

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

## SENATE ENROLLED ACT No. 265

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AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

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

SECTION 1. IC 30-4-1-2, AS AMENDED BY P.L.163-2018, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. As used in this article:

- (1) "Adult" means any person eighteen (18) years of age or older.
- (2) "Affiliate" means a parent, descendant, spouse, spouse of a descendant, brother, sister, spouse of a brother or sister, employee, director, officer, partner, joint venturer, a corporation subject to common control with the trustee, a shareholder, or corporation who controls the trustee or a corporation controlled by the trustee other than as a fiduciary, an attorney, or an agent.
- (3) "Beneficiary" has the meaning set forth in IC 30-2-14-2.
- (4) "Breach of trust" means a violation by the trustee of any duty which is owed to the settlor or beneficiary.
- (5) "Charitable trust" means a trust in which all the beneficiaries are the general public or organizations, including trusts, corporations, and associations, and that is organized and operated wholly for religious, charitable, scientific, public safety testing, literary, or educational purposes. The term does not include charitable remainder trusts, charitable lead trusts, pooled income funds, or any other form of split-interest charitable trust that has at least one (1) noncharitable beneficiary.

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(6) "Court" means a court having jurisdiction over trust matters.

(7) **"Designated representative" means a person who:**

**(A) is authorized, under the terms of a trust, to represent the interests of a beneficiary;**

**(B) delivers to the trustee a written acceptance of appointment as the designated representative; and**

**(C) is appointed or assigned to act and communicate on behalf of that beneficiary in one (1) or more of the following ways:**

**(i) The person is expressly appointed by the settlor, in the trust instrument or under a power reserved by the settlor, to act as a designated representative for one (1) or more beneficiaries of a trust.**

**(ii) The person is appointed as a designated representative by the trustee or by another authorized person under procedures provided in the trust instrument or under this subdivision.**

**(iii) The person is authorized or directed under the trust instrument to represent or bind one (1) or more beneficiaries in connection with a judicial proceeding or nonjudicial matter.**

**(iv) The person is appointed by a beneficiary to act as a designated representative of that beneficiary.**

**Notwithstanding any contrary provision in the trust instrument or in any other writing that appoints a designated representative, a designated representative is a fiduciary and has a duty to act in good faith in representing the best interests of the beneficiary being represented, and to refrain from willful misconduct.**

~~(7)~~ **(8) "Income",** except as otherwise stated in a trust agreement, has the meaning set forth in IC 30-2-14-4.

~~(8)~~ **(9) "Income beneficiary"** has the meaning set forth in IC 30-2-14-5.

~~(9)~~ **(10) "Inventory value"** means the cost of property to the settlor or the trustee at the time of acquisition or the market value of the property at the time it is delivered to the trustee, or the value of the property as finally determined for purposes of an estate or inheritance tax.

**(11) "Judicial proceeding" means a proceeding involving a trust before a court having subject matter jurisdiction of the trust, whether or not the administration of the trust is governed by Indiana law.**



~~(10)~~ **(12)** "Minor" means any person under the age of eighteen (18) years.

~~(11)~~ **(13)** "No contest provision" refers to a provision of a trust instrument that, if given effect, would reduce or eliminate the interest of a beneficiary of the trust who, directly or indirectly, initiates or otherwise pursues:

- (A) an action to contest the validity of:
  - (i) the trust; or
  - (ii) the terms of the trust;
- (B) an action to set aside or vary any term of the trust; or
- (C) any other act to frustrate or defeat the settlor's intent as expressed in the terms of the trust.

**(14) "Nonjudicial matter" includes but is not limited to any of the following matters or actions relating to a trust or its administration:**

- (A) A trustee's provision of accounting statements or notices to beneficiaries under IC 30-2-14, IC 30-2-15, or this article.**
- (B) The solicitation, execution, and delivery of waivers of notice, consent, or objections from beneficiaries under IC 30-2-14, IC 30-2-15, or this article.**
- (C) The solicitation, execution, and delivery of a consent, acquiescence, ratification, release, or discharge by a beneficiary under IC 30-4-3-19.**

~~(12)~~ **(15)** "Person" has the meaning set forth in IC 30-2-14-9.

~~(13)~~ **(16)** "Personal representative" means an executor or administrator of a decedent's or absentee's estate, guardian of the person or estate, guardian ad litem or other court appointed representative, next friend, parent or custodian of a minor, attorney in fact, or custodian of an incapacitated person (as defined in IC 29-3-1-7.5).

~~(14)~~ **(17)** "Principal" has the meaning set forth in IC 30-2-14-10.

~~(15)~~ **(18)** "Qualified beneficiary" means:

- (A) a beneficiary who, on the date the beneficiary's qualification is determined:
  - (i) is a distributee or permissible distributee of trust income or principal;
  - (ii) would be a distributee or permissible distributee of trust income or principal if the interest of the distributee described in item (i) terminated on that date;
  - (iii) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date;



(iv) is a charitable organization expressly designated to receive distributions under the terms of a charitable trust;

(v) is a person appointed to enforce a trust for the care of an animal under IC 30-4-2-18; or

(vi) is a person appointed to enforce a trust for a noncharitable purpose under IC 30-4-2-19; or

(B) the attorney general, if the trust is a charitable trust having its principal place of administration in Indiana.

~~(16)~~ **(19)** "Remainderman" means a beneficiary entitled to principal, including income which has been accumulated and added to the principal.

~~(17)~~ **(20)** "Settlor" means a person who establishes a trust including the testator of a will under which a trust is created.

~~(18)~~ **(21)** "Terms of a trust", "terms of the trust", or "terms of a charitable trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

~~(19)~~ **(22)** "Trust estate" means the trust property and the income derived from its use.

