

First Regular Session of the 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1407

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AN ACT to amend the Indiana Code concerning probate.

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

SECTION 1. IC 29-1-7-17, AS AMENDED BY P.L.190-2016, SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: 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 same court, in ~~the same~~ **a separate** cause of action, 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.

SECTION 2. IC 29-1-7.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: 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

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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:
  - (A) all distributees of the estate; and
  - (B) ~~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, **unless waived in writing.**
- (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.

SECTION 3. IC 29-1-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: 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~~ **the person** dealt with a personal representative of the decedent.



**He The person** 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.

SECTION 4. IC 29-1-8-3, AS AMENDED BY P.L.220-2011, SECTION 473, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: 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 **of an unsupervised estate** 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.

SECTION 5. IC 29-1-8-4, AS AMENDED BY P.L.220-2011, SECTION 474, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: 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 **of an unsupervised estate** 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~~ **accounting** in writing of the administration to the distributees whose interests are affected.

(b) If no actions, claims, objections, or proceedings involving the personal representative **of an unsupervised estate** 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.

SECTION 6. IC 29-3-1-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 3.5. "De facto custodian" has the meaning set forth in IC 31-9-2-35.5.**

SECTION 7. IC 29-3-5-4, AS AMENDED BY P.L.190-2016, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: 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 made for a minor by:**

**(A) a parent of the minor; or**

**(B) a de facto custodian of the minor, including a designation in a power of attorney under IC 30-5-3-4(b) or IC 30-5-3-4(c).**

~~(2)~~ (3) Any request contained in a will or other written instrument.

~~(3)~~ (4) A designation of a standby guardian under IC 29-3-3-7.

~~(4)~~ (5) Any request made by a minor who is at least fourteen (14) years of age.

~~(5)~~ (6) Any request made by the spouse of the alleged incapacitated person.

~~(6)~~ (7) The relationship of the proposed guardian to the individual for whom guardianship is sought.

~~(7)~~ (8) Any person acting for the incapacitated person under a durable power of attorney.

~~(8)~~ (9) The best interest of the incapacitated person or minor and the property of the incapacitated person or minor.

SECTION 8. IC 29-3-5-5, AS AMENDED BY P.L.190-2016, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: 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) A person designated as a standby guardian under IC 29-3-3-7.



- (3) The spouse of an incapacitated person.
- (4) An adult child of an incapacitated person.
- (5) 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, **or in a power of attorney of a living parent of an incapacitated person under IC 30-5-3-4(c).**

**(6) A parent of a minor, a de facto custodian of a minor, or a person nominated:**

**(A) by will of a deceased parent or a de facto custodian of a minor; or**

**(B) by a power of attorney of a living parent or a de facto custodian of a minor.**

~~(7)~~ (7) 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.

~~(8)~~ (8) 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.

SECTION 9. IC 30-4-3-7, AS AMENDED BY P.L.89-2011, SECTION 75, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 7. (a) Unless the terms of the trust provide otherwise or the transaction is authorized under **section 7.5 of this chapter**, IC 28-1-12-8, or IC 28-6.1-6-26, the trustee has a duty:

- (1) not to loan funds to the trustee or an affiliate;
- (2) not to purchase or participate in the purchase of trust property from the trust for the trustee's own or an affiliate's account;
- (3) not to sell or participate in the sale of the trustee's own or an affiliate's property to the trust; or
- (4) if a corporate trustee, not to purchase for or retain in the trust its own or a parent or subsidiary corporation's stock, bonds, or other capital securities. However, the trustee may retain such securities already held in trusts created prior to September 2, 1971.

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



conflict of interest under section 5 of this chapter.

(c) Unless the terms of the trust provide otherwise, a corporate trustee does not violate subsection (a) by investing in, purchasing for, or retaining in the trust its own or an affiliate's obligations, including savings accounts and certificates of deposit, if the payment of each obligation is fully insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or any insurer approved by the department of financial institutions under IC 28-7-1-31.5.

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

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

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

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

SECTION 10. IC 30-4-3-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 7.5. A transaction otherwise prohibited by section 7 of this chapter is authorized if:**

- (1) the proposed prohibited transaction is authorized by the written consent of all qualified beneficiaries; or**
- (2) the proposed prohibited transaction is approved by an order of the court issued after:**
  - (A) notice to all qualified beneficiaries; and**
  - (B) a hearing to ensure that adequate consideration is received by or delivered from the trust for the interest transferred.**

SECTION 11. IC 30-4-5-12, AS AMENDED BY P.L.137-2014, SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 12. (~~Accounting by Trustees~~)**

(a) Unless the terms of the trust provide otherwise or unless waived in writing by an adult, competent beneficiary, the trustee shall deliver



a written statement of accounts to each income beneficiary or the income beneficiary's personal representative annually. The statement shall contain at least:

- (1) all receipts and disbursements since the last statement; and
- (2) all items of trust property held by the trustee on the date of the statement at their inventory value.

(b) This subsection applies to a charitable trust with assets of at least five hundred thousand dollars (\$500,000). The trustee of a charitable trust shall annually file a verified written certification with the attorney general stating that a written statement of accounts has been prepared showing at least the items listed in section 13(a) of this chapter. The certification must state that the statement of accounts is available to the attorney general and any member of the general public upon request. A charitable trust may not be exempted from this requirement by a provision in a will, trust agreement, indenture, or other governing instrument. This subsection does not prevent a trustee from docketing a charitable trust to finalize a written statement of account or any other lawful purpose in the manner provided in this article. However, this subsection does not apply to an organization that is not required to file a federal information return under Section 6033(a)(3)(A)(1) of the Internal Revenue Code.

