it may prescribe, which may include the payment or receipt of part cash by the personal representative. If personal property of the estate is to be exchanged, the proceedings required for the sale of such property shall apply so far as may be; if real property of the estate is to be exchanged, the procedure for the sale of such property shall apply so far as may be.
(Formerly: Acts 1953, c.112, s.1523.)

IC 29-1-16

Chapter 16. Accounting

IC 29-1-16-0.1

Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to section 6 of this chapter by P.L.118-1997 do not apply to an individual whose death occurs before July 1, 1997.

(2) The amendments made to section 6 of this chapter by P.L.252-2001 apply to the estate of an individual who dies after June 30, 2001.

As added by P.L.220-2011, SEC.478.

IC 29-1-16-1

Personal liability, loss to estate

Sec. 1. (a) Every personal representative shall be liable for and chargeable in his accounts with all of the estate of the decedent which comes into his possession at any time, including all the income therefrom; but he shall not be accountable for any debts due to the decedent or other assets of the estate which remain uncollected without his fault. He shall not be entitled to any profit by the increase, nor be chargeable with loss by the decrease in value or destruction without his fault, of any part of the estate.

(b) Every personal representative shall be chargeable in his accounts with property not a part of the estate which comes into his hands at any time and shall be liable to the persons entitled thereto, if:

(1) the property was received, under a duty imposed on him by law in the capacity of personal representative; or

(2) he has commingled such property with the assets of the estate.

(c) Every personal representative shall be liable for any loss to the estate arising from his neglect or unreasonable delay in collecting the credits or other assets of the estate or in selling, mortgaging or leasing the property of the estate; for neglect in paying over money or delivering property of the estate he shall have in his hands; for failure to account for or to close the estate within the time provided by this article; for any loss to the estate arising from his embezzlement or commingling of the assets of the estate with other property; for loss to the estate through self-dealing; for any loss to the estate arising from wrongful acts or omissions of his co-representatives which he could have prevented by the exercise of ordinary care; and for any other negligent or wilful act or nonfeasance in his administration of the estate by which loss to the estate arises.

(Formerly: Acts 1953, c.112, s.1601.) As amended by Acts 1982, P.L.171, SEC.46.

IC 29-1-16-2

Closing estate; final account

Sec. 2. Every personal representative shall close the estate as promptly as possible. Unless for good cause shown the time for filing the final account in the estate shall not exceed one (1) year from the appointment of a personal representative.

(Formerly: Acts 1953, c.112, s.1602.)

IC 29-1-16-3

Verified account; filing; time

Sec. 3. Every personal representative may file in the court a verified account of his administration at any time prior to final settlement and distribution but every personal representative must file in the court a verified account of his administration.

(a) Upon filing a petition for final settlement;

(b) Upon the revocation of his letters;

(c) Upon his application to resign and before his resignation is accepted by the court;

(d) At any other time when directed by the court either of its own motion or on the application of any interested person.

(Formerly: Acts 1953, c.112, s.1603.)

IC 29-1-16-4

Schedules; verification; certified public accountant

Sec. 4. Accounts rendered to the court by a personal representative shall be for a period distinctly stated and shall consist of three (3) schedules, of which the first shall show the amount of the property chargeable to the personal representative; the second shall show payments, charges, losses and distributions; the third shall show the property on hand constituting the balance of such account, if any. When an account is filed, the personal representative shall also file receipts for disbursements of assets made during the period covered by the account. Whenever the personal representative is unable to file receipts for any disbursements, the court may permit him to substantiate them by other proof. The court may provide for an inspection of the balance of assets on hand. The court may, upon its own motion, or upon petition, provide that verification of accounts or credits thereon may be made by the unqualified certificate of a certified public accountant in lieu of receipts or other proof.

(Formerly: Acts 1953, c.112, s.1604; Acts 1975, P.L.288, SEC.34.)

IC 29-1-16-5

Petition to settle and allow; petition to distribute

Sec. 5. At the time of filing of an account the personal representative shall petition the court to settle and allow his account; and if the estate is in a proper condition to be closed, he shall also petition the court for an order authorizing him to distribute the estate, and shall specify in the petition the persons to whom distribution is to be made and the proportions or parts of the estate to which each is entitled. Petitions to settle or to distribute may be incorporated in the account in the absence of a court rule or order to the contrary.

(Formerly: Acts 1953, c.112, s.1605.)

IC 29-1-16-6
Hearing and notice; final distribution; unknown heirs; intermediate account

Sec. 6. (a) Upon the filing of any account in a decedent's estate, hearing and notice thereof shall be had as set forth in this section.

(b) If the account is for final settlement the court or clerk shall set a date by which all objections to such final account and petition for distribution must be filed in writing and the clerk shall give notice to all persons entitled to share in the final distribution of said estate that a final report has been filed and will be acted upon by the court on the date set unless written objections are presented to the court on or before that date. The personal representative shall at the time said account is filed furnish to the clerk the names and addresses of all persons entitled to share in the distribution of the residue of said estate, whose names and addresses are known to the personal representative or may by reasonable diligence be ascertained as set forth in the personal representative's petition for distribution, together with sufficient copies of said notice prepared for mailing. The clerk shall send a copy of said notice by ordinary mail to each of said parties at least fourteen (14) days prior to such date. Said parties or their attorney of record may waive the service by mail of this notice and where there is an attorney of record, service upon said attorney shall be sufficient as to the parties represented by said attorney. Neither a notice nor a hearing is required if all persons entitled to share in the final distribution of the estate waive the service of notice by mail and consent to the final account and petition for distribution without a hearing.

(c) If a person entitled to share in the distribution of the residue of the estate is unknown or cannot be located, the personal representative may give notice by one (1) publication in a newspaper of general circulation, published in the county in which the administration is pending. The deadline for filing an objection is fourteen (14) days before the hearing date. The notice shall state that objections to the final account and petition for distribution must be filed in writing before the hearing date.

(d) If the account is intermediate, but the personal representative has therein petitioned the court that said account be made final as to the matters and things reported in said account, the same procedure as to hearing and notice shall be followed as in the case of a final account.

(e) If the account is intermediate and the personal representative makes no request that said account may be made final as to the matters and things reported in said account, the court may order such notice as the court deems necessary or approve the same ex parte and without notice. Every such intermediate account approved without notice shall be subject to review by the court at any time and shall not become final until the personal representative's account in final settlement is approved by the court.

(Formerly: Acts 1953, c.112, s.1606; Acts 1955, c.258, s.8; Acts 1975, P.L.288, SEC.35.) As amended by P.L.118-1997, SEC.24; P.L.252-2001, SEC.24; P.L.1-2002, SEC.125.

IC 29-1-16-7
Objections; modification

Sec. 7. At any time prior to the hearing on an account of a personal representative, any interested person may file written objections to any item or omission in the account. All such objections shall be specific and shall indicate the modification desired.
(Formerly: Acts 1953, c.112, s.1607.)

IC 29-1-16-8
Approval or disapproval; appeals; relief from liability

Sec. 8. Upon the approval of the account of a personal representative, the personal representative and his sureties shall, subject to the right of appeal and to the power of the court to vacate its final orders, be relieved from liability for the administration of his trust during the accounting period, including the investment of the assets of the estate. The court may disapprove the account in whole or in part and surcharge the personal representative for any loss caused by any breach of duty.
(Formerly: Acts 1953, c.112, s.1608.)

IC 29-1-16-9
Death or incompetency of personal representative; out-of-state residency

Sec. 9. (a) If the personal representative dies or becomes incompetent, his account shall be presented by his personal representative or the guardian of his estate to, and settled by, the court in which the estate of which he was personal representative is being administered and the the court shall settle the account as in other cases. The personal representative of the deceased personal representative shall have no authority as such to proceed with the administration.

(b) Where the deceased or incompetent person has no personal representative or guardian, the surety upon his bond shall file such account on his behalf.

(c) Where a personal representative is without the state, and fails to account as provided in this article, such account may be filed by his resident agent or by his surety or its resident agent and the court may compel the surety or its resident agent to file such account.
(Formerly: Acts 1953, c.112, s.1609.) As amended by Acts 1982, P.L.171, SEC.47.

IC 29-1-16-10
Noncompliance with orders; attachment; imprisonment

Sec. 10. Any person who has been ordered to account as herein provided, and who fails to comply with such order, may be attached and imprisoned in order to enforce such compliance therewith.

(Formerly: Acts 1953, c.112, s.1610.)

IC 29-1-17

Chapter 17. Distribution and Discharge

IC 29-1-17-1

Order of court; perishable property; depreciable property; storage or preservation; income and profits

Sec. 1. (a) At any time during the administration, upon application of the personal representative or any distributee, with or without notice as the court may direct, the court may order the personal representative to deliver to any distributee, who consents to it, possession of any specific real or tangible personal property to which he is entitled under the terms of the will or by intestacy, provided that other distributees and claimants are not prejudiced thereby. The court may at any time prior to the decree of final distribution order him to return such property to the personal representative if it is for the best interest of the estate. The court may require the distributee to give security for such return.

(b) At any time during the administration, when it is apparent that the estate is solvent, the court in its discretion may order distribution to the persons entitled thereto of such items of property of the estate as:

(1) are perishable in nature,

(2) would materially depreciate in value if distribution were delayed, or

(3) would necessitate the expenditure of estate funds for storage or preservation if not distributed.

Such distribution may be with or without security or notice to the interested parties as the court may direct.

(c) After the expiration of the time limited for the filing of claims and before final settlement of the accounts of the personal representative, a partial distribution may be decreed, with notice to interested persons as the court may direct. Such distribution shall be as conclusive as a decree of final distribution, except that the court may, as provided in section 2(b) of this chapter, modify such decree of partial distribution to the extent necessary to protect the other distributees and claimants, and assure them that they will receive the amount due them on final distribution. Before a partial distribution is so decreed, the court may require that security be given for the return of the property so distributed to the extent necessary to satisfy any distributees and claimants who may be prejudiced as aforesaid by the partial distribution.

(d) The person to whom possession or distribution has been made under the provisions of this section, shall be entitled to the income and profits from such property.

(Formerly: Acts 1953, c.112, s.1701; Acts 1955, c.258, s.9.) As amended by Acts 1982, P.L.171, SEC.48.

IC 29-1-17-2

Final accounts; decree of final distribution

Sec. 2. (a) After the expiration of the time limit for the filing of

claims, and after all claims against the estate, including state and federal inheritance and estate taxes, have been determined, paid, or provision made therefor, except contingent and unmatured claims which cannot then be paid, the personal representative shall, if the estate is in a condition to be closed, render a final account and at the same time petition the court to decree the final distribution of the estate. Notice of the hearing of the petition shall be given under IC 29-1-16-6.

(b) In its decree of final distribution, the court shall designate the persons to whom distribution is to be made, and the proportions or parts of the estate, or the amounts, to which each is entitled under the will and the provisions of this probate code, including the provisions regarding advancements, election by the surviving spouse, lapse, renunciation, adjudicated compromise of controversies, and retainer. Every tract of real property so distributed shall be specifically described therein. The decree shall find that all state and federal inheritance and estate taxes are paid, and if all claims have been paid, it shall so state; otherwise, the decree shall state that all claims except those therein specified are paid and shall describe the claims for the payment of which a special fund is set aside, and the amount of such fund. If any contingent claims which have been duly allowed are still unpaid and have not become absolute, such claims shall be described in the decree, which shall state whether the distributees take subject to them. If a fund is set aside for the payment of contingent claims, the decree shall provide for the distribution of such fund in the event that all or a part of it is not needed to satisfy such contingent claims. If a decree of partial distribution has been previously made, the decree of final distribution shall expressly confirm it, or, for good cause, shall modify said decree and state specifically what modifications are made.

(c) If a distributee dies before distribution to the distributee of the distributee's share of the estate, the distributee's share may be distributed to the personal representative of the distributee's estate, if there is one; or if no administration on the deceased distributee's estate is had and none is necessary according to IC 29-1-8, the share of the deceased distributee shall be distributed in accordance with IC 29-1-8.

(d) The decree of final distribution shall be a conclusive determination of the persons who are the successors in interest to the estate of the decedent and of the extent and character of their interest therein, subject only to the right of appeal and the right to reopen the decree. It shall operate as the final adjudication of the transfer of the right, title, and interest of the decedent to the distributees therein designated; but no transfer before or after the decedent's death by an heir or devisee shall affect the decree, nor shall the decree affect any rights so acquired by grantees from the heirs or devisees.

(e) Whenever the decree of final distribution includes real property, a certified copy thereof shall be recorded by the personal representative in every county of this state in which any real property distributed by the decree is situated except the county in which the

estate is administered. The cost of recording such decree shall be charged to the estate.
(Formerly: Acts 1953, c.112, s.1702; Acts 1975, P.L.288, SEC.36.) As amended by P.L.95-2007, SEC.11.

IC 29-1-17-3
Abatement of distributee shares

Sec. 3. (a) Except as provided in subsection (b) hereof, shares of the distributees shall abate, for the payment of claims, legacies, the allowance provided by IC 29-1-4-1, the shares of pretermitted heirs or the share of the surviving spouse who elects to take against the will, without any preference or priority as between real and personal property, in the following order:

(1) Property not disposed of by the will.
(2) Property devised to the residuary devisee.
(3) Property disposed of by the will but not specifically devised and not devised to the residuary devisee.
(4) Property specifically devised.

A general devise charged on any specific property or fund shall, for purposes of abatement be deemed property specifically devised to the extent of the value of the thing on which it is charged. Upon the failure or insufficiency of the thing on which it is charged, it shall be deemed property not specifically devised to the extent of such failure or insufficiency.

(b) If the provisions of the will or the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (a) hereof, the shares of distributees shall abate in such other manner as may be found necessary to give effect to the intention of the testator.
(Formerly: Acts 1953, c.112, s.1703.) As amended by Acts 1981, P.L.260, SEC.2.

IC 29-1-17-4
Abatement of distributee shares; contribution by legatees and devisees

Sec. 4. When real or personal property which has been specifically devised, or charged with a legacy, shall be sold or taken by the personal representative for the payment of:

(1) claims;
(2) general legacies;
(3) the allowance provided by IC 29-1-4-1;
(4) the shares of pretermitted heirs; or
(5) the share of the surviving spouse who elects to take against the will;

other legatees and devisees shall contribute according to their respective interests to the legatee or devisee whose legacy or devise has been sold or taken, so as to accomplish an abatement in accordance with the provisions of section 3 of this chapter. The court shall, at the time of the hearing on the petition for final distribution, determine the amounts of the respective contributions and whether

the same shall be made before distribution or shall constitute a lien on specific property which is distributed.
(Formerly: Acts 1953, c.112, s.1704.) As amended by Acts 1981, P.L.260, SEC.3; P.L.42-2011, SEC.63.

IC 29-1-17-5
Advancements

Sec. 5. All questions of advancements made, or alleged to have been made, by an intestate to any heir may be heard and determined by the court before or at the time of the hearing on the petition for final distribution. The amount of every such advancement shall be specified in the decree of final distribution.
(Formerly: Acts 1953, c.112, s.1705.)

IC 29-1-17-6
Indebtedness of distributee; offset

Sec. 6. When a distributee of an estate is indebted to the estate, the amount of the indebtedness if due, or the present worth of the indebtedness, if not due, may be treated as an offset by the personal representative against any testate or intestate property, real or personal, of the estate to which such distributee is entitled; but such distributee shall be entitled to the benefit of any defense which would be available to him in a direct proceeding for the recovery of such debt.
(Formerly: Acts 1953, c.112, s.1706.)

IC 29-1-17-7
Income received during administration

Sec. 7. Unless the decedent's will provides otherwise, all income received by the personal representative during the administration of the estate shall constitute an asset of the estate the same as any other asset and the personal representative shall disburse, distribute, account for and administer said income as a part of the corpus of the estate.
(Formerly: Acts 1953, c.112, s.1707.)

IC 29-1-17-8
General legacies; interest

Sec. 8. General legacies shall not bear interest, unless a contrary intent is indicated by the will.
(Formerly: Acts 1953, c.112, s.1708.)

IC 29-1-17-9
Specific devise; liens

Sec. 9. (a) As used in this section, "lien" refers to a mortgage, pledge, security interest, or other lien.

(b) When any real or personal property subject to a lien is specifically devised, the devisee shall take the devised property subject to the lien unless the will provides expressly or by necessary implication that the lien be otherwise paid. If the holder of a lien

receives payment on a claim based upon the obligation secured by the lien, the devise which was subject to the lien shall be charged with the reimbursement to the estate of the amount of the payment for the benefit of the distributees entitled to the devise, unless the will provides expressly or by necessary implication that the payment be charged against the residue of the estate.

(c) For purposes of this section, a general directive in a will to pay debts does not imply an intent that a devise of property subject to a lien be distributed free from the lien.

(Formerly: Acts 1953, c.112, s.1709.) As amended by P.L.51-2014, SEC.6.

IC 29-1-17-10

Distribution in kind; partition sale; election of distributee; annuity; good faith purchasers or lenders

Sec. 10. (a) When the estate is otherwise ready to be distributed, it shall be distributed in kind to whatever extent it is practicable, unless the terms of the will otherwise provide or unless a partition sale is ordered. Except as provided in subsection (b) of this section, any general legatee may elect to take the value of his legacy in kind, and any distributee, who by the terms of the will is to receive land or any other thing to be purchased by the personal representative, may, if he notifies the personal representative before the thing is purchased, elect to take the purchase price or property of the estate which the personal representative would otherwise sell to obtain such purchase price. Values for the purposes of such distributions in kind shall be determined at a time not more than ten (10) days prior to the filing of the petition for distribution, and if necessary to avoid substantial inequities may be redetermined at any time prior to the order of distribution.

(b) If the terms of the will direct the purchase of an annuity, the person to whom the income thereof shall be directed to be paid shall not have the right to elect to take the capital sum directed to be used for such purchase in lieu of such annuity except to the extent that the will expressly provides that an assignable annuity be purchased. Nothing herein contained shall affect the rights of election by a surviving spouse against a testamentary provision as provided in this article.

(c) If property distributed in kind or a security interest therein is acquired in good faith for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution or release from the personal representative, or is so acquired in good faith by a purchaser from or lender to a transferee of the distributee, the purchaser or lender takes title free of any right of an interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed. This subsection protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of

distribution to himself, and a purchaser from or lender to any other distributee or his transferee. To be protected under this subsection, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution.

(Formerly: Acts 1953, c.112, s.1710.) As amended by Acts 1977, P.L.297, SEC.4.

IC 29-1-17-11

Undivided interests; distribution, partition

Sec. 11. (a) When two (2) or more distributees are entitled to distribution of an undivided interest in any real or personal property of the estate, distribution shall be made of undivided interests in the property unless the personal representative or one (1) or more of the distributees petition the court for partition not later than the hearing on the petition for final distribution. If a petition is filed, the court, after notice is given to all interested persons as the court directs, shall proceed in accordance with IC 32-17-4-2.5. With respect to personal property, the person who files for partition shall conduct a title search with the bureau of motor vehicles (if the personal property is titled) or a search for liens under the Uniform Commercial Code (if the personal property is not titled). The person shall file a copy of the results of the search with the court.

(b) If a distribution of particular assets of a decedent is to be made to two (2) or more distributees that are entitled to receive fractional shares in the assets, the decedent's personal representative may, under an agreement among the distributees, distribute the particular assets without distributing to each distributee a pro rata share of each asset. However, the personal representative shall:

(1) distribute to each distributee a pro rata share of the total fair market value of all the particular assets as of the date of distribution; and

(2) divide the assets in a manner that results in a fair and equitable division among the distributees of any capital gain or loss on the assets.

(Formerly: Acts 1953, c.112, s.1711.) As amended by P.L.265-1989, SEC.1; P.L.41-2012, SEC.1.

IC 29-1-17-12

Unclaimed estate assets; disposition procedures; escheat; time limit; exceptions

Sec. 12. (a) If after reasonable search, satisfactory to the court, there shall be no known heir of the decedent, all of his net estate not disposed of by will shall be ordered paid to the state treasurer to become a part of the common school fund, subject to the further provisions of this section.

(b) If any heir, distributee, advisee, or claimant cannot be found after reasonable search, satisfactory to the court, the personal

representative shall sell the share of the estate to which he is entitled, pursuant to an order of court first obtained, and pay the proceeds to the clerk of the court for use and benefit of the person or persons thereafter determined to be entitled thereto according to law.

(c) When the personal representative shall pay any money to the state treasurer or clerk of the court pursuant to this section, he shall take a receipt therefor and file it with the court with the other receipts filed in the proceeding. Such receipt shall be sufficient to discharge the personal representative in the same manner and to the same extent as though such distribution or payment were made to a distributee or claimant entitled thereto.

(d) The moneys received by the state treasurer pursuant to the provisions of this section shall be paid to the person entitled on proof of his right thereto or in the case of an absentee, to the receiver of such absentee's property, or, if the state treasurer refuses or fails to pay because he is doubtful as to his duties in the premises, such person may apply to the court in which the estate was administered, whereupon the court upon notice to the state treasurer may determine the person entitled thereto and order the treasurer to pay the same accordingly. No interest shall be allowed thereon and such distributee or claimant shall pay all costs and expenses incident to the proceedings. If such proceeds are not paid or no application is made to the court within seven (7) years after such payment to the state treasurer, no recovery thereof shall be had.

(e) 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 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.

(Formerly: Acts 1953, c.112, s.1712.) As amended by Acts 1981, P.L.106, SEC.4; P.L.2-2008, SEC.69.

IC 29-1-17-13

Supplemental reports; discharge; limitation of actions

Sec. 13. Upon the filing of a supplemental report of distribution together with receipts or other evidence satisfactory to the court that distribution has been made as ordered in the final decree, the court shall enter an order of discharge. The discharge so obtained shall operate as a release from the duties of personal representative and shall operate as a bar to any suit including suits by persons under disability, against the personal representative and his sureties except suits which are commenced within one (1) year from the date of the discharge and are based solely upon alleged mistake, fraud or wilful misconduct on the part of the personal representative.

(Formerly: Acts 1953, c.112, s.1713.)

IC 29-1-17-14

After discovered property; reopening estate; inheritance tax

Sec. 14. (a) If, after an estate has been settled and the personal representative discharged, other property of the estate shall be discovered, or if it shall appear that any necessary act remains unperformed on the part of the personal representative, or for any other proper cause, the court, upon the petition of the discharged personal representative or any person interested in the estate and, without notice or upon such notice as it may direct, may order that said estate be reopened. It may reappoint the personal representative or appoint another personal representative to administer such property or perform such act as may be deemed necessary. Unless the court shall otherwise order, the provisions of this article as to an original administration shall apply to the proceedings had in the reopened administration so far as may be, but no claim which is already barred can be asserted in the reopened administration.

(b) Whenever any solvent estate has been closed, and it thereafter appears that any assets thereof have not been fully administered upon, the court may, if it appears practicable, order such assets distributed to, or title vested in, the persons entitled thereto after compliance with requirements as to an inheritance tax imposed under IC 6-4.1, in lieu of reopening the estate as provided in the preceding subsection. No additional notice of such proceedings shall be necessary unless so ordered by the court.

(Formerly: Acts 1953, c.112, s.1714.) As amended by Acts 1982, P.L.171, SEC.49; P.L.254-1997(ss), SEC.29.

IC 29-1-17-15
Repealed

(Repealed by Acts 1973, P.L.289, SEC.4.)

IC 29-1-17-15.1
Petition to determine heirs of estate; contents; notice; hearing; decree

Sec. 15.1. (a) Whenever any person has died leaving property or any interest therein and no general administration has been commenced on his estate in this state, nor has any will been offered for probate in this state, within five (5) months after his death, any person claiming an interest in such property as heir or through an heir may file a petition in any court which would be of proper venue for the administration of such decedent's estate, to determine the heirs of said decedent and their respective interests as heirs in the estate.

(b) The petition shall state:

(1) The name, age, domicile and date of death of the decedent;

(2) The names, ages and residence addresses of the heirs, so far as known or can with reasonable diligence be ascertained;

(3) The names and residence addresses of any persons claiming any interest in such property through an heir, so far as known or can by reasonable diligence be ascertained;

(4) A particular description of the property with respect to which such determination is sought;

(5) The net value of the estate.

(c) Upon the filing of the petition, the court shall fix the time for the hearing thereof, notice of which shall be given to:

(1) All persons known or believed to claim any interest in the property as heir or through an heir of the decedent;

(2) All persons who may at the date of the filing of the petition be shown by the records of conveyances of the county in which any real property described in such petition is located to claim any interest therein through the heirs of the decedent; and

(3) Any unknown heirs of the decedent.

Such notice shall be given by publication and, in addition personal notice by registered mail shall be given to every such person whose address is known to the petitioner. Upon satisfactory proofs including proof of compliance with inheritance tax laws of this state the court shall make a decree determining the heirs of said decedent and their respective interests as heirs in said property.

(d) A certified copy of the decree shall be recorded at the expense of the petitioner in each county in which any real property described therein is situated except the county in which the decree is entered, and shall be conclusive evidence of the facts determined therein as against all parties to the proceedings.

(Formerly: Acts 1973, P.L.289, SEC.2; Acts 1975, P.L.288, SEC.37.)

IC 29-1-17-16

Rules of equity; relief not limited

Sec. 16. The limitations provided for in IC 29-1-1-21 and section 13 of this chapter shall not deprive any interested person of the relief now afforded him under the rules of equity.

(Formerly: Acts 1953, c.112, s.1716.) As amended by Acts 1982, P.L.171, SEC.50.

IC 29-1-18
Repealed

(Repealed by P.L.169-1988, SEC.8.)

IC 29-1-19

Chapter 19. Department of Veterans Affairs

IC 29-1-19-1

Definitions

Sec. 1. As used in this chapter:

"Person" means an individual, a partnership, a limited liability company, a corporation, or an association.

"Department" refers to the United States Department of Veterans Affairs.

"Income" means money received from the Department and revenue or profit from any property wholly or partially acquired therewith.

"Estate" means income on hand and assets acquired partially or wholly with "income".

"Benefits" means all money paid or payable by the United States through the department.

"Protected person" means a beneficiary of the department.

"Guardian" means any fiduciary for the person or estate of a protected person or a person designated by a protective order issued under IC 29-3 to act on behalf of a protected person.

"Secretary" refers to the secretary of the department.

(Formerly: Acts 1953, c.112, s.2001.) As amended by Acts 1982, P.L.171, SEC.63; P.L.33-1989, SEC.41; P.L.1-1990, SEC.267; P.L.8-1993, SEC.460.

IC 29-1-19-2

Party in interest; notice of hearing

Sec. 2. The Secretary shall be a party in interest in any proceeding:

(1) for the appointment or removal of a guardian;

(2) for the recognition that an individual is no longer a minor or an incapacitated person (as defined in IC 29-3-1-7.5); and

(3) affecting in any manner the administration by the guardian of the estate of any present or former protected person whose estate includes assets derived in whole or in part from benefits paid at any time by the Department.

Not less than fifteen (15) days before the hearing on the matter, notice in writing of the time and place of the hearing shall be given by mail (unless waived in writing) to the office of the Department having jurisdiction over the area in which the suit or proceeding is pending.

(Formerly: Acts 1953, c.112, s.2002.) As amended by P.L.33-1989, SEC.42.

IC 29-1-19-3

Appointment of guardian

Sec. 3. Whenever, pursuant to any law of the United States or regulation of the department, it is necessary, prior to payment of benefits, that a guardian be appointed, the appointment may be made in the manner provided in this chapter.

(Formerly: Acts 1953, c.112, s.2003.) As amended by P.L.1-1990, SEC.268.

IC 29-1-19-4
Repealed

(Repealed by Acts 1971, P.L.412, SEC.1.)

IC 29-1-19-5
Petition for appointment

Sec. 5. (a) A petition for the appointment of a guardian may be filed by any relative or friend of the incapacitated person or minor or by any person who is authorized by law to file such a petition. If there is no person authorized to file or if the person authorized to file refuses or fails to file a petition within thirty (30) days after mailing of notice by the Department to the last known address of the person, if any, indicating the necessity for the filing of a petition, a petition for appointment may be filed by any resident of Indiana.

