



January 26, 2021

HOUSE BILL No. 1252

DIGEST OF HB 1252 (Updated January 25, 2021 3:14 pm - DI 106)

Citations Affected: IC 29-1; IC 29-3; IC 30-5; IC 32-31.

Synopsis: Probate and guardianship matters. Removes conflicts between probate and guardianship statutes regarding classification of claims. Requires, for purposes of the power of attorney act, that a principal may not be a minor. Creates a tenant's representative for a deceased tenant or a tenant who is under a guardianship and specifies who may accept an appointment as a tenant's representative. Protects the proceeds from the sale of real property where no estate administration has been opened within five months of the decedent's date of death from claims of all creditors.

Effective: July 1, 2021.

Young J, Torr

January 14, 2021, read first time and referred to Committee on Judiciary.
January 26, 2021, amended, reported — Do Pass.

HB 1252—LS 6844/DI 123



January 26, 2021

First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1252

A BILL FOR AN ACT to amend the Indiana Code concerning probate.

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

1 SECTION 1. IC 29-1-7-15.1, AS AMENDED BY P.L.231-2019,
2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]: Sec. 15.1. (a) When it has been determined that a
4 decedent died intestate and letters of administration have been issued
5 upon the decedent's estate, no will shall be probated unless it is
6 presented for probate:
7 (1) before the court decrees final distribution of the estate; or
8 (2) in an unsupervised estate, before a closing statement has been
9 filed.
10 (b) No real **estate property** located in Indiana of which any person
11 may die seized shall be sold by the executor or administrator of the
12 deceased person's estate to pay any debt or obligation of the deceased
13 person, which is not a lien of record in the county in which the real
14 **estate property** is located or to pay any costs of administration of any
15 decedent's estate, unless a petition for administration is filed in court
16 under section 5 of this chapter not later than five (5) months after the
17 decedent's death and the clerk issues letters testamentary or letters of

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1 administration not later than seven (7) months after the decedent's
2 death.

3 (c) If:
4 (1) a petitioner files a petition for administration filed in an estate
5 to which subsection (b) may apply; and
6 (2) the clerk of the court does not issue letters testamentary or of
7 administration and publish notice of the estate administration
8 under subsection (a) not later than thirty (30) days after the
9 petition for administration has been filed;

10 the petitioner shall serve the following notice on each creditor in the
11 manner provided under section 7(d) of this chapter not later than
12 forty-five (45) days after the petition for administration has been filed:

13 NOTICE OF PETITION FOR ADMINISTRATION
14 In the _____ Court of _____ County, Indiana.
15 Notice is hereby given that a petition for administration was filed on
16 the ___ day of ___, 20___, in cause number _____,
17 concerning the estate of _____, deceased, who died on the
18 ___ day of ___, 20___, but the clerk of the court has not issued
19 letters testamentary or of administration.

20 The estate includes real **estate property** that may be subject to sale
21 restrictions under IC 29-1-7-15.1.

22 All persons who have claims against this estate, whether or not now
23 due, must file their claims in the office of the clerk of this court not
24 later than seventy-five (75) days after the date on which the petition for
25 administration was filed, or not later than thirty (30) days after the date
26 on which the petitioner serves this notice, to prevent the application of
27 real **estate property** sale restrictions to the claims, whichever is later.

28 Dated at _____, Indiana this ___ day of _____,
29 20___.

30 _____ as the Petitioner.

31 (d) The limitation described in subsection (b) on the sale of real
32 **estate property** does not apply to a claim if:

33 (1) a petition for administration is filed in court under section 5 of
34 this chapter not later than five (5) months after the decedent's
35 death;

36 (2) the claimant files the claim in the office of the clerk of the
37 court not later than:

38 (A) seventy-five (75) days after the date on which the petition
39 for administration was filed; or

40 (B) thirty (30) days after the date on which the petitioner
41 serves the notice required in subsection (c);

42 whichever is later; and



1 (3) the failure of the clerk to issue letters testamentary or letters
 2 of administration not later than seven (7) months after the
 3 decedent's death is not the result of the petitioner's failure to
 4 comply with the requirements of:

- 5 (A) this article;
 6 (B) the Indiana Rules of Trial Procedure; or
 7 (C) the local rules of the court.