~~(20)~~ **(23)** "Trust for a benevolent public purpose" means a charitable trust (as defined in subdivision (5)), a split-interest trust (as defined in Section 4947 of the Internal Revenue Code), a perpetual care fund or an endowment care fund established under IC 23-14-48-2, a prepaid funeral plan or funeral trust established under IC 30-2-9, a funeral trust established under IC 30-2-10, a trust or an escrow account created from payments of funeral, burial services, or merchandise in advance of need described in IC 30-2-13, and any other form of split-interest charitable trust that has both charitable and noncharitable beneficiaries, including but not limited to charitable remainder trusts, charitable lead trusts, and charitable pooled income funds.

~~(21)~~ **(24)** "Trust instrument" means an instrument, agreement, or other written document executed by the settlor that contains the terms of the trust, including any amendments to the terms of the trust.

~~(22)~~ **(25)** "Trust property" means property either placed in trust or purchased or otherwise acquired by the trustee for the trust regardless of whether the trust property is titled in the name of the trustee or the name of the trust.

~~(23)~~ **(26)** "Trustee" has the meaning set forth in IC 30-2-14-13.

SECTION 2. IC 30-4-3-2 IS AMENDED TO READ AS FOLLOWS



[EFFECTIVE JULY 1, 2019]: Sec. 2. (a) The settlor may provide in the terms of the trust that the interest of a beneficiary may not be either voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.

(b) Except as otherwise provided in subsection (c), if the settlor is also a beneficiary of the trust, a provision restraining the voluntary or involuntary transfer of ~~his the settlor's~~ beneficial interest will not prevent ~~his the settlor's~~ creditors from satisfying claims from ~~his the settlor's~~ interest in the trust estate.

(c) ~~Subsection (a) applies to a trust that meets both of the following requirements, regardless of whether or not the~~ **A protective provision similar to that authorized by subsection (a) prevents a creditor of the settlor from satisfying a claim from the settlor's interest in the trust estate when the settlor is also a beneficiary of the trust if the trust is one (1) of the following:**

**(1) A trust that meets both of the following requirements:**

~~(1) (A)~~ **(A)** The trust is a qualified trust under 26 U.S.C. 401(a).

~~(2) (B)~~ **(B)** The limitations on each beneficiary's control over the beneficiary's interest in the trust complies with 29 U.S.C. 1056(d).

**(2) A legacy trust established under IC 30-4-8.**

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

SECTION 3. IC 30-4-3-6, AS AMENDED BY P.L.5-2015, SECTION 63, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 6. (a) The trustee has a duty to administer a trust according to the terms of the trust.

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

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

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

(3) Preserve the trust property.

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

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

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



estate.

(7) **Except as provided in subsection (c)**, keep the following beneficiaries reasonably informed about the administration of the trust and of the material facts necessary for the beneficiaries to protect their interests:

- (A) A current income beneficiary.
- (B) A beneficiary who will become an income beneficiary upon the expiration of the term of the current income beneficiary, if the trust has become irrevocable by:
  - (i) the terms of the trust instrument; or
  - (ii) the death of the settlor.

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

(8) Upon:

- (A) the trust becoming irrevocable:
  - (i) by the terms of the trust instrument; or
  - (ii) by the death of the settlor; and
- (B) the written request of an income beneficiary or remainderman;

promptly provide a copy of the complete trust instrument to the income beneficiary or remainderman. **This subdivision does not prohibit the terms of the trust from requiring the trustee to separately provide each beneficiary only the portions of the trust instrument that describe or pertain to that beneficiary's interest in the trust and the administrative provision of the trust instrument that pertain to all beneficiaries of the trust.**

(9) Take whatever action is reasonable to realize on claims constituting part of the trust property.

(10) Defend actions involving the trust estate.

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

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

- (A) the trustee, by reasonable inquiry, considers reliable; and
- (B) with respect to heirship, relationship, survivorship, or any other issue relative to determining a trust beneficiary.

**(c) The terms of a trust may expand, restrict, eliminate, or otherwise vary the right of a beneficiary to be informed of the beneficiary's interest in a trust for a period of time, including a period of time related to:**

- (1) the age of the beneficiary;**



- (2) the lifetime of a settlor or the spouse of a settlor;
- (3) a term of years or a period of time ending on a specific date; or
- (4) a specific event that is certain to occur.

(d) During any period of time that the trust instrument restricts or eliminates the right of a beneficiary to be informed of the beneficiary's interest in a trust, a designated representative for the beneficiary:

- (1) shall represent that beneficiary and bind that beneficiary's interests for purposes of any judiciary proceeding or nonjudicial matter involving the trust unless the court finds, after a hearing upon notice, that a conflict of interest exists between the beneficiary and the designated representative; and
- (2) has the authority to initiate or defend and participate in any proceeding relating to the trust under this article or under IC 30-2 on behalf of the beneficiary.

An alleged conflict of interest between a beneficiary and the beneficiary's designated representative may be asserted to the court by the beneficiary whose right to be informed of the beneficiary's interest in a trust is restricted or eliminated in the trust instrument or by any other person authorized to represent and bind that beneficiary's interest under IC 30-4-6-10.5.

(e) If:

- (1) a beneficiary is an adult and has not been adjudicated to be an incapacitated person;
- (2) the trust instrument restricts or eliminates the right of the beneficiary to be informed of the beneficiary's interest in a trust; and
- (3) the beneficiary discovers information about the beneficiary's interest in the trust from sources other than the trustee;

subsections (c) and (e) do not prohibit the beneficiary from demanding and receiving information about the trust and its administration under subsection (b)(7), including a copy of all relevant portions of the trust instrument, or an accounting or statement regarding the trust under IC 30-4-5-12(c). The beneficiary may also initiate and participate in any proceeding against or with the trustee under this chapter.

SECTION 4. IC 30-4-3-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 9. (Duty of Trustee under Control of Third Person)



**(a) This section applies to directions given to a trustee before July 1, 2019, by a person who has power under the terms of the trust to direct the trustee.**

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

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

(1) If the person holds the power as a fiduciary, the trustee has a duty to refuse to comply with any direction which he knows or should know would constitute a breach of a duty owed by that person as a fiduciary.