(b) The petition for appointment shall set forth the name, age, place of residence of the protected person, the name and place of residence of the nearest relative, if known, and the fact that the protected person is entitled to receive benefits payable by or through the Department and shall set forth the amount of money then due and the amount of probable future payments.

(c) The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the protected person and the name, age, relationship, if any, occupation, and address of the proposed guardian, and, if the nominee is a natural person, the number of protected persons for whom the nominee is presently acting as guardian. Notwithstanding any law as to priority of persons entitled to appointment, or the nomination in the petition, the court may appoint some other individual or a bank or trust company as guardian, if the court determines it is for the best interest of the protected person.

(d) In the case of an incapacitated person the petition shall show that the person has been rated incapacitated by the Department on examination in accordance with the laws and regulations governing the Department.

(Formerly: Acts 1953, c.112, s.2005.) As amended by P.L.33-1989, SEC.43.

IC 29-1-19-6
Appointment of guardian; condition precedent to payment of veterans' benefits; minor ward

Sec. 6. Where a petition is filed for the appointment of a guardian for a minor, a certificate of the secretary or the secretary's authorized representative, setting forth the age of such minor as shown by the records of the department and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the minor by the department shall be prima facie evidence of the necessity for such appointment.

(Formerly: Acts 1953, c.112, s.2006.) As amended by P.L.1-1990, SEC.269.

IC 29-1-19-7
Appointment of guardian; condition precedent to payment of veterans' benefits; incapacitated person

Sec. 7. Where a petition is filed for the appointment of a guardian for an incapacitated person, a certificate of the administrator or the administrator's duly authorized representative that the person has been rated incompetent or incapacitated by the Department on examination in accordance with the laws and regulations governing the Department and that the appointment of a guardian or the issuance of a protective order is a condition precedent to the payment of money due the protected person by the Department shall be prima facie evidence of the necessity for the appointment.
(Formerly: Acts 1953, c.112, s.2007.) As amended by P.L.33-1989, SEC.44.

IC 29-1-19-8
Filing petitions; notice

Sec. 8. Upon the filing of a petition for the appointment of a guardian or the issuance of a protective order under this article, notice shall be given to the incapacitated person, and to other persons and the department by certified mail.
(Formerly: Acts 1953, c.112, s.2008.) As amended by Acts 1982, P.L.171, SEC.64; P.L.33-1989, SEC.45; P.L.95-2007, SEC.12.

IC 29-1-19-9
Bond of guardian

Sec. 9. (a) Upon appointment, a guardian shall execute and file bond to be approved by the court in an amount not less than the estimated value of the personal estate and anticipated income of the protected person during the ensuing year. The bond shall be in the form and be conditioned as required of guardians appointed under IC 29-3-7. The court may from time to time require the guardian to file an additional bond. Any bank or trust company organized under the laws of the state, or of the United States of America, and operating a bank or trust company, which is located within Indiana, which is now acting, or which may act as a guardian under this chapter, is exempt from furnishing the bond required in this subsection to the same extent and in the same manner as a bank or trust company, when acting in a fiduciary capacity, is relieved from filing a bond under the provisions of IC 28-2-7.

(b) Where a bond is tendered by a guardian with personal sureties, there shall be at least one (1) or more surety or sureties and the guardian or sureties shall file with the court a certificate under oath which shall describe the property owned, both real and personal, and shall state that each is worth the sum named in the bond as the penalty thereof over and above all the guardian's debts and liabilities and the aggregate of other bonds on which the guardian is principal

or surety and exclusive of property exempt from execution. The court may require additional security or may require a corporate surety bond, the premium thereon to be paid from the ward's estate.
(Formerly: Acts 1953, c.112, s.2009; Acts 1961, c.93, s.1; Acts 1971, P.L.413, SEC.1.) As amended by Acts 1982, P.L.171, SEC.65; P.L.33-1989, SEC.46.

IC 29-1-19-10
Accounting by guardian; notice; hearing

Sec. 10. (a) Every guardian who has received or shall receive money or other things of value from the Department shall file with the court biennially within thirty (30) days following the anniversary date of the appointment, in addition to other accounts as required by the court, a full, true, and accurate account under oath of all money or other things of value received by the guardian, all earnings, interest, or profits derived from the estate, all property acquired with the estate and of all disbursements from the estate, and showing the balance at the date of the account and how it was invested.

(b) The guardian, at the time of filing any account, shall exhibit all securities or investments held by the guardian to an officer of the bank or other depository wherein the securities or investments are held for safekeeping or to an authorized representative of the corporation which is surety on the guardian's bond, or to the judge or clerk of a court in this state, or, upon request of the guardian or other interested party, to any other reputable person designated by the court, who shall certify in writing that the person has examined the securities or investments and identified them with those described in the account, and shall note any omissions or discrepancies. If the depository is the guardian, the certifying officer shall not be the officer verifying the account. The guardian may exhibit the securities or investments to the judge of the court, who shall endorse on the account and the copy of the account a certificate that the securities or investments shown as held by the guardian were each in fact exhibited to the judge and that those exhibited were the same as those shown in the account, and noting any omission or discrepancy. That certificate and the certificate of an official of the bank in which are deposited any funds for which the guardian is accountable, showing the amount on deposit, shall be prepared and signed in duplicate, and one (1) of each shall be filed by the guardian with the account.

(c) At the time of filing in the court any account, a certified copy of the account and a signed duplicate of each certificate filed with the court shall be sent by the guardian to the office of the Department having jurisdiction over the area in which the court is located. A signed duplicate or a certified copy of a petition, motion, or other pleading, pertaining to an account, or to any matter other than an account, and which is filed in the guardianship proceedings or in any proceeding for the recognition that an individual is no longer a minor or an incapacitated person shall be furnished by the person filing the petition, motion, or pleading to the proper office of the Department. Unless hearing is waived in writing by the attorney of the

Department, and by all other persons entitled to notice, the court shall fix a time and place for the hearing on the account, petition, motion, or other pleading not less than fifteen (15) days nor more than thirty (30) days from the date filed, unless a different available date is stipulated in writing. Unless waived in writing, written notice of the time and place of hearing shall be given the Department office concerned, the guardian, and any others entitled to notice not less than fifteen (15) days prior to the date fixed for the hearing. The notice may be given by mail, in which event it shall be deposited in the mail not less than fifteen (15) days prior to the date specified. The court, or clerk of the court, shall mail to the Department office a copy of each order entered in any guardianship proceeding in which the administrator is an interested party.

(d) If the guardian is accountable for property derived from sources other than the Department, the guardian shall be accountable as required under the applicable law of this state pertaining to the property of minors or incapacitated persons who are not beneficiaries of the Department, and the guardian is entitled to the compensation provided by law for administering the other property. The account for other property may be combined with the account filed in accordance with this section.

(Formerly: Acts 1953, c.112, s.2010; Acts 1971, P.L.413, SEC.2.) As amended by P.L.33-1989, SEC.47.

IC 29-1-19-11

Removal of guardian

Sec. 11. If any guardian shall fail to file with the court any account as required by this article or by an order of the court when any account is due or within thirty (30) days after citation issues as provided by law, or shall fail to furnish the department a true copy of any account, petition, or pleading as required by this article, such failure may in the discretion of the court be ground for removal.

(Formerly: Acts 1953, c.112, s.2011.) As amended by Acts 1982, P.L.171, SEC.66; P.L.1-1990, SEC.270.

IC 29-1-19-12

Compensation of guardian; liquidation of loans or investments

Sec. 12. (a) Compensation payable to guardians shall:

(1) be based upon services rendered; and

(2) not exceed either five percent (5%) of the amount of moneys received or such larger amount as may be established by the court during the period covered by the account.

(b) In the event of extraordinary services by any guardian, the court, upon petition and hearing thereon, may authorize reasonable additional compensation for the services. A copy of the petition and notice of hearing on the petition shall be given the proper office of the department in the manner provided in the case of hearing on a guardian's account or other pleading.

(c) No commission or compensation shall be allowed on the moneys or other assets received from a prior guardian nor upon the

amount received from liquidation of loans or other investments.
(Formerly: Acts 1953, c.112, s.2012; Acts 1971, P.L.413, SEC.3.) As amended by P.L.1-1990, SEC.271.

IC 29-1-19-13
Investment of funds

Sec. 13. Every guardian shall invest the surplus funds of the estate of the protected person, in which investment the guardian has no interest, and only as provided in this section:

(1) In bonds or notes constituting the direct and general obligations of the United States, or of a state that has not at any time during the ten (10) years next preceding the date of the investment defaulted in payment of the principal or interest on any bonds or notes by it issued, or in bonds, the payment of which, both principal and interest, is guaranteed by the United States.

(2) In bonds or notes that are the direct and general legal obligations of a county, city, or town in this state, and which also at the date of the investment has the power to levy general taxes sufficient for the payment of principal and interest on the obligations, if the issuer of the obligation has not defaulted in payment of principal or interest due upon any of its bonds or notes at any time during the ten (10) years next preceding the date of the investment.

(3) After prior order of the court, upon application, in the legally issued notes or bonds of the owner of improved unencumbered real property in this state, secured by first mortgage or deed of trust. The total debt secured by the encumbrance may not exceed fifty percent (50%) of the cash market value of the real property at the time of the investment, and, if buildings or other improvements constitute a material part of the value of the premises encumbered to secure the indebtedness, they shall be kept insured against loss or damage by fire, in a reasonable amount for the benefit of the owners of the notes or bonds. Before making any investment, a signed application shall be procured from the borrower, that shall contain the information required by the lender, and that shall contain a complete description of the real estate, including improvements and an affirmative statement that the proposed borrower is the owner of the entire fee simple title to the real estate and improvements, that they are free of every encumbrance or lien of any character, or if not, a statement of any existing encumbrance or other liens, and specific authorization to the lender to withhold from the proposed loan the necessary sum to discharge and procure the release of any encumbrances or other liens. The release shall be procured and filed for record prior to or contemporaneously with the making of the loan. The proposed borrower shall also furnish with the application an abstract or certificate of title, which shall be completed to the time of closing the loan. The guardian proposing to make a loan or purchase any notes or

bonds shall exhibit to the court with the application for approval the opinion of a qualified attorney at law, satisfactory to the court, which opinion shall show that the attorney has examined the title or certificate of title and that it is the opinion of the attorney that the proposed borrower has good title to the property to be encumbered, and that the proposed encumbrance will constitute a first lien on the property. In addition, the guardian shall file with the court satisfactory written evidence that the cash market value of the property to be encumbered is in accordance with the requirements of this subsection. If the guardian purchases notes or bonds previously issued, the attorney's examination and opinion shall also disclose whether the proposed transferor has and will pass to the guardian good title together with the liens securing the notes or bonds. Except loans insured by the federal housing administrator, the guardian is not authorized to loan or invest money upon the security of a real estate mortgage or trust deed which secures any principal indebtedness other than to the protected person's estate, and in the case of a minor the maturity of any indebtedness to the minor secured by real estate mortgage or trust deed shall not be later than the date on which the minor will attain the age of majority. Any investment made by a guardian in any of the securities enumerated shall not be transferred, liquidated, or disposed of, except upon petition filed for that purpose and an order of court obtained.

(4) In shares of a federal savings and loan association organized under the Home Owners' Loan Act of 1933, (12 U.S.C. 1461 through 1468), as in effect on December 31, 1990, or any building or savings and loan association whose principal place of business is located in Indiana whose accounts are insured by the Federal Deposit Insurance Corporation as provided in 12 U.S.C. 1811 through 1833e, as in effect on December 31, 1990. No shares may be purchased in excess of the amount of insurance protection afforded a member or investor of any such institution.

(5) In savings deposits in any bank whose principal place of business is located in Indiana.

(Formerly: Acts 1953, c.112, s.2013; Acts 1957, c.223, s.1.) As amended by Acts 1982, P.L.1, SEC.53; P.L.33-1989, SEC.48; P.L.8-1991, SEC.32.

IC 29-1-19-14

Support; maintenance; education

Sec. 14. (a) A guardian shall not apply any portion of the income or the estate for the support or maintenance of any person other than the protected person, the spouse, and the children under the age of eighteen (18) years of the protected person, except upon petition to and prior order of the court after a hearing. A signed duplicate or certified copy of the petition shall be furnished the proper office of the Department and notice of hearing shall be given the office as

provided in the case of hearing on a guardian's account or other pleading.

(b) If the protected person is a child under the age of eighteen (18) years, and the parents or those standing in loco parentis are able to care for, maintain, and educate the protected person, neither the income nor the principal shall be expended for any purpose except as ordered by the court.

(Formerly: Acts 1953, c.112, s.2014; Acts 1973, P.L.287, SEC.11.) As amended by P.L.33-1989, SEC.49.

IC 29-1-19-15

Real estate acquisition

Sec. 15. (a) The court may authorize the purchase of the entire fee simple title to real estate in Indiana in which the guardian has no interest, but only as a home for the ward, or to protect the ward's interest, or (if the ward is not a minor) as a home for the ward's dependent family.

(b) Such purchase of real estate shall not be made except upon the entry of an order of the court after hearing upon verified petition. A copy of the petition shall be furnished the proper office of the department and notice of hearing on the petition shall be given the office as provided in the case of hearing on a guardian's account.

(c) Before authorizing such investment the court shall require written evidence of value and of title and of the advisability of acquiring such real estate. Title shall be taken in the ward's name.

(d) This section does not limit the right of the guardian:

(1) on behalf of the ward to bid and to become the purchaser of real estate at a sale of the real estate pursuant to decree of foreclosure of lien held by or for the ward, or at a trustee's sale, to protect the ward's right in the property so foreclosed or sold; or

(2) if such be necessary to protect the ward's interest and upon prior order of the court in which the guardianship is pending, to agree with co-tenants of the ward for a partition in kind, or to purchase from co-tenants the entire undivided interests held by them, or to bid and purchase the same at a sale under a partition decree, or to compromise adverse claims of title to the ward's realty.

(Formerly: Acts 1953, c.112, s.2015.) As amended by P.L.1-1990, SEC.272.

IC 29-1-19-16

Copies of records; determining eligibility

Sec. 16. When a copy of any public record is required by the department to be used in determining the eligibility of any person to participate in benefits made available by the department, the official custodian of such public record shall without charge provide the applicant for such benefits or any person acting on the applicant's behalf or the authorized representative of the department with a certified copy of such record.

(Formerly: Acts 1953, c.112, s.2016.) As amended by P.L.1-1990, SEC.273.

IC 29-1-19-17
Discharge of guardian

Sec. 17. In addition to any other provisions of law relating to judicial restoration and discharge of guardian, a certificate by the Department showing that a minor has attained majority or that the incapacitated person has been rated competent by the Department upon examination in accordance with law shall be prima facie evidence that the minor has attained majority, or the incapacitated person has recovered competency. Upon hearing after notice as provided in this chapter and the determination by the court that the minor has attained majority or the incapacitated person has recovered competency, an order shall be entered to that effect, and the guardian shall file a final account within sixty (60) days of such determination. Upon hearing after notice to the former protected person and to the Department as in case of other accounts, upon approval of the final account, and upon delivery to the protected person of the assets due from the guardian, the guardian shall be discharged and the guardian's sureties released.

(Formerly: Acts 1953, c.112, s.2017; Acts 1971, P.L.413, SEC.4.) As amended by P.L.33-1989, SEC.50.

IC 29-1-19-18
Application of certain provisions of chapter

Sec. 18. The provisions of this chapter relating to surety bonds and the administration of estates of protected persons shall apply to all income and estate as defined in section 1 of this chapter whether the guardian has been appointed under this chapter or under any other law of this state, special or general, prior or subsequent to January 1, 1954.

(Formerly: Acts 1953, c.112, s.2018.) As amended by Acts 1982, P.L.171, SEC.67; P.L.33-1989, SEC.51.

IC 29-1-20

Chapter 20. Verification and Oaths

IC 29-1-20-1

Affirmation or representation; form

Sec. 1. (a) Wherever in this article it is provided that any pleading, petition, report, or other document of any kind be verified, or that an oath be taken, it shall be sufficient if the subscriber simply affirms the truth of the matter to be verified by an affirmation or representation in substantially the following language: "I (we) affirm, under the penalties for perjury, that the foregoing representation(s) is (are) true.

(SIGNED) _____"

(b) Any person who falsifies an affirmation or representation of fact shall be subject to the same penalties as are prescribed by law for the making of a false affidavit.

(Formerly: Acts 1953, c.112, s.2503; Acts 1959, c.200, s.1.) As amended by Acts 1982, P.L.171, SEC.68.

IC 29-2

ARTICLE 2. MISCELLANEOUS PROVISIONS

IC 29-2-1

Chapter 1. Jurisdiction in Probate Matters and Probate of Foreign Wills

IC 29-2-1-1

Definitions

Sec. 1. As used in this chapter:

(1) "local administration" means administration by a personal representative appointed in this state pursuant to appointment proceedings described in article 1 of this title.

(2) "local personal representative" includes any personal representative appointed in this state pursuant to appointment proceedings described in article 1 of this title and excludes foreign personal representatives who acquire the power of a local personal representative under section 6.

(3) "resident creditor" means a person domiciled in, or doing business in this state, who is, or could be, a claimant against an estate of a non-resident decedent.

(4) "non-resident decedent" means a decedent not domiciled in Indiana at his death.

(5) "foreign personal representative" means a personal representative appointed in a jurisdiction other than Indiana to administer a non-resident decedenths estate.

(6) "domiciliary foreign personal representative" means a foreign personal representative appointed in the jurisdiction where the decedent was domiciled at the time of his death.

(Formerly: Acts 1881(ss), c.45, s.1; Acts 1975, P.L.288, SEC.39.)

IC 29-2-1-2

Indebtedness to non-resident decedent; payments to domiciliary foreign personal representative

Sec. 2. At any time after the expiration of forty-five (45) days from the death of a non-resident decedent, any person indebted to the estate of the non-resident deceden or having possession or control of personal property, or of an instrument evidencing a debt, obligation, sotck or chose in action belonging to the estate of the non-resident decedent may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock or chose in action, to the domiciliary foreign personal representative of the non-resident decedent upon being presented with proof of his appointment and an affidavit made by or on behalf of the representative stating:

(1) the date of the death of the non-resident decedent;

(2) that no local administration, or application or petition therefor, is pending in this state; and

(3) that the domiciliary foreign personal representative is entitled to payment or delivery.

(Formerly: Acts 1881(ss), c.45, s.15; Acts 1975, P.L.288, SEC.40.)

IC 29-2-1-3
Payments to domiciliary foreign personal representative; release of debtor

Sec. 3. Payment or delivery made in good faith on the basis of the proof of authority and affidavit releases the debtor or person having possession of the personal property to the same extent as if payment or delivery had been made to a local personal representative.
(Formerly: Acts 1881(ss), c.45, s.72; Acts 1975, P.L.288, SEC.41.)

IC 29-2-1-4
Payments to domiciliary foreign personal representative; notice by resident creditor to debtor as bar

Sec. 4. Payment of delivery under section 2 of this chapter may not be made if a resident creditor of the non-resident decedent has notified the debtor of the non-resident decedent or the person having possession of the personal property belonging to the non-resident decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative.
(Formerly: Acts 1881(ss), c.45, s.73; Acts 1975, P.L.288, SEC.42.)

IC 29-2-1-5
Domiciliary foreign personal representative; filing copies of appointment and bond

Sec. 5. If no local administration or application or petition therefor is pending in this state, a domiciliary foreign personal representative may file with a court in this state in a county in which property belonging to the decedent is located, authenticated copies of his appointment and of any official bond he has given.
(Formerly: Acts 1881(ss), c.45, s.74; Acts 1975, P.L.288, SEC.43.)

IC 29-2-1-6
Domiciliary foreign personal representative; powers

Sec. 6. A domiciliary foreign personal representative who has complied with section 5 may exercise as to assets in this state all powers of a local unsupervised personal representative and may maintain actions and proceedings in this state subject to any conditions imposed upon non-resident parties generally.
(Formerly: Acts 1881(ss), c.45, s.138; Acts 1959, c.246, s.1; Acts 1971, P.L.414, SEC.1; Acts 1975, P.L.288, SEC.44.) As amended by P.L.36-2011, SEC.5.

IC 29-2-1-7
Domiciliary foreign personal representative; limitation of powers by local personal representative

Sec. 7. The powers of a domiciliary foreign personal representative under section 2 or 6 of this chapter shall be exercised only if there is no administration or application therefor pending in this state. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under section 6 of this chapter, but the local court may allow the

foreign personal representative to exercise limited powers to preserve the estate. No person who, before receiving actual notice of a pending local administration, has changed his position in reliance upon the powers of a foreign personal representative shall be prejudiced by reason of the application or petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for him in any action or proceedings in the state.
(Formerly: Acts 1881(ss), c.45, s.139; Acts 1971, P.L.414, SEC.2; Acts 1975, P.L.288, SEC.45.)

IC 29-2-1-8
Non-resident decedents; proceedings; application of law

Sec. 8. In respect to a non-resident decedent, the provisions of article 1 of this title govern (a) proceedings, if any, in a court of this state for probate of the will, appointment, removal, supervision, and discharge of the local personal representative, and any other order concerning the estate; and (b) the status, powers, duties and liabilities of any local personal representative and the rights of claimants, purchasers, distributees and others in regard to a local administration.
(Formerly: Acts 1881(ss), c.45, s.140; Acts 1971, P.L.414, SEC.3; Acts 1975, P.L.288, SEC.46.)

IC 29-2-1-9
Foreign personal representative; submission to jurisdiction of state court

Sec. 9. A foreign personal representative submits himself to the jurisdiction of the courts of this state by (a) filing authenticated copies of his appointment as provided in section 5 of this chapter, (b) receiving payment of money or taking delivery of personal property under section 2 of this chapter, or (c) doing any act as a personal representative in this state which would have given the state jurisdiction over him as an individual. Jurisdiction under (b) is limited to the money or value of personal property collected.
(Formerly: Acts 1975, P.L.288, SEC.47.)

IC 29-2-1-10
Foreign personal representative; subjection to decedent jurisdiction

Sec. 10. In addition to jurisdiction conferred by section 9 of this chapter, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that his decedent was subject to jurisdiction immediately prior to death.
(Formerly: Acts 1975, P.L.288, SEC.48.)

IC 29-2-1-11
Service of process on foreign personal representative

Sec. 11. (a) Service of process may be made upon the foreign personal representative by registered or certified mail, addressed to

his last reasonably ascertainable address, requesting a return receipt signed by addressee only. Notice by ordinary first class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or his decedent immediately prior to death.

(b) If service is made upon a foreign personal representative as provided in subsection (a) of this section, he shall be allowed at least thirty (30) days within which to appear or respond.

(Formerly: Acts 1975, P.L.288, SEC.49.)

IC 29-2-1-12

Adjudications binding on personal representative

Sec. 12. An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication.

(Formerly: Acts 1975, P.L.288, SEC.50.)

IC 29-2-2

Chapter 2. Probate Commissioners

IC 29-2-2-1

Appointment; salary

Sec. 1. (a) In all counties of this state containing a voting population of over seven thousand (7,000), as shown by the vote cast for secretary of state at the last preceding election, the judge of the circuit court of each of said counties, when he shall find:

(1) that the probate business of his court requires it;

(2) that the interests of heirs under the age of eighteen (18) years and other beneficiaries of estates, guardianships, receiverships, and other trusts pending in said court will be protected and subserved thereby; and

(3) that the same is demanded for the proper protection of such interests;

shall cause such finding to be entered of record, and thereupon shall appoint some competent person as probate commissioner of such court.

(b) In such finding and order of appointment, on proof first heard in open court, the judge shall fix and specify the annual salary of such commissioner and the time of payment thereof and shall thereupon cause to be certified to the auditor of such county a copy of such finding and order, which shall be sufficient authority for said auditor to draw his warrant for the payment thereof at the times and in the amounts in said record set forth.

(Formerly: Acts 1891, c.137, s.1; Acts 1897, c.164, s.1; Acts 1911, c.269, s.1; Acts 1973, P.L.287, SEC.12.) As amended by P.L.285-1987, SEC.1.

IC 29-2-2-2

Oath of office; fees and compensation

Sec. 2. Said commissioner shall take and subscribe an oath for the faithful discharge of his duties, and shall hold his office for the term of four (4) years, subject to the provisions of this chapter, and for his services as such commissioner shall receive or be allowed no fees, emoluments or compensation whatever other than the salary fixed by said court and required to be paid out of the treasury of said county as aforesaid, and which salary shall not be increased during his said term of office.

(Formerly: Acts 1891, c.137, s.2.) As amended by Acts 1982, P.L.171, SEC.69.

IC 29-2-2-3

Oaths; acknowledgments; removal from office

Sec. 3. Said commissioner shall have power to administer oaths, take acknowledgments and do all other acts legally pertaining to said office and necessary to carry into effect the rules or orders of said court, and he may, at any time, be removed by the court for failure to properly discharge the duties of his trust.

(Formerly: Acts 1891, c.137, s.3.)

IC 29-2-2-4
Duties defined; records

Sec. 4. At the time of the appointment of said commissioner, or as soon thereafter as may be practicable, the court shall define the duties of such commissioner and cause a record thereof to be made upon the order-book of said court.
(Formerly: Acts 1891, c.137, s.4.)

IC 29-2-2-5
Rules for protection of trusts; speedy transaction of probate business

Sec. 5. Such court shall have power to make and enforce all necessary rules for the protection of the several trusts pending therein, and the requiring of delinquent guardians, administrators or other trustees to make reports, give new or additional bonds, or discharge any other duty required of them by law, or the rules of said court, and may vest such commissioner with all necessary power in the premises looking to the protection of such trusts and enforcement of the law and rules of said court in reference thereto, and the proper and speedy transaction of the probate business of such court, as the court, in its discretion, may deem advisable and necessary.
(Formerly: Acts 1891, c.137, s.5.)

IC 29-2-2-6
Dispensing with services; salary

Sec. 6. At any time after the appointment of such commissioner, when such court shall deem that his services may be dispensed with, either for a certain or indefinite length of time, without detriment to the business of said court, or the interests of the trusts therein pending, the court shall enter of record its finding to that effect and cause the same to be certified to the auditor of such county, and thereupon, during the time so specified in such finding, the salary of such commissioner shall cease and his services during said time be dispensed with, the said commissioner to again assume his duties and receive his salary therefor only when the court shall so order.
(Formerly: Acts 1891, c.137, s.6.)

IC 29-2-3
Repealed

(Repealed by Acts 1982, P.L.1, SEC.71.)

IC 29-2-4

Chapter 4. Duties of Probate Commissioner in Counties With Populations from 30,000 to 150,000

IC 29-2-4-1

Report of findings; compensation

Sec. 1. In all counties of this state, having a population of not less than thirty thousand (30,000) nor more than one hundred and fifty thousand (150,000), according to the last preceding United States census, it shall be the duty of the probate commissioner of the circuit court in any county, duly appointed as by law provided, to hear evidence upon and report his finding to the judge of the circuit court of his county, upon all matters, probate, civil and otherwise, which may be referred to such probate commissioner by such judge of the circuit court, and he shall receive no fees or compensation other than his salary, which salary shall be fixed by the judge of said circuit court, after proof heard, during any term of such court, and in such sum as, in the judgment of the judge of such circuit court, may deem proper, the same to be payable out of the treasury of such county.
(Formerly: Acts 1911, c.42, s.1.)