8 (e) The court shall order the limitation described in subsection (b)
 9 inapplicable to a claimant's claim concerning the sale of real **estate**
 10 **property** if any interested person files a motion for findings under this
 11 subsection and the court finds that the following conditions apply:

- 12 (1) A petition for administration was filed in court under section
 13 5 of this chapter not later than five (5) months after the decedent's
 14 death.
 15 (2) More than thirty (30) days have elapsed since the petition was
 16 filed.
 17 (3) The claimant is a reasonably ascertainable creditor under
 18 section 7 of this chapter.
 19 (4) The claimant filed a claim in the estate not later than
 20 seventy-five (75) days after the date on which the petition for
 21 administration was filed, or not later than thirty (30) days after the
 22 date on which the petitioner serves the notice required in
 23 subsection (c), whichever is later.
 24 (5) The petitioner has not satisfied the provisions of subsection
 25 (c).

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

- 31 (1) the will containing the devise has been probated and recorded
 32 in the office of the clerk of the court having jurisdiction within
 33 five (5) months after the death of the testator; or
 34 (2) an action to contest the will's validity is commenced within the
 35 time provided by law and, as a result, the will is ultimately
 36 probated.

37 (g) Except as provided in subsection (h), the will of the decedent
 38 shall not be admitted to probate unless the will is presented for probate
 39 before the latest of the following dates:

- 40 (1) Three (3) years after the individual's death.
 41 (2) Sixty (60) days after the entry of an order denying the probate
 42 of a will of the decedent previously offered for probate and



1 objected to under section 16 of this chapter.

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

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

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

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

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

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

20 SECTION 2. IC 29-1-7-15.2, AS ADDED BY P.L.163-2018,
21 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 JULY 1, 2021]: Sec. 15.2. (a) This section applies to real **estate**
23 **property** subject to section 15.1(b) of this chapter, if **the personal**
24 **representative sells the real property to:**

25 (1) **satisfy a lien of record in the county in which the real**
26 **property is located;**

27 (2) **pay costs of administration; or**

28 (3) **use the sale proceeds for any other payment or**
29 **distribution approved by the written consent of a majority in**
30 **interest of all the distributees consent to the sale of the real estate**
31 **under IC 29-1-10-21.**

32 (b) The proceeds of the sale of real **estate property** described in
33 subsection (a) will retain the same protection that section 15.1(b) of
34 this chapter provides to real ~~estate~~: **property with respect to payment**
35 **of any debt or obligation of the deceased person not described in**
36 **subsection (a).** Such ~~proceeds can only be used to satisfy a debt or~~
37 ~~obligation of the deceased person or costs of administration of the~~
38 ~~decedent's estate if the distributees consent to the personal~~
39 ~~representative's use of the proceeds to satisfy the debts, obligations, or~~
40 ~~costs of administration.~~

41 SECTION 3. IC 29-1-8-11 IS ADDED TO THE INDIANA CODE
42 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY



1, 2021]: Sec. 11. (a) A tenant's representative who accepts appointment under IC 32-31-1-23 may represent the deceased residential lease tenant's distributees for the following purposes:

(1) Collecting all or part of the tenant's security deposit from the tenant's landlord.

(2) Collecting the tenant's tangible personal property from the tenant's residence.

(3) Distributing among the tenant's distributees any portion of the tenant's security deposit that the tenant's representative has collected from the tenant's landlord.

(4) Distributing among the tenant's distributees any portion of the tenant's tangible personal property that the tenant's representative has collected from the tenant's residence.

(5) Signing and issuing on behalf of the tenant's distributees any affidavit described in IC 29-1-8 that the tenant's landlord may require before releasing the tenant's security deposit or tangible personal property to the tenant's representative.

(b) Upon presentation of letters testamentary or letters of administration by the personal representative of the tenant's estate to the tenant's representative, the tenant's representative shall deliver to the personal representative any portion of the tenant's tangible personal property that the tenant's representative has collected from the tenant's landlord.