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

SECTION 5. IC 30-4-3-24.5, AS ADDED BY P.L.238-2005, SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 24.5. (a) This section does not apply to an easement for conservation or preservation.

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

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

**(c) The trustee may propose the termination of a trust by written notice to qualified beneficiaries if the trustee, upon review of surrounding circumstances, concludes that continuation of the trust on its existing terms would be contrary to the economic best interest of the trust estate and that early termination would be in the best interests of the beneficiaries consistent with the settlor's intent. This trust termination shall occur upon receipt of written consent of all qualified beneficiaries.**

~~(c)~~ **(d)** The court may:

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

if the court determines that the value of the trust property is insufficient





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

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

SECTION 6. IC 30-4-5-14.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 14.5. (a) A trustee may obtain a nonjudicial settlement of its accounts in accordance with subsection (b) when:**

- (1) a trust terminates pursuant to the terms of the trust;**
- (2) a small trust terminates pursuant to IC 30-4-3-24.5;**
- (3) a trustee resigns or is removed; or**
- (4) a trustee seeks discharge of an interim accounting period when the trust is continuing.**

**(b) A trustee who elects to proceed under this section shall provide the following to the qualified beneficiaries of the trust and a successor trustee, if applicable, within a reasonable time after termination of the trust pursuant to its terms, the resignation or removal of the trustee, or the end of the period for which the trustee is seeking discharge:**

- (1) A statement showing the fair market value of the new assets to be distributed from a terminating trust or a successor trustee.**
- (2) A trust accounting for the prior three (3) years showing all receipts and disbursements and inventory value of the net assets.**
- (3) An estimate for any items reasonably anticipated to be received or disbursed.**
- (4) The amount of any fees, including trustee fees, remaining to be paid.**
- (5) Notice that the trust is terminating, or that the trustee has resigned or been removed, the time period for which the trustee seeks discharge of its accounts, and a statement providing that claims against a trustee under IC 30-4-6-12 and IC 30-4-6-14, if applicable, shall be barred if no objections are received within the time period described in subsection (c).**
- (6) The name and mailing address of the trustee.**
- (7) The name and telephone number of a person who may be contacted for additional information.**

**The trustee may also provide the statement and notice described in**



this subsection to any other person who the trustee reasonably believes may have an interest in the trust.

(c) If, after receiving the notice and trust information described in subsection (b), a qualified beneficiary objects to a disclosed act or omission, the qualified beneficiary shall provide written notice of the objection to the trustee not later than sixty (60) days after the notice was sent by the trustee. If no written objection is provided in the sixty (60) day time period, the information provided under subsection (b) shall be considered approved by the recipient. The trustee shall, in the case of a trust terminating pursuant to the terms of the trust or the trustee's resignation or removal, within a reasonable period of time following the expiration of the sixty (60) day time period, distribute the assets as provided in the trust or to the successor trustee. If a qualified beneficiary gives the trustee a written objection within the applicable sixty (60) day time period, the trustee or the qualified beneficiary may:

- (1) submit the written objection to the court for resolution and charge the expense of commencing a proceeding to the trust; or
- (2) resolve the objection by a nonjudicial settlement agreement under section 25 of this chapter, or otherwise.

Any agreement entered into pursuant to subdivision (2) may include a release, an indemnity clause, or both, on the part of the beneficiary against the trustee relating to the trust. If the parties agree to a nonjudicial settlement agreement under section 25 of this chapter, any related expenses shall be charged to the trust. Upon a resolution of an objection under this subsection, within a reasonable period of time, the trustee shall distribute the remaining trust assets as provided in the trust or to the successor trustee.

(d) The trustee may rely upon the written statement of a person receiving notice that the person does not object.

(e) When a trustee distributes assets of a terminating trust or to a successor trustee after complying with the provisions of this article and having received no objections, each person who received notice and either consented or failed to object pursuant to this section is barred from:

- (1) bringing a claim against the trustee or challenging the validity of the trust to the same extent and with the same preclusive effect as if the court had entered a final order approving the trustee's final account; or



(2) bringing a claim against the trustee for the period of such interim accounts to the same extent and with the same preclusive effect as if the court had entered a final order approving the trustee's interim accounts.

(f) A trustee may not request that a beneficiary indemnify the trustee against loss in exchange for the trustee forgoing a request to the court to approve its accounts at the time that the trust terminates, or at the time the trustee resigns or is removed, except as agreed upon by the parties pursuant to subsection (c).

(g) The court that exercises probate jurisdiction shall have exclusive jurisdiction over matters under this section.

(h) IC 30-4-6-10.5 shall apply to this section.

(i) Nothing in this section shall preclude a trustee from proceeding under IC 30-4-3-18(b) to have the trustee's accounts reviewed and settled by the court.

SECTION 7. IC 30-4-5-25 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 25. (a) As used in this section, "interested person" means a person whose consent would be required to achieve a binding settlement were the settlement to be approved by the court.

(b) Except as provided in subsection (c), an interested person may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust. This procedure is not intended to foreclose or limit any other procedure for settlement available under other applicable law.

(c) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this article or other applicable law. A nonjudicial settlement may not be used to produce a result not authorized by other provisions of this article, including but not limited to terminating or modifying a trust in an impermissible manner.

(d) Subject to subsection (c), matters that may be resolved by a nonjudicial settlement agreement include the following:

- (1) The interpretation or construction of the terms of a trust.
- (2) The approval of a trustee's report or accounting or waiver of the preparation of a trustee's report or accounting.
- (3) Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power.
- (4) The resignation or appointment of a trustee and the determination of a trustee's compensation.