IC 29-2-5

Chapter 5. Administration of Estate of Intestate Absentee

IC 29-2-5-1

Five years absence; presumption of death

Sec. 1. (a) When any resident of Indiana is absent from the individual's usual place of residence and gone to parts unknown for a period of five (5) years, without having made any sufficient provision for the care and management of the individual's property, real or personal, and the court having probate jurisdiction in the county where the individual last resided or where the property is situated determines that:

(1) the individual's property is suffering waste for want of proper care; or

(2) the family of the individual is in need of the use and proceeds of the property for support or education (or that the sale of the property, or part thereof, is necessary for the payment of the individual's debts);

it shall be presumed and taken by the court that the individual is dead. The court has jurisdiction over the estate of the individual in the same manner and to the same extent as if the individual were dead. The court shall appoint an administrator of the individual's estate, who shall have all of the powers and rights over the estate and be subject to all of the liabilities and duties that appertain to administrators of decedents' estates.

(b) Before the court may determine that an individual should be presumed dead, notice to the individual must be published once each week for three (3) consecutive weeks, with the first notice published more than thirty (30) days before the hearing in a newspaper of general circulation in the county where the individual last resided or where the individual's property is located.

(c) The will of an individual who is presumed dead under this section is admissible to probate under IC 29-1 and shall be probated as the will of a deceased individual.

(Formerly: Acts 1859, c.4, s.1; Acts 1861, c.52, s.1; Acts 1911, c.285, s.1.) As amended by P.L.263-1989, SEC.2; P.L.4-2003, SEC.6.

IC 29-2-5-2

Discharge of administrator; return of absentee

Sec. 2. Such administrator shall not be discharged on the return and reappearance of such person until discharged by the court, but shall retain his powers and rights and be subject to all his official liabilities and duties until so discharged.

(Formerly: Acts 1859, c.4, s.2.)

IC 29-2-5-3

Repealed

(Repealed by Acts 1975, P.L.289, SEC.3.)

IC 29-2-5-4

Guardians; appointment

Sec. 4. Such court shall have power to appoint guardians of the persons and estates of the children under eighteen (18) years of age of such departed person, who shall have all the powers and rights, and be subject to all the duties and liabilities, in relation to such children and their estates, which appertain to guardians of heirs under eighteen (18) years of age and their estates, under IC 34-9-2.

(Formerly: Acts 1859, c.4, s.4; Acts 1973, P.L.287, SEC.13.) As amended by P.L.1-1998, SEC.157.

IC 29-2-5-5

Distribution of estates; bond; trustee

Sec. 5. (a) The property of such departed person, real and personal, and all his rights, obligations and choses in action, shall be subject to the same liabilities, incidents, rights, management and disposal under this chapter, in all respects, as if such person were known to be deceased; and all adjudications and acts done by such administrator or guardian shall be valid, effectual and binding on such person should he return, as if they were his own acts, the acts and doings of such administrator and guardian being in good faith and without fraud.

(b) Before any distribution of the estate of such absentee shall be made to the person or persons entitled to receive it, he or they shall give security, to the approval of the proper circuit or superior court or probate court of the county having jurisdiction thereof, in such sum as the court shall direct, and conditioned that if the absentee shall, in fact, be at the time alive, he or they will, respectively, refund the amounts received by each, on demand, with interest; said bond to run and be in force for the period of three (3) years from the date of the issuing of letters of administration by said court, and if, during said period of three (3) years, the absentee shall not appear and demand said estate, the rights of the absentee thereto shall be barred; but if the person or persons entitled to receive the same is or are unable to give the security aforesaid, then the court shall appoint a trustee, who shall give bond for the faithful performance of his duties in one and one-half times the amount of such money, with sufficient sureties, who shall invest said money at interest as the court may direct, which interest is to be paid annually to the person or persons entitled to it, and the money to remain at interest until the security aforesaid is given, and if the absentee does not appear and demand said money within said period of three (3) years, the court shall order it to be paid to the person or persons entitled to it absolutely.

(c) The provisions of this section shall apply to all pending and future administrations of such estates of absentees.

(Formerly: Acts 1859, c.4, s.5; Acts 1913, c.326, s.1.) As amended by Acts 1982, P.L.171, SEC.70.

IC 29-2-6

Chapter 6. Administration of Absentee's Estate Where There Is a Will or Trust

IC 29-2-6-1

Distribution of estates; bond; trustee appointed

Sec. 1. When any resident of this state shall have absented himself from his usual place of residence and gone to parts unknown for a space of five (5) years, and when, in such case, thirty (30) days' notice shall have been given to such person by publication in a newspaper of general circulation published at the capital of the state, and also in a paper published in the county where he last resided in such state, if there be any, it shall be presumed and taken by the court having probate jurisdiction in the county where such person last resided, or any county of said state where trust funds or an interest therein have been left to such person, as hereinafter set out, that such person is dead, upon presentation of proper proof of such absence and of publication of notice. Any interest any such absentee would have in any property under and by the terms of any will shall be administered upon by the executor of such will the same as though such person were in fact dead; and where, by the terms of any will, a trust has been created in favor of such absentee, such trust shall be terminated and the executor of such will or the trustee in charge of said trust funds shall administer and dispose of such funds as are provided in such will upon the death of the cestui que trust: Provided, however, That before any distribution of any such trust funds shall be made to the person or persons entitled to receive the same, he or they shall give security to the approval of the proper circuit or superior court or probate court of the county having jurisdiction thereof, in such sum as the court shall direct, and conditioned that if the absentee shall, in fact, be at the time alive, he or they will respectively refund the amounts received by each, with interest, on demand of said cestui que trust, said bond to run and be enforced for the period of three (3) years from the date of the judgment of the court declaring said absentee legally dead, and if, during said period of three (3) years, the absentee shall not appear and demand any rights he may have in said trust, the rights of the absentee thereto shall be barred; but if the person or persons entitled to receive the same is or are unable to give the security aforesaid, then the court shall appoint a trustee, who shall give bond for the faithful performance of his duties in one and one-half times the amount of such money, with sufficient sureties, who shall invest said money at interest, as the court may direct, which interest is to be paid annually to the person or persons entitled to it, and the money to remain at interest until the security aforesaid is given, and if the absentee does not appear and demand said money and his rights in said trust within said period of three (3) years, the court shall order the money so held by such trustee so appointed by said court to be paid to the person or persons entitled to it absolutely. The provisions of this section shall apply to all pending and future administrations of trust funds left to absentees.

(Formerly: Acts 1915, c.43, s.1.)

IC 29-2-7
Repealed

(Repealed by P.L.263-1989, SEC.3.)

IC 29-2-8

Chapter 8. Conservatorship of Estate of Missing Serviceman or Seaman

IC 29-2-8-1

Guardians; appointment; revocation

Sec. 1. Whenever a person (referred to as an absentee) serving in or with the armed forces of the United States, or a person serving as a Merchant Marine of the United States, has been reported or listed as:

(1) missing;
(2) missing in action;
(3) interned in a neutral country; or
(4) beleaguered, besieged, or captured by an enemy;

has an interest in property in Indiana or is a legal resident of Indiana and has not provided an adequate power of attorney authorizing another to act in regard to the property or interest, a court having probate jurisdiction in the county of the absentee's legal domicile or in the county where the property, or a part of the property, is situated, may appoint a guardian to manage the absentee's property, under the supervision of the court. The guardian may be appointed upon the filing of a verified petition alleging the facts and showing the necessity for the management and control of the property of the absentee made by an interested person, or on the court's own motion, after notice to or the filing of waiver of notice from the presumptive heirs of the absentee. Within ten (10) days after appointment the guardian shall publish a notice of appointment in a newspaper of general circulation in the county once each week for three (3) weeks and shall mail a copy of the notice to the absentee addressed to the absentee's last known address. Any interested person may on application to the court require the guardian to show cause why the appointment should not be revoked. If an appointment is revoked, the revocation shall be without prejudice to the rights and interests of any person who relied upon it in good faith.

(Formerly: Acts 1945, c.35, s.1.) As amended by P.L.33-1989, SEC.52.

IC 29-2-8-2

Guardian bond; powers; removal and substitution

Sec. 2. The court shall have full discretionary authority to appoint any suitable person as guardian and may require the guardian to post an adequate surety bond and to make reports as the court may deem necessary. The guardian shall have the same powers and authority as the guardian of the property of a minor or incapacitated person (as defined in IC 29-3-1-7.5) and shall be considered as an officer of the court, and shall be subject to removal and substitution for good cause shown.

(Formerly: Acts 1945, c.35, s.2.) As amended by P.L.33-1989, SEC.53.

IC 29-2-8-3

Termination of guardianship; executor or administrator

Sec. 3. Upon petition signed by the absentee, or on petition of an attorney-in-fact acting under an adequate power of attorney granted by the absentee, the court shall direct the termination of the guardianship and the transfer of all property held to the absentee or to the designated attorney-in-fact. If at any time subsequent to the appointment of a guardian it appears that the absentee has died and an executor or administrator has been appointed for the estate, the court shall direct the termination of the guardianship and the transfer of all property of the deceased absentee to the executor or administrator.

(Formerly: Acts 1945, c.35, s.3.) As amended by P.L.33-1989, SEC.54.

IC 29-2-9

Chapter 9. Sale of Ward's Personal Property by Non-Resident Guardian

IC 29-2-9-1

Repealed

(Repealed by Acts 1982, P.L.175, SEC.4.)

IC 29-2-9-2

Repealed

(Repealed by Acts 1973, P.L.290, SEC.16.)

IC 29-2-10
Repealed

(Repealed by Acts 1973, P.L.290, SEC.16.)

IC 29-2-11

Chapter 11. Waiver by Judge of Period Costs in Certain Cases

IC 29-2-11-1

Estates; guardianship; assignments; trusteeship; surviving partnership

Sec. 1. The courts of this state having jurisdiction of estates, guardianships, assignments, trusteeships, and surviving partnerships and the judges thereof, in their discretion, be and hereby are authorized and empowered to waive the period costs and payment thereof in estates for any and all years subsequent to and in addition to the first two (2) years or part of same thereof, and to waive the costs and payment thereof in guardianships for any and all years subsequent to and in addition to the first three (3) years or part of same thereof, and to waive the costs and payment thereof in assignments, trusteeships, and surviving partnerships for any and all years subsequent to and in addition to the first two (2) years or part of same thereof.

(Formerly: Acts 1965, c.163, s.1.)

IC 29-2-12

Chapter 12. Apportionment of Federal Estate Taxes

IC 29-2-12-0.1

Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The addition of section 1.5 of this chapter by P.L.266-1989 does not apply to:

(A) a will;

(B) a trust; or

(C) another instrument governing the distribution of assets following an individual's death;

executed before July 1, 1989.

(2) The amendments made to section 7 of this chapter by P.L.266-1989 do not apply to:

(A) a will;

(B) a trust; or

(C) another instrument governing the distribution of assets following an individual's death;

executed before July 1, 1989.

As added by P.L.220-2011, SEC.479.

IC 29-2-12-1

Purpose

Sec. 1. The purpose of this chapter is to provide for an equitable apportionment of federal estate tax imposed upon decedents' estates under the provisions of the United States revenue code.

(Formerly: Acts 1969, c.175, s.1.) As amended by Acts 1982, P.L.171, SEC.72.

IC 29-2-12-1.5

"Will" defined

Sec. 1.5. As used in this chapter, "will" includes a trust or other instrument governing the distribution of assets following an individual's death.

As added by P.L.266-1989, SEC.1.

IC 29-2-12-2

Heirs and beneficiaries; charitable or marital deduction or exemption

Sec. 2. Unless a decedent shall otherwise direct by will, the federal estate tax imposed upon decedent's estate, shall be apportioned among all of the persons, heirs and beneficiaries of decedent's estate who receive any property which is includable in the total gross estate of said decedent for the purpose of determining the amount of federal estate tax to be paid by said estate, Provided, That no part of the federal estate tax shall be apportioned against property which, in the absence of any apportionment whatsoever, whould qualify for any charitable, marital or other deduction or exemption, nor against

recipients of such property on account thereof.
(Formerly: Acts 1969, c.175, s.2.)

IC 29-2-12-3
Payment; recovery

Sec. 3. The personal representative of decedent's estate or the person paying the federal estate tax imposed upon said estate by said United States revenue code shall be entitled to recover such tax so paid proportionately from each such person, heir, or beneficiary as is hereinafter provided.
(Formerly: Acts 1969, c.175, s.3.)

IC 29-2-12-4
Method of apportionment

Sec. 4. The portion of the federal estate tax to be paid by each person, heir, or beneficiary of a decedent's estate shall be determined by dividing the value of the property received by the person, heir, or beneficiary, which is included in the net taxable estate, by the amount of the net taxable estate, and multiplying the result by the amount of the total federal estate tax paid.
(Formerly: Acts 1969, c.175, s.4.) As amended by P.L.36-2011, SEC.6.

IC 29-2-12-5
Liens

Sec. 5. That portion of said federal estate tax apportioned to each person, heir, or beneficiary receiving property as aforesaid, shall constitute a lien upon the property received by said person, heir or beneficiary until the amount thereof has been paid or reimbursed to the personal representative of decedent's estate or the person other than the personal representative who has paid such tax.
(Formerly: Acts 1969, c.175, s.5.)

IC 29-2-12-6
Deduction of amounts; action for recovery

Sec. 6. The personal representative of decedent's estate shall, prior to final distribution of the estate, deduct the amount of federal estate tax apportioned to each heir or beneficiary, if such personal representative is in possession of sufficient property distributable to such heir or beneficiary to pay such apportioned share of said federal estate tax. In the event that such personal representative does not have property of at least the value of such apportioned share of said federal estate tax, said personal representative may recover such apportioned share by an action in court.
(Formerly: Acts 1969, c.175, s.6.)

IC 29-2-12-7
Will providing for payment

Sec. 7. (a) This chapter shall not be applicable to estates where the decedent has, by will, provided for the payment of federal estate tax

either by the estate or by the residue of the estate.

(b) A specific direction in a will to pay federal estate tax from the testator's estate or the residue of the estate shall be considered a provision for payment under subsection (a).

(Formerly: Acts 1969, c.175, s.7.) As amended by Acts 1982, P.L.171, SEC.73; P.L.266-1989, SEC.2.

IC 29-2-13
Repealed

(Repealed by P.L.4-1988, SEC.18.)

IC 29-2-14

Chapter 14. Uniform Simultaneous Death Act

IC 29-2-14-1

Disposition of property; insufficient evidence of survivorship

Sec. 1. Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this chapter.

(Formerly: Acts 1941, c.49, s.1.) As amended by Acts 1982, P.L.171, SEC.74.

IC 29-2-14-2

Beneficiaries taking successively under another's disposition of property

Sec. 2. Where two (2) or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

(Formerly: Acts 1941, c.49, s.2.)

IC 29-2-14-3

Joint tenants; tenants by entirety

Sec. 3. Where there is no sufficient evidence that two (2) joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed one-half (1/2) as if one (1) had survived and one-half (1/2) as if the other had survived. If there are more than two (2) joint tenants and all of them have so died the property thus distributed shall be in the proportion that one (1) bears to the whole number of joint tenants.

(Formerly: Acts 1941, c.49, s.3.)

IC 29-2-14-4

Life or accident insurance

Sec. 4. Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

(Formerly: Acts 1941, c.49, s.4.)

IC 29-2-14-5

Prior death

Sec. 5. This chapter shall not apply to the distribution of the property of a person who has died before it takes effect.

(Formerly: Acts 1941, c.49, s.5.) As amended by Acts 1982, P.L.171, SEC.75.

IC 29-2-14-6
Wills, living trusts; deeds; insurance

Sec. 6. This chapter shall not apply in the case of wills, living trusts, deeds, or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this chapter.

(Formerly: Acts 1941, c.49, s.6.) As amended by Acts 1982, P.L.171, SEC.76.

IC 29-2-14-7
Uniformity of interpretation

Sec. 7. This chapter shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact it.

(Formerly: Acts 1941, c.49, s.7.) As amended by Acts 1982, P.L.171, SEC.77.

IC 29-2-14-8
Short title

Sec. 8. This chapter may be cited as the Uniform Simultaneous Death Act.

(Formerly: Acts 1941, c.49, s.8.) As amended by Acts 1982, P.L.171, SEC.78.

IC 29-2-15
Repealed

(Repealed by Acts 1972, P.L.11, SEC.14.)

IC 29-2-16
Repealed

(Repealed by P.L.147-2007, SEC.21.)

IC 29-2-16.1

Chapter 16.1. Revised Uniform Anatomical Gift Act

IC 29-2-16.1-1

Definitions

Sec. 1. The following definitions apply throughout this chapter:

(1) "Adult" means an individual at least eighteen (18) years of age.

(2) "Agent" means an individual who is:

(A) authorized to make health care decisions on behalf of another person by a health care power of attorney; or

(B) expressly authorized to make an anatomical gift on behalf of another person by a document signed by the person.

(3) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.

(4) "Bank" or "storage facility" means a facility licensed, accredited, or approved under the laws of any state for storage of human bodies or parts of human bodies.

(5) "Decedent":

(A) means a deceased individual whose body or body part is or may be the source of an anatomical gift; and

(B) includes:

(i) a stillborn infant; and

(ii) except as restricted by any other law, a fetus.

(6) "Disinterested witness" means an individual other than a spouse, child, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift or another adult who exhibited special care and concern for the individual. This term does not include a person to whom an anatomical gift could pass under section 10 of this chapter.

(7) "Document of gift" means a donor card or other record used to make an anatomical gift, including a statement or symbol on a driver's license, identification, or donor registry.

(8) "Donor" means an individual whose body or body part is the subject of an anatomical gift.

(9) "Donor registry" means:

(A) a data base maintained by:

(i) the bureau of motor vehicles under IC 9-24-17-9; or

(ii) the equivalent agency in another state;

(B) the Donate Life Indiana Registry maintained by the Indiana Donation Alliance Foundation; or

(C) a donor registry maintained in another state;

that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.

(10) "Driver's license" means a license or permit issued by the bureau of motor vehicles to operate a vehicle.

(11) "Eye bank" means a person that is licensed, accredited, or

regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(12) "Guardian" means an individual appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.

(13) "Hospital" means a facility licensed as a hospital under the laws of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

(14) "Identification card" means an identification card issued by the bureau of motor vehicles.

(15) "Minor" means an individual under eighteen (18) years of age.

(16) "Organ procurement organization" means a person designated by the Secretary of the United States Department of Health and Human Services as an organ procurement organization.

(17) "Parent" means an individual whose parental rights have not been terminated.

(18) "Part" means an organ, an eye, or tissue of a human being. The term does not mean a whole body.

(19) "Pathologist" means a physician:

(A) certified by the American Board of Pathology; or

(B) holding an unlimited license to practice medicine in Indiana and acting under the direction of a physician certified by the American Board of Pathology.

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

(21) "Physician" or "surgeon" means an individual authorized to practice medicine or osteopathy under the laws of any state.

(22) "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.

(23) "Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made an appropriate refusal.

(24) "Reasonably available" means:

(A) able to be contacted by a procurement organization without undue effort; and

(B) willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(25) "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.

(26) "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.

(27) "Refusal" means a record created under section 6 of this chapter that expressly states the intent to bar another person from making an anatomical gift of an individual's body or part.

(28) "Sign" means, with the present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(29) "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.

(30) "Technician" means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an eye enucleator.

(31) "Tissue" means a part of the human body other than an organ or an eye. The term does not include blood or other bodily fluids unless the blood or bodily fluids are donated for the purpose of research or education.

(32) "Tissue bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(33) "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of organ transplant patients.

As added by P.L.147-2007, SEC.12.

IC 29-2-16.1-2

Chapter application

Sec. 2. This chapter applies to:

(1) an anatomical gift;

(2) an amendment to an anatomical gift;

(3) a revocation of an anatomical gift; or

(4) a refusal to make an anatomical gift.

As added by P.L.147-2007, SEC.12.

IC 29-2-16.1-3

Persons who may make anatomical gifts during the lifetime of a donor

Sec. 3. Subject to section 7 of this chapter, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in section 4 of this chapter by:

(1) the donor, if the donor is an adult or if the donor is a minor and is:

(A) emancipated; or

(B) authorized under state law to apply for a driver's license

because the donor is at least sixteen (16) years of age;

(2) an agent of the donor, unless the health care power of attorney or other record prohibits the agent from making an anatomical gift;

(3) a parent of the donor, if the donor is not emancipated; or

(4) the donor's guardian.

As added by P.L.147-2007, SEC.12.

IC 29-2-16.1-4

Methods of making anatomical gifts

Sec. 4. (a) A donor may make an anatomical gift:

(1) by authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;

(2) in a will;

(3) during a terminal illness or injury of the donor, by any form of communication directed to at least two (2) adults, at least one (1) of whom is a disinterested witness; or

(4) as provided in subsection (b).

(b) A donor or other person authorized to make an anatomical gift under section 3 of this chapter may make a gift by:

(1) a donor card or other record signed by the donor or other person making the gift; or

(2) authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry.

(c) If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

(1) be witnessed by at least two (2) adults, at least one (1) of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) state that it has been signed and witnessed as provided in subdivision (1).

(d) Revocation, suspension, expiration, or cancellation of:

(1) a driver's license; or

(2) an identification card;

that indicates an anatomical gift does not invalidate the gift.

(e) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

As added by P.L.147-2007, SEC.12.

IC 29-2-16.1-5

Amendment or revocation of anatomical gifts

Sec. 5. (a) Subject to section 7 of this chapter, a donor or other person authorized to make an anatomical gift under section 3 of this chapter may amend or revoke an anatomical gift by:

(1) a record signed by:

(A) the donor;

(B) the other person; or

(C) subject to subsection (b), another individual acting at the direction of the donor or the other person authorized to make an anatomical gift if the donor or other person is physically unable to sign; or

(2) a later executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(b) A record signed under subsection (a)(1)(C) must:

(1) be witnessed by two (2) adults, at least one (1) of whom is a disinterested witness, who are witnesses at the request of the donor or the other person authorized to make an anatomical gift; and

(2) state that the record has been signed and witnessed as described in subdivision (1).

(c) Subject to section 7 of this chapter, a donor or other person authorized to make an anatomical gift under section 3 of this chapter may revoke an anatomical gift by the destruction or cancellation of the:

(1) document of gift; or

(2) portion of the document of gift used to make the gift;

with the intent to revoke the gift.

(d) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two (2) adults, at least one (1) of whom is a disinterested witness.

(e) A donor who makes an anatomical gift in a will may amend or revoke the gift as described in subsection (a).

As added by P.L.147-2007, SEC.12.

IC 29-2-16.1-6

Refusal of anatomical gifts

Sec. 6. (a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(1) a record signed by:

(A) the individual; or

(B) subject to subsection (b), another individual acting at the direction of the individual if the individual is physically unable to sign;

(2) the individual's will, including if the will is admitted to probate or invalidated after the individual's death; or

(3) any form of communication made by the individual during the individual's terminal illness or injury to at least two (2) adults, and one (1) of the adults must be a disinterested witness.

(b) A record signed under subsection (a)(1)(B) must:

(1) be witnessed by two (2) adults, at least one (1) of whom is a disinterested witness, who are witnesses at the request of the donor or the other person acting at the direction of the donor; and

(2) state that the record has been signed and witnessed as

described in subdivision (1).

(c) An individual who has made a refusal may amend or revoke the refusal:

(1) in the manner described in subsection (a);

(2) by subsequently making an anatomical gift under section 4 of this chapter that is inconsistent with the refusal; or

(3) by destroying or cancelling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(d) Except as provided in section 7(h) of this chapter, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars another person from making an anatomical gift of the individual's body or part.

As added by P.L.147-2007, SEC.12.

IC 29-2-16.1-7

Persons prohibited from making, amending, or revoking an anatomical gift; donor revocation of an anatomical gift; unemancipated minors

Sec. 7. (a) Except as otherwise provided in subsection (g) and subject to subsection (f), in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under section 4 of this chapter or an amendment to an anatomical gift of the donor's body or part under section 5 of this chapter.

(b) A donor's revocation of an anatomical gift of the donor's body or part under section 5 of this chapter is not a refusal and does not bar the person specified in section 3 or 8 of this chapter from making an anatomical gift of the donor's body or part under section 4 or 9 of this chapter.

(c) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under section 4 of this chapter or an amendment to an anatomical gift of the donor's body or part under section 5 of this chapter, another person may not make, amend, or revoke the gift of the donor's body or part under section 9 of this chapter.

(d) A revocation of an anatomical gift of a donor's body or part under section 5 of this chapter by a person other than the donor does not bar another person from making an anatomical gift of the body or part under section 4 or 9 of this chapter.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 3 of this chapter, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 3 of this chapter, an anatomical gift of a part for one (1) or more of

the purposes set forth in section 3 of this chapter is not a limitation on the making of an anatomical gift of the part for any of the other purposes of the donor or any other person under section 4 or 9 of this chapter.

(g) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(h) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

As added by P.L.147-2007, SEC.12. Amended by P.L.3-2008, SEC.226.

IC 29-2-16.1-8

Priority of persons authorized to make an anatomical gift of a decedent's body or part

Sec. 8. (a) Subject to subsections (b) and (c), unless barred by section 6 or 7 of this chapter, an anatomical gift of a decedent's body or part for the purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who are reasonably available, in the order of priority listed:

(1) An agent of the decedent at the time of death who could have made an anatomical gift under section 3(2) of this chapter immediately before the decedent's death.

(2) The spouse of the decedent.

(3) Adult children of the decedent.

(4) Parents of the decedent.

(5) Adult siblings of the decedent.

(6) Adult grandchildren of the decedent.

(7) Grandparents of the decedent.

(8) An adult who exhibited special care and concern for the decedent.

(9) A person acting as the guardian of the decedent at the time of death.

(10) Any other person having the authority to dispose of the decedent's body.

(b) If there is more than one (1) member of a class listed in subsection (a)(1), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(9) entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to whom the gift may pass under section 10 of this chapter knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(c) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (a) is reasonably available to make or to object to the making of an anatomical gift.

As added by P.L.147-2007, SEC.12.

IC 29-2-16.1-9
Anatomical gift documents; amendments; revocations

Sec. 9. (a) A person authorized to make an anatomical gift under section 8 of this chapter may make an anatomical gift by a document or may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(b) Subject to subsection (c), an anatomical gift by a person authorized under section 8 of this chapter may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one (1) member of the prior class is reasonably available, the gift made by a person authorized under section 8 of this chapter may be:

(1) amended only if a majority of the reasonably available members agree to the amending of the gift; or

(2) revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(c) A revocation under subsection (b) is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

As added by P.L.147-2007, SEC.12.

IC 29-2-16.1-10
Anatomical gift recipients; unnamed recipients; anatomical gift uses; rules; delivery of anatomical gift documents; amendment; revocation

Sec. 10. (a) An anatomical gift may be made to the following persons named in the document of gift:

(1) A hospital.

(2) An accredited medical school, dental school, college, or university.

(3) An organ procurement organization.

(4) An appropriate person for research or education.

(5) Subject to subsection (b), an individual designated by the person making the anatomical gift if the individual is the recipient of the part.

(6) An eye bank.

(7) A tissue bank.

(b) If an anatomical gift to an individual under subsection (a)(5) cannot be transplanted into the individual, the part passes in accordance with subsection (g) in the absence of an express, contrary indication by the person making the anatomical gift.

(c) If an anatomical gift of one (1) or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (a) but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(1) If the part is an eye and the gift is for the purpose of:

(A) transplantation;

(B) therapy;

(C) education; or

(D) research;

the gift passes to the appropriate eye bank that has an agreement to recover donated eyes from patients who die within the hospital. The eye bank is considered to be the custodian of the donated eye.

(2) If the part is tissue and the gift is for the purpose of:

(A) transplantation; or

(B) therapy;

the gift passes to the appropriate tissue bank that has an agreement to recover donated tissue from patients that die within the hospital. The tissue bank is considered to be the custodian of the donated tissue.

(3) If the part is an organ and the gift is for the purpose of:

(A) transplantation; or

(B) therapy;

the gift passes to the appropriate organ procurement organization that has an agreement to recover donated organs from patients who die within the hospital. The procurement organization is considered to be the custodian of the donated organs.

(4) If the part is an organ, an eye, or tissue from a patient who dies within a hospital and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization that has an agreement to recover donated organs, tissue, or eyes from patients who die within the hospital.