(c) The tenant's representative shall keep complete records of all transactions entered into by the tenant's representative on behalf of the tenant for:

(1) nine (9) months after the tenant's death date; or

(2) three (3) months after the records are delivered to the tenant's personal representative;

whichever occurs first.

(d) Except as otherwise required by subsection (e), the tenant's representative is not required to render an accounting.

(e) Except as provided in subsection (h), the tenant's representative shall render a written accounting if an accounting is:

(1) ordered by a court; or

(2) demanded by:

(A) a child of the tenant;

(B) the personal representative of the tenant's estate; or

(C) an heir or legatee of the tenant.

(f) Except as provided in subsection (h), a tenant's representative shall deliver an accounting required under



- 1 subsection (e) to:
 2 (1) the court;
 3 (2) the personal representative of the tenant's estate;
 4 (3) an heir of the tenant;
 5 (4) a legatee of the tenant; or
 6 (5) a child of the tenant.
- 7 (g) Except as provided in subsection (h), a tenant's
 8 representative shall deliver an accounting ordered or demanded
 9 under subsection (e) to the court or the person demanding the
 10 accounting not later than sixty (60) days after the date the tenant's
 11 representative receives the court order or written demand for an
 12 accounting.
- 13 (h) The court may order an accounting under subsection (e) at
 14 any time. In the absence of a court ordered accounting, a tenant's
 15 representative is not required to deliver an accounting to a person
 16 described in subsection (f)(1) through (f)(4) unless the person
 17 demands the accounting not later than nine (9) months after the
 18 date of the tenant's death. The delivery deadline provided in
 19 subsection (g) applies to a written demand for an accounting that
 20 is timely submitted under this subsection.
- 21 (i) Not more than one (1) accounting is required under this
 22 section in each twelve (12) month period unless the court, in its
 23 discretion, orders additional accountings.
- 24 (j) If a tenant's representative fails to deliver an accounting as
 25 required under this section, the court or the person demanding the
 26 accounting may initiate an action in mandamus to compel the
 27 tenant's representative to render the accounting. The court may
 28 award the attorney's fees and court costs incurred under this
 29 subsection to the person demanding the accounting if the court
 30 finds that the tenant's representative failed to render an accounting
 31 as required under this section without just cause.
- 32 (k) A tenant's representative is entitled to judicial review and
 33 settlement of an account of all transactions entered into by the
 34 tenant's representative, regardless of whether:
 35 (1) the tenant's representative's authority has been revoked;
 36 or
 37 (2) a demand for an accounting is made under subsection (e).
- 38 (l) Judicial review and settlement of an account is initiated upon
 39 the filing of a petition to settle and allow an account. The petition
 40 must be filed with the court exercising probate jurisdiction for the
 41 county in which the tenant resided. Except as otherwise provided
 42 by this section, the procedures in IC 30-4-5-14(b), IC 30-4-5-14(c),



1 IC 30-4-5-14(d), and IC 30-4-5-15 that are applicable to judicial
2 settlement of a trustee's account govern:

- 3 (1) the filing of objections; and
4 (2) all proceedings;

5 on the petition.

6 (m) A petition to settle and allow an account must be served
7 upon all the following that are applicable:

- 8 (1) The tenant's personal representative.
9 (2) Any person beneficially interested in the decedent's estate.
10 (3) The tenant's heirs at law.
11 (4) If the tenant's will is probated without administration:
12 (A) the personal representative named in the probated
13 will; and
14 (B) all persons or entities beneficially interested in the
15 probated will.

16 (5) Any other person that the court directs.

17 (n) A tenant's representative is discharged from liability as to
18 the transactions disclosed in the accounting if:

- 19 (1) the court reviews and approves the accounting; and
20 (2) notice of the court's approval of the accounting is provided
21 to the persons identified in subsection (m).

22 (o) In the absence of fraud, misrepresentation, inadequate
23 disclosure, or failure to provide proper notice related to the power
24 of attorney transactions, the discharge from liability under
25 subsection (n) is lawful and binding upon all interested persons:

- 26 (1) who would assert an interest on behalf of or through the
27 tenant; and
28 (2) who are:
29 (A) born or unborn;
30 (B) notified or not notified; or
31 (C) represented or not represented.