- (5) Transfer of a trust's principal place of administration.**
- (6) Liability or release of a trustee for an action relating to a trust.**
- (7) The criteria for distribution to a beneficiary where a trustee is given discretion.**
- (8) The resolution of a dispute arising out of the administration or distribution of a trust.**
- (9) An investment action.**
- (10) The appointment of and powers granted to a directing party of a trust protector.**
- (11) Direction to a directing party or to a trust protector to perform or refrain from performing a particular act or the grant of a power to a directing party or trust protector.**

**(e) Before or after the parties enter into a nonjudicial settlement agreement, an interested person may request the court to approve a nonjudicial settlement agreement to determine whether the representation under IC 30-4-6-10.5 was adequate and to determine whether the agreement contains terms and conditions the court would approve.**

SECTION 8. IC 30-4-6-10.5, AS ADDED BY P.L.238-2005, SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 10.5. (a) Except as provided in the terms of a trust, and to the extent there is not a conflict of interest between the representative and the person represented or among those being represented:

- (1) a guardian may represent and bind the protected person who is subject to the guardianship;
- (2) an attorney in fact who has authority to act with respect to the particular question or dispute may represent and bind the principal;
- (3) a trustee may represent and bind the beneficiaries of the trust;
- (4) a personal representative of a decedent's estate may represent and bind persons interested in the estate; ~~and~~
- (5) a designated representative appointed for a beneficiary under a provision in a trust instrument may represent and bind the beneficiary of the trust; and**
- ~~(5)~~ **(6)** a parent may represent and bind the parent's minor, unborn, or not yet adopted child if a guardian for the child has not been appointed;

with regard to a particular question or dispute.

(b) The holder of a general power of appointment, including a general testamentary power of appointment, may represent and bind



persons whose interests are subject to the power of appointment, including:

- (1) permissible appointees; and
- (2) takers in default.
- (c) Unless otherwise represented:
  - (1) a minor;
  - (2) an incapacitated person;
  - (3) an unborn or a not yet adopted child; or
  - (4) a person whose identity or location is unknown and not reasonably ascertainable;

may be represented by and bound by another person who has a substantially identical interest with respect to the particular question or dispute but only to the extent there is not a conflict of interest between the representative and the person represented.

(d) If the court determines that an interest is not represented under this section or that the otherwise available representation might be inadequate, the court may appoint a guardian ad litem to receive notice, give consent, and otherwise represent, bind, and act on behalf of:

- (1) a minor;
- (2) an incapacitated person;
- (3) an unborn child; or
- (4) a person whose identity or location is unknown.

If not precluded by conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. A guardian ad litem may act on behalf of the person represented with respect to any matter arising under this title, regardless of whether a judicial proceeding concerning the trust is pending. In making decisions, a guardian ad litem may consider general benefits accruing to the living members of the family of the persons represented.

(e) Notice to a person who may represent and bind another person under this section has the same effect as if notice were given directly to the other person.

(f) The consent of a person who may represent and bind another person under this section is binding on the person represented unless the person represented objects to the representation before the consent would have become effective.

SECTION 9. IC 30-4-8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]:

#### **Chapter 8. Legacy Trusts**

**Sec. 1. (a) Subject to the limitations set forth in subsection (b), this chapter applies to:**



(1) qualified dispositions to legacy trusts; and  
 (2) dispositions by transferors who are trustees;  
 that are made after June 30, 2019.

(b) This chapter does not apply to:

- (1) any assets that are listed on an application or financial statement completed by the transferor and which is submitted to a lender in connection with a request to obtain or maintain credit from the lender; or
- (2) any assets of a legacy trust that are listed on an application or financial statement completed on behalf of the legacy trust and which is submitted to a lender in connection with a request to obtain or maintain credit from the lender on behalf of the legacy trust.

In the event that assets described in subsection (b)(1) are later transferred to a legacy trust and a default occurs under the loan or extension of credit, either before or after the transfer or disposition under the legacy trust, the lender shall be entitled to proceed against any assets listed on the applications or financial statements which were submitted in connection with the loan, or any modifications, amendments, or renewals of the loan. Nothing in this chapter shall prohibit such action. A change in the character, form, or ownership of the assets described in subsection (b)(1) shall in no way make subsection (b)(1) inapplicable.

Sec. 2. Unless the context requires otherwise, the following definitions apply throughout this chapter:

- (1) "Claim" means a right to payment, regardless of whether the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, immature, disputed, undisputed, legal, equitable, secured, or unsecured.
- (2) "Creditor" means a person who has a claim against the transferor.
- (3) "Debt" means liability on a claim.
- (4) "Disposition" means a transfer, conveyance, or assignment of property, including a change in the legal ownership of property that occurs when a trustee is substituted for another trustee or when at least one (1) trustee is added. The term also includes the exercise of a power that causes a transfer of property to a trustee. However, the term does not include the release or relinquishment of an interest in property that, until the release or relinquishment, was the subject of a qualified disposition.
- (5) "Investment decision" means the retention, purchase, sale,



exchange, tender, or other transaction affecting the ownership of or rights in an investment.

(6) "Legacy trust" means an irrevocable trust established under section 3 of this chapter.

(7) "Lender" means a company or entity that extends credit, including but not limited to a financial institution (as defined by IC 28-1-1-3(1)), a company or entity that extends credit under IC 24-4.4 or IC 24-4.5, or the successors and assigns of the company or entity.

(8) "Person" means an individual at least eighteen (18) years of age, a corporation, a trust, a limited liability company, a limited liability partnership, a partnership, a governmental entity, the state, or a political subdivision of the state.

(9) "Property" means real property, personal property, or an interest in real or personal property.

(10) "Qualified affidavit" means a sworn affidavit executed under section 5 of this chapter.

(11) "Qualified disposition" means a disposition by a transferor to a legacy trust.

(12) "Qualified trustee" means a person qualified to serve as the trustee of a legacy trust under section 6 of this chapter.

(13) "Transferor" means a person who as:

(A) an owner of property;

(B) a holder of a power of appointment that authorizes the holder to appoint in favor of the holder, the holder's creditors, the holder's estate, or the creditors of the holder's estate; or

(C) a trustee;

directly or indirectly makes a disposition or causes a disposition to be made.