(d) For the purpose of subsection (c), if there is more than one (1) purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(e) If an anatomical gift of one (1) or more specific parts is made in a document of gift that does not name a person described in subsection (a) and does not identify the purpose of the gift, the gift may be used only for transplantation, research, or therapy, and the gift passes in accordance with subsection (g).

(f) If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor", "organ donor", or "body donor", or by a symbol or statement of similar import, the gift may be used only for transplantation, research, or therapy, and the gift passes in accordance with subsection (g).

(g) For purposes of subsections (b), (e), and (f), the following rules apply:

(1) If the part is an eye, the gift passes to the appropriate eye bank.

(2) If the part is tissue, the gift passes to the appropriate tissue

bank.

(3) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(h) An anatomical gift of an organ for transplantation, therapy, or research, other than an anatomical gift under subsection (a)(2), passes to the organ procurement organization as custodian of the organ.

(i) If an anatomical gift does not pass pursuant to subsections (a) through (h) or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(j) A person may not accept an anatomical gift if the person knows that the:

(1) gift was not effectively made under section 4 or 9 of this chapter; or

(2) decedent made a refusal under section 6 of this chapter that was not revoked.

(k) For purposes of subsection (j), if a person knows that an anatomical gift was made on a document of gift, the person is considered to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(l) If the gift is made by the donor to a specified donee, the will, card, or other document, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death. Delivery is not necessary to the validity of the gift. The will, card, or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

(m) If the will, card, or other document, or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:

(1) the execution and delivery to the donee of a signed statement;

(2) an oral statement made in the presence of two (2) persons and communicated to the donee;

(3) a statement during a terminal illness or injury addressed to an attending physician and communicated to the donee; or

(4) a signed card or document found on the decedent's person or in the decedent's effects.

(n) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (m) or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

(o) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection (m).

(p) Except as otherwise provided in subsection (a)(2), this chapter

does not affect the allocation of organs for transplantation or therapy.
As added by P.L.147-2007, SEC.12.

IC 29-2-16.1-11
Searches for documents of gift or refusal

Sec. 11. (a) The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death in a hospital for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

(1) An organ procurement organization.
(2) A tissue bank.
(3) An eye bank.
(4) If no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.

(b) If a document of gift or a refusal to make an anatomical gift is located by the search required by subsection (a) and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

(c) A person is not subject to civil liability for failing to discharge the duties imposed by this section but may be subject to criminal liability or administrative sanctions.
As added by P.L.147-2007, SEC.12.

IC 29-2-16.1-12
Petitions to determine anatomical gift or revocation of anatomical gift

Sec. 12. (a) The individual's attending physician, or, if none, the:

(1) physician that certifies the individual's death;
(2) hospital where the individual is admitted;
(3) hospital where the individual's remains are being kept; or
(4) individual identified in section 8(a) of this chapter;

may petition a court with probate jurisdiction in the county where the remains of the individual who is the subject of the petition are located, or the county in which the individual died, for the information referred to in subsection (b).

(b) A person identified in subsection (a) may petition the court with probate jurisdiction specified in subsection (a) to determine whether the individual:

(1) made a written anatomical gift under section 4 of this chapter or IC 9-24-17; or
(2) made a written revocation of an anatomical gift under section 5 of this chapter or under IC 9-24-17.

(c) If the court with probate jurisdiction determines under subsection (b) that the individual made a written anatomical gift that was not subsequently revoked in writing by the individual, the court shall order that the anatomical gift of an organ, tissue, or an eye be recovered.

(d) The court with probate jurisdiction may modify or waive notice and a hearing if the court determines that a delay would have a serious adverse effect on:

(1) the medical viability of the individual; or

(2) the viability of the individual's anatomical gift of an organ, tissue, or an eye.

As added by P.L.147-2007, SEC.12.

IC 29-2-16.1-13

Organ or tissue donor queries for hospital patients

Sec. 13. (a) As used in this section:

(1) "Administrator" means a hospital administrator or a hospital administrator's designee.

(2) "Gift" means a gift of all or any part of the human body made under this chapter.

(3) "Representative" means a person who is:

(A) authorized under section 8 of this chapter to make a gift on behalf of a decedent; and

(B) available at the time of the decedent's death when members of a prior class under section 8 of this chapter are unavailable.

(b) An administrator of each hospital or the administrator's designee may ask each patient who is at least eighteen (18) years of age if the patient is an organ or a tissue donor or if the patient desires to become an organ or a tissue donor.

(c) The governing board of each hospital shall adopt procedures to determine under what circumstances an administrator or an administrator's designee may ask a patient if the patient is an organ or a tissue donor or if the patient desires to become an organ or a tissue donor.

(d) The administrator shall inform the representative of the procedures available under this chapter for making a gift whenever:

(1) an individual dies in a hospital;

(2) the hospital has not been notified that a gift has been authorized under section 4 of this chapter; and

(3) a procurement organization determines that the individual's body may be suitable of yielding a gift.

(e) If:

(1) an individual makes an anatomical gift on the individual's driver's license or identification card under IC 9-24-17; and

(2) the individual dies in a hospital;

the person in possession of the individual's driver's license or identification card shall immediately produce the driver's license or identification card for examination upon request, as provided in section 10(l) of this chapter.

(f) A gift made in response to information provided under this section must be signed by the donor or made by the donor's telegraphic, recorded telephonic, or other recorded message.

(g) When a representative is informed under this section about the procedures available for making a gift, the fact that the representative

was so informed must be noted in the decedent's medical record.

(h) A person who fails to discharge the duties imposed by this section is not subject to civil liability but may be subject to criminal liability or administrative sanctions.

As added by P.L.147-2007, SEC.12. Amended by P.L.1-2010, SEC.114.

IC 29-2-16.1-14

Documents of gift

Sec. 14. (a) A document of gift need not be delivered during the donor's lifetime to be effective.

(b) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under section 10 of this chapter.

As added by P.L.147-2007, SEC.12.

IC 29-2-16.1-15

Hospital referrals to procurement organizations; record searches; examination of medical suitability; rights of person to whom a part passes

Sec. 15. (a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of:

(1) the bureau of motor vehicles;

(2) the equivalent agency to the bureau of motor vehicles in another state;

(3) the Indiana donor registry; and

(4) any other registry that the organization knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) A procurement organization must be allowed reasonable access to information in the records of the bureau of motor vehicles to ascertain whether an individual at or near death is a donor.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(d) Unless prohibited by law other than this chapter, at any time after a donor's death, the person to whom a part passes under section 10 of this chapter may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended

purpose.

(e) Unless prohibited by law other than this chapter, an examination under subsection (c) or (d) may include an examination of all medical and dental records of the donor or prospective donor.

(f) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) Upon referral by a hospital under subsection (a), a procurement organization shall make a reasonable search for any person listed in section 8 of this chapter having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Subject to section 10(i) of this chapter, IC 36-2-14-21, and IC 36-2-14-22.6, the rights of the person to whom a part passes under section 10 of this chapter are superior to the rights of all others with respect to the part, including a part from a person whose death within a hospital is under investigation by a coroner. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this chapter, a person who accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under section 10 of this chapter, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(i) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

(j) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

As added by P.L.147-2007, SEC.12.

IC 29-2-16.1-16

Hospital agreements with procurement organizations

Sec. 16. Each hospital in Indiana shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

As added by P.L.147-2007, SEC.12.

IC 29-2-16.1-17

Liability; immunity

Sec. 17. (a) A person who acts in accordance with this chapter is not liable for the act in a civil action or administrative proceeding.

(b) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(c) In determining whether an anatomical gift has been made, amended, or revoked under this chapter, a person may rely upon representations of an individual listed in section 8(a)(2), 8(a)(3), 8(a)(4), 8(a)(5), 8(a)(6), 8(a)(7), or 8(a)(8) of this chapter relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

(d) A health care provider is immune from civil liability for following a donor's unrevoked anatomical gift directive under this chapter or IC 9-24-17.

(e) A hospital or a recovery agency is immune from civil liability for determining in good faith and in compliance with this section that:

(1) an individual made a written anatomical gift; or

(2) an individual subsequently made a written revocation of an anatomical gift.

(f) A person who, in good faith reliance upon a will, card, or other document of gift, and without actual notice of the amendment, revocation, or invalidity of the will, card, or document:

(1) takes possession of a decedent's body or performs or causes to be performed surgical operations upon a decedent's body; or

(2) removes or causes to be removed organs, tissues, or other parts from a decedent's body;

is not liable in damages in any civil action brought against the donor for that act.

As added by P.L.147-2007, SEC.12.

IC 29-2-16.1-18

Validity of a document of gift

Sec. 18. (a) A document of gift is valid if executed in accordance with:

(1) this chapter;

(2) the laws of the state or country where it was executed; or

(3) the laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(b) If a document of gift is valid under this chapter, the law of this state governs the interpretation of the document of gift.

(c) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

As added by P.L.147-2007, SEC.12.

IC 29-2-16.1-19

Bureau of motor vehicles cooperation with donor registries; donor registry duties; personal information on donor registries

Sec. 19. (a) The bureau of motor vehicles shall cooperate with a person that administers any donor registry that this state establishes,

contracts for, or recognizes for the purpose of transferring to the donor registry all relevant information regarding a donor's making, amendment to, or revocation of an anatomical gift.

(b) A donor registry must:

(1) allow a donor or other person authorized under section 4 of this chapter to include on the donor registry a statement or symbol that the donor has made, amended, or revoked an anatomical gift;

(2) be accessible to a procurement organization and to coroners to allow it to obtain relevant information on the donor registry to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift; and

(3) be accessible for purposes of subdivisions (1) and (2) seven (7) days a week on a twenty-four (24) hour basis.

(c) Personally identifiable information on a donor registry about a donor or prospective donor may not be used or disclosed without the express consent of the donor, prospective donor, or person that made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift.

(d) This section does not prohibit any person from creating or maintaining a donor registry that is not established by or under contract with the state. Any such registry must comply with subsections (b) and (c).

As added by P.L.147-2007, SEC.12.

IC 29-2-16.1-20

Declarations and advance health care directives; procurement organizations

Sec. 20. (a) As used in this section:

(1) "Advance health care directive" means a power of attorney for health care or a record signed by a prospective donor containing the prospective donor's direction concerning a health care decision for the prospective donor.

(2) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

(3) "Health care decision" means any decision made regarding the health care of the prospective donor.

(b) If a prospective donor has a declaration or advance health care directive, unless the directive expressly states the contrary, hospitals must use measures necessary to allow a procurement agency to determine the medical suitability of an organ for transplantation or therapy by insuring that life support is not withdrawn from the prospective donor before consultation with the appropriate procurement agency to determine medical potential for donation. The procurement organization shall make every effort to determine donor potential within approximately two (2) hours from the time the procurement organization is contacted by the hospital. A hospital

may, in accordance with a donor's declaration or advance health care directive, withdraw life support from the prospective donor if the procurement organization has not made a determination of donor potential within six (6) hours from the time the procurement organization is contacted by the hospital.
As added by P.L.147-2007, SEC.12.

IC 29-2-16.1-21
Coroner cooperation with procurement organizations; postmortem examinations; removal of a part of organ from a decedent

Sec. 21. (a) A coroner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, education, or training.

(b) If a coroner receives notice from a procurement organization that an anatomical gift might be available or was made with respect to a decedent whose body is under the jurisdiction of the coroner and a postmortem examination is going to be performed, unless the coroner denies recovery in accordance with IC 36-2-14-22.6(f), the coroner or designee shall, when practicable, conduct a postmortem examination of the body or the part in a manner and within a period compatible with its preservation for the purposes of the gift. If a coroner conducts a postmortem examination outside of a compatible period, the coroner must document why examination occurred outside of a compatible period. It is considered sufficient documentation if the coroner documents that additional time was necessary to conduct an adequate medicolegal examination.

(c) A part may not be removed from the body of a decedent under the jurisdiction of a coroner for transplantation, therapy, research, or education unless the part is the subject of an anatomical gift. The body of a decedent under the jurisdiction of the coroner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection does not preclude a coroner or pathologist from performing the medicolegal investigation upon the body or parts of a decedent under the jurisdiction of the coroner or from using the body or parts of a decedent under the jurisdiction of the coroner for the purposes of research, education, or training required by the coroner or pathologist.
As added by P.L.147-2007, SEC.12.

IC 29-2-17
Repealed

(Repealed by P.L.149-1991, SEC.6.)

IC 29-2-18

Chapter 18. Platting of Certain Property

IC 29-2-18-1

Platting; town lots

Sec. 1. Whenever any lands are ordered by any court to be sold, on the application of any guardian, executor or administrator, the court ordering such sale may, in their discretion, authorize such guardian, executor or administrator, previous to such sale, to lay out such lands, or a portion thereof, in town lots, and to make the necessary dedication to public use of streets, alleys and squares therein; but before any sale of such lots shall take place, and before a plat of such lots, streets, alleys and squares shall be recorded in the recorder's office–the same, with a plat thereof, shall be reported to such court for approval or rejection. If confirmed by the court, such plat shall be recorded as other plats of like nature are recorded, and shall have the same validity in law as if made by a legal proprietor of such lands who is eighteen (18) years of age or over.

(Formerly: Acts 1853, c.49, s.1; Acts 1973, P.L.287, SEC.15.)

IC 29-2-18-2

Land not for sale

Sec. 2. Whenever it shall be manifestly to the interest of a protected person, the court may, under the restrictions provided in section 1 of this chapter, authorize the guardian of the protected person to lay out any portion of the estate in the manner and with the legal effect provided in section 1, as though the land was not designed for sale.

(Formerly: Acts 1853, c.49, s.2.) As amended by Acts 1982, P.L.171, SEC.85; P.L.33-1989, SEC.55.

IC 29-2-19

Chapter 19. Funeral Planning Declaration

IC 29-2-19-1

"Declarant"

Sec. 1. As used in this chapter, "declarant" means an individual who signs a funeral planning declaration executed under this chapter.

As added by P.L.143-2009, SEC.14.

IC 29-2-19-2

"Declaration"

Sec. 2. As used in this chapter, "declaration" means a funeral planning declaration executed under this chapter.

As added by P.L.143-2009, SEC.14.

IC 29-2-19-3

"Designee"

Sec. 3. As used in this chapter, "designee" means an individual directed by the terms of a declaration to:

(1) carry out the funeral plan of the declarant as set forth in the declaration; or

(2) make any arrangements concerning the disposition of the declarant's remains, funeral services, merchandise, and ceremonies that are delegated to the designee in the declaration.

As added by P.L.143-2009, SEC.14.

IC 29-2-19-4

"Disposition"

Sec. 4. As used in this chapter, "disposition" has the meaning set forth in IC 25-15-2-7.

As added by P.L.143-2009, SEC.14.

IC 29-2-19-5

"Funeral services"

Sec. 5. As used in this chapter, "funeral services" has the meaning set forth in IC 25-15-2-17.

As added by P.L.143-2009, SEC.14.

IC 29-2-19-6

"Grave memorial"

Sec. 6. As used in this chapter, "grave memorial" has the meaning set forth in IC 14-21-2-2.

As added by P.L.143-2009, SEC.14.

IC 29-2-19-7

"Merchandise"

Sec. 7. As used in this chapter, "merchandise" refers to personal property described in IC 30-2-13-8.

As added by P.L.143-2009, SEC.14.

IC 29-2-19-8
Funeral planning declaration; requirements

Sec. 8. (a) A person who is of sound mind and is at least eighteen (18) years of age may execute a funeral planning declaration substantially in the form set forth in section 13 of this chapter. A declaration may not be included in a will, a power of attorney, or a similar document.

(b) A declaration must meet the following conditions:

(1) Be voluntary.

(2) Be in writing.

(3) Direct an individual to serve as the declarant's designee.

(4) Be signed by the person making the declaration or by another person in the declarant's presence and at the direction of the declarant.

(5) Be dated.

(6) Be signed in the presence of at least two (2) competent witnesses who are at least eighteen (18) years of age.

(c) The following may not be a witness to a declaration under subsection (b)(6):

(1) The person who signed the declaration on behalf of and at the direction of the declarant.

(2) A parent, spouse, or child of the declarant.

(3) An individual who is entitled to any part of the declarant's estate whether the declarant dies testate or intestate, including an individual who could take from the declarant's estate if the declarant's will is declared invalid.

For purposes of subdivision (3), a person is not considered to be entitled to any part of the declarant's estate solely by virtue of being nominated as a personal representative or as the attorney for the estate in the declarant's will.

(d) A declaration is not binding upon a funeral home, a cemetery, any other person engaged in the business of providing funeral services, any other person selling merchandise or grave markers, or any other person providing a service or other property subject to the declaration until the person receives consideration for the service, merchandise, or other property. If any provision of a declaration conflicts with:

(1) IC 23-14-31;

(2) IC 23-14-33; or

(3) IC 25-15;

the provision contained in the declaration controls.

(e) Except as provided in subsection (f), a declarant may not direct an individual who is:

(1) a provider of funeral services;

(2) responsible for any aspect of the disposition of the declarant's remains; or

(3) associated with any entity that is responsible for providing funeral services or disposing of the declarant's remains;

to be the declarant's designee in a declaration executed under this chapter.

(f) Subsection (e) does not apply to an individual who is related to the declarant by birth, marriage, or adoption.
As added by P.L.143-2009, SEC.14.

IC 29-2-19-9
Funeral planning declaration; declarant's preferences

Sec. 9. A declaration may specify the declarant's preferences concerning any of the following:

(1) The disposition of the declarant's remains after the declarant's death.
(2) Who may direct the disposition of the declarant's remains.
(3) Who may provide funeral services after the declarant's death.
(4) The ceremonial arrangements to be performed after the declarant's death.
(5) The merchandise that the declarant prefers for the disposition of the declarant's remains and any ceremonial arrangements.
(6) Who may direct the ceremonial arrangements to be performed after the declarant's death.
(7) A grave memorial.

As added by P.L.143-2009, SEC.14.

IC 29-2-19-10
Conflict resolution

Sec. 10. The provisions of a declarant's most recent declaration prevail over any other document executed by the declarant concerning any preferences described in section 9 of this chapter. However, this section may not be construed to invalidate a power of attorney executed under IC 30-5-5 or an appointment of a health care representative under IC 16-36-1 with respect to any power or duty belonging to the attorney in fact or health care representative that is not related to a preference described in section 9 of this chapter.
As added by P.L.143-2009, SEC.14.

IC 29-2-19-11
Immunity for good faith reliance

Sec. 11. (a) A person who acts in good faith reliance on a declaration is immune from liability to the same extent as if the person had dealt directly with the declarant and the declarant had been a competent and living person.

(b) A person who deals with a declaration may presume, in the absence of actual knowledge to the contrary, that:

(1) the declaration was validly executed; and
(2) the declarant was competent at the time the declaration was executed.

(c) The directions of a declarant expressed in a declaration are binding as if the declarant were alive and competent.
As added by P.L.143-2009, SEC.14.

IC 29-2-19-12

Funeral planning declaration; form required; additional directions permitted

Sec. 12. A declaration must be substantially in the form set forth in section 13 of this chapter, but the declaration may include additional, specific directions. The invalidity of any additional, specific direction does not affect the validity of the declaration.

As added by P.L.143-2009, SEC.14.

IC 29-2-19-13

Form of funeral planning declaration

Sec. 13. The following is the funeral planning declaration form:

FUNERAL PLANNING DECLARATION

Declaration made this _____ day of _____ (month, year). I, _____, being at least eighteen (18) years of age and of sound mind, willfully and voluntarily make known my instructions concerning funeral services, ceremonies, and the disposition of my remains after my death.

I hereby declare and direct that after my death _____(name of designee) shall, as my designee, carry out the instructions that are set forth in this declaration. If my designee is unwilling or unable to act, I nominate _____ as an alternate designee.

I hereby declare and direct that after my death the following actions be taken (indicate your choice by initialing or making your mark before signing this declaration):

(1) My body shall be:

(A) _____ Buried. I direct that my body be buried at _____.

(B) _____ Cremated. I direct that my cremated remains be disposed of as follows:

_____

_____

(C) _____ Entombed. I direct that my body be entombed at _____.

(D) _____ I intentionally make no decision concerning the disposition of my body, leaving the decision to my designee (as named above).

(2) My arrangements shall be made as follows:

(A) I direct that funeral services be obtained from:

_____

_____

(B) I direct that the following ceremonial arrangements be made:

_____

_____

(C) I direct the selection of a grave memorial that:

_____
___
_____
___

(D) I direct that the following merchandise and other property be selected for the disposition of my remains, my funeral or other ceremonial arrangements:

_____
_____
___
_____
___
_____
___

(E) _____I direct that my designee (as named above) make all arrangements concerning ceremonies and other funeral services.

(3) In addition to the instructions listed above, I request the following:

_____
_____

(4) If it is impossible to make an arrangement specified in subdivisions (1) through (3) because:

(A) a funeral home or other service provider is out of business, impossible to locate, or otherwise unable to provide the specified service; or

(B) the specified arrangement is impossible, impractical, or illegal;

I direct my designee to make alternate arrangements to the best of the designee's ability.

It is my intention that this declaration be honored by my family and others as the final expression of my intentions concerning my funeral and the disposition of my body after my death. I understand the full import of this declaration.

Signed _____

_____
City, County, and State of Residence

The declarant is personally known to me, and I believe the declarant to be of sound mind. I did not sign the declarant's signature above for or at the direction of the declarant. I am not a parent, spouse, or child of the declarant. I am not entitled to any part of the declarant's estate. I am competent and at least eighteen (18) years of age.

Witness _____ Date _____

Witness _____ Date _____

As added by P.L.143-2009, SEC.14.

IC 29-2-19-14

Revocation

Sec. 14. A declaration may be revoked by the declarant in writing

or by burning, tearing, canceling, obliterating, or destroying the declaration with the intent to revoke the declaration.
As added by P.L.143-2009, SEC.14.

IC 29-2-19-15
Effect of dissolution, annulment, or separation

Sec. 15. Except as otherwise expressly provided in a declaration, a subsequent:

(1) dissolution of marriage;
(2) annulment of marriage;
(3) legal separation of the declarant and the declarant's spouse; or
(4) court determination that the declarant and spouse were physically and emotionally separated at the time of death and the separation was for an extended time that clearly demonstrates an absence of due affection, trust, and regard for the declarant;

automatically revokes a delegation of authority in a declaration to the declarant's spouse to direct the disposition of the declarant's body or to make all arrangements concerning funeral services and other ceremonies after the declarant's death.
As added by P.L.143-2009, SEC.14. Amended by P.L.34-2011, SEC.6.

IC 29-2-19-16
Law governing a designee who is unable or unwilling to serve

Sec. 16. Except as otherwise provided in a declaration, section 17 of this chapter controls if a person to whom a declaration delegates the authority to make arrangements after a declarant's death is unable or unwilling to serve.
As added by P.L.143-2009, SEC.14.

IC 29-2-19-17
Priority among individuals as to right to control disposition of decedent's body and make other arrangements

Sec. 17. The right to control the disposition of a decedent's body, to make arrangements for funeral services, and to make other ceremonial arrangements after an individual's death devolves on the following, in the priority listed:

(1) A person:
    (A) granted the authority to serve in a funeral planning declaration executed by the decedent under this chapter; or
    (B) named in a United States Department of Defense form "Record of Emergency Data" (DD Form 93) or a successor form adopted by the United States Department of Defense, if the decedent died while serving in any branch of the United States Armed Forces (as defined in 10 U.S.C. 1481) and completed the form.
(2) An individual specifically granted the authority in a power of attorney or a health care power of attorney executed by the

decedent under IC 30-5-5-16.
(3) The decedent's surviving spouse.
(4) A surviving adult child of the decedent or, if more than one (1) adult child is surviving, the majority of the other adult children. However, less than half of the surviving adult children have the rights under this subdivision if the adult children have used reasonable efforts to notify the other surviving adult children of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving adult children.
(5) The surviving parent or parents of the decedent. If one (1) of the parents is absent, the parent who is present has the rights under this subdivision if the parent who is present has used reasonable efforts to notify the absent parent.
(6) The decedent's surviving sibling or, if more than one (1) sibling is surviving, the majority of the surviving siblings. However, less than half of the surviving siblings have the rights under this subdivision if the siblings have used reasonable efforts to notify the other surviving siblings of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving siblings.
(7) An individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent or, if more than one (1) individual of the same degree survives, the majority of those who are of the same degree of kinship. However, less than half of the individuals who are of the same degree of kinship have the rights under this subdivision if they have used reasonable efforts to notify the other individuals who are of the same degree of kinship of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the individuals who are of the same degree of kinship.
(8) If none of the persons described in subdivisions (1) through (7) are available, any other person willing to act and arrange for the final disposition of the decedent's remains, including a funeral home that:
(A) has a valid prepaid funeral plan executed under IC 30-2-13 that makes arrangements for the disposition of the decedent's remains; and
(B) attests in writing that a good faith effort has been made to contact any living individuals described in subdivisions (1) through (7).

As added by P.L.143-2009, SEC.14. Amended by P.L.101-2010, SEC.4; P.L.34-2011, SEC.7; P.L.6-2012, SEC.201.

IC 29-2-19-18
Reliance on out-of-state declarations

Sec. 18. A person in Indiana may rely on a declaration or similar instrument that was executed in another state and that complies with the requirements of this chapter to the extent that an action requested by the declarant in the declaration or similar instrument does not

violate any federal or Indiana law or any ordinance or regulation of a political subdivision.
As added by P.L.143-2009, SEC.14.

IC 29-2-19-19
Actions to contest the validity of a funeral planning declaration

Sec. 19. An action to contest the validity of any declaration made under this chapter must be:

(1) brought in the same manner as an action to contest the validity of a will under IC 29-1-7;

(2) filed in the circuit court of the county in which the declarant's remains are located;

(3) expedited on the docket of the circuit court as a matter requiring priority; and

(4) accompanied by a bond, cash deposit, or other surety sufficient to guarantee that the hospital, nursing home, funeral home, or other institution holding the declarant's remains is compensated for the storage charges incurred while the action is pending.

As added by P.L.143-2009, SEC.14.

IC 29-3

ARTICLE 3. GUARDIANSHIPS AND PROTECTIVE PROCEEDINGS

IC 29-3-1

Chapter 1. Definitions

IC 29-3-1-1

Application of definitions

Sec. 1. The definitions in this chapter apply throughout and their application is limited to this article.

As added by P.L.169-1988, SEC.1.

IC 29-3-1-2

"Claim"

Sec. 2. "Claim" means, with respect to an incapacitated person or a minor, any liability of the incapacitated person or minor, whether arising in contract, tort, or otherwise, and any liability against an incapacitated person's or a minor's property that arises before, at, or after the appointment of a guardian, including expenses of administration.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.56.

IC 29-3-1-3

"Court"

Sec. 3. "Court" means the court having probate jurisdiction and, where the context permits, the court having venue of the guardianship.

As added by P.L.169-1988, SEC.1.

IC 29-3-1-4

Repealed

(Repealed by P.L.264-1989, SEC.14.)

IC 29-3-1-5

"Durable power of attorney"

Sec. 5. "Durable power of attorney" means a power of attorney that:

(1) is executed by an incapacitated person before that person became an incapacitated person;

(2) provides that the power survives the person's incompetence; and

(3) is executed in accordance with the law in effect in the jurisdiction in which it was executed on the date it was executed.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.57.

IC 29-3-1-6

"Guardian"

Sec. 6. "Guardian" means a person who is a fiduciary and is appointed by a court to be a guardian or conservator responsible as the court may direct for the person or the property of an incapacitated person or a minor. The term includes a temporary guardian, a limited guardian, and a successor guardian but excludes one who is only a guardian ad litem. The terms guardian and conservator are interchangeable.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.58.

IC 29-3-1-7

"Guardianship property"

Sec. 7. "Guardianship property" means the property of an incapacitated person or a minor for which a guardian is responsible.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.59.