32 (p) The filing fee for a petition to settle and allow an account
33 filed under this section is a legitimate expense of the tenant's estate.

34 SECTION 4. IC 29-1-10-21, AS ADDED BY P.L.99-2013,
35 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 JULY 1, 2021]: Sec. 21. (a) All authority to act with respect to an
37 estate administered under IC 29-1-7 and IC 29-1-7.5 is vested
38 exclusively in the personal representative.

39 (b) If this article prohibits an action by the personal representative,
40 the prohibition restricts the personal representative, regardless of court
41 order, unless:

- 42 (1) a majority in interest of the distributees expressly consent in



1 **writing** to the proposed action; or

2 (2) the statute imposing the restriction expressly permits a court
3 to approve the prohibited action.

4 SECTION 5. IC 29-1-15-3 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 3. **Subject to the**
6 **provisions of IC 29-1-7-15.1 concerning the sale of real property,**
7 any real or personal property belonging to an estate may be sold,
8 mortgaged, leased or exchanged under court order when necessary for
9 any of the following purposes:

10 (a) For the payment of claims allowed against the estate.

11 (b) For the payment of any allowances made under IC 29-1-4-1.

12 (c) For the payment of any legacy given by the will of the
13 decedent.

14 (d) For the payment of expenses of administration.

15 (e) For the payment of any gift, estate, inheritance or transfer
16 taxes assessed upon the transfer of the estate or due from the
17 decedent or ~~his~~ **the decedent's** estate.

18 (f) For making distribution of the estate or any part thereof.

19 (g) For any other purpose in the best interests of the estate.

20 SECTION 6. IC 29-1-15-11, AS AMENDED BY P.L.86-2018,
21 SECTION 212, IS AMENDED TO READ AS FOLLOWS
22 [EFFECTIVE JULY 1, 2021]: Sec. 11. **(a) This section is subject to**
23 **the provisions of IC 29-1-7-15.1 concerning the sale of real**
24 **property.**

25 **(b)** A personal representative may file a petition to sell, mortgage or
26 lease any real property belonging to the estate. The petition shall set
27 forth the reasons for the application and describe the property involved.
28 The personal representative may apply for different authority as to
29 separate parts of the property; or the personal representative may apply
30 in the alternative for authority to sell, mortgage or lease. Upon the
31 filing of the petition, the court shall fix the time and place for the
32 hearing thereof. Notice of the hearing, unless waived, shall be given to
33 all heirs and lienholders, except holders of liens created by said heirs,
34 whose liens are to be extinguished or transferred to the proceeds of said
35 sale in case of intestacy and to all devisees and lienholders, except
36 holders of liens created by said devisees, whose liens are to be
37 extinguished or transferred to the proceeds of said sale in case of
38 testacy, and the notice shall state briefly the nature of the application
39 and shall be given as provided in IC 29-1-1-12. However, as to any real
40 property valued at not more than one thousand dollars ~~(\$1000.00)~~
41 **(\$1,000)** exclusive of any liens the court may, in its discretion, hear and
42 act upon the petition without notice to heirs or devisees. At the hearing



1 and upon satisfactory proofs, the court may order the sale, mortgage or
 2 lease of the property described or any part thereof. When a claim
 3 secured by a mortgage on real property is, under the provisions of this
 4 probate code, payable at the time of distribution of the estate or prior
 5 thereto, the court with the consent of the mortgagee may, nevertheless,
 6 order the sale of the real property subject to the mortgage, but such
 7 consent shall release the estate should a deficiency later appear.

8 SECTION 7. IC 29-3-3-8 IS ADDED TO THE INDIANA CODE
 9 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 10 1, 2021]: **Sec. 8. (a) A tenant's representative who accepts
 11 appointment under IC 32-31-1-23 may represent the tenant for the
 12 following purposes:**

13 **(1) Collecting all or part of the tenant's security deposit from
 14 the tenant's landlord.**

15 **(2) Collecting the tenant's tangible personal property from the
 16 tenant's residence.**

17 **(3) Distributing among the tenant's distributees any portion
 18 of the tenant's security deposit that the tenant's representative
 19 has collected from the tenant's landlord.**