(14) "Trust director" means a person given authority by the terms of a legacy trust to direct, consent to, or disapprove actual or proposed investment decisions, distribution decisions, or other decisions related to property in a legacy trust.

**Sec. 3. A legacy trust is established by:**

(1) designating in writing in the trust that the trust is a legacy trust established under this chapter;

(2) including the terms required by section 4 of this chapter in the legacy trust; and

(3) delivering a qualified affidavit containing the statements required by section 5 of this chapter to the qualified trustee.



**Sec. 4. A legacy trust must do the following:**

- (1) Provide for the appointment of at least one (1) qualified trustee for the property that is the subject of a qualified disposition.**
- (2) Expressly incorporate Indiana law to govern the validity, construction, and administration of the trust.**
- (3) Be irrevocable.**
- (4) Provide that the interests of the transferor or beneficiary in the trust property or the income from the trust property may not voluntarily or involuntarily be transferred, assigned, pledged, or mortgaged before the qualified trustee actually distributes the property or income to the beneficiary.**

**Sec. 5. (a) A qualified affidavit must be signed under the penalties of perjury, and state the following:**

- (1) That the transferor has full right, title, and authority to transfer the property to the legacy trust.**
- (2) That the transfer of the property to the legacy trust will not render the transferor insolvent.**
- (3) That the transferor does not intend to defraud a creditor by transferring the property to the legacy trust.**
- (4) That there are no pending or threatened court actions against the transferor other than the court actions identified by the transferor and attached to the qualified affidavit.**
- (5) That the transferor is not involved in any administrative proceedings other than the administrative proceedings identified by the transferor and attached to the qualified affidavit.**
- (6) That the transferor does not contemplate filing for relief under the federal bankruptcy code.**
- (7) That the property transferred to the legacy trust is not derived from unlawful activities.**

**(b) Except as provided in subsection (c), a qualified affidavit must be signed by the transferor.**

**(c) In the case of a disposition by a transferor who is a trustee, the qualified affidavit must be signed by the transferor who made the original disposition to the trustee. A qualified affidavit signed under this subsection must state the facts as of the time of the original disposition.**

**(d) If a transferor is a married individual at the time a qualified affidavit is signed, the transferor shall provide a copy of the qualified affidavit to the transferor's spouse.**

**Sec. 6. (a) A person may serve as a qualified trustee of a legacy**





trust if the person is not the transferor and satisfies either of the following requirements:

- (1) In the case of an individual, the individual is a resident of Indiana.
- (2) In all other cases, the person is:
  - (A) authorized by Indiana law to act as a trustee; and
  - (B) subject to the supervision of:
    - (i) the department of financial institutions; or
    - (ii) the federal Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, or any successor to these agencies.
- (b) A qualified trustee shall do the following:
  - (1) Maintain or arrange for providing custody of the property subject to the qualified disposition in Indiana.
  - (2) Maintain complete and accurate records for the legacy trust on an exclusive or nonexclusive basis.
  - (3) Prepare or arrange for the preparation of all required tax returns for the legacy trust.
  - (4) Materially participate in the administration of the legacy trust.

Sec. 7. (a) Except as provided in section 8 of this chapter, no cause of action of any kind, including a cause of action to enforce a judgment, may be brought for:

- (1) an attachment or other provisional remedy against property that is the subject of a qualified disposition to a legacy trust; or
- (2) the avoidance of a qualified disposition to a legacy trust.

The protections provided to a qualified disposition by this subsection apply notwithstanding any law to the contrary set forth outside this chapter.

(b) If a court declines to apply Indiana law in determining the effect of a spendthrift provision in a legacy trust in an action brought against a legacy trust, the trustee of the legacy trust shall immediately resign and, without further order of any court, cease to be the trustee of the legacy trust. When a trustee resigns under this section, the trustee has the power only to convey the trust property to a successor trustee appointed under this section. A successor trustee shall succeed the resigning trustee in accordance with the terms of the legacy trust. If the trust does not provide for a successor trustee and the trust would otherwise be without a trustee, any beneficiary of the trust may petition an Indiana court



to appoint a successor trustee. The Indiana court receiving the petition shall appoint a successor trustee to serve in accordance with the terms and conditions that the court determines are consistent with the purposes of the trust and this chapter.

(c) A legacy trust and its property are protected under this section regardless of whether or not the transferor:

- (1) serves as a trust adviser under section 12 of this chapter; or
- (2) retains a power described in section 13 of this chapter.

(d) To the maximum extent permitted by the United States Constitution and the Indiana Constitution, a court of this state shall exercise jurisdiction over a legacy trust or a qualified disposition and shall adjudicate a case or controversy brought before the court regarding, arising out of, or related to a legacy trust or a qualified disposition if that case or controversy is otherwise within the subject matter jurisdiction of the court. Subject to the United States Constitution and the Indiana Constitution, a court of this state shall not dismiss or otherwise decline to adjudicate a case or controversy described in this subsection on the grounds that a court of another jurisdiction has acquired or may acquire proper jurisdiction over, or may provide proper venue for, the case or controversy or the parties to the case or controversy. Nothing in this subsection shall be construed to do either of the following:

- (1) Prohibit a transfer or other reassignment of a case or controversy from one court of this state to another court of this state.
- (2) Expand or limit the subject matter jurisdiction of a court of this state.

Sec. 8. (a) Except as provided in subsection (e), a claim against property that is the subject of a qualified disposition to a legacy trust is barred by section 7 of this chapter unless the claim is one (1) of the following:

- (1) Except as provided in subsection (b), an action brought in Indiana under the Uniform Fraudulent Transfer Act (IC 32-18-2) in which the requirements for recovery under the act are met by clear and convincing evidence.
- (2) An action to enforce the child support obligations of the transferor under a judgment or court order.
- (3) A court judgment or order for the division of property in a dissolution of the transferor's marriage or a legal separation between the transferor and the transferor's spouse, if the



transferor's distribution to the legacy trust was made:

- (A) after the date of the transferor's marriage that is subject to the dissolution or legal separation; or
- (B) within thirty (30) days before the date of the transferor's marriage that is subject to the dissolution or legal separation unless the transferor provided written notice of the qualified disposition to the other party to the marriage at least three (3) days before making the qualified disposition.