IC 29-3-1-7.5

"Incapacitated person"

Sec. 7.5. "Incapacitated person" means an individual who:

(1) cannot be located upon reasonable inquiry;

(2) is unable:

(A) to manage in whole or in part the individual's property;

(B) to provide self-care; or

(C) both;

because of insanity, mental illness, mental deficiency, physical illness, infirmity, habitual drunkenness, excessive use of drugs, incarceration, confinement, detention, duress, fraud, undue influence of others on the individual, or other incapacity; or

(3) has a developmental disability (as defined in IC 12-7-2-61).

As added by P.L.33-1989, SEC.60. Amended by P.L.2-1992, SEC.790.

IC 29-3-1-8

Repealed

(Repealed by P.L.264-1989, SEC.14.)

IC 29-3-1-9

"Letters"

Sec. 9. "Letters" means letters of guardianship.

As added by P.L.169-1988, SEC.1.

IC 29-3-1-10

"Minor"

Sec. 10. "Minor" means an individual who is less than eighteen (18) years of age and who is not an emancipated minor.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.2.

IC 29-3-1-11
"Parent"

Sec. 11. "Parent" means a biological or adoptive parent. The term does not include a stepparent, foster parent, or grandparent.

As added by P.L.169-1988, SEC.1.

IC 29-3-1-12
"Person"

Sec. 12. "Person" means an individual, an organization, an association, a nonprofit corporation, a corporation for profit, a limited liability company, a partnership, a financial institution, a trust, the division of family resources or other governmental entity, or other legal entity.

As added by P.L.169-1988, SEC.1. Amended by P.L.2-1992, SEC.791; P.L.8-1993, SEC.461; P.L.145-2006, SEC.168.

IC 29-3-1-13
"Protected person"

Sec. 13. "Protected person" means an individual for whom a guardian has been appointed or with respect to whom a protective order has been issued.

As added by P.L.169-1988, SEC.1.

IC 29-3-1-14
"Protective proceeding"

Sec. 14. "Protective proceeding" means a proceeding for a protective order under IC 29-3-4.

As added by P.L.169-1988, SEC.1.

IC 29-3-1-15
"Support"

Sec. 15. "Support" means care, maintenance, and education or training, if appropriate.

As added by P.L.169-1988, SEC.1.

IC 29-3-1-15.5
"Volunteer advocate for incapacitated adults"

Sec. 15.5. "Volunteer advocate for incapacitated adults" means an individual who:

(1) is a volunteer;

(2) has completed a guardian training program approved by a court;

(3) is supervised by a volunteer advocates for incapacitated adults program that is appointed by a court to serve as a guardian for an incapacitated person who is at least eighteen (18) years of age; and

(4) provides reports and makes recommendations to a court.

As added by P.L.11-2006, SEC.1. Amended by P.L.72-2010, SEC.1.

IC 29-3-1-16

"Volunteer advocate for seniors"

Sec. 16. "Volunteer advocate for seniors" means an individual who:

(1) is a volunteer;

(2) has completed a guardian training program approved by a court;

(3) is supervised by a volunteer advocates for seniors program that is appointed by a court to serve as a guardian for an incapacitated person who is at least fifty-five (55) years of age; and

(4) provides reports and makes recommendations to a court.

As added by P.L.41-2004, SEC.1. Amended by P.L.72-2010, SEC.2.

IC 29-3-1-17

"Volunteer advocates for incapacitated adults program"

Sec. 17. "Volunteer advocates for incapacitated adults program" means:

(1) an Indiana nonprofit or municipal corporation;

(2) a program of an Indiana nonprofit or municipal corporation; or

(3) a program operated by a county or court;

that is appointed by a court to serve as a guardian for an incapacitated person who is at least eighteen (18) years of age and trains and supervises volunteers in a court approved guardian program for incapacitated adults.

As added by P.L.72-2010, SEC.3.

IC 29-3-1-18

"Volunteer advocates for seniors program"

Sec. 18. "Volunteer advocates for seniors program" means:

(1) an Indiana nonprofit or municipal corporation;

(2) a program of an Indiana nonprofit or municipal corporation; or

(3) a program operated by a county or court;

that is appointed by a court to serve as a guardian for an incapacitated person who is at least fifty-five (55) years of age and trains and supervises volunteers in a court approved guardian program for incapacitated persons who are at least fifty-five (55) years of age.

As added by P.L.72-2010, SEC.4.

IC 29-3-2

Chapter 2. General Provisions

IC 29-3-2-0.1

Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to sections 3 and 4 of this chapter by P.L.118-1997 do not apply to an individual whose death occurs before July 1, 1997.

(2) The amendments made to section 1 of this chapter by P.L.217-2001 apply to all proceedings pending under IC 31-34 on July 1, 2001, and to all proceedings commenced under IC 31-34 after June 30, 2001.

As added by P.L.220-2011, SEC.480.

IC 29-3-2-0.2

Application of article; effect of amendments to certain other statutes

Sec. 0.2. (a) As used in this section, "affected statutes" refers to the following:

(1) IC 16-8-12-7 (repealed, now codified at IC 16-36-1-8).

(2) IC 29-1-7.5-2.

(3) IC 33-16-2-2 (repealed, now codified at IC 33-42-2-2).

(4) IC 33-19-3-2 (repealed, now codified at IC 33-37-3-2).

(5) IC 35-34-2-3.

(6) IC 35-37-1-5.

(b) This article and the amendments made by P.L.169-1988 to the affected statutes apply to guardianships in existence on June 30, 1989, except to the extent that application of this article and the amendments made by P.L.169-1988 to the affected statutes would contravene any vested or contractual rights in effect on June 30, 1989, in which case the law in effect before July 1, 1989, prevails.

As added by P.L.220-2011, SEC.481.

IC 29-3-2-1

Application of article; jurisdiction of courts

Sec. 1. (a) This article applies to the following:

(1) The business affairs, physical person, and property of every incapacitated person and minor residing in Indiana.

(2) Property located in Indiana of every incapacitated person and minor residing outside Indiana.

(3) Property of every incapacitated person or minor, regardless of where the property is located, coming into the control of a fiduciary who is subject to the laws of Indiana.

(b) Except as provided in subsections (c) through (e), the court has exclusive original jurisdiction with respect to an individual who is not an adult (as defined in IC 29-3.5-1-2(1)) over all matters concerning the following:

(1) Guardians.

(2) Protective proceedings under IC 29-3-4.

In the case of an adult (as defined in IC 29-3.5-1-2(1)), a court must establish jurisdiction concerning a guardianship or a protective proceeding in accordance with IC 29-3.5-2.

(c) A juvenile court has exclusive original jurisdiction over matters relating to the following:

(1) Minors described in IC 31-30-1-1.

(2) Matters related to guardians of the person and guardianships of the person described in IC 31-30-1-1(10).

(d) Except as provided in subsection (c), courts with child custody jurisdiction under:

(1) IC 31-14-10;

(2) IC 31-17-2-1; or

(3) IC 31-21-5 (or IC 31-17-3-3 before its repeal);

have original and continuing jurisdiction over custody matters relating to minors.

(e) A mental health division of a superior court under IC 33-33-49 has jurisdiction concurrent with the court in mental health proceedings under IC 12-26 relating to guardianship and protective orders.

(f) Jurisdiction under this section is not dependent on issuance or service of summons.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.61; P.L.1-1990, SEC.275; P.L.2-1992, SEC.792; P.L.16-1995, SEC.5; P.L.1-1997, SEC.118; P.L.217-2001, SEC.1; P.L.98-2004, SEC.100; P.L.138-2007, SEC.4; P.L.178-2011, SEC.1.

IC 29-3-2-2

Venue for appointment of guardian; stay of proceedings; transfer of proceedings

Sec. 2. (a) The venue for the appointment of a guardian or for protective proceedings is as follows:

(1) If the alleged incapacitated person or minor resides in Indiana, venue is:

(A) in the county where the alleged incapacitated person or minor resides; or

(B) if the proceeding is for the appointment of a temporary guardian of the person for an alleged incapacitated person or minor who is in need of medical care, in the county where a facility is located that is providing or attempting to provide medical care to the alleged incapacitated person or minor.

(2) If the alleged incapacitated person or minor does not reside in Indiana, then venue is in any county where any property of the alleged incapacitated person or minor is located. However, if the proceeding is for the appointment of a temporary guardian of the person for an alleged incapacitated person or minor who is in need of medical care, venue is in the county where the facility providing or attempting to provide medical care is located.

(3) If the alleged incapacitated person is an adult (as defined in

IC 29-3.5-1-2(1)), venue is determined under the laws of the state or country having jurisdiction under IC 29-3.5-2. However, if a court in Indiana has jurisdiction under IC 29-3.5-2, the rules for determining venue set forth in this section apply.

(b) If proceedings are commenced in more than one (1) county, they shall be stayed except in the county where first commenced until final determination of the proper venue by the court in the county where first commenced. After proper venue has been determined, all proceedings in any county other than the county where jurisdiction has been finally determined to exist shall be dismissed. If the proper venue is finally determined to be in another county, the court shall transmit the original file to the proper county. The proceedings shall be commenced by the filing of a petition with the court, and the proceeding first commenced extends to all of the property of the minor or the incapacitated person unless otherwise ordered by the court.

(c) If it appears to the court at any time that:

(1) the proceeding was commenced in the wrong county;

(2) the residence of the incapacitated person or the minor has been changed to another county;

(3) the proper venue is determined to be otherwise under the Indiana Rules of Trial Procedure; or

(4) it would be in the best interest of the incapacitated person or the minor and the property of the minor or the incapacitated person;

the court may order the proceeding, together with all papers, files, and a certified copy of all orders, transferred to another court in Indiana. That court shall complete the proceeding as if originally commenced in that court. The court may in like manner transfer a guardianship or protective proceeding in Indiana to a court outside Indiana if the other court assumes jurisdiction to complete the proceeding as if originally commenced in that court. Before any transfer is made under this subsection, a hearing pursuant to notice shall be held in the same manner as provided with respect to the appointment of a guardian.

(d) Where a guardian has been appointed by a court that does not have probate jurisdiction, the matter shall be transferred in accordance with the proper venue to a court having probate jurisdiction for qualification of the guardian and for further proceedings in the guardianship.

(e) Nothing in this section shall be construed as a requirement of jurisdiction.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.62; P.L.178-2011, SEC.2.

IC 29-3-2-3

Guardian ad litem; appointment

Sec. 3. (a) Unless waived under subsection (b) or if section 4 of this chapter does not apply, the court shall appoint a guardian ad litem to represent the interests of the alleged incapacitated person or

minor if the court determines that the alleged incapacitated person or minor is not represented or is not adequately represented by counsel. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The court as part of the record of the proceeding shall set out its reasons for appointing a guardian ad litem.

(b) If a minor has or is entitled to property for the preservation of which the appointment of a guardian is necessary, and the court makes written findings that:

(1) the proposed guardian is capable of representing and managing the minor's property;

(2) no other petition for the appointment of a guardian has been filed; and

(3) the petition for the appointment of the proposed guardian is uncontested;

the court may waive the appointment of a guardian ad litem for the minor.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.63; P.L.154-1990, SEC.12; P.L.118-1997, SEC.25.

IC 29-3-2-4

Discretion of court; binding orders

Sec. 4. (a) All findings, orders, or other proceedings under this article shall be in the discretion of the court unless otherwise provided in this article.

(b) If there is not a conflict of interest between a guardian of an estate and the protected person or among persons represented, orders binding a guardian of an estate bind the protected person.

(c) Orders binding a guardian of the person bind the ward if a guardian of the ward's estate has not been appointed.

As added by P.L.169-1988, SEC.1. Amended by P.L.118-1997, SEC.26; P.L.252-2001, SEC.25.

IC 29-3-2-5

Residence; determination

Sec. 5. The residence of a person shall be determined by actual presence rather than technical domicile.

As added by P.L.169-1988, SEC.1.

IC 29-3-2-6

Application of decedents' estates law to guardianships and protected persons

Sec. 6. (a) The applicable rules regarding decedents' estates in IC 29-1-7 through IC 29-1-17 apply to guardianships and protective proceedings under IC 29-3-4 when consistent with this article and IC 29-1-19.

(b) IC 29-1-1-6 through IC 29-1-1-7, IC 29-1-1-9 through IC 29-1-1-10, IC 29-1-1-12 through IC 29-1-1-14, IC 29-1-1-16 through IC 29-1-1-18, and IC 29-1-1-20 through IC 29-1-1-24 apply to guardianships under this article and IC 29-1-19.

(c) This article extends to persons specifically provided for under IC 29-1-19. The provisions of this article are cumulative to the provisions of IC 29-1-19. A conflict arising between this article and IC 29-1-19 is resolved by giving effect to the law stated in IC 29-1-19 in cases to which it applies.

(d) The provisions of IC 29-1-15 concerning the sale of decedents' property apply to the sale of protected persons' property.

(e) The provisions of IC 29-1-16 concerning accounting in decedents' estates apply to accounting in protected persons' estates that are consistent with this article.

(f) The provisions of IC 29-1-14-2, IC 29-1-14-10, IC 29-1-14-11, IC 29-1-14-12, IC 29-1-14-13, and IC 29-1-14-17 concerning claims against decedents' estates apply to claims against protected persons' estates.

As added by P.L.264-1989, SEC.3.

IC 29-3-2-7

Submissions to the court; court requests for information

Sec. 7. (a) If a person files a petition to establish or modify guardianship of a minor, any person who:

(1) is a party to the guardianship proceeding; and

(2) has knowledge that:

(A) a party to the guardianship proceeding has been determined to be a perpetrator of a substantiated report of child abuse or neglect;

(B) the child named in the petition has been the subject of a substantiated report of child abuse or neglect;

(C) the child named in the petition has been determined to be a child in need of services under IC 31-34; or

(D) the child named in the petition has been involved in an informal adjustment under IC 31-34-8;

shall submit to the court in writing under seal that a party to the guardianship proceeding is a person described in subdivision (2)(A) or the child named in the petition is a child described in subdivision (2)(B), (2)(C), or (2)(D).

(b) A court reviewing a petition to establish or modify a guardianship may request information from the department of child services regarding a petition or proceeding described in subsection (a)(2). The department shall provide a response under seal to the court's request for information not later than ten (10) days after the department receives the court's request for the information.

As added by P.L.239-2013, SEC.1.

IC 29-3-3

Chapter 3. Proceedings in Lieu of Guardianships

IC 29-3-3-1

Payment of debt owed to minor; delivery of minor's property in possession of another; use of payment or property

Sec. 1. (a) Any person indebted to a minor or having possession of property belonging to a minor in an amount not exceeding ten thousand dollars ($10,000) may pay the debt or deliver the property without the appointment of a guardian, giving of bond, or other order of court directly to any person having the care and custody of the minor with whom the minor resides.

(b) Persons receiving property for a minor under this section are obligated to apply the property to the support, use, and benefit of the minor.

(c) This section does not apply if the person paying or delivering the property knows that a guardian has been appointed for the minor or that proceedings for appointment of a guardian for the minor are pending.

(d) A person who pays or delivers property in accordance with this section in good faith is not responsible for the proper application of that property.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.4; P.L.42-1998, SEC.3; P.L.252-2001, SEC.26.

IC 29-3-3-2

Property of incapacitated person not in excess of $10,000; deposit, delivery, and disposition of property; compensation and expenses of receiver

Sec. 2. When the entire property of an incapacitated person does not exceed the value of ten thousand dollars ($10,000), the court may, without the appointment of a guardian, giving of bond, or other order of court, authorize:

(1) the deposit of the property in a depository authorized to receive fiduciary funds in the name of a suitable person designated by the court; or

(2) if the property does not consist of money, the delivery of the property to a suitable person designated by the court.

The person receiving the property shall hold and dispose of the property in the manner the court directs and is entitled to reasonable compensation and to reimbursement for reasonable expenses incurred in good faith on behalf of the incapacitated person and approved by the court.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.5; P.L.252-2001, SEC.27.

IC 29-3-3-3

Custody of minor by parents; consents, waivers, and powers of attorney provided by statute or Internal Revenue Code; consent to medical treatment

Sec. 3. Except as otherwise determined in a dissolution of marriage proceeding, a custody proceeding, or in some other proceeding authorized by law, including a proceeding under section 6 of this chapter or another proceeding under this article, and unless a minor is married, the parents of the minor jointly (or the survivor if one (1) parent is deceased), if not an incapacitated person, have, without the appointment of a guardian, giving of bond, or order or confirmation of court, the right to custody of the person of the minor and the power to execute the following on behalf of the minor:

(1) Consent to the application of subsection (c) of Section 2032A of the Internal Revenue Code, which imposes personal liability for payment of the tax under that Section.

(2) Consent to the application of Section 6324A of the Internal Revenue Code, which attaches a lien to property to secure payment of taxes deferred under Section 6166 of the Internal Revenue Code.

(3) Any other consents, waivers, or powers of attorney provided for under the Internal Revenue Code.

(4) Waivers of notice permissible with reference to proceedings under IC 29-1.

(5) Consents, waivers of notice, or powers of attorney under any statute, including the Indiana inheritance tax law (IC 6-4.1) and the Indiana adjusted gross income tax law (IC 6-3).

(6) Consent to unsupervised administration as provided in IC 29-1-7.5.

(7) Federal and state income tax returns.

(8) Consent to medical or other professional care, treatment, or advice for the minor's health and welfare.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.64; P.L.155-1990, SEC.1; P.L.192-2002(ss), SEC.171.

IC 29-3-3-3.5

Custodians of individual retirement accounts

Sec. 3.5. (a) Except as otherwise determined in a dissolution of marriage proceeding, a custody proceeding, or another proceeding authorized by law, including a proceeding under section 6 of this chapter or another proceeding under this article, and unless a minor is married:

(1) the parents of the minor jointly or one (1) parent of the minor individually, if both parents are not incapacitated persons;

(2) one (1) parent, if one (1) of the parents is an incapacitated person; or

(3) the survivor, if one (1) parent is deceased and if the survivor is not an incapacitated person;

have the right, without the appointment of a guardian, giving of bond, or order or confirmation of court, to act as custodians of an individual retirement account established for the minor under 26 U.S.C. 408.

(b) IC 30-2-8.5-27(b), IC 30-2-8.5-27(e), and IC 30-2-8.5-28 apply to this section.

As added by P.L.264-1995, SEC.1.

IC 29-3-3-4

Temporary guardians; notice; suspension of guardian; powers and responsibilities

Sec. 4. (a) If:

(1) a guardian has not been appointed for an incapacitated person or minor;

(2) an emergency exists;

(3) the welfare of the incapacitated person or minor requires immediate action; and

(4) no other person appears to have authority to act in the circumstances;

the court, on petition by any person or on its own motion, may appoint a temporary guardian for the incapacitated person or minor for a specified period not to exceed ninety (90) days. No such appointment shall be made except after notice and hearing unless it is alleged and found by the court that immediate and irreparable injury to the person or injury, loss, or damage to the property of the alleged incapacitated person or minor may result before the alleged incapacitated person or minor can be heard in response to the petition. If a temporary guardian is appointed without advance notice and the alleged incapacitated person or minor files a petition that the guardianship be terminated or the court order modified, the court shall hear and determine the petition at the earliest possible time.

(b) If:

(1) a petition is filed under this section for the appointment of a temporary guardian; and

(2) each person required to receive notice under IC 29-3-6-1(a) has not:

(A) received a complete copy of the petition and notice required by IC 29-3-6-2 before the court considers and acts on the petition; or

(B) received actual notice of the filing of the petition and specifically waived in writing the necessity for service of the notice required under IC 29-3-6-2 before the court considers and acts on the petition;

the petitioner shall, on the earlier of the date the court enters an order scheduling a hearing on the petition or the date the court enters an order appointing a temporary guardian, serve complete copies of the petition, the court's order, and the notice required by IC 29-3-6-2 on every person entitled to receive notice under IC 29-3-6-1(a) and on each additional person to whom the court directs that notice be given. The requirements of this subsection are in addition to the petitioner's obligations under Rule 65 of the Indiana Rules of Trial Procedure to make a specific showing of the petitioner's efforts to provide advance notice to all interested persons or the reasons why advance notice cannot or should not be given.

(c) If the court finds that a previously appointed guardian is not effectively performing fiduciary duties and that the welfare of the protected person requires immediate action, the court may suspend the authority of the previously appointed guardian and appoint a

temporary guardian for the protected person for any period fixed by the court. The authority of the previously appointed guardian is suspended as long as a temporary guardian appointed under this subsection has authority to act.

(d) A temporary guardian appointed under this section has only the responsibilities and powers that are ordered by the court. The court shall order only the powers that are necessary to prevent immediate and substantial injury or loss to the person or property of the alleged incapacitated person or minor in an appointment made under this section.

(e) Proceedings under this section are not subject to the provisions of IC 29-3-4.

(f) A proceeding under this section may be joined with a proceeding under IC 29-3-4 or IC 29-3-5.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.65; P.L.154-1990, SEC.13; P.L.178-2011, SEC.3.

IC 29-3-3-5

Application for public assistance or transfer; authority of chief of social services at state institution

Sec. 5. The chief of social services (or a person designated by the chief of social services) at any institution under the control of the division of mental health and addiction or the division of disability and rehabilitative services may execute the necessary documents to make applications on behalf of a patient in the institution to receive public assistance or to transfer the patient to an alternate care facility without the appointment of a guardian or other order of court.

As added by P.L.169-1988, SEC.1. Amended by P.L.2-1992, SEC.793; P.L.1-1993, SEC.214; P.L.40-1994, SEC.74; P.L.215-2001, SEC.105; P.L.141-2006, SEC.110.

IC 29-3-3-6

Surviving parent; custody proceedings; temporary guardian or guardian ad litem; hearing

Sec. 6. (a) The surviving parent of a minor does not have the right to custody of the minor without a proceeding authorized by law if the parent was not granted custody of the minor in a dissolution of marriage decree and the conditions specified in this section exist.

(b) If:

(1) the surviving parent, at the time of the custodial parent's death, had required supervision during parenting time privileges granted under a dissolution of marriage decree involving the minor; or

(2) the surviving parent's parenting time privileges with the minor had been suspended at the time of the death of the custodial parent;

the court on petition by any person, including a temporary custodian named under IC 31-17-2-11 (or IC 31-1-11.5-27 before its repeal), or on the court's own motion, may appoint a temporary guardian for the minor for a specified period not to exceed sixty (60) days.

(c) If a petition is filed under this section, a court shall appoint a guardian ad litem (as defined in IC 31-9-2-50) or a court appointed special advocate (as defined in IC 31-9-2-28) for the child. A guardian ad litem or court appointed special advocate appointed under this section serves until removed by the court.

(d) If a temporary guardian is appointed without notice and the minor files a petition that the guardianship be terminated or the court order modified, the court shall hold a hearing and make a determination on the petition at the earliest possible time.

(e) A temporary guardian appointed under this section has only the responsibilities and powers that are ordered by the court.

(f) A proceeding under this section may be joined with a proceeding under IC 29-3-4 or IC 29-3-5.

(g) The court shall appoint a guardian under this article if the court finds that the surviving parent is not entitled to the right of custody of the minor.

As added by P.L.155-1990, SEC.2. Amended by P.L.1-1993, SEC.215; P.L.1-1997, SEC.119; P.L.68-2005, SEC.7.

IC 29-3-3-7

Standby guardians

Sec. 7. (a) Subject to subsection (e), a parent of a minor or the guardian of a protected person may designate a standby guardian by making a written declaration naming the individual designated to serve as a standby guardian. A declarant may name an alternate to the designated standby guardian if the designated standby guardian is unable to serve, refuses to serve, renounces the appointment, dies, or becomes incapacitated after the death of the declarant.

(b) A declaration under this section must contain the following information:

(1) The names of the declarant, the designated standby guardian, and the alternate standby guardian, if any.

(2) The following information concerning each minor child or protected person for whom a standby guardian is designated by the declaration:

(A) The person's full name as it appears on the birth certificate or as ordered by a court.

(B) The person's date of birth.

(3) A statement that the declaration becomes effective upon the death or incapacity of the declarant.

(4) A statement that the declaration terminates ninety (90) days after becoming effective unless the standby guardian files a petition for a guardianship of the minor or protected person during that ninety (90) day period.

(c) A declaration executed under this section must be signed by the declarant in the presence of a notary public.

(d) A declaration executed under this section becomes effective upon the death or incapacity (as defined in IC 29-3-1-7.5) of the parent or guardian and terminates ninety (90) days after the declaration becomes effective. However, if the designated standby

guardian files a petition for a guardianship of the minor or protected person during that ninety (90) day period, the declaration remains in effect until the court rules on the petition.

(e) A declaration executed under this section must be considered by, but is not binding upon, the department of child services, a probation department, or a juvenile court for purposes of determining the placement of a child who is the subject of:

(1) an allegation of child abuse or neglect under IC 31-33;

(2) an open child in need of services case under IC 31-34; or

(3) an open delinquency case under IC 31-37.

(f) A standby guardian shall have all the powers granted to a guardian under this article.

As added by P.L.178-2011, SEC.4. Amended by P.L.149-2012, SEC.9.

IC 29-3-4

Chapter 4. Protective Proceedings and Single Transactions

IC 29-3-4-1

Protective orders; notice and hearing; findings; protective arrangements

Sec. 1. (a) Upon petition by any person and after a hearing under IC 29-3-5, the court may issue, without the appointment of a guardian, any protective order for the benefit of a person who has been adjudicated an incapacitated person or is a minor.

(b) Notice of the filing of a petition under this chapter for the issuance of a protective order and the hearing on the petition shall be given under IC 29-3-6.

(c) Incapacitated persons and minors have the same rights at the hearing on a petition filed under this chapter for the issuance of a protective order as they would have at a hearing for the appointment of a guardian.

(d) The court may issue a protective order concerning an incapacitated person if the court finds that:

(1) the incapacitated person:

(A) owns property or has income requiring management or protection that cannot otherwise be provided;

(B) has or may have financial or business affairs that may be jeopardized or impaired; or

(C) has property that needs to be managed to provide for the support or protection of the incapacitated person;

(2) the incapacitated person is unable to manage the incapacitated person's property and financial or business affairs effectively; and

(3) the protection sought is necessary.

The court shall make the orders that it considers proper and appropriate to protect the person, business affairs, and property of the incapacitated person.

(e) The court may issue a protective order concerning a minor if the court finds that:

(1) the minor:

(A) owns property or has income requiring management or protection that cannot otherwise be provided;

(B) has or may have financial or business affairs that may be jeopardized or impaired; or

(C) has property that needs to be managed to provide for the support or protection of the minor; and

(2) the protection sought is necessary.

The court shall make the orders it considers proper and appropriate to protect the person, business affairs, and property of the minor.

(f) If the court finds grounds for a protective order under subsection (d) or (e), it may, without appointing a guardian, declare the person to be a protected person and authorize or ratify any transaction necessary or desirable to meet the needs of the protected person. Protective arrangements include the following:

(1) The payment, delivery, deposit, or retention of property.
(2) The sale, mortgage, lease, or other transfer of property.
(3) The entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and educating a person.
(4) The addition to or establishment of a suitable trust.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.66; P.L.6-2010, SEC.9.

IC 29-3-4-2

Contracts, trusts or business transactions of incapacitated person or minor; ratification by court; exercise of parental powers in absence of guardian

Sec. 2. The court may, without appointment of a guardian, by protective order authorize or ratify:

(1) any contract, trust, or other transaction relating to the property and financial or business affairs of the incapacitated person or minor if the court determines the transaction to be in the incapacitated person's or the minor's best interest; or
(2) if no guardian is acting for an incapacitated person, the exercise of any power on the incapacitated person's behalf that is the same as that given to the parent of a minor under IC 29-3-3-3.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.67.

IC 29-3-4-3

Creditors and dependents to be considered by court before issuing protective order; appointment of limited guardian; authority conferred by order

Sec. 3. Before issuing a protective order under this chapter, the court shall consider the interest of creditors and dependents of the protected person and, in view of the disability or minority of the protected person, whether the protected person needs the protection of a guardian. The court may appoint a limited guardian to assist in the establishment of any protective arrangement or other transaction. All persons acting under a protective order have the authority conferred by the order and serve until discharged by the court after reporting to the court all matters conducted under the order.