20 **(4) Distributing among the tenant's distributees any portion
 21 of the tenant's tangible personal property that the tenant's
 22 representative has collected from the tenant's residence.**

23 **(5) Signing and issuing on behalf of the tenant's distributees
 24 any affidavit described in IC 29-1-8 that the tenant's landlord
 25 may require before releasing the tenant's security deposit or
 26 tangible personal property to the tenant's representative.**

27 **(b) Upon presentation of letters testamentary or letters of
 28 administration by the personal representative of the tenant's estate
 29 to the tenant's representative, the tenant's representative will
 30 deliver to the personal representative any portion of the tenant's
 31 tangible personal property that the tenant's representative has
 32 collected from the tenant's landlord.**

33 **(c) The tenant's representative shall keep complete records of all
 34 transactions entered into by the tenant's representative on behalf
 35 of the tenant for:**

36 **(1) nine (9) months after the tenant's death date; or**

37 **(2) three (3) months after the records are delivered to the
 38 tenant's personal representative;**

39 **whichever occurs first.**

40 **(d) Except as otherwise required by subsection (e), the tenant's
 41 representative is not required to render an accounting.**

42 **(e) Except as provided in subsection (h), the tenant's**



1 representative shall render a written accounting if an accounting
2 is:

3 (1) ordered by a court; or

4 (2) demanded by:

5 (A) a child of the tenant;

6 (B) the personal representative of the tenant's estate; or

7 (C) an heir or legatee of the tenant.

8 (f) Except as provided in subsection (h), a tenant's
9 representative shall deliver an accounting required under
10 subsection (e) to:

11 (1) the court;

12 (2) the personal representative of the tenant's estate;

13 (3) an heir of the tenant;

14 (4) a legatee of the tenant; or

15 (5) a child of the tenant.

16 (g) Except as provided in subsection (h), a tenant's
17 representative shall deliver an accounting ordered or demanded
18 under subsection (e) to the court or the person demanding the
19 accounting not later than sixty (60) days after the date the tenant's
20 representative receives the court order or written demand for an
21 accounting.

22 (h) The court may order an accounting under subsection (e) at
23 any time. In the absence of a court ordered accounting, a tenant's
24 representative is not required to deliver an accounting to a person
25 described in subsection (f)(1) through (f)(4) unless the person
26 demands the accounting not later than nine (9) months after the
27 date of the tenant's death. The delivery deadline set forth in
28 subsection (g) applies to a written demand for an accounting that
29 is timely submitted under this subsection.

30 (i) Not more than one (1) accounting is required under this
31 section in each twelve (12) month period unless the court, in its
32 discretion, orders additional accountings.

33 (j) If a tenant's representative fails to deliver an accounting as
34 required under this section, the court or the person demanding the
35 accounting may initiate an action in mandamus to compel the
36 tenant's representative to render the accounting. The court may
37 award the attorney's fees and court costs incurred under this
38 subsection to the person demanding the accounting if the court
39 finds that the tenant's representative failed to render an accounting
40 as required under this section without just cause.

41 (k) A tenant's representative is entitled to judicial review and
42 settlement of an account of all transactions entered into by the