(b) A claim brought under an action described in subsection (a)(1) is extinguished unless:

(1) the creditor's claim arose before the qualified disposition to a legacy trust was made and the action is brought not later than the later of:

- (A) two (2) years after the transfer was made; or
- (B) six (6) months after the transfer:
  - (i) was recorded or made a public record; or
  - (ii) if not recorded or made a public record, was discovered or could have reasonably been discovered by the creditor; or

(2) notwithstanding IC 32-18-2-19, the creditor's claim arose concurrent with or after the qualified disposition and the action is brought not more than two (2) years after the date of the qualified disposition.

(c) A qualified disposition made by a transferor who is a trustee is considered for purposes of this chapter to have been made on the date that the property that is subject to the qualified disposition was originally transferred in trust to the trustee or any predecessor trustee and the conditions set forth in section 4(3) of this chapter are satisfied.

(d) If more than one (1) qualified disposition is made by means of the same legacy trust:

- (1) the making of a subsequent qualified disposition is disregarded when determining whether a creditor's claim with respect to a prior qualified disposition is extinguished under subsection (b); and
- (2) any distribution to a beneficiary is considered to have been made from the latest qualified disposition.

(e) If the state of Indiana is a creditor of a transferor, then notwithstanding subsection (a)(1) and subsection (b), the state of Indiana may bring an action against a qualified trustee to assert a claim against or to recover property that is the subject of a



qualified disposition by proceeding under the Indiana Uniform Fraudulent Transfer Act, subject to the standard of evidence in IC 32-18-2-14 and IC 32-18-2-15, and the limitation periods in IC 32-18-2-19.

**Sec. 9. (a)** If a creditor's claim is allowed under section 8 of this chapter, the transferor's qualified disposition to a legacy trust is subject to the claim only to the extent necessary to satisfy the transferor's debt to the creditor making the allowed claim.

**(b)** In the event the trustee participates in litigation brought by a lender to enforce its rights under section 1(b)(1) of this chapter, the trustee may recover the fees and costs incurred in such litigation from the trust only after the lender has been paid in full.

**(c)** If a creditor's claim is allowed under section 8 of this chapter and the creditor has not sought to enforce its rights under section 1(b)(1) of this chapter, the claim is limited as follows:

**(1)** If the court is satisfied that a qualified trustee has not acted in bad faith in accepting or administering the property that is the subject of the qualified disposition:

**(A)** the qualified trustee has a first and paramount lien against the property that is the subject of the qualified disposition in an amount equal to the entire cost, including attorney's fees, properly incurred by the qualified trustee in the defense of the action or proceedings filed by the creditor;

**(B)** the creditor's claim shall be allowed subject to the proper fees, costs, preexisting rights, claims, and interests of the qualified trustee and of any predecessor qualified trustee that has not acted in bad faith; and

**(C)** it is presumed that the qualified trustee did not act in bad faith merely by accepting the property that is the subject of the qualified disposition.

**(2)** If the court is satisfied that a beneficiary of a legacy trust has not acted in bad faith, and the distribution was made to the beneficiary before the creditor made the trustee aware of its claim or commenced an action to enforce its claim, the creditor's claim is subject to the right of the beneficiary to retain any distribution made upon the exercise of a trust power or the discretion vested in the qualified trustee that was properly exercised before the trustee was made aware of the claim or an action was commenced to enforce the claim.

**Sec. 10.** A spendthrift provision described in section 4(4) of this chapter is considered a restriction on the transfer of the



transferor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of Section 541(c)(2) of the federal Bankruptcy Code (11 U.S.C. 541(c)(2)) or any successor provision of the federal Bankruptcy Code.

**Sec. 11.** Except as permitted by the terms of a legacy trust and by sections 12 and 13 of this chapter, the transferor may not have any rights or authority with respect to the principal or income of the legacy trust. An agreement or understanding purporting to grant or permit the retention of any greater rights or authority is void.

**Sec. 12.** A transferor who makes a qualified disposition may also serve as an investment adviser to the trust. However, the transferor may not serve as a trust director to a legacy trust except with respect to the retention of a veto right permitted by section 13(a)(1) of this chapter.

**Sec. 13. (a)** A legacy trust is not considered revocable because of the inclusion of one (1) or more of the following:

- (1) A transferor's power to veto a distribution from the trust.
- (2) A power of appointment (other than the power to appoint to the transferor, the transferor's creditors, the transferor's estate, or the creditors of the transferor's estate) that may be exercised by will or other written instrument of the transferor that is effective only upon the transferor's death.
- (3) The transferor's potential or actual receipt of income or principal, including a right to income retained in the trust.
- (4) The transferor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust (as those terms are defined in Section 664 of the Internal Revenue Code).
- (5) The transferor's potential or actual receipt of income or principal from a grantor retained annuity trust or grantor retained unitrust that is allowed under Section 2702 of the Internal Revenue Code.
- (6) The transferor's potential or actual receipt or use of principal when that potential or actual receipt or use results from a qualified trustee's acting:
  - (A) in the qualified trustee's discretion;
  - (B) under a standard that governs the distribution of principal and does not confer upon the transferor a power to consume, invade, or appropriate property for the benefit of the transferor unless the power of the transferor is limited by an ascertainable standard relating to health,



education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code; or

(C) at the direction of a trust director described in section 14 of this chapter who acts:

- (i) in the trust director's discretion; or
- (ii) under a standard that governs the distribution of principal and does not confer upon the transferor a power to consume, invade, or appropriate property for the benefit of the transferor unless the power of the transferor is limited by an ascertainable standard relating to health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.

(7) The transferor's right to remove a trustee or trust director and to appoint a new trustee or trust director as long as that right does not include the appointment of a person who is a related or subordinate party to the transferor within the meaning of Section 672(c) of the Internal Revenue Code.