As added by P.L.169-1988, SEC.1.

IC 29-3-4-4

Compensation; persons whose services benefited protected person or his or her property

Sec. 4. If not otherwise compensated for services rendered, any guardian, attorney, physician, or other person whose services are provided in good faith and are beneficial to the protected person or the protected person's property is entitled to reasonable compensation and reimbursement for reasonable expenditures made on behalf of the protected person. These amounts may be paid from the property of the protected person as ordered by the court.

As added by P.L.169-1988, SEC.1.

IC 29-3-5

Chapter 5. Proceedings for Appointment of Guardian or to Procure a Protective Order

IC 29-3-5-1

Petitions for appointment of a guardian or to have a protective order issued; requirements; notice and hearing; conduct of hearing; participation by department of child services

Sec. 1. (a) Any person may file a petition for the appointment of a person to serve as guardian for an incapacitated person or minor under this chapter or to have a protective order issued under IC 29-3-4. The petition must state the following:

(1) The name, age, residence, and post office address of the alleged incapacitated person or minor for whom the guardian is sought to be appointed or the protective order issued.

(2) The nature of the incapacity.

(3) The approximate value and description of the property of the incapacitated person or minor, including any compensation, pension, insurance, or allowance to which the incapacitated person or minor may be entitled.

(4) If a limited guardianship is sought, the particular limitations requested.

(5) Whether a protective order has been issued or a guardian has been appointed or is acting for the incapacitated person or minor in any state.

(6) The residence and post office address of the proposed guardian or person to carry out the protective order and the relationship to the alleged incapacitated person of:

(A) the proposed guardian; or

(B) the person proposed to carry out the protective order.

(7) The names and addresses, as far as known or as can reasonably be ascertained, of the persons most closely related by blood or marriage to the person for whom the guardian is sought to be appointed or the protective order is issued.

(8) The name and address of the person or institution having the care and custody of the person for whom the guardian is sought to be appointed or the protective order is issued.

(9) The names and addresses of any other incapacitated persons or minors for whom the proposed guardian or person to carry out the protective order is acting if the proposed guardian or person is an individual.

(10) The reasons the appointment of a guardian or issuance of a protective order is sought and the interest of the petitioner in the appointment or issuance.

(11) The name and business address of the attorney who is to represent the guardian or person to carry out the protective order.

(12) Whether a child in need of services petition or a program of informal adjustment has been filed regarding the minor for whom a guardianship is being sought, and, if so, whether the

case regarding the minor is open at the time the guardianship petition is filed.

(b) Notice of a petition under this section for the appointment of a guardian or the issuance of a protective order and the hearing on the petition shall be given under IC 29-3-6.

(c) After the filing of a petition, the court shall set a date for a hearing on the issues raised by the petition. Unless an alleged incapacitated person is already represented by counsel, the court may appoint an attorney to represent the incapacitated person.

(d) A person alleged to be an incapacitated person must be present at the hearing on the issues raised by the petition and any response to the petition unless the court determines by evidence that:

(1) it is impossible or impractical for the alleged incapacitated person to be present due to the alleged incapacitated person's disappearance, absence from the state, or similar circumstance;

(2) it is not in the alleged incapacitated person's best interest to be present because of a threat to the health or safety of the alleged incapacitated person as determined by the court;

(3) the incapacitated person has knowingly and voluntarily consented to the appointment of a guardian or the issuance of a protective order and at the time of such consent the incapacitated person was not incapacitated as a result of a mental condition that would prevent that person from knowingly and voluntarily consenting; or

(4) the incapacitated person has knowingly and voluntarily waived notice of the hearing and at the time of such waiver the incapacitated person was not incapacitated as a result of a mental condition that would prevent that person from making a knowing and voluntary waiver of notice.

(e) A person alleged to be an incapacitated person may present evidence and cross-examine witnesses at the hearing. The issues raised by the petition and any response to the petition shall be determined by a jury if a jury is requested no later than seventy-two (72) hours prior to the original date and time set for the hearing on the petition. However, in no event may a request for a jury trial be made after thirty (30) days have passed following the service of notice of a petition.

(f) Any person may apply for permission to participate in the proceeding, and the court may grant the request with or without hearing upon determining that the best interest of the alleged incapacitated person or minor will be served by permitting the applicant's participation. The court may attach appropriate conditions to the permission to participate.

(g) A court shall notify the department of child services of a hearing regarding the guardianship of a minor under this section if a:

(1) child in need of services petition has been filed regarding the minor; or

(2) program of informal adjustment involving the minor is pending.

The department of child services may participate in a hearing

regarding the guardianship of a minor described in this subsection.
As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.68; P.L.6-2010, SEC.10; P.L.162-2011, SEC.2.

IC 29-3-5-2
Appointment of guardian before adjudication of incapacity or minority

Sec. 2. A guardian may not be appointed for an incapacitated person or a minor under this chapter until the incapacity or minority has been adjudicated.
As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.6.

IC 29-3-5-3
Findings; appointment of guardian; limited guardianship; protective orders

Sec. 3. (a) Except under subsection (c), if it is alleged and the court finds that:

(1) the individual for whom the guardian is sought is an incapacitated person or a minor; and

(2) the appointment of a guardian is necessary as a means of providing care and supervision of the physical person or property of the incapacitated person or minor;

the court shall appoint a guardian under this chapter.

(b) If it is alleged and the court finds that the welfare of an incapacitated person would be best served by limiting the scope of the guardianship, the court shall make the appointive or other orders under this chapter to:

(1) encourage development of the incapacitated person's self-improvement, self-reliance, and independence; and

(2) contribute to the incapacitated person's living as normal a life as that person's condition and circumstances permit without psychological or physical harm to the incapacitated person.

(c) If the court finds that it is not in the best interests of the incapacitated person or minor to appoint a guardian, the court may:

(1) treat the petition as one for a protective order and proceed accordingly;

(2) enter any other appropriate order; or

(3) dismiss the proceedings.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.69.

IC 29-3-5-4
Considerations for appointment of guardian

Sec. 4. The court shall appoint as guardian a qualified person or persons most suitable and willing to serve, having due regard to the following:

(1) Any request made by a person alleged to be an incapacitated person, including designations in a durable power of attorney under IC 30-5-3-4(a).

(2) Any request contained in a will or other written instrument.
(3) Any request made by a minor who is at least fourteen (14) years of age.
(4) Any request made by the spouse of the alleged incapacitated person.
(5) The relationship of the proposed guardian to the individual for whom guardianship is sought.
(6) Any person acting for the incapacitated person under a durable power of attorney.
(7) The best interest of the incapacitated person or minor and the property of the incapacitated person or minor.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.7; P.L.149-1991, SEC.3.

IC 29-3-5-5
Consideration for appointment of guardian; order of consideration; priorities

Sec. 5. (a) The following are entitled to consideration for appointment as a guardian under section 4 of this chapter in the order listed:
(1) A person designated in a durable power of attorney.
(2) The spouse of an incapacitated person.
(3) An adult child of an incapacitated person.
(4) A parent of an incapacitated person, or a person nominated by will of a deceased parent of an incapacitated person or by any writing signed by a parent of an incapacitated person and attested to by at least two (2) witnesses.
(5) Any person related to an incapacitated person by blood or marriage with whom the incapacitated person has resided for more than six (6) months before the filing of the petition.
(6) A person nominated by the incapacitated person who is caring for or paying for the care of the incapacitated person.

(b) With respect to persons having equal priority, the court shall select the person it considers best qualified to serve as guardian. The court, acting in the best interest of the incapacitated person or minor, may pass over a person having priority and appoint a person having a lower priority or no priority under this section.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.70.

IC 29-3-5-6
Two or more minors or incapacitated persons; petition for appointment of guardian; separate accounting

Sec. 6. When a petition is filed for the appointment of a guardian for two (2) or more minors or incapacitated persons who are children of a common parent, parent and child, or husband and wife, a separate petition need not be filed for each minor or incapacitated person, and appointment of a guardian for all may be considered in one (1) proceeding. A separate accounting is required for each minor or incapacitated person, but an actual segregation of assets is not

required except as required by the court.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.71.

IC 29-3-6

Chapter 6. Notice of Hearings

IC 29-3-6-1

Notice of petition and hearing; persons to whom notice must be given; waiver of notice

Sec. 1. (a) When a petition for appointment of a guardian or for the issuance of a protective order is filed with the court, notice of the petition and the hearing on the petition shall be given by first class postage prepaid mail as follows:

(1) If the petition is for the appointment of a successor guardian, notice shall be given unless the court, for good cause shown, orders that notice is not necessary.

(2) If the petition is for the appointment of a temporary guardian, notice shall be given as required by IC 29-3-3-4.

(3) If the subject of the petition is a minor, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:

(A) The minor, if at least fourteen (14) years of age, unless the minor has signed the petition.

(B) Any living parent of the minor, unless parental rights have been terminated by a court order.

(C) Any person alleged to have had the principal care and custody of the minor during the sixty (60) days preceding the filing of the petition.

(D) Any other person that the court directs.

(4) If it is alleged that the person is an incapacitated person, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:

(A) The alleged incapacitated person, the alleged incapacitated person's spouse, and the alleged incapacitated person's adult children, or if none, the alleged incapacitated person's parents.

(B) Any person who is serving as a guardian for, or who has the care and custody of, the alleged incapacitated person.

(C) In case no person other than the incapacitated person is notified under clause (A), at least one (1) of the persons most closely related by blood or marriage to the alleged incapacitated person.

(D) Any person known to the petitioner to be serving as the alleged incapacitated person's attorney-in-fact under a durable power of attorney.

(E) Any other person that the court directs.

Notice is not required under this subdivision if the person to be notified waives notice or appears at the hearing on the petition.

(b) Whenever a petition (other than one for the appointment of a guardian or for the issuance of a protective order) is filed with the court, notice of the petition and the hearing on the petition shall be

given to the following persons, unless they appear or waive notice:

(1) The guardian.

(2) Any other persons that the court directs, including the following:

(A) Any department, bureau, agency, or political subdivision of the United States or of this state that makes or awards compensation, pension, insurance, or other allowance for the benefit of an alleged incapacitated person.

(B) Any department, bureau, agency, or political subdivision of this state that may be charged with the supervision, control, or custody of an alleged incapacitated person.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.8; P.L.95-2007, SEC.13; P.L.143-2009, SEC.15; P.L.178-2011, SEC.5.

IC 29-3-6-2

Notice; form and contents; copy of petition to be attached

Sec. 2. A copy of the petition shall be attached to the notice, and the notice must be in substantially the following form:

NOTICE

TO: (name and address of person receiving notice)

On (date of hearing) at (time of hearing) in (place of hearing) at (city), Indiana, the (name and address of court) will hold a hearing to determine whether a guardian should be appointed or a protective order should be issued for (name of alleged incapacitated person or minor). A copy of the petition requesting appointment of a guardian or for the issuance of a protective order is attached to this notice.

At the hearing the court will determine whether (name of alleged incapacitated person or minor) is an incapacitated person or minor under Indiana law. This proceeding may substantially affect the rights of (name of alleged incapacitated person or minor).

If the court finds that (name of alleged incapacitated person or minor) is an incapacitated person or minor, the court at the hearing shall also consider whether (name of proposed guardian, if any) should be appointed as guardian of (name of alleged incapacitated person or minor). The court may, in its discretion, appoint some other qualified person as guardian. The court may also, in its discretion, limit the powers and duties of the guardian to allow (name of alleged incapacitated person or minor) to retain control over certain property and activities. The court may also determine whether a protective order should be entered on behalf of (name of alleged incapacitated person or minor).

(Name of alleged incapacitated person) may attend the hearing and be represented by an attorney. The petition may be heard and determined in the absence of (name of alleged incapacitated person) if the court determines that the presence of (name of alleged incapacitated person) is not required. If (name of alleged incapacitated person) attends the hearing, opposes the petition, and is not represented by an attorney, the court may appoint an attorney to represent (name of alleged incapacitated person). The court may,

where required, appoint a guardian ad litem to represent (name of alleged incapacitated person or minor) at the hearing.

The court may, on its own motion or on request of any interested person, postpone the hearing to another date and time.

_____

(signature of clerk of the court)

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.9; P.L.77-1992, SEC.6; P.L.6-2010, SEC.11.

IC 29-3-6-3

Request for written notice of proceedings and pleadings; determination of interest; failure to comply with request

Sec. 3. (a) At any time after the appointment of a guardian or the issuance of a protective order, any person may, in person or by the person's attorney, serve upon the guardian or the guardian's attorney, and file with the clerk of the court where the proceedings are pending, a written request together with a written admission or proof of service stating that the person desires written notice of all hearings and copies of all pleadings or other papers in connection with:

(1) the settlement of accounts;

(2) the sale, mortgage, lease, or exchange of any property of the protected person;

(3) allowances of any nature payable from the protected person's property;

(4) the investment of funds of the protected person;

(5) a petition to request the authority to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of the protected person as provided under IC 29-3-9-12.2;

(6) the removal, suspension, or discharge of the guardian;

(7) the final termination of the guardianship; or

(8) any other notice or matter as specified in the request.

The applicant requesting special notice must include in the written request the applicant's post office address or that of the applicant's attorney. The court may determine that any person requesting notice under this section has no interest in the proceeding, either generally or with respect to a particular matter, and is not entitled to the notice requested. Unless the court otherwise directs, upon filing the request, the guardian or the guardian's attorney shall comply with the request.

(b) Failure to comply with a request for notice under this section does not affect the validity of the proceeding.

As added by P.L.169-1988, SEC.1. Amended by P.L.83-2014, SEC.1.

IC 29-3-7

Chapter 7. Qualification and Bonding Requirements for Guardians

IC 29-3-7-1

Guardian's bond; amount; collateral in lieu of sureties on bond; reduced bonds

Sec. 1. (a) Unless the court finds that a bond is unnecessary and enters an order to that effect, or unless the appointed guardian is a bank or trust company (as defined in IC 28-1-1-3), a guardian must execute and file a bond relating to the duties of the guardian's office. Unless otherwise directed by the court, the bond must be in an amount that is not less than the amount determined under STEP THREE of the following STEPS:

STEP ONE: Enter the aggregate value of the guardianship property.

STEP TWO: Add to the amount entered under STEP ONE one (1) year's estimated income.

STEP THREE: From the sum determined under STEP TWO subtract the value of any property that the guardian, by express limitation of power, lacks the power to sell, convey, or encumber without a court order.

(b) The court, instead of sureties on a bond, may accept other collateral for the performance of the bond, including a pledge of securities or a mortgage of the land.

(c) The court may fix the bond at an amount less than that provided under subsection (a), but the amount fixed must, in the court's opinion, provide adequate protection to the property of the protected person. In fixing a reduced bond, the court may do any of the following:

(1) Direct the guardian to invest all, or a part of, the property subject to the guardian's control in:

(A) stocks, bonds, or other securities of any corporation, public or private, which are listed or admitted to trading on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, the Pacific Coast Stock Exchange, or any other exchange regulated by the Securities and Exchange Commission; or

(B) securities that are obligations issued or guaranteed by the United States.

(2) Direct the guardian to place all, or a part of, the property subject to the guardian's control in a savings account. However, the court may require property to be held in a manner that requires either the joint authorization of the guardian and the guardian's surety or an order of the court to remove the funds from the account.

(3) Direct the guardian to transfer all, or a part of, the property subject to the guardian's control to a bank or trust company organized under the laws of Indiana or of the United States and operating a bank or trust company located within Indiana to

administer the estate as an agent for the guardian.

(4) Direct the guardian to:

(A) transfer any or all stocks, bonds, and securities subject to the guardian's control only after obtaining an order of the court directing the transfer; and

(B) require that notice of this restriction on the transfer of such stocks, bonds, and securities be placed upon the certificates evidencing those stocks, bonds, and securities.

(5) Direct the guardian to comply with all, part, or any combination of the requisites specified in subdivisions (1) through (4).

(6) Direct the guardian to take any other action that the court determines necessary to provide adequate protection to the property of the protected person.

As added by P.L.169-1988, SEC.1.

IC 29-3-7-2

Bond requirements; liability; consent to jurisdiction; proceedings against sureties

Sec. 2. (a) The following requirements apply to all bonds on which the guardian is primary obligor:

(1) Unless otherwise provided by the terms of the bond, sureties are jointly and severally liable with the primary obligor and with each other.

(2) By executing the bond, the surety consents to the jurisdiction of the court that issued letters in any proceeding pertaining to the fiduciary duties of the primary obligor and naming the surety as a party respondent. Notice of any proceeding under this article must be delivered to the surety or mailed by registered or certified mail to the address listed with the court at the place where the bond is filed and to the address as then known to the petitioner.

(3) On petition of a successor to the primary obligor or any interested person, a proceeding may be intitiated against a surety for breach of the obligation of the bond of the primary obligor.

(4) The bond is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(b) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

As added by P.L.169-1988, SEC.1.

IC 29-3-7-3

Letters of guardianship

Sec. 3. (a) Letters of guardianship, temporary or otherwise, shall be issued to the person entitled to receive them when:

(1) the guardian, if an individual, has filed bond if required and taken and subscribed before the clerk or any other officer

authorized to administer oaths, an oath or affirmation that the guardian will faithfully discharge the duties of the guardian's trust according to law; or

(2) the guardian, if other than an individual, has filed bond if required and has:

(A) taken and subscribed before the clerk or any other officer authorized to administer oaths an oath or affirmation that it will faithfully discharge the duties of its trust according to law; and

(B) filed an acceptance of the appointment, duly executed and acknowledged by one (1) of its officers.

(b) The oath, and if other than an individual also the acceptance, shall be filed and recorded as a part of the proceedings of the guardianship.

(c) If the court limits or restricts the authority of the guardian or creates a limited guardianship, the letters must so state under IC 29-3-8.

As added by P.L.169-1988, SEC.1.

IC 29-3-7-4

Acceptance of appointment as submission to personal jurisdiction

Sec. 4. By accepting appointment, a guardian and the guardian's attorney submit personally to the jurisdiction of the court in any proceeding relating to the guardianship.

As added by P.L.169-1988, SEC.1.

IC 29-3-7-5

Guardianship property; possession by guardian; transfer of property interest; process against property

Sec. 5. (a) A guardian shall take possession of the guardianship property, title to which shall remain in the protected person subject to the right of the guardian to possess and dispose of the property as provided by law.

(b) The interest of the protected person in guardianship property is not transferable or assignable by the protected person. An attempted transfer or assignment by the protected person, though ineffective to affect property rights, may generate a claim under IC 29-3-10.

(c) The property referred to in subsections (a) through (b) is not subject to levy, garnishment, or similar process other than an order issued in a proceeding on a claim under IC 29-3-10.

As added by P.L.169-1988, SEC.1.

IC 29-3-7-6

Evidence of possessory and disposition rights in guardianship property; real property of guardianship; filing of letters of appointment or termination orders

Sec. 6. (a) Letters are evidence that the guardian has all, and the protected person does not have any, rights to possess and dispose of the guardianship property. An order terminating a guardianship is

evidence that the protected person has all, and the guardian does not have any, rights to possess and dispose of the guardianship property.

(b) Subject to the requirements of general statutes governing the filing or recordation of documents of title to real estate, letters, and orders terminating the same may be filed or recorded in the county where the real estate in question is located to give record notice of rights of possession and disposal as between the guardian and the protected person.

As added by P.L.169-1988, SEC.1.

IC 29-3-7-7

Persons prohibited from being appointed or from serving as a guardian

Sec. 7. A court may not appoint a person to serve as the guardian or permit a person to continue to serve as a guardian if the person:

(1) is a sexually violent predator (as described in IC 35-38-1-7.5);

(2) was at least eighteen (18) years of age at the time of the offense and was convicted of child molesting (IC 35-42-4-3) or sexual misconduct with a minor (IC 35-42-4-9) against a child less than sixteen (16) years of age:

(A) by using or threatening the use of deadly force;

(B) while armed with a deadly weapon; or

(C) that resulted in serious bodily injury; or

(3) was less than eighteen (18) years of age at the time of the offense and was convicted as an adult of:

(A) an offense described in:

(i) IC 35-42-4-1;

(ii) IC 35-42-4-2 (before its repeal);

(iii) IC 35-42-4-3 as a Class A or Class B felony (for crimes committed before July 1, 2014) or as a Level 2 or Level 4 felony (for crimes committed after June 30, 2014);

(iv) IC 35-42-4-5(a)(1);

(v) IC 35-42-4-5(a)(2);

(vi) IC 35-42-4-5(a)(3);

(vii) IC 35-42-4-5(b)(1) as a Class A or Class B felony (for crimes committed before July 1, 2014) or as a Level 2, Level 3, or Level 4 felony (for crimes committed after June 30, 2014);

(viii) IC 35-42-4-5(b)(2); or

(ix) IC 35-42-4-5(b)(3) as a Class A or Class B felony (for crimes committed before July 1, 2014) or as a Level 2, Level 3, or Level 4 felony (for crimes committed after June 30, 2014);

(B) an attempt or conspiracy to commit a crime listed in clause (A); or

(C) a crime under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) and (B).

As added by P.L.131-2009, SEC.5. Amended by P.L.158-2013,

SEC.303; P.L.214-2013, SEC.22; P.L.168-2014, SEC.37.

IC 29-3-8

Chapter 8. Responsibilities and Powers of Guardian

IC 29-3-8-1

Enumerated responsibilities of guardian

Sec. 1. (a) The guardian of a minor (other than a temporary guardian) has all of the responsibilities and authority of a parent and, unless otherwise ordered by the court, is responsible for the preservation of all the minor's property regardless of where the property is located. In addition and without limitation, the guardian:

(1) must be or shall become sufficiently acquainted with the minor and maintain sufficient contact with the minor to know of the minor's capabilities, disabilities, limitations, needs, opportunities, and physical and mental health;

(2) shall, upon termination of the guardianship, comply with the applicable provisions of IC 29-3-12;

(3) to the extent the available parental income and property are insufficient to fulfill the parental obligation of support to the minor, shall apply the guardianship income and, to the extent the guardianship income is insufficient, the principal of the guardianship property to the minor's current needs for support, and protect and conserve that portion of the minor's property that is in excess of the minor's current needs;

(4) shall report the physical and mental condition of the minor to the court as ordered by the court; and

(5) has any other responsibilities that the court may order.

(b) The guardian (other than a temporary guardian) of an incapacitated person is responsible for the incapacitated person's care and custody and for the preservation of the incapacitated person's property to the extent ordered by the court. In addition and without limitation, the guardian of an incapacitated person:

(1) has, with respect to the incapacitated person, the same responsibilities as those of a guardian of a minor enumerated in subsection (a)(1), (a)(3), and (a)(4);

(2) shall, upon termination of the guardianship, comply with the applicable provisions of IC 29-3-12; and

(3) has any other responsibilities that the court may order.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.10.

IC 29-3-8-2

Powers which guardian may exercise

Sec. 2. (a) The guardian of a minor may exercise all of the powers required to perform the guardian's responsibilities, including the following:

(1) The power to receive property payable to the minor or the minor's parent, guardian, or custodian from any source, including any statutory benefit, insurance system, or private contract, devise, trust, or custodianship.

(2) The power to take custody of the person of the minor and

establish the minor's place of abode within or without Indiana if in accordance with IC 29-3-9-2.

(3) The power to institute proceedings or take other appropriate action to compel the performance by any person of a duty to support the minor or to pay for the minor's education, health, or welfare.

(4) The power to consent to medical or other professional care and treatment for the minor's health and welfare.

(5) The power to consent to the marriage or adoption of the minor.

(6) If reasonable, the power to delegate to the minor certain responsibilities for decisions affecting the minor's business affairs and well-being.

(7) The power to purchase a home for the minor or the minor's dependents, to protect the minor's existing home, or to protect the minor's interest in any real estate in which the minor may have an interest, contractual or otherwise, or to purchase any other interest in real property where the court finds the purchase to be in the minor's best interest.

(8) The powers with respect to the guardianship property as are granted to a guardian under section 4 of this chapter with respect to guardianship property.

(9) The power to bind all or any part of the guardianship property in a transaction for the benefit of the minor unless the third party dealing with the guardian is acting in bad faith.

(10) If the minor has no living parent, other than a parent who is an incapacitated person, the powers granted to the parent of a minor under IC 29-3-3-3(1) through IC 29-3-3-3(8).

(b) The guardian (other than a temporary guardian) of an incapacitated person has all of the powers to perform the guardian's responsibilities, including the powers with respect to the incapacitated person and the incapacitated person's property regardless of where the property is located, that are granted to the guardian of a minor enumerated in subsection (a)(1) through (a)(9). *As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.11.*

IC 29-3-8-3

Mandatory responsibilities of guardian

Sec. 3. A guardian (other than a temporary guardian) shall do the following:

(1) Act as a guardian with respect to the guardianship property and observe the standards of care and conduct applicable to trustees.

(2) Protect and preserve the property of the protected person subject to guardianship and secure the protective orders or other orders that are required to protect any other property of the protected person.

(3) Conserve any property of the protected person in excess of the protected person's current needs.

(4) Encourage self-reliance and independence of the protected person.

(5) Consider recommendations relating to the appropriate standard of support, care, education, and training for the protected person or the protected person's dependent made by the protected person's parent.

As added by P.L.169-1988, SEC.1. Amended by P.L.108-1996, SEC.6.

IC 29-3-8-4

Exercise of powers to perform responsibilities; enumeration

Sec. 4. A guardian (other than a temporary guardian) may exercise all of the powers required to perform the guardian's responsibilities, including the following:

(1) To receive and issue a receipt for property payable to the protected person or the protected person's parent, guardian, or custodian from any source, including any statutory benefit, insurance system, or any private contract, devise, trust, guardianship, or custodianship.

(2) If reasonable, to delegate to the protected person certain responsibilities for decisions affecting the protected person's business affairs and well-being.

(3) To invest and reinvest the property of the protected person in accordance with powers vested in, and according to the standards imposed upon, trustees under IC 30-4-3-3(c).

(4) To secure the appointment of a guardian or co-guardian in any other state, when needed, with respect to any part or all of the guardianship property located in another state, to confer upon the appointed guardian any or all of the guardian's powers as guardian with respect to the property.

(5) To continue any business of the protected person, whether in corporate, partnership, or proprietorship form, according to the rules for continuing the business of a decedent specified in IC 29-1-13-11.

(6) To pay to the person, guardian, department, bureau, or agency having care and custody of the protected person, or to the protected person if at least fourteen (14) years of age, a reasonable amount to be expended for the support of the protected person and the protected person's dependents, with due regard to the following:

(A) The size of the guardianship property, the probable duration of the guardianship, and the extent to which the protected person in the future may be self-sufficient and able to manage the protected person's financial affairs and property.

(B) The accustomed standard of living of the protected person and the protected person's dependents.

(C) Other funds or sources used for the support of the protected person and the protected person's dependents.

(7) To distribute income and discretionary amounts of principal

in one (1) or more of the following ways as the guardian believes to be in the best interests of the protected person:

(A) Directly to the protected person.

(B) To a guardian of the protected person appointed in another state.

(C) To a custodian for the protected person under IC 30-2-8.5.

(D) To an adult relative of the protected person.

(E) By expending the money or using the property directly for the benefit of the protected person.

(8) To apply the guardianship property to or for the benefit of any person, including the protected person, in reimbursement for reasonable expenditures made in good faith on behalf of the protected person that the guardian might have made, or in advance for services to be rendered to the protected person if it is reasonable to expect that the services will be performed and advance payments are reasonably necessary under the circumstances.

(9) To bind all or any part of the guardianship property in a transaction for the benefit of the protected person, unless the third party dealing with the guardian is acting in bad faith.

(10) Except as provided in IC 29-3-2-6(d), powers conferred upon trustees and personal representatives respectively by IC 30-4-3-3 and IC 29-1-7.5-3. However, if there is a conflict, the broader power controls.