- 1 tenant's representative, regardless of whether:
- 2 (1) the tenant's representative's authority has been revoked;
- 3 or
- 4 (2) a demand for an accounting is made under subsection (e).
- 5 (l) Judicial review and settlement of an account is initiated upon
- 6 the filing of a petition to settle and allow an account. The petition
- 7 must be filed with the court exercising probate jurisdiction for the
- 8 county in which the tenant resided. Except as otherwise provided
- 9 by this section, the procedures in IC 30-4-5-14(b), IC 30-4-5-14(c),
- 10 IC 30-4-5-14(d), and IC 30-4-5-15 that are applicable to judicial
- 11 settlement of a trustee's account govern:
- 12 (1) the filing of objections; and
- 13 (2) all proceedings;
- 14 on the petition.
- 15 (m) A petition to settle and allow an account must be served
- 16 upon all the following that are applicable:
- 17 (1) The tenant's personal representative.
- 18 (2) Any person beneficially interested in the decedent's estate.
- 19 (3) The tenant's heirs at law.
- 20 (4) If the tenant's will is probated without administration:
- 21 (A) the personal representative named in the probated
- 22 will; and
- 23 (B) all persons or entities beneficially interested in the
- 24 probated will.
- 25 (5) Any other person that the court directs.
- 26 (n) A tenant's representative is discharged from liability as to
- 27 the transactions disclosed in the accounting if:
- 28 (1) the court reviews and approves the accounting; and
- 29 (2) notice of the court's approval of the accounting is provided
- 30 to the persons identified in subsection (m).
- 31 (o) In the absence of fraud, misrepresentation, inadequate
- 32 disclosure, or failure to provide proper notice related to the power
- 33 of attorney transactions, the discharge from liability under
- 34 subsection (n) is lawful and binding upon all interested persons:
- 35 (1) who would assert an interest on behalf of or through the
- 36 tenant; and
- 37 (2) who are:
- 38 (A) born or unborn;
- 39 (B) notified or not notified; or
- 40 (C) represented or not represented.
- 41 (p) The filing fee for a petition to settle and allow an account
- 42 filed under this section is a legitimate expense of the tenant's estate.



1 SECTION 8. IC 29-3-12-1, AS AMENDED BY P.L.240-2017,
 2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2021]: Sec. 1. (a) Except as provided in section 6 or 7 of this
 4 chapter, the court shall terminate the guardianship of a minor upon:

- 5 (1) the minor's attaining eighteen (18) years of age; or
- 6 (2) the minor's death.

7 The court may terminate the guardianship of a minor upon the minor's
 8 adoption or marriage.

9 (b) The court shall terminate the guardianship of an incapacitated
 10 person upon:

- 11 (1) adjudication by the court that the protected person is no longer
 12 an incapacitated person; or
- 13 (2) the death of the protected person.

14 (c) The court may terminate any guardianship if:

- 15 (1) the guardianship property does not exceed the value of three
 16 thousand five hundred dollars (\$3,500);
- 17 (2) the guardianship property is reduced to three thousand five
 18 hundred dollars (\$3,500);
- 19 (3) the domicile or physical presence of the protected person is
 20 changed to another state and a guardian has been appointed for
 21 the protected person and the protected person's property in that
 22 state; or
- 23 (4) the guardianship is no longer necessary for any other reason.

24 (d) When a guardianship terminates otherwise than by the death of
 25 the protected person, the powers of the guardian cease, except that the
 26 guardian may pay the claims and expenses of administration that are
 27 approved by the court and exercise other powers that are necessary to
 28 complete the performance of the guardian's trust, including payment
 29 and delivery of the remaining property for which the guardian is
 30 responsible:

- 31 (1) to the protected person;
- 32 (2) in the case of an unmarried minor, to a person having care and
 33 custody of the minor with whom the minor resides;
- 34 (3) to a trust approved by the court, including a trust created by
 35 the guardian, in which:
 - 36 (A) the protected person is the sole beneficiary of the trust;
 - 37 and
 - 38 (B) the terms of the trust satisfy the requirements of Section
 39 2503(c) of the Internal Revenue Code and the regulations
 40 under that Section;
- 41 (4) to a custodian under the Uniform Transfers to Minors Act
 42 (IC 30-2-8.5); or