(8) The transferor's potential or actual use of real property held under a qualified personal residence trust (as defined in Section 2702(c) of the Internal Revenue Code).

(b) For the purpose of subsection (a)(6)(A), a qualified trustee is presumed to have discretion with respect to the distribution of principal unless that discretion is denied to the qualified trustee by the terms of the legacy trust.

Sec. 14. (a) A transferor may appoint one (1) or more trust directors who may have authority under the terms of the trust:

- (1) to remove and appoint qualified trustees or trust directors; and
- (2) to direct, consent to, or disapprove distributions from the trust.

(b) Trust directors are not required to satisfy the requirements imposed upon trustees by section 6 of this chapter.

Sec. 15. If:

- (1) a qualified trustee of a legacy trust ceases to meet the requirements of section 6 of this chapter; and
- (2) there remains no trustee of the legacy trust that meets the requirements of section 6 of this chapter;

the qualified trustee described in subdivision (1) is considered to have resigned when the qualified trustee ceased to meet the requirements of section 6 of this chapter, and a successor trustee



provided for in the legacy trust shall become a qualified trustee. If the legacy trust does not provide for a successor qualified trustee, a court shall appoint a successor qualified trustee upon the application of any interested party.

**Sec. 16. (a)** Nothing in this chapter shall be construed to prohibit a lender from enforcing its rights in property identified in section 1(b) of this chapter and, to the extent necessary, naming the legacy trust or trustee of the trust as a defendant to the action or proceeding.

**(b)** If an asset described in subsection 1(b)(1) of this chapter is transferred to a legacy trust or trustee of a legacy trust, the transferor of that asset must send written notice of the transfer to the pertinent lender within fifteen (15) days after that transfer. The transferor must send the notice by certified mail, return receipt requested, to the registered agent for the lender. If there is no registered agent for the lender, the transferor must send notice to one (1) of the following:

- (1)** The last known address of the lender.
- (2)** The last address specified by the lender for mailing payments on the obligations.
- (3)** The address specified by the lender for general inquiries by customers.

The notice must include the name of the transferor, a description of the asset transferred, the name of the trustee, and the date that the transfer was completed. Upon request, the transferor or trustee shall provide the lender with a certification of the trust under IC 30-4-4-4, the names and addresses of the qualified beneficiaries of the trust, and copies of the pages from the trust instrument that identify the current trustee and describe the trustee's administrative powers and duties.

**(c)** Nothing in this chapter shall be construed to authorize any disposition that is prohibited by the terms of any agreements, notes, guaranties, mortgages, indentures, instruments, undertakings, or other documents. Any provisions that prohibit such transfer or disposition shall be binding and shall make this chapter inapplicable.

**(d)** In the event of a conflict between this section and any other provision of this chapter, this section shall control.

SECTION 10. IC 30-4-9 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]:

**Chapter 9. Uniform Directed Trust Act**



**Sec. 1. This chapter may be cited as the Uniform Directed Trust Act.**

**Sec. 2. As used in this chapter, the following definitions apply:**

**(1) "Breach of trust" includes a violation by a trust director or trustee of a duty imposed on that director or trustee by the terms of the trust, this chapter, or the law of this state other than this chapter.**

**(2) "Directed trust" means a trust for which the terms of the trust grant a power of direction.**

**(3) "Directed trustee" means a trustee that is subject to a trust director's power of direction.**

**(4) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or government subdivision, agency, or instrumentality or other legal entity.**

**(5) "Power of direction" means a power over a trust granted to a person by the terms of the trust to the extent the power is exercisable while the person is not serving as a trustee. The term includes a power over the investment, management, or distribution of trust property or other matters of trust administration. The term excludes the powers described in section 5(b) of this chapter.**

**(6) "Settlor" means a person, including a testator, that creates, or contributes property to, a trust. If more than one (1) person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.**

**(7) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory of possession subject to the jurisdiction of the United States.**

**(8) "Terms of a trust" means:**

**(A) except as otherwise provided in clause (B), the manifestation of the settlor's intent regarding a trust's provisions as:**

**(i) expressed in the trust instrument; or**

**(ii) established by other evidence that would be admissible in a judicial proceeding; or**

**(B) the trust's provisions as established, determined, or amended by:**





- (i) a trustee or trust director in accordance with applicable law; or
- (ii) court order.

(9) "Trust director" means a person that is granted a power of direction by the terms of a trust to the extent the power is exercisable while the person is not serving as a trustee. The person is a trust director whether or not the terms of the trust refer to the person as a trust director and whether or not the person is a beneficiary or settlor of the trust.

(10) "Trustee" includes an original, additional, and successor trustee, and a cotrustee.

(11) "Willful misconduct" means intentional wrongdoing, and not mere negligence, gross negligence, or recklessness.

(12) "Wrongdoing" means malicious conduct or conduct designed to defraud or to seek an unconscionable advantage.

**Sec. 3. (a)** This chapter applies to a trust, whenever created, that has its principal place of administration in Indiana, subject to the following:

(1) If the trust was created before July 1, 2019, this chapter applies only to a decision or action occurring after June 30, 2019.

(2) If the principal place of administration of the trust is changed to Indiana after June 30, 2019, this chapter applies only to a decision or action occurring on or after the date of the change.

(b) Without precluding other means to establish a sufficient connection with the designated jurisdiction in a directed trust, the terms of the trust that designate the principal place of administration of the trust are valid and controlling if:

(1) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction;

(2) a trust director's principal place of business is located in or a trust director is a resident of the designated jurisdiction;

or

(3) all or part of the administration occurs in the designated jurisdiction.

**Sec. 4.** The common law and principles of equity supplement this chapter, except to the extent modified by this chapter or law of Indiana other than this chapter.

**Sec. 5. (a)** As used in this section, "power of appointment" means a power that enables a person acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or



another power of appointment over trust property.