(11) To exercise on behalf of the protected person powers that are the same as those granted to the parent of a minor under IC 29-3-3-3.

(12) To petition the court to request the authority to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of the protected person, if the protected person is an incapacitated person, as provided under IC 29-3-9-12.2.

As added by P.L.169-1988, SEC.1. Amended by P.L.267-1989, SEC.1; P.L.77-1992, SEC.7; P.L.83-2014, SEC.2.

IC 29-3-8-5

Sale or encumbrance of guardianship property; conflicts of interest

Sec. 5. (a) Any:

(1) sale or encumbrance of any part of the property of a protected person to a guardian or guardian's spouse, agent, attorney, or any corporation, trust, or other organization in which the guardian has a substantial beneficial interest; or

(2) other transaction involving the property that is affected by a substantial conflict between the interest of the protected person and the guardian's personal interest;

is void unless approved by the court.

(b) Every contract, sale, or conveyance executed by a protected person is void unless the protected person is a minor, in which event the contract, sale, or conveyance is voidable.

As added by P.L.169-1988, SEC.1. Amended by P.L.238-2005, SEC.15.

IC 29-3-8-6
Sale or transfer of guardianship property contrary to terms of protected person's will; election of devisee

Sec. 6. If:

(1) a guardian sells or transfers during a protected person's lifetime property belonging to the protected person that is specifically devised to another in a will executed by the protected person;

(2) the protected person subsequently dies; and

(3) the devised property is consequently not contained in the protected person's estate following the death of the protected person;

the devisee may, at the devisee's option, elect to receive the value of the devised property, as valued at the time of death of the protected person, as a general devise or the proceeds of the sale or transfer as a specific devise.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.72; P.L.252-2001, SEC.28.

IC 29-3-8-6.5
Severance of property jointly owned with rights of survivorship or use of the assets of a multiple party account

Sec. 6.5. (a) If:

(1) a guardian takes possession of property that is:

(A) jointly owned by or titled in the names of the protected person and another person with rights of survivorship; or

(B) owned as a multiple party account with another person as joint owner or beneficiary;

(2) the guardian:

(A) severs the joint ownership of the property; or

(B) uses the assets of the multiple party account; and

(3) the protected person subsequently dies while the other person is living;

the other person may elect to receive from the protected person's estate property in an amount determined under subsection (b).

(b) The amount of property the other person described in subsection (a) may elect to receive is determined in STEP THREE of the following formula:

STEP ONE: Subtract:

(A) the value of the severed or used property retained by the other person at the time ownership was severed or used, if any; from

(B) the value of the joint property or multiple party account at the time ownership was severed or the assets were used.

STEP TWO: Divide:

(A) the remainder determined under STEP ONE; by

(B) the value of the protected person's property, including

the jointly held property or multiple party account, at the time ownership was severed or the assets were used.

STEP THREE: Multiply:

(A) the quotient determined under STEP TWO; by

(B) the value of the deceased protected person's net estate.

(c) As used in this section, "multiple party account" refers to both multiple party accounts described by IC 32-17-11 and transfer on death transfers completed under IC 32-17-14.

As added by P.L.33-1989, SEC.73. Amended by P.L.143-2009, SEC.16.

IC 29-3-8-7

Sale, division, or disposition of property; contracts entered into before incapacity; performance by guardian

Sec. 7. If the court finds that:

(1) an incapacitated person who is a protected person did, before the person became an incapacitated person, enter into a written contract, including a contract for the sale, division, or other disposition of property;

(2) the obligations of the contract have not been fully carried out; and

(3) the contract was a good and binding contract at the time of the making of the contract;

the court shall authorize the guardian of the protected person to perform the contract without notice or hearing unless otherwise ordered by the court.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.74.

IC 29-3-8-8

Limitations on guardian powers

Sec. 8. (a) The court, at the time of appointment or later, on its own motion or on petition of the protected person or other person approved by the court, may:

(1) confer upon the guardian any additional responsibilities and powers;

(2) increase or decrease the bond of the guardian to satisfy the requirements of IC 29-3-7-1; or

(3) limit the responsibilities and powers of the guardian otherwise conferred by this article and create a limited guardianship.

(b) However, all limitations must be endorsed on the guardian's letters. Following the same procedure, a limitation may be removed or modified and appropriate revised letters issued.

As added by P.L.169-1988, SEC.1.

IC 29-3-8-9

Requirements, terms, and conditions included in order creating guardianship; requirements for modifying or terminating guardianship; notify and refer to department of child services;

conduct of hearing

Sec. 9. (a) A probate or juvenile court may include in its order creating a guardianship of a minor the following:

(1) A requirement that the minor must reside with the guardian until the guardianship is terminated or modified.

(2) Any terms and conditions that a parent must meet in order to seek modification or termination of the guardianship.

(b) Except as provided in IC 29-3-12, if an order creating a guardianship contains terms and conditions described in subsection (a)(2), the court may modify or terminate the guardianship only if the parent:

(1) complies with the terms and conditions; and

(2) proves the parent's current fitness to assume all parental obligations by a preponderance of the evidence.

(c) If:

(1) a petition is filed for modification, resignation, or removal of the guardian or termination of the guardianship before the parent complies with the court ordered terms and conditions described in subsection (a)(2); and

(2) the minor:

(A) was the subject of a petition alleging the child to be a child in need of services; or

(B) is participating in a program of informal adjustment;

the court shall refer the petition to the department of child services for the department of child services to determine the placement of the child in accordance with the best interests of the child.

(d) A court shall notify the department of child services:

(1) if:

(A) the court appoints a guardian for a minor who:

(i) was the subject of a petition alleging the minor to be a child in need of services; or

(ii) is participating in a program of informal adjustment; and

(B) a petition to modify or terminate the guardianship of the minor or a petition regarding the death, resignation, or removal of the guardian is filed; and

(2) of any hearings related to the petitions described under subdivision (1)(B).

(e) If a minor was the subject of a petition alleging the minor to be a child in need of services or is participating in a program of informal adjustment, the court shall do the following at a hearing regarding a petition filed under this section:

(1) Consider the position of the department of child services.

(2) If requested by the department of child services, allow the department of child services to present evidence regarding:

(A) whether the guardianship should be modified or terminated;

(B) the fitness of the parent to provide for the care and supervision of the minor at the time of the hearing;

(C) the appropriate care and placement of the child; and

(D) the best interests of the child.

(f) The department of child services or the proposed guardian shall notify the court creating a guardianship if the department of child services has approved financial assistance to a guardian for the benefit of the protected person, as a component of child services (as defined in IC 31-9-2-17.8(1)(E)). If the guardian will be provided assistance as a component of child services, the court shall order the guardian to provide financial support to the protected person to the extent the following resources do not fully support the needs of the protected person:

(1) The guardianship property of the protected person.

(2) Child support or other financial assistance received by the guardian from the protected person's parent or parents.

(3) Periodic payments the guardian receives from the department of child services for support of the protected person as set forth in the department of child service's rules or the terms of the guardianship assistance agreement.

As added by P.L.162-2011, SEC.3. Amended by P.L.48-2012, SEC.8.

IC 29-3-8.5

Chapter 8.5. Volunteer Advocates for Seniors or Incapacitated Adults

IC 29-3-8.5-1

Appointment

Sec. 1. A court in a proceeding under this article may appoint a volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program.

As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.2; P.L.72-2010, SEC.5.

IC 29-3-8.5-2

Progress reports; final report

Sec. 2. A volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program shall submit to the court:

(1) a progress report thirty (30) days after the date of appointment describing:

(A) the matters required by the court; and

(B) the:

(i) current physical and mental condition;

(ii) residential placement; and

(iii) property, and any property related issues;

of the senior or the incapacitated adult;

(2) a progress report sixty (60) days after the date of appointment:

(A) describing the matters required by the court; and

(B) that includes a verified inventory describing the property, and any property related issues, of the incapacitated adult or senior;

(3) a progress report or final report ninety (90) days after the date of appointment:

(A) describing the matters required by the court; and

(B) making recommendations to the court as to whether the need continues to exist for the appointment of a guardian of the incapacitated adult or senior;

(4) an annual progress report on the anniversary date of the appointment if the appointment of the volunteer advocate is continued by the court for more than one (1) year:

(A) describing the matters required by the court;

(B) describing the:

(i) current physical and mental condition;

(ii) residential placement; and

(iii) property, and any property related issues;

of the senior or the incapacitated adult; and

(C) making recommendations to the court as to whether the need continues to exist for the appointment of a guardian of the incapacitated adult or senior; and

(5) upon the death of the incapacitated person, a final report and financial accounting:

(A) describing the incapacitated person's:
(i) final physical and mental condition;
(ii) cause of death;
(iii) last residential placement; and
(iv) final burial arrangements;
(B) stating the actions taken by the program regarding the:
(i) person's care and custody; and
(ii) preservation of the person's property;
(C) making recommendations to the court to close the guardianship of the person; and
(D) containing all other matters required by the court.

As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.3; P.L.72-2010, SEC.6.

IC 29-3-8.5-3
Duties

Sec. 3. (a) A volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program shall:

(1) serve as a guardian to represent and protect the best interests of an incapacitated person or senior including the person's property;
(2) investigate and gather information regarding the health, welfare, and financial circumstances of the incapacitated person or senior, as directed by a court;
(3) facilitate and authorize health care, social welfare, and residential placement services as needed by the incapacitated person or senior;
(4) advocate for the rights of the incapacitated person or senior;
(5) facilitate legal representation for the incapacitated person or senior;
(6) provide the court with the required reports under section 2 of this chapter; and
(7) perform any other responsibilities required by the court.

(b) A volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program has the duties of the guardian of a minor listed in IC 29-3-8-1 and IC 29-3-8-3.

As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.4; P.L.72-2010, SEC.7.

IC 29-3-8.5-4
Actions a volunteer advocate for seniors or a volunteer advocate for incapacitated adults may take

Sec. 4. (a) A volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program may:

(1) consent to medical and other professional care and treatment for the incapacitated person's or senior's health and welfare;
(2) secure the appointment of a guardian or coguardian in another state;
(3) take custody of the incapacitated person or senior and establish the incapacitated person's or senior's residence within

Indiana or another state in accordance with IC 29-3-9-2;

(4) institute proceedings or take other appropriate action to compel the performance by any person of a duty to support the incapacitated person's or senior's health or welfare;

(5) protect and preserve the property of the incapacitated person or senior and preserve any property in excess of the incapacitated person's or senior's current needs;

(6) delegate to the incapacitated person or senior certain responsibilities for decisions affecting the incapacitated person's or senior's business affairs and well-being; and

(7) petition the court to request the authority to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of an incapacitated person as provided under IC 29-3-9-12.2.

(b) A volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program may exercise the powers of a guardian of a minor listed in IC 29-3-8-2 and IC 29-3-8-4.

As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.5; P.L.72-2010, SEC.8; P.L.83-2014, SEC.3.

IC 29-3-8.5-5

Term of appointment

Sec. 5. (a) If a court appoints a volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program, the initial appointment shall be for a period of ninety (90) days.

(b) After the initial ninety (90) day period, the court may, upon petition by the volunteer advocates for seniors program or volunteer advocates for incapacitated adults program or upon the court's own motion, extend the appointment for a period as determined by the court to be necessary to protect the best interests and property of the incapacitated person or senior.

As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.6; P.L.72-2010, SEC.9.

IC 29-3-8.5-6

Officer of the court

Sec. 6. A volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program is considered an officer of the court for the purpose of representing the interests of an incapacitated person or senior.

As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.7; P.L.72-2010, SEC.10.

IC 29-3-8.5-7

Attorney appointment

Sec. 7. The court may appoint an attorney to represent a volunteer advocate for seniors or a volunteer advocate for incapacitated adults.

As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.8.

IC 29-3-8.5-8

Civil immunity

Sec. 8. Except for gross misconduct:

(1) a volunteer advocate for seniors program or a volunteer advocate for incapacitated adults program that;

(2) an employee of a volunteer advocates for seniors program or a volunteer advocate for incapacitated adults program who; or

(3) a volunteer for a volunteer advocates for seniors program or a volunteer advocate for incapacitated adults program who;

performs duties in good faith is immune from any civil liability resulting from the program's, employee's, or volunteer's performance.

As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.9.

IC 29-3-8.5-9

Authorization to consent to or refuse health care

Sec. 9. A volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program under this chapter is not authorized to consent to or refuse health care (as defined in IC 16-36-1-1) for an individual if:

(1) a spouse, a parent, an adult child, or an adult sibling of the individual or the individual's religious superior, if the individual is a member of a religious order, is available, capable, and suitable to consent to or refuse the health care on behalf of the individual; or

(2) the individual has previously:

(A) appointed a health care representative under IC 16-36-1;

(B) authorized health care under IC 16-36-1.5, IC 16-36-4, or IC 16-36-5;

(C) executed a power of attorney under IC 30-5-4; or

(D) had a guardian appointed by the court under IC 29-3.

As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.10; P.L.72-2010, SEC.11.

IC 29-3-8.5-9.5

Application of responsibilities and powers of guardians

Sec. 9.5. IC 29-3-8-5 through IC 29-3-8-8 apply to a volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program under this chapter.

As added by P.L.72-2010, SEC.12.

IC 29-3-8.5-10

Petitions for reasonable compensation

Sec. 10. (a) A volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program may petition the court for reasonable compensation for services provided or for expenditures made in good faith on behalf of the incapacitated adult or senior.

(b) A court may grant reasonable compensation or expenditure reimbursement to a volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program upon the court's own motion.

As added by P.L.72-2010, SEC.13.

IC 29-3-8.5-11
Joint or multiple county programs

Sec. 11. (a) Courts with probate jurisdiction that are located in adjacent counties may establish joint or multiple county volunteer advocates for seniors programs or volunteer advocates for incapacitated adults programs.

(b) Courts with probate jurisdiction may contract with an Indiana nonprofit or municipal corporation to provide volunteer advocates for seniors programs or volunteer advocates for incapacitated adults programs.

As added by P.L.72-2010, SEC.14.

IC 29-3-8.5-12
Programs of nonprofit corporations

Sec. 12. (a) A volunteer advocates for seniors program or volunteer advocates for incapacitated adults program that is a program of an Indiana nonprofit corporation must establish policies and procedures to avoid a conflict of interest if the nonprofit corporation is also a provider of other necessary services to the incapacitated individual.

(b) A volunteer advocates for seniors program or volunteer advocates for incapacitated adults program to which subsection (a) applies shall advise the court of the policies and procedures established to avoid a conflict of interest in the petition to the court for guardianship of the incapacitated individual.

As added by P.L.72-2010, SEC.15.

IC 29-3-9

Chapter 9. Matters Other Than Appointment

IC 29-3-9-1

Delegation of powers; powers excluded; exercise of powers under power of attorney

Sec. 1. (a) Except as provided in subsection (b), by a properly executed power of attorney, a parent of a minor or a guardian (other than a temporary guardian) of a protected person may delegate to another person for:

(1) any period during which the care and custody of the minor or protected person is entrusted to an institution furnishing care, custody, education, or training; or

(2) a period not exceeding twelve (12) months;

any powers regarding support, custody, or property of the minor or protected person. A delegation described in this subsection is effective immediately unless otherwise stated in the power of attorney.

(b) A parent of a minor or a guardian of a protected person may not delegate under subsection (a) the power to:

(1) consent to the marriage or adoption of a protected person who is a minor; or

(2) petition the court to request the authority to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of a protected person as provided under IC 29-3-9-12.2.

(c) A person having a power of attorney executed under subsection (a) has and shall exercise, for the period during which the power is effective, all other authority of the parent or guardian respecting the support, custody, or property of the minor or protected person except any authority expressly excluded in the written instrument delegating the power. However, the parent or guardian remains responsible for any act or omission of the person having the power of attorney with respect to the affairs, property, and person of the minor or protected person as though the power of attorney had never been executed.

(d) Except as otherwise stated in the power of attorney delegating powers under this section, a delegation of powers under this section may be revoked by a written instrument of revocation that:

(1) identifies the power of attorney revoked; and

(2) is signed by the:

(A) parent of a minor; or

(B) guardian of a protected person;

who executed the power of attorney.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.75; P.L.101-2008, SEC.7; P.L.178-2011, SEC.6; P.L.83-2014, SEC.4.

IC 29-3-9-2

Change in physical presence of protected person

Sec. 2. A guardian (other than a temporary guardian), a volunteer advocate for seniors, or a volunteer advocate for incapacitated adults appointed under IC 29-3-8.5 may, with the approval of and under such conditions as may be imposed by the court after notice and hearing, change the physical presence of the protected person to another place in Indiana or to another state if the court finds that such a change is in the best interests of the protected person. Upon such a change, the guardianship may be limited or terminated by the court. *As added by P.L.169-1988, SEC.1. Amended by P.L.41-2004, SEC.3; P.L.11-2006, SEC.11.*

IC 29-3-9-3
Compensation and reimbursement of guardian

Sec. 3. A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for reasonable expenditures made in good faith on behalf of the protected person. *As added by P.L.169-1988, SEC.1.*

IC 29-3-9-4
Repealed

(Repealed by P.L.6-2010, SEC.40.)

IC 29-3-9-4.5
Estate planning

Sec. 4.5. (a) After notice to interested persons and upon authorization of the court, a guardian may, if the protected person has been found by the court to lack testamentary capacity, do any of the following:

(1) Make gifts.

(2) Exercise any power with respect to transfer on death or payable on death transfers that is described in IC 30-5-5-7.5.

(3) Convey, release, or disclaim contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entireties.

(4) Exercise or release a power of appointment.

(5) Create a revocable or irrevocable trust of all or part of the property of the estate, including a trust that extends beyond the duration of the guardianship.

(6) Revoke or amend a trust that is revocable by the protected person.

(7) Exercise rights to elect options and change beneficiaries under insurance policies, retirement plans, and annuities.

(8) Surrender an insurance policy or annuity for its cash value.

(9) Exercise any right to an elective share in the estate of the protected person's deceased spouse.

(10) Renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos.

(b) Before approving a guardian's exercise of a power listed in subsection (a), the court shall consider primarily the decision that the

protected person would have made, to the extent that the decision of the protected person can be ascertained. If the protected person has a will, the protected person's distribution of assets under the will is prima facie evidence of the protected person's intent. The court shall also consider:

(1) the financial needs of the protected person and the needs of individuals who are dependent on the protected person for support;

(2) the interests of creditors;

(3) the possible reduction of income taxes, estate taxes, inheritance taxes, or other federal, state, or local tax liabilities;

(4) the eligibility of the protected person for governmental assistance;

(5) the protected person's previous pattern of giving or level of support;

(6) the protected person's existing estate plan, if any;

(7) the protected person's life expectancy and the probability that the guardianship will terminate before the protected person's death; and

(8) any other factor the court considers relevant.

(c) A guardian may examine and receive, at the expense of the guardian, copies of the following documents of the protected person:

(1) A will.

(2) A trust.

(3) A power of attorney.

(4) A health care appointment.

(5) Any other estate planning document.

As added by P.L.6-2010, SEC.12.

IC 29-3-9-5

Inventory of guardianship property

Sec. 5. (a) Within ninety (90) days after appointment, a guardian (other than a temporary guardian) shall file with the court a complete inventory of the property subject to the guardian's control together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits. A temporary guardian shall file the inventory and oath or affirmation with the court within thirty (30) days after appointment. The inventory must conform to the requirements of IC 29-1-12-1. The guardian shall provide a copy of the inventory to the protected person if the protected person is at least fourteen (14) years of age. A copy also shall be provided to any guardian, parent, or person with whom the protected person resides and any other person ordered by the court. In addition, the guardian shall provide notice of the filing of the inventory to each person that was required to be notified of the hearing on the petition to establish the guardianship. The notice must be provided in the same manner as the notice of the hearing to establish a guardianship. The notice must include all of the following:

(1) The cause number.

(2) A statement that Indiana law requires a guardian to file with

the court a written verified account of the guardian's administration:

(A) at least biennially, not more than thirty (30) days after the anniversary date of the guardian's appointment; and

(B) not more than thirty (30) days after the termination of the appointment.

(3) A statement that the inventory and the written verified accounts may be inspected at the court's address.

(b) The guardian shall keep suitable records of the guardian's administration and exhibit the records as ordered by the court.

As added by P.L.169-1988, SEC.1. Amended by P.L.265-1995, SEC.1.

IC 29-3-9-6

Account of administration; filing with court; notice of hearing on account; order of discharge; limitation of actions against sureties

Sec. 6. (a) Unless otherwise directed by the court, a guardian (other than a temporary guardian) shall file with the court:

(1) at least biennially, not more than thirty (30) days after the anniversary date of the guardian's appointment; and

(2) not more than thirty (30) days after the termination of the appointment;

a written verified account of the guardian's administration.

(b) A temporary guardian shall file with the court, within thirty (30) days after the termination of the temporary guardian's appointment, and otherwise as ordered by the court, a written verified account of the temporary guardian's administration.

(c) A written verified account required under this section must include the incapacitated person's or minor's current residence and a description of the condition and circumstances of the incapacitated person or minor.

(d) The court shall conduct a hearing on each verified account filed under this section. The court shall give notice to each person entitled to receive notice that an accounting has been filed and will be acted upon by the court on the date set unless written objections are presented to the court on or before that date. The court shall give the notice required by this subsection, unless waived, to the following:

(1) The protected person, unless waived by the court. If notice to the protected person is waived, the court shall give notice to a person who is not the guardian of the protected person in the following priority:

(A) The protected person's spouse.

(B) An adult child of the protected person.

(C) A parent of the protected person.

(D) A guardian ad litem appointed by the court under subsection (e).

(2) In the case of a protected person who has died, the personal representative of the estate of the protected person, if any.

(3) Any other persons that the court directs.

(e) The court may appoint a guardian ad litem to review on behalf of a protected person an accounting filed under this section if:

(1) the protected person does not have a spouse, an adult child, or a parent; or

(2) the same individual:

(A) served as the protected person's guardian before the death of the protected person; and

(B) is the personal representative of the protected person's estate.

(f) When an account other than an account in final settlement is filed, the court may approve the same ex parte, but the account may be reviewed by the court at any subsequent time and does not become final until an account in final settlement is approved by the court after notice and hearing.

(g) When notice of hearing has been given under this section, the order of the court approving the intermediate account or the final account is binding upon all persons.

(h) When a guardian files with the court proper receipts or other evidence satisfactory to the court showing that the guardian has delivered to the appropriate persons all the property for which the guardian is accountable as guardian, the court shall enter an order of discharge. The order of discharge operates as a release from the duties of the guardian's office that have not yet terminated and operates as a bar to any suit against the guardian and the guardian's sureties, unless the suit is commenced within one (1) year from the date of the discharge.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.76; P.L.99-2013, SEC.8.

IC 29-3-9-6.5

Accounting standards and procedures

Sec. 6.5. (a) This section applies to an accounting described under section 6 of this chapter that is filed:

(1) in a court that requires an accounting; and

(2) by a guardian for a protected person:

(A) whose:

(i) annual gross income is not more than one hundred eighty-five percent (185%) of the federal income poverty level as determined annually by the federal Office of Management and Budget under 42 U.S.C. 9902; and

(ii) total assets are worth fifteen thousand dollars ($15,000) or less; or

(B) who has an annual gross income and total assets of any amount, if the guardian does not have powers concerning the estate of the protected person.

(b) The court shall establish standards for the type of information required to be reported in an accounting described in subsection (a).

(c) Except as provided in subsection (d), the accounting described in subsection (a) is not required to be filed by an attorney for the guardian.

(d) The court may order that the guardian hire an attorney to assist the guardian in filing the accounting described in subsection (a) if the court determines that an accounting filed by the guardian does not conform to the standards established by the court under this section.
As added by P.L.265-1995, SEC.2.

IC 29-3-9-7
Compromise of claim; petition to court; settlement

Sec. 7. (a) Whenever it is proposed to compromise any claim by or against a protected person or the protected person's property, the court, on petition of the guardian, may enter an order authorizing the compromise to be made if satisfied that the compromise will be in the best interest of the protected person.

(b) Whenever a minor has a disputed claim against another person, whether arising in contract, tort, or otherwise, and a guardian for the minor and the minor's property has not been appointed, the parents of the minor may compromise the claim. However, before the compromise is valid, it must be approved by the court upon filing of a petition requesting the court's approval. If the court approves the compromise, it may direct that the settlement be paid in accordance with IC 29-3-3-1. If IC 29-3-3-1 is not applicable, the court shall require that a guardian be appointed and that the settlement be delivered to the guardian upon the terms that the court directs.
As added by P.L.169-1988, SEC.1.

IC 29-3-9-8
Supplementary orders

Sec. 8. At any time after the appointment or issuance of a protective order, the court on its own motion or on the petition of the protected person or other person approved by the court, in addition to its authority under IC 29-3-8-8, may give the instructions and make the amendatory and supplementary orders that the court finds appropriate.
As added by P.L.169-1988, SEC.1.

IC 29-3-9-9
Expenses of proceedings

Sec. 9. (a) Whenever a guardian is appointed for an incapacitated person or minor, the guardian shall pay all expenses of the proceeding, including reasonable medical, professional, and attorney's fees, out of the property of the protected person.

(b) The expenses of any other proceeding under this article that results in benefit to the protected person or the protected person's property shall be paid from the protected person's property as approved by the court.
As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.77.

IC 29-3-9-10
Attorney of record for guardian

Sec. 10. The attorney of record for a guardian continues as such until the termination of the guardianship or the attorney's withdrawal, whichever occurs first, as approved by the court.
As added by P.L.169-1988, SEC.1.

IC 29-3-9-11
Investigation and report concerning minor or protected person

Sec. 11. The office of the secretary of family and social services shall investigate and report to the court concerning the conditions and circumstances of a minor or an alleged incapacitated adult or protected person who is an adult and the fitness and conduct of the guardian or the proposed guardian whenever ordered to do so by the court.
As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.78; P.L.2-1992, SEC.794; P.L.4-1993, SEC.261; P.L.5-1993, SEC.274; P.L.145-2006, SEC.169; P.L.146-2008, SEC.531; P.L.128-2012, SEC.20.

IC 29-3-9-12
Guardianship of property of minor or incapacitated adult; compliance with demand or instruction; enforcement proceedings; awards

Sec. 12. (a) This section applies only to a guardianship of the property of a minor or an incapacitated adult.

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

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

(2) is consistent with this article;

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

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

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

(2) refused to respond within thirty (30) business days after receiving the guardian's written demand or instruction, if the demand or instruction is consistent with this article.

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

(1) the insurer failed to respond under IC 27 after receiving a written demand or instruction from the personal guardian; and

(2) the written demand or instruction is consistent with this article.

As added by P.L.51-2014, SEC.7. Amended by P.L.83-2014, SEC.5.

IC 29-3-9-12.2
Petition for authority to petition for dissolution, legal separation,

or annulment; granting petition; considerations; petition not required for certain actions

Sec. 12.2. (a) If a guardian of an incapacitated person determines that:

(1) a dissolution of the incapacitated person's marriage;

(2) a legal separation of the incapacitated person and the incapacitated person's spouse; or

(3) an annulment of the incapacitated person's marriage;

is in the best interests of the incapacitated person, the guardian shall petition the court to request the authority to petition for a dissolution of marriage, a legal separation, or an annulment of marriage on behalf of the incapacitated person.

(b) The petition to request authority described in subsection (a) must set forth the following:

(1) The purpose for petitioning for dissolution of marriage, legal separation, or annulment of marriage.

(2) The names and addresses of all the following:

(A) The incapacitated person's spouse.

(B) If the incapacitated person has adult children, any adult children of the incapacitated person who are not guardians of the incapacitated person.

(C) If the incapacitated person is a minor, a parent of the incapacitated person whose parental rights have not been terminated.

(c) A guardian that petitions the court to request authority as described in subsection (a) shall provide a copy of the petition, on or before the date the petition is filed, to all the following:

(1) The individuals listed in subsection (b)(2).