(c) Upon petition by the settlor, a beneficiary or the beneficiary's personal representative, a person designated by the settlor to have advisory or supervisory powers over the trust, or any other person having an interest in the administration or the benefits of the trust, including the attorney general in the case of a trust for a benevolent public purpose, the court may direct the trustee to file a verified written statement of accounts showing the items listed in section 13(a) of this chapter. The petition may be filed at any time; however, the court may not, in the absence of good cause shown, require the trustee to file a statement more than once a year.

(d) If the court's jurisdiction is of a continuing nature as provided in IC 30-4-6-2, the trustee shall file a verified written statement of accounts containing the items shown in section 13(a) of this chapter with the court biennially, and the court may, on its own motion, require the trustee to file such a statement at any other time if there is good cause for requiring a statement to be filed.

**(e) Receipt of a statement or accounting by a beneficiary or other interested person is presumed if the trustee has procedures in place requiring the mailing or delivery of an account to the beneficiary or other interested person. This presumption applies to the mailing or delivery of a statement or accounting by electronic**





delivery or access (as described in IC 30-4-6-6.5), if the beneficiary or other interested person has agreed to receive the statement or accounting by electronic delivery or access.

SECTION 12. IC 30-4-6-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 6.5. (a) The sending of notice or a document to a beneficiary, a trustee, or another interested person under this article or under IC 30-2-14 must be accomplished in a manner reasonably suitable under the circumstances and that is likely to result in receipt of the notice or document. Permissible methods for sending notice or a document include first class mail, personal delivery, delivery to the person's last known place of residence or place of business, or electronic delivery, including access to information by electronic means, if the intended recipient has agreed to receive the electronic delivery or to access a properly directed electronic message.**

**(b) An electronic message meets the requirements of this chapter if the sender transmits the message to the intended recipient by a method that:**

- (1) the sender and the recipient have previously agreed to in writing or in a previous electronic communication; or**
- (2) is reasonably calculated to prevent unauthorized access to the content of the electronic message or to nonpublic identifying or personal information of the sender or recipient, such as encryption of the electronic message itself or sending the recipient a link to a password protected or encrypted web site that stores the electronic message and any related documents.**

SECTION 13. IC 30-5-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 4. (a) A principal may nominate a guardian for consideration by the court if protective proceedings for the principal's person or estate are commenced. The court shall make an appointment in accordance with the principal's most recent nomination in a power of attorney except for good cause or disqualification.**

**(b) A parent of a minor or a de facto custodian of a minor may nominate a guardian of the minor for consideration by the court if protective proceedings for the minor's person or estate are commenced. The court shall consider a nomination in a power of attorney.**

**(c) A parent of an incapacitated person may nominate a guardian of the incapacitated person for consideration by the court**



**if protective proceedings for the incapacitated person's person or estate are commenced. The court shall consider a nomination in a power of attorney.**

(b) (d) A guardian does not have power, duty, or liability with respect to property or personal health care decisions that are subject to a valid power of attorney. A guardian has no power to revoke or amend a valid power of attorney unless specifically directed to revoke or amend the power of attorney by a court order on behalf of the principal. A court may not enter an order to revoke or amend a power of attorney without a hearing. Notice of a hearing held under this section shall be given to the attorney in fact.

SECTION 14. IC 31-17-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 8. The court shall determine custody and enter a custody order in accordance with the best interests of the child. In determining the best interests of the child, there is no presumption favoring either parent. The court shall consider all relevant factors, including the following:

- (1) The age and sex of the child.
- (2) The wishes of the child's parent or parents.
- (3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
- (4) The interaction and interrelationship of the child with:
  - (A) the child's parent or parents;
  - (B) the child's sibling; and
  - (C) any other person who may significantly affect the child's best interests.
- (5) The child's adjustment to the child's:
  - (A) home;
  - (B) school; and
  - (C) community.
- (6) The mental and physical health of all individuals involved.
- (7) Evidence of a pattern of domestic or family violence by either parent.
- (8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 8.5(b) of this chapter.
- (9) A designation in a power of attorney of:**

- (A) the child's parent; or**
- (B) a person found to be a de facto custodian of the child.**

SECTION 15. IC 33-37-4-7, AS AMENDED BY SEA 42-2017, SECTION 3, AND AS AMENDED BY HEA 1520-2017, SECTION 76, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,



2017]: Sec. 7. (a) Except as provided under subsection (c), the clerk shall collect from the party filing the action a probate costs fee of one hundred twenty dollars (\$120) for each action filed under any of the following:

- (1) IC 29 (probate).
- (2) IC 30 (trusts and fiduciaries).

(b) In addition to the probate costs fee collected under subsection (a), the clerk shall collect from the party filing the action the following fees, if they are required under IC 33-37-5:

- (1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or IC 33-37-5-4).
- (2) A document storage fee (IC 33-37-5-20).
- (3) An automated record keeping fee (IC 33-37-5-21).
- (4) A public defense administration fee (IC 33-37-5-21.2).
- (5) A judicial insurance adjustment fee (IC 33-37-5-25).
- (6) A judicial salaries fee (IC 33-37-5-26).
- (7) A court administration fee (IC 33-37-5-27).
- (8) Before July 1, 2022, a pro bono legal services fee (IC 33-37-5-31).

(c) A clerk may not collect a court costs fee for the filing of the following exempted actions:

- (1) Petition to open a safety deposit box.
- (2) Filing an inheritance tax return, unless proceedings other than the court's approval of the return become necessary.
- (3) Offering a will for probate under IC 29-1-7, unless proceedings other than admitting the will to probate become necessary.
- (4) Filing a closing statement for an estate described in IC 29-1-8-4.**



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Speaker of the House of Representatives

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
President Pro Tempore

\_\_\_\_\_  
Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