- 1 (5) to another responsible person as the court orders.
- 2 (e) When a guardianship terminates by reason of the death of the
- 3 protected person, the powers of the guardian cease, except as follows:
- 4 (1) The guardian may do the following:
- 5 (A) Pay the expenses of administration that are approved by
- 6 the court and exercise other powers that are necessary to
- 7 complete the performance of the guardian's trust.
- 8 (B) Deliver the remaining property for which the guardian is
- 9 responsible to the protected person's personal representative or
- 10 to a person who presents the guardian with an affidavit under
- 11 IC 29-1-8-1 or IC 29-2-1-2.
- 12 (C) Request the health records of the protected person under
- 13 IC 16-39-1-3(c)(4), except as provided in IC 16-39-1-3(d), if
- 14 the protected person was an incapacitated person. The power
- 15 of a guardian under this clause terminates sixty (60) days after
- 16 the date of the protected person's death.
- 17 (2) ~~If approved by the court the guardian may pay directly the~~
- 18 ~~following:~~ **approves the payment of expenses and obligations**
- 19 **under this subdivision, then before the guardian delivers the**
- 20 **remaining property under subdivision (1)(B), the guardian**
- 21 **shall pay the following expenses and obligations in the**
- 22 **amounts approved by the court and in decreasing order of**
- 23 **priority:**
- 24 (A) **Final administration expenses of the guardianship as**
- 25 **approved by the court under subdivision (1)(A).**
- 26 (B) **Unless prepaid by means of a funeral trust or before**
- 27 **the protected person's death, the reasonable expenses for:**
- 28 (i) **the protected person's funeral;**
- 29 (ii) **a tombstone, monument, or other marker; and**
- 30 (iii) **the disposition of the protected person's bodily**
- 31 **remains;**
- 32 **subject to the limitations provided in IC 29-1-14-9(a)(2).**
- 33 ~~(A) Reasonable funeral and burial expenses of the protected~~
- 34 ~~person:~~
- 35 ~~(B) Reasonable expenses of the protected person's last illness.~~
- 36 (C) **Any statutory allowances payable to the protected**
- 37 **person's surviving spouse or surviving child under**
- 38 **IC 29-1-4-1.**
- 39 ~~(D) The protected person's debts having priority under~~
- 40 **the laws of the United States, including the protected**
- 41 **person's federal and state taxes.**
- 42 ~~(D) Any statutory allowances payable to the protected person's~~



- 1 surviving spouse or surviving children.
- 2 **(E) Reasonable expenses of the protected person's last**
- 3 **illness.**
- 4 **(F) The protected person's debts, including unpaid state**
- 5 **and local taxes, having priority over nongovernmental**
- 6 **debts under the laws of Indiana.**
- 7 ~~(E)~~ **(G) Any other obligations of the protected person**
- 8 **disclosed to the court and which could be filed and allowed**
- 9 **as claims under IC 29-1-14.**

10 SECTION 9. IC 30-5-2-8 IS AMENDED TO READ AS FOLLOWS
 11 [EFFECTIVE JULY 1, 2021]: Sec. 8. "Principal" means:

- 12 (1) an individual:
 - 13 **(A) who is:**
 - 14 **(i) at least eighteen (18) years of age;**
 - 15 **(ii) emancipated; or**
 - 16 **(iii) currently serving in the United States military; and**
 - 17 **(B) ~~including~~ includes an individual acting as a:**
 - 18 ~~(A)~~ **(i) trustee;**
 - 19 ~~(B)~~ **(ii) personal representative; or**
 - 20 ~~(C)~~ **(iii) fiduciary;**
- 21 (2) a corporation;
- 22 (3) a limited liability company;
- 23 (4) a trust; or
- 24 (5) a partnership;

25 who signs a power of attorney granting powers to an attorney in fact.

26 SECTION 10. IC 32-31-1-23 IS ADDED TO THE INDIANA
 27 CODE AS A NEW SECTION TO READ AS FOLLOWS
 28 [EFFECTIVE JULY 1, 2021]: Sec. 23. **(a) If a landlord knows of the**
 29 **death of a tenant who, at the time of death, was the sole occupant**
 30 **of the dwelling unit under a lease, the landlord:**

- 31 **(1) shall notify a tenant's representative of the death;**
- 32 **(2) shall give the tenant's representative access to the premises**
- 33 **at a reasonable time to remove any personal property from**
- 34 **the unit and other personal property of the tenant elsewhere**
- 35 **on the premises;**
- 36 **(3) may require the tenant's representative to prepare and**
- 37 **sign an inventory of the property being removed; and**
- 38 **(4) shall pay the tenant's representative the deceased tenant's**
- 39 **security deposit and unearned rent to which the tenant would**
- 40 **otherwise have been entitled under IC 32-31-3-12.**

41 **(b) If a landlord believes that a tenant, who is the sole occupant**
 42 **of the dwelling unit under a lease, is incapacitated and absent from**



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the dwelling unit, the landlord:

- (1) shall notify a tenant's representative of the tenant's possible incapacity;
- (2) shall give the tenant's representative access to the premises at a reasonable time to remove any personal property from the unit and other personal property of the tenant elsewhere on the premises;
- (3) may require the tenant's representative to prepare and sign an inventory of the property being removed; and
- (4) shall pay the tenant's representative the incapacitated tenant's security deposit and unearned rent to which the tenant would otherwise have been entitled under IC 32-31-3-12.