(2) Any other interested person as ordered by the court.

(d) The court shall:

(1) set a date for a hearing on the petition to request authority described in subsection (a);

(2) notify:

(A) all the parties; and

(B) any other individual listed in subsection (c);

of the hearing at least thirty (30) days before the hearing; and

(3) hold a hearing on the petition to request authority described in subsection (a).

(e) If the court determines by clear and convincing evidence that petitioning for:

(1) a dissolution of the incapacitated person's marriage;

(2) a legal separation of the incapacitated person and the incapacitated person's spouse; or

(3) an annulment of the incapacitated person's marriage;

is in the best interests of the incapacitated person, considering the totality of the circumstances, including the desire and interests of the spouse in remaining married, the court shall grant the petition and authorize the guardian to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of the incapacitated person.

(f) In making a determination under subsection (e), the court shall consider the risk of harm to the incapacitated person's physical or mental health, safety, or property if the court does not grant the petition and authorize the guardian to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of the incapacitated person.

(g) In making a determination under subsection (e), the court shall also give appropriate weight to evidence of:

(1) the incapacitated person's intent or preferences; or

(2) a prior decision of the incapacitated person;

for or against a dissolution of marriage, a legal separation, or an annulment of marriage. The court may reduce the weight given to evidence of the intent, preferences, or prior decisions of the incapacitated person if the court concludes, from all of the relevant facts and circumstances, that the passage of time, the relevant circumstances at the time of a prior statement or action by the incapacitated person, or changed circumstances after a prior statement or action make the prior statement or action less reliable evidence of the incapacitated person's best interests and current preferences. The court may give no weight to evidence considered under this subsection that the court concludes is unreliable evidence of the incapacitated person's best interests and current preferences.

(h) This section does not require a guardian of an incapacitated person to file a petition under this section in order to:

(1) defend the incapacitated person against a petition for dissolution, legal separation, or annulment of marriage that was filed before or after the filing of the petition for guardianship; or

(2) finalize:

(A) a dissolution of the incapacitated person's marriage;

(B) a legal separation between the incapacitated person and the incapacitated person's spouse; or

(C) an annulment of the incapacitated person's marriage;

if the petition for dissolution of marriage, legal separation, or annulment of marriage was filed by the incapacitated person or the incapacitated person's spouse before the appointment of the guardian.

As added by P.L.83-2014, SEC.6.

IC 29-3-9-13

Filing petition for dissolution, legal separation, or annulment in guardian's county of residence

Sec. 13. (a) This section applies if a court has authorized a guardian to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of an incapacitated person under section 12.2 of this chapter.

(b) A guardian may file a petition for dissolution on behalf of an incapacitated person under IC 31-15-2 in the county where the guardian resides in accordance with IC 31-15-2-6.

(c) A guardian may file a petition for legal separation on behalf of an incapacitated person under IC 31-15-3-4 in the county where the

guardian resides in accordance with IC 31-15-3-6.

(d) A guardian may file an action to annul a marriage under IC 31-11-10 in the county where the guardian resides in accordance with IC 31-11-10-4.

As added by P.L.83-2014, SEC.7.

IC 29-3-10

Chapter 10. Claims Against Protected Persons

IC 29-3-10-1

Payment of debts incurred on behalf of protected person; payment of claims; actions against guardian; filing of claims

Sec. 1. (a) Without prior order of the court, a guardian shall pay from the guardianship property all indebtedness that the guardian has reasonably incurred in good faith on behalf of the protected person.

(b) Upon order of the court, a guardian shall pay from the protected person's property for which the guardian is responsible any claim against the protected person or the protected person's property, that the court determines has merit.

(c) Claims based on:

(1) contracts entered into by a guardian in the guardian's official capacity;

(2) obligations arising from ownership or control of the property for which the guardian is responsible; or

(3) acts or omissions in the course of administration of the guardianship;

may be asserted against the guardianship by proceeding against the guardian in the guardian's official capacity, whether or not the guardian is personally liable.

(d) Any person having a claim against the protected person or the protected person's property or against the guardian as such may file the claim with the court at any time before the claim is barred by the statute of limitations and, upon proof of the claim, procure an order for its allowance and payment from the guardianship property. However, if a claim is filed within sixty (60) days before the date that a protected person attains the age of majority or regains capacity:

(1) the claim shall be stayed until the sixty (60) day period has elapsed;

(2) the protected person shall be substituted as a party; and

(3) the guardian shall prepare and file the guardian's account without regard to the claim.

As added by P.L.169-1988, SEC.1.

IC 29-3-11

Chapter 11. Liability of Guardians and Persons Acting Under Protective Orders

IC 29-3-11-1

Protection for persons dealing in good faith with guardian or person acting under protective order; scope of protection

Sec. 1. (a) A person who in good faith deals with a guardian or person acting under a protective order is:

(1) protected as if the guardian or person acting under a protective order properly exercised the power; and

(2) not required to inquire into the existence of the power or the propriety of its exercise except as to restrictions endorsed on the letters.

(b) A person who deals with a guardian or person acting under a protective order in good faith is not bound to see to the proper application of amounts paid or property delivered to the guardian or person.

(c) The protection expressed in this section:

(1) extends to any procedural irregularity or jurisdictional defect occurring in proceedings under this article; and

(2) is not a substitution for but is in addition to any other applicable law, including the laws relating to commercial transactions and to simplifying transfers of securities by fiduciaries.

As added by P.L.169-1988, SEC.1.

IC 29-3-11-2

Contracts entered into in good faith; personal liability of guardian; liability for acts or omissions; proceeding to determine liability

Sec. 2. (a) Unless otherwise provided in the contract, a guardian or person acting under a protective order is not personally liable on a contract entered into in good faith under the order, unless that person fails to reveal that person's representative capacity and identify that person's capacity in the contract.

(b) Subject to subsection (a), a guardian or person acting under a protective order is not personally liable to the protected person or others for any act or omission in good faith or for any act or omission of the protected person or others acting on behalf of the protected person.

(c) The guardian or person acting under a protective order is personally liable to the protected person for acts or omissions in the course of the administration of the trust of the guardian or person acting under a protective order only for a breach of duty to the protected person.

(d) Any question of liability of the guardian or person acting under a protective order personally to the protected person may be determined in a proceeding for accounting, surcharge, indemnification, or other appropriate proceeding or action.

As added by P.L.169-1988, SEC.1.

IC 29-3-11-3

Actions between third party and protected person; service of process; suits against guardian or person acting under protective order; substitution of parties

Sec. 3. (a) If a guardian has been appointed, all actions between third persons and the protected person seeking to charge or benefit the protected person or the protected person's property shall be prosecuted by or against the guardian or person acting under a protective order to represent the interests of the protected person in the action. All process relating to that action shall be served on the guardian.

(b) In the case of a claim against the guardian or person acting under a protective order personally, the guardian or person acting under the protective order may be sued both as guardian or person acting under the protective order and in the personal capacity of the guardian or person acting under the protective order in the same action.

(c) If an action was commenced by or against the protected person before the appointment of a guardian for the protected person, the guardian upon appointment shall be substituted as a party for the protected person. If the appointment of the guardian is terminated, the guardian's successor shall be substituted as a party to the action. If the protected person dies, the protected person's personal representative shall be substituted. If the protected person is no longer a minor or incapacitated person, the protected person shall be substituted.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.79.

IC 29-3-11-4

Civil immunity of a guardian

Sec. 4. Except as provided in section 2 of this chapter and except for gross misconduct, a guardian appointed under this article is immune from any civil liability resulting from the guardian's performance.

As added by P.L.41-2004, SEC.4.

IC 29-3-12

Chapter 12. Termination of Guardianships and Protective Orders

IC 29-3-12-1

Conditions for termination of guardianship; effect of termination on guardianship powers

Sec. 1. (a) Except as provided in section 6 or 7 of this chapter, the court shall terminate the guardianship of a minor upon:

(1) the minor's attaining eighteen (18) years of age; or

(2) the minor's death.

The court may terminate the guardianship of a minor upon the minor's adoption or marriage.

(b) The court shall terminate the guardianship of an incapacitated person upon:

(1) adjudication by the court that the protected person is no longer an incapacitated person; or

(2) the death of the protected person.

(c) The court may terminate any guardianship if:

(1) the guardianship property does not exceed the value of three thousand five hundred dollars ($3,500);

(2) the guardianship property is reduced to three thousand five hundred dollars ($3,500);

(3) the domicile or physical presence of the protected person is changed to another state and a guardian has been appointed for the protected person and the protected person's property in that state; or

(4) the guardianship is no longer necessary for any other reason.

(d) When a guardianship terminates otherwise than by the death of the protected person, the powers of the guardian cease, except that the guardian may pay the claims and expenses of administration that are approved by the court and exercise other powers that are necessary to complete the performance of the guardian's trust, including payment and delivery of the remaining property for which the guardian is responsible:

(1) to the protected person;

(2) in the case of an unmarried minor, to a person having care and custody of the minor with whom the minor resides;

(3) to a trust approved by the court, including a trust created by the guardian, in which:

(A) the protected person is the sole beneficiary of the trust; and

(B) the terms of the trust satisfy the requirements of Section 2503(c) of the Internal Revenue Code and the regulations under that Section;

(4) to a custodian under the Uniform Transfers to Minors Act (IC 30-2-8.5); or

(5) to another responsible person as the court orders.

(e) When a guardianship terminates by reason of the death of the protected person, the powers of the guardian cease, except that the

guardian may pay the expenses of administration that are approved by the court and exercise other powers that are necessary to complete the performance of the guardian's trust and may deliver the remaining property for which the guardian is responsible to the protected person's personal representative or to a person who presents the guardian with an affidavit under IC 29-1-8-1 or IC 29-2-1-2. If approved by the court, the guardian may pay directly the following:

(1) Reasonable funeral and burial expenses of the protected person.

(2) Reasonable expenses of the protected person's last illness.

(3) The protected person's federal and state taxes.

(4) Any statutory allowances payable to the protected person's surviving spouse or surviving children.

(5) Any other obligations of the protected person.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.12; P.L.95-2007, SEC.14; P.L.48-2012, SEC.9; P.L.115-2012, SEC.1.

IC 29-3-12-2

Mandatory termination of protective order

Sec. 2. The court shall terminate a protective order if:

(1) the protective order has expired by its terms; or

(2) the protective order is no longer necessary for any other reason.

As added by P.L.169-1988, SEC.1.

IC 29-3-12-3

Minimum period to maintain incapacitated person status; petition to terminate guardianship or protective order; penalty

Sec. 3. An order adjudicating a person as an incapacitated person may specify a minimum period, not exceeding one (1) year, during which a petition for an adjudication that the protected person is no longer an incapacitated person may not be filed without court approval. Subject to that restriction, the protected person or any other person may petition for an order that the protected person is no longer an incapacitated person and for termination of the guardianship or protective order. A request for an order may also be made informally to the court. Any person who knowingly interferes with transmission of the request is guilty of contempt of court.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.80.

IC 29-3-12-4

Removal, resignation, or death of guardian; final accounting; appointment of successor; effect of removal on validity of guardian's acts

Sec. 4. (a) The court may remove a guardian on its own motion or on petition of the protected person or any person interested in the guardianship, after notice and hearing, on the same grounds and in the same manner as is provided under IC 29-1-10-6 for the removal

of a personal representative. The court may accept the resignation of a guardian. Upon the death of the guardian, the guardian's personal representative shall submit a final account of guardianship to the court in accordance with IC 29-3-9-6. Upon the resignation or removal of the guardian, the guardian shall give a final accounting to the court.

(b) If the appointment of a successor guardian is required, the court shall appoint a qualified successor guardian to succeed to the title, powers, and duties of the predecessor guardian unless otherwise ordered by the court.

(c) The removal or resignation of a guardian after letters are duly issued to the guardian does not by itself invalidate the guardian's acts and omissions prior to removal. A final order under IC 29-3-9-6 protects the successor guardian and the successor guardian's surety to the same extent that it protects the successor guardian's predecessor and surety.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.13.

IC 29-3-12-5

Termination of authority and responsibility of guardian; effect on liability of guardian; court approval

Sec. 5. The authority and responsibility of a guardian terminate at the time that the court designates or upon the death, resignation, or removal of the guardian or upon the termination of the guardianship. The termination for any reason of the authority and responsibility of the guardian does not affect the liability of the guardian for prior acts or the obligation to account for the guardian's conduct of the guardian's trust. Resignation of a guardian does not terminate the appointment of the guardian until the guardian's resignation and final account have been approved by the court.

As added by P.L.169-1988, SEC.1.

IC 29-3-12-6

Guardianship extends beyond age 18 if minor is incapacitated or receives certain DCS assistance

Sec. 6. (a) If a protected person:

(1) is a minor; and

(2) has been adjudicated an incapacitated person;

the court may not terminate the guardianship of the protected person when the protected person attains eighteen (18) years of age.

(b) If a protected person is:

(1) a minor; and

(2) a recipient or beneficiary of financial assistance provided by the department of child services through a guardianship described in IC 31-9-2-17.8(1)(E);

the court may not terminate the guardianship of the protected person when the protected person attains eighteen (18) years of age.

As added by P.L.115-2012, SEC.2.

IC 29-3-12-7

Petition to extend guardianship past age 18

Sec. 7. (a) This section applies to the guardianship of a minor who has not been adjudicated an incapacitated person.

(b) A protected person who is at least seventeen (17) years of age and the guardian of the protected person may jointly petition the court to extend the duration of the guardianship beyond the date on which the protected person attains eighteen (18) years of age to the earlier of the following:

(1) A termination date, if any, set forth in the petition.

(2) The date the protected person attains twenty-two (22) years of age.

(c) A petition submitted under subsection (b) must be verified.

(d) The court, after notice and hearing, may extend a guardianship under this section if the court finds that extending the guardianship is in the best interests of the protected person. The extension of a guardianship under this section does not place the protected person under a legal disability.

As added by P.L.115-2012, SEC.3.

IC 29-3-13

Chapter 13. Foreign Guardians

IC 29-3-13-1

Payment of debt or delivery of property to foreign guardian

Sec. 1. (a) Any person indebted to an incapacitated person or minor, or having possession of property belonging to a minor or incapacitated person, may pay the debt or deliver the property to a foreign guardian appointed by a court of the state in which the incapacitated person or minor resides upon being presented with proof of the foreign guardian's appointment and an affidavit made by the foreign guardian stating the following:

(1) That the foreign guardian does not know of any other guardianship proceeding, relating to the incapacitated person or minor, pending in Indiana.

(2) That the letters of the foreign guardian were duly issued.

(3) In the case of an incapacitated person who is an adult (as defined in IC 29-3.5-1-2(1)), that the foreign guardian does not know of a court in a jurisdiction other than Indiana that has exercised jurisdiction regarding the incapacitated person under a law similar to IC 29-3.5-2.

(4) That the foreign guardian is entitled to receive the payment or delivery.

(b) If the person to whom the affidavit is presented does not know of any other guardianship proceeding pending in Indiana, payment or delivery in response to the demand and affidavit discharges the debtor or possessor from any further liability.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.81; P.L.178-2011, SEC.7.

IC 29-3-13-2

Filings concerning a foreign guardianship of the property of a minor; registration of the letters of office of a foreign guardian for an adult

Sec. 2. (a) This subsection applies to a guardianship of the property of a minor. If no guardian has been appointed, and no petition in a guardianship proceeding is pending in Indiana, a guardian appointed by a court of another state in which the minor is domiciled may file, with an Indiana court in a county in which property belonging to the minor is located, an authenticated copy of the guardian's appointment and a bond that meets the requirements of IC 29-3-7-1 with respect to that part of the property of the minor that is located in that county. After filing the copy and bond, the foreign guardian may exercise as to the property of the minor in that county in Indiana all powers of a guardian in Indiana and may maintain actions and proceedings in Indiana.

(b) In the case of an incapacitated person who is an adult (as defined in IC 29-3.5-1-2(1)), a foreign guardian for that adult may register certified copies of the guardian's letters of office and order of appointment under IC 29-3.5-4.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.82; P.L.178-2011, SEC.8.

IC 29-3-13-3

Acts by which foreign guardian submits to personal jurisdiction

Sec. 3. A foreign guardian submits personally to the jurisdiction of Indiana courts in any proceeding relating to the property for which the guardian is responsible by:

(1) complying with section 2 of this chapter;

(2) receiving payment of money or taking delivery of property belonging to a minor in Indiana; or

(3) doing any act as a guardian in Indiana that would give Indiana jurisdiction over the guardian as an individual.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.83; P.L.178-2011, SEC.9.

IC 29-3.5

ARTICLE 3.5. UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

IC 29-3.5-1

Chapter 1. General Provisions

IC 29-3.5-1-1

Citation

Sec. 1. This article may be cited as the uniform adult guardianship and protective proceedings jurisdiction act.

As added by P.L.178-2011, SEC.10.

IC 29-3.5-1-2

Definitions

Sec. 2. The following definitions apply throughout this article:

(1) "Adult" means either of the following:

(A) An individual who has attained eighteen (18) years of age.

(B) An emancipated minor who has not attained eighteen (18) years of age.

(2) "Conservator" means a guardian (as defined in IC 29-3-1-6).

(3) "Guardian" has the meaning set forth in IC 29-3-1-6.

(4) "Guardianship order" means an order appointing a guardian.

(5) "Guardianship proceeding" means a proceeding in which an order for the appointment of a guardian is sought or has been issued.

(6) "Home state" means either of the following:

(A) The state in which the respondent was physically present, including any period of temporary absence, for at least six (6) consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian.

(B) In the case of a respondent for whom no state satisfies clause (A), the state in which the respondent was physically present, including any period of temporary absence, for at least six (6) consecutive months ending within the six (6) months prior to the filing of the petition.

(7) "Incapacitated person" has the meaning set forth in IC 29-3-1-7.5 with respect to an adult.

(8) "Party" means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.

(9) "Person" has the meaning set forth in IC 29-3-1-12.

(10) "Protected person" has the meaning set forth in IC 29-3-1-13 with respect to an adult.

(11) "Protective order" refers to an order issued under IC 29-3-4.

(12) "Protective proceeding" has the meaning set forth in

IC 29-3-1-14.

(13) "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.

(14) "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.

(15) "Significant connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(16) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

As added by P.L.178-2011, SEC.10.

IC 29-3.5-1-3

Foreign countries treated as states

Sec. 3. A court of this state may treat a foreign country as if it were a state for the purpose of applying this article.

As added by P.L.178-2011, SEC.10.

IC 29-3.5-1-4

Interstate communications between courts

Sec. 4. (a) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (b), the court shall make a record of the communication.

(b) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

As added by P.L.178-2011, SEC.10.

IC 29-3.5-1-5

Requests of out-of-state courts

Sec. 5. (a) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

(1) Hold an evidentiary hearing.

(2) Order a person in that state to produce or give evidence pursuant to procedures of that state.

(3) Order that an evaluation or assessment be made of the respondent, or order any appropriate investigation of a person involved in a proceeding.

(4) Forward to the court of this state a certified copy of any of the following:

(A) The transcript or other record of a hearing under subdivision (1) or any other proceeding.

(B) Any evidence otherwise presented under subdivision (2).

(C) Any evaluation or assessment prepared in compliance with the request under subdivision (3).

(5) Issue any other order necessary to assure the appearance of a person necessary to make a determination, including the respondent or the incapacitated or protected person.

(6) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including health information otherwise protected by state or federal law.

(b) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (a), a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

As added by P.L.178-2011, SEC.10.

IC 29-3.5-1-6

Testimony of out-of-state witnesses

Sec. 6. (a) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of witnesses who are located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(b) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce a record simultaneously with the transmission may not be excluded from evidence on an objection based on the means of transmission.

As added by P.L.178-2011, SEC.10.

IC 29-3.5-2
Chapter 2. Jurisdiction

IC 29-3.5-2-1
Considerations in determining jurisdiction

Sec. 1. In determining under section 3 of this chapter and IC 29-3.5-3-1(d) whether a respondent has a significant connection with a particular state, the court shall consider:

(1) the location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;
(2) the length of time the respondent at any time was physically present in the state and the duration of any absence;
(3) the location of the respondent's property; and
(4) the extent to which the respondent has ties to the state such as registering to vote, filing a state or local tax return, registering a vehicle, possessing a driver's license, having social relationships, and receiving services in the state.

As added by P.L.178-2011, SEC.10.

IC 29-3.5-2-2
Exclusive basis for determining jurisdiction

Sec. 2. This chapter provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

As added by P.L.178-2011, SEC.10.

IC 29-3.5-2-3
Jurisdiction of Indiana courts; criteria

Sec. 3. A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) this state is the respondent's home state;
(2) on the date the petition is filed, this state is a significant connection state and:
    (A) the respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or
    (B) the respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant connection state, and, before the court makes the appointment or issues the order:
        (i) a petition for an appointment or order is not filed in the respondent's home state;
        (ii) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and
        (iii) the court in this state concludes that it is an appropriate forum under the factors set forth in section 6 of this chapter;
(3) this state does not have jurisdiction under either subdivision (1) or (2), the respondent's home state and all significant

connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

(4) the requirements for special jurisdiction under section 4 of this chapter are met.

As added by P.L.178-2011, SEC.10.

IC 29-3.5-2-4

Special jurisdiction

Sec. 4. (a) A court of this state lacking jurisdiction under section 3(1) through 3(3) of this chapter has special jurisdiction to do any of the following:

(1) Appoint a temporary guardian in an emergency as permitted by IC 29-3-3-4 for a term not exceeding ninety (90) days for a respondent who is physically present in this state.

(2) Issue a protective order with respect to real or tangible personal property located in this state.

(3) Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to IC 29-3.5-3-1.

(b) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state whether dismissal is requested before or after the emergency appointment.

As added by P.L.178-2011, SEC.10.

IC 29-3.5-2-5

Duration of the jurisdiction of a court that appoints a guardian or issues a protective order

Sec. 5. Except as otherwise provided in section 4 of this chapter, a court that has appointed a guardian or issued a protective order consistent with this chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

As added by P.L.178-2011, SEC.10.

IC 29-3.5-2-6

Courts authorized to decline exercising jurisdiction upon determining that the courts of another state are the more appropriate forum

Sec. 6. (a) A court of this state having jurisdiction under section 3 of this chapter to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(b) If a court of this state declines to exercise its jurisdiction under subsection (a), it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper,

including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(c) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

(1) any expressed preference of the respondent;

(2) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur, and which state could best protect the respondent from the abuse, neglect, or exploitation;

(3) the length of time the respondent was physically present in or was a legal resident of this or another state;

(4) the distance of the respondent from the court in each state;

(5) the financial circumstances of the respondent's estate;

(6) the nature and location of the evidence;

(7) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(8) the familiarity of the court of each state with the facts and issues in the proceeding; and

(9) if an appointment were made, the court's ability to monitor the conduct of the guardian.

As added by P.L.178-2011, SEC.10.

IC 29-3.5-2-7

Authorized responses to a determination that jurisdiction has been acquired because of unjustifiable conduct

Sec. 7. (a) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(1) decline to exercise jurisdiction;

(2) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(3) continue to exercise jurisdiction after considering:

(A) the extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(B) whether it is a more appropriate forum than the court of any other state under the factors set forth in section 6(c) of this chapter; and

(C) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 3 of this chapter.

(b) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it

may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this chapter.
As added by P.L.178-2011, SEC.10.

IC 29-3.5-2-8
Notice requirements when another state is the respondent's home state

Sec. 8. If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state.
As added by P.L.178-2011, SEC.10.

IC 29-3.5-2-9
Rules concerning proceedings filed in two states

Sec. 9. Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under section 4(a)(1) or 4(a)(2) of this chapter, if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction under section 3 of this chapter, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section 3 of this chapter before the appointment or issuance of the order.

(2) If the court in this state does not have jurisdiction under section 3 of this chapter, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

As added by P.L.178-2011, SEC.10.

IC 29-3.5-3

Chapter 3. Transfer of Guardianship or Conservatorship

IC 29-3.5-3-1

Transfer of guardianship to another state

Sec. 1. (a) A guardian appointed in this state may petition the court to transfer the guardianship to another state.

(b) Notice of a petition under subsection (a) must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian.

(c) On the court's own motion or on request of the guardian, the protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed under subsection (a).

(d) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(1) the protected person:

(A) is physically present in the other state;

(B) is reasonably expected to move permanently to the other state; or

(C) has a significant connection to the other state as determined under IC 29-3.5-2-1;

(2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person;

(3) plans for care and services for the protected person in the other state are reasonable and sufficient; and

(4) adequate arrangements will be made for management of the protected person's property.

(e) The court shall issue a final order confirming the transfer and terminating the guardianship upon its receipt of:

(1) a provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to section 2 of this chapter; and

(2) the documents required to terminate a guardianship in this state.

As added by P.L.178-2011, SEC.10.

IC 29-3.5-3-2

Acceptance of a guardianship transferred to Indiana

Sec. 2. (a) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to section 1 of this chapter, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(b) Notice of a petition under subsection (a) must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

(c) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed under subsection (a).

(d) The court shall issue an order provisionally granting a petition filed under subsection (a) unless:

(1) an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(2) the guardian or conservator is ineligible for appointment in this state.

(e) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to section 1 of this chapter transferring the proceeding to this state.

(f) Not later than ninety (90) days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

(g) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(h) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian in this state under IC 29-3 if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

As added by P.L.178-2011, SEC.10.

IC 29-3.5-4

Chapter 4. Registration and Recognition of Order From Other States

IC 29-3.5-4-1

Registration of out-of-state guardianships

Sec. 1. If:

(1) a guardian has been appointed in another state;

(2) a petition for the appointment of a guardian is not pending in this state; and

(3) the guardian appointed in the other state gives notice to the appointing court of an intent to register the guardianship order;

the guardian appointed in the other state may register the guardianship order in this state by filing certified copies of the guardian's order and letters of office as a foreign judgment in the court of this state having probate jurisdiction and venue of the registered guardianship.

As added by P.L.178-2011, SEC.10.

IC 29-3.5-4-2

Registration of out-of-state protective order

Sec. 2. If:

(1) a conservator has been appointed in another state;

(2) a petition for a guardianship or protective order is not pending in this state; and

(3) the conservator appointed in the other state gives notice to the appointing court of an intent to register the protective order;

the conservator appointed in the other state may register the protective order in this state by filing as a foreign judgment certified copies of the conservator's order, letters of office, and bond, if any, in the court of this state having probate jurisdiction in any county in which property belonging to the protected person is located.

As added by P.L.178-2011, SEC.10.

IC 29-3.5-4-3

Powers of a registered out-of-state guardian or conservator

Sec. 3. (a) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(b) A court of this state may grant any relief available under this chapter and other laws of this state to enforce a registered order.

As added by P.L.178-2011, SEC.10.

IC 29-3.5-5

Chapter 5. Miscellaneous Provisions

IC 29-3.5-5-1

Construction of statutes must promote uniformity

Sec. 1. In applying and construing this uniform act, 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.178-2011, SEC.10.

IC 29-3.5-5-2

Effect on the federal Electronic Signatures in Global and National Commerce Act

Sec. 2. This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. 7003(b).

As added by P.L.178-2011, SEC.10.

IC 29-3.5-5-3

Application

Sec. 3. (a) This article applies as follows:

(1) To guardianships and protective orders in existence on July 1, 2011.

(2) To guardianship and protective proceedings begun after June 30, 2011.

(b) In the case of a guardianship or protective proceeding begun in Indiana before July 1, 2011, jurisdiction is established under IC 29-3.

(c) After June 30, 2011, a guardianship appointed or a protective order issued by a court exercising jurisdiction established under subsection (b) may be transferred to another court in accordance with IC 29-3.5-3.

(d) After June 30, 2011, a guardianship or protective proceeding begun in another state before July 1, 2011, may be registered in Indiana in accordance with IC 29-3.5-4.

As added by P.L.178-2011, SEC.10.