(b) This chapter does not apply to a:

- (1) power of appointment;
- (2) power to appoint or remove a trustee or trust director;
- (3) power of a settlor over a trust to the extent the settlor has a power to revoke the trust;
- (4) power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects the beneficiary interest of:
  - (A) the beneficiary; or
  - (B) another beneficiary represented by the beneficiary with respect to the exercise or nonexercise of the power; or
- (5) power over a trust if:
  - (A) the terms of the trust provide that the power is held in a nonfiduciary capacity; and
  - (B) the power must be held in a nonfiduciary capacity to achieve the settlor's tax objectives under the Internal Revenue Code.

(c) Unless the terms of a trust provide otherwise, a power granted to a person to designate a recipient of an ownership interest in or power of appointment over trust property that is exercisable while the person is not serving as a trustee is a power of appointment and not a power of direction.

Sec. 6. (a) Subject to section 7 of this chapter, the terms of the trust may grant a power of direction to a trust director.

(b) Unless the terms of a trust provide otherwise:

- (1) a trust director may exercise any further power appropriate to the exercise or nonexercise of a power of direction granted to the director under subsection (a); and
- (2) trust directors with joint powers must act by majority decision.

Sec. 7. A trust director is subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction or further power under section 6(b)(1) of this chapter regarding:

- (1) a payback provision in the terms of a trust necessary to comply with the reimbursement requirements under 42 U.S.C. 1396p(d)(4)(A); or
- (2) a charitable interest in the trust, including notice regarding the interest to the attorney general under IC 30-4-6-6.

Sec. 8. (a) Subject to subsection (b), with respect to a power of



direction or further power under section 6(b)(1) of this chapter:

(1) a trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power:

(A) if the power is held individually, as a sole trustee in a like position and under similar circumstances; or

(B) if the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances; and

(2) the terms of the trust may vary the director's duty or liability to the same extent the terms of the trust could vary the duty or liability of a trustee in a like position and under similar circumstances.

(b) Unless the terms of a trust provide otherwise, if a trust director is licensed, certified, or otherwise authorized or permitted by law other than this chapter to provide health care in the ordinary course of the director's business or practice of a profession, to the extent the director acts in that capacity, the director has no duty or liability under this chapter.

(c) The terms of a trust may impose a duty or liability on a trust director in addition to the duties and liabilities under this section.

Sec. 9. (a) Subject to subsection (b), a directed trustee shall take reasonable action to comply with a trust director's exercise or nonexercise of a power of direction or further power under section 6(b)(1) of this chapter, and the trustee is not liable for the action.

(b) A directed trustee must not comply with a trust director's exercise or nonexercise of a power of direction or further power under section 6(b)(1) of this chapter to the extent that by complying the trustee would engage in willful misconduct.

(c) An exercise of power of direction under which a trust director may release a trustee or another trust director from liability for breach of trust is not effective if:

(1) the breach involved the trustee's or other director's willful misconduct;

(2) the release was induced by improper conduct of the trustee or other director in procuring the release; or

(3) at the time of the release, the director did not know the material facts relating to the breach.

(d) A directed trustee that has reasonable doubt about the directed trustee's duty under this section may petition the court for instructions.

(e) The terms of a trust may impose a duty or liability on a directed trustee in addition to the duties and liabilities under this



section.

**Sec. 10. (a)** Subject to section 11 of this chapter, a trustee shall provide information to a trust director to the extent the information is reasonably related both to:

- (1) the powers or duties of the trustee; and
- (2) the powers or duties of the director.

**(b)** Subject to section 11 of this chapter, a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related to:

- (1) the powers or duties of the director; and
- (2) the powers or duties of the trustee or other director.

**(c)** A trustee that acts in reliance on information provided by a trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting, the trustee engages in willful misconduct.

**(d)** A trust director that acts in reliance on information provided by a trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting, the trust director engages in willful misconduct.

**Sec. 11. (a)** Unless the terms of a trust provide otherwise:

- (1) a trustee does not have a duty to:
  - (A) monitor a trust director; or
  - (B) inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which the trustee might have acted differently than the director; and
- (2) by taking an action described in subdivision (1), a trustee does not assume the duty excluded by subdivision (1).

**(b)** Unless the terms of a trust provide otherwise:

- (1) a trust director does not have a duty to:
  - (A) monitor a trustee or another trust director; or
  - (B) inform or give advice to a settlor, beneficiary, trustee, or another trust director concerning an instance in which the director might have acted differently than a trustee or another trust director; and
- (2) by taking an action described in subdivision (1), a trust director does not assume the duty excluded by subdivision (1).

**Sec. 12.** The terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent that in a directed trust a directed trustee is relieved from duty and liability with respect to a trust director's power of direction under



sections 9 through 11 of this chapter.

**Sec. 13. (a)** An action against a trust director for breach of trust must be commenced within the same limitation period as an action against a trustee under IC 30-4-6-12.

**(b)** A report or accounting has the same effect on the limitation period for an action against a trust director for breach of trust that the report or accounting would have under IC 30-4-6-12 in an action for breach of trust against a trustee who is in a like position and under similar circumstances.

**Sec. 14.** In an action against a trust director for breach of trust, the director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee.

**Sec. 15. (a)** By accepting appointment as a trust director of a trust under this chapter, the director submits to personal jurisdiction of the courts of the state of Indiana regarding any matter related to a power or duty of the director.

**(b)** This section does not preclude other methods of obtaining jurisdiction over a trust director.

**Sec. 16.** Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a trust director regarding the following matters:

- (1)** Acceptance (IC 30-4-2-2).
- (2)** Giving of bond to secure performance (IC 30-4-6-8).
- (3)** Reasonable compensation (IC 30-4-5-16).
- (4)** Resignation and removal (IC 30-4-3-29).
- (5)** Vacancy and appointment of successor (IC 30-4-3-33).

**Sec. 17.** 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 the states that enact it.



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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

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

**SEA 265**