(c) Any of the following persons, in decreasing order of priority, may accept an appointment and serve as a tenant's representative under this article:

- (1) A person designated by the tenant in a written document delivered to the landlord.
- (2) A person designated, in writing, by the tenant in a written lease between the tenant and the landlord.
- (3) An attorney in fact named by the tenant in a power of attorney during the tenant's lifetime.
- (4) A temporary guardian or guardian of the person of a tenant.
- (5) A tenant's heir.
- (6) A person selected and appointed by a probate court upon a petition by any interested person under this section.

If a dispute exists between two (2) or more persons claiming to be a tenant's representative, the probate court's decision controls after a hearing held upon notice to the interested persons.

(d) A person who is authorized to serve as a tenant's representative under subsection (c) accepts appointment by:

- (1) providing written notice to the tenant's landlord of the tenant representative's acceptance of appointment; and
- (2) if the tenant is appointed under subsection (c)(6), complying with the conditions stated in the probate court's order.

(e) The authority of a deceased tenant's heir, a deceased tenant's attorney in fact, a temporary guardian, or a guardian of the person to act under this article terminates when the heir, the guardian, or the landlord knows that:

- (1) a personal representative has been appointed for the



1 deceased tenant's estate;
2 (2) a tenant's attorney in fact is acting on the living tenant's
3 behalf; or
4 (3) a guardian has been appointed for the living incapacitated
5 tenant's property.
6 (f) A landlord that complies with this section is not liable:
7 (1) to the tenant, if the tenant is living;
8 (2) to the tenant's estate, if the tenant is deceased; or
9 (3) to any other person that has a claim or interest in the
10 personal property removed from the premises, unearned rent,
11 or security deposit.
12 (g) A landlord that willfully violates subsection (a) or (b) is
13 liable:
14 (1) to the tenant, if the tenant is living; or
15 (2) to the tenant's estate, if the tenant is deceased;
16 for actual damages.
17 (h) In addition to the rights provided in this section, the tenant's
18 representative has the incapacitated or deceased tenant's rights
19 and responsibilities under IC 32-31-4.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1252, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 14, delete "located," and insert "located".

Page 4, line 29, after "majority" insert "in".

Page 15, delete lines 14 through 21, begin a new paragraph and insert:

"(c) Any of the following persons, in decreasing order of priority, may accept an appointment and serve as a tenant's representative under this article:

(1) A person designated by the tenant in a written document delivered to the landlord.

(2) A person designated, in writing, by the tenant in a written lease between the tenant and the landlord.

(3) An attorney in fact named by the tenant in a power of attorney during the tenant's lifetime.

(4) A temporary guardian or guardian of the person of a tenant.

(5) A tenant's heir.

(6) A person selected and appointed by a probate court upon a petition by any interested person under this section.

If a dispute exists between two (2) or more persons claiming to be a tenant's representative, the probate court's decision controls after a hearing held upon notice to the interested persons.

(d) A person who is authorized to serve as a tenant's representative under subsection (c) accepts appointment by:

(1) providing written notice to the tenant's landlord of the tenant representative's acceptance of appointment; and

(2) if the tenant is appointed under subsection (c)(6), complying with the conditions stated in the probate court's order.

(e) The authority of a deceased tenant's heir, a deceased tenant's attorney in fact, a temporary guardian, or a guardian of the person to act under this article terminates when the heir, the guardian, or the landlord knows that:"

Page 15, line 26, after "the" insert "living".

Page 15, line 28, delete "(e)" and insert "(f)".

Page 15, line 34, delete "(f)" and insert "(g)".

Page 15, line 39, delete "(g)" and insert "(h)".



and when so amended that said bill do pass.

(Reference is to HB 1252 as introduced.)

TORR

Committee Vote: yeas 9, nays 0.

