

# SENATE BILL No. 371

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-1.1-12-17.9; IC 6-4.1; IC 29-1; IC 29-2-19-17; IC 29-3-5; IC 32-17.5-4-1.

**Synopsis:** Probate matters. Provides that an individual otherwise qualified for certain property tax deductions for property that the individual occupies as a beneficiary of the trust that owns the property is not required to be considered the owner of the property under the rules of construction for the property tax law for the trust to receive the property tax deduction. Transfers certain inheritance tax duties from the probate court, county assessor, and county treasurer to the department of state revenue with respect to inheritance tax returns filed after March 31, 2016. Provides that a will contest must be initiated in a separate cause of action. Specifies the priority of a personal representative and stepchildren with respect to the disposition of a decedent's body and funeral arrangements. Specifies that a court must consider a standby guardian designation when appointing a guardian. Specifies that for purposes of a guardianship appointment, a person designated a standby guardian is second in priority to a person designated in a durable power of attorney. Specifies how property passes in a transfer on death transfer if the beneficiary disclaims the property. Makes technical corrections.

**Effective:** Upon passage; July 1, 2016.

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January 11, 2016, read first time and referred to Committee on Civil Law.

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Second Regular Session 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

# SENATE BILL No. 371

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

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

1 SECTION 1. IC 6-1.1-12-17.9, AS AMENDED BY P.L.250-2015,  
2 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]: Sec. 17.9. A trust is entitled to a deduction under  
4 section 9, 11, 13, 14, 16, or 17.4 (before its expiration) of this chapter  
5 for real property owned by the trust and occupied by an individual if  
6 the county auditor determines that the individual:

7 (1) upon verification in the body of the deed or otherwise, has  
8 either:

9 (A) a beneficial interest in the trust; or

10 (B) the right to occupy the real property rent free under the  
11 terms of a qualified personal residence trust created by the  
12 individual under United States Treasury Regulation  
13 25.2702-5(c)(2); **and**

14 (2) otherwise qualifies for the deduction. **and**

15 (3) ~~would be considered the owner of the real property under~~  
16 ~~IC 6-1.1-1-9(f) or IC 6-1.1-1-9(g).~~

17 SECTION 2. IC 6-4.1-4-1, AS AMENDED BY P.L.6-2010,



1 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
2 UPON PASSAGE]: Sec. 1. (a) Except as otherwise provided in section  
3 0.5 of this chapter or in IC 6-4.1-5-8, the personal representative of a  
4 resident decedent's estate or the trustee or transferee of property  
5 transferred by the decedent shall file an inheritance tax return with:

6 (1) the appropriate probate court, **in the case of a return filed**  
7 **before April 1, 2016; or**

8 (2) **the department of state revenue, in the case of a return**  
9 **filed after March 31, 2016;**

10 within nine (9) months after the date of the decedent's death.

11 (b) The person filing the return shall file it under oath on the forms  
12 prescribed by the department of state revenue. The return shall:

13 (1) contain a statement of all property interests transferred by the  
14 decedent under taxable transfers known to the person filing the  
15 return;

16 (2) indicate the fair market value, as of the appraisal date  
17 prescribed by IC 6-4.1-5-1.5, of each property interest included in  
18 the statement;

19 (3) contain an itemized list of all inheritance tax deductions  
20 claimed with respect to property interests included in the  
21 statement;

22 (4) contain a list which indicates the name and address of each  
23 transferee of the property interests included in the statement and  
24 which indicates the total value of the property interests transferred  
25 to each transferee; and

26 (5) contain the name and address of the attorney for the personal  
27 representative or for the person filing the return.

28 ~~(b)~~ (c) If the decedent died testate, the person filing the return shall  
29 attach a copy of the decedent's will to the return.

30 SECTION 3. IC 6-4.1-4-2, AS AMENDED BY P.L.238-2005,  
31 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
32 UPON PASSAGE]: Sec. 2. (a) If the Internal Revenue Service allows  
33 an extension on a federal estate tax return, the corresponding due date  
34 for the Indiana inheritance tax return is automatically extended for the  
35 same period as the federal extension.

36 (b) **This subsection applies to an inheritance tax return due**  
37 **before April 1, 2016.** If the appropriate probate court finds that  
38 because of an unavoidable delay an inheritance tax return cannot be  
39 filed within nine (9) months after the date of decedent's death, the court  
40 may extend the period for filing the return. After the expiration of the  
41 first extension period, the court may grant a subsequent extension if the  
42 person seeking the extension files a written motion which states the



1 reason for the delay in filing the return.

2 **(c) This subsection applies to an inheritance tax return due after**  
 3 **March 31, 2016. If the department of state revenue finds that**  
 4 **because of an unavoidable delay an inheritance tax return cannot**  
 5 **be filed before the deadline established by the appropriate probate**  
 6 **court or the department of state revenue, the department of state**  
 7 **revenue may extend the period for filing the return. After the**  
 8 **expiration of the first extension period, the department of state**  
 9 **revenue may grant a subsequent extension if the person seeking the**  
 10 **extension files a written petition that states the reason for the delay**  
 11 **in filing the return.**

12 ~~(e)~~ **(d)** For purposes of sections 3 and 6 of this chapter, an  
 13 inheritance tax return is not due until the last day of any extension  
 14 period or periods granted under this section.

15 SECTION 4. IC 6-4.1-4-6 IS AMENDED TO READ AS  
 16 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) **This**  
 17 **subsection applies to an inheritance tax return due before April 1,**  
 18 **2016.** Except as provided in subsection (b), ~~of this section,~~ the  
 19 appropriate probate court shall charge a person who fails to file an  
 20 inheritance tax return on or before the due date a penalty in an amount  
 21 which equals:

- 22 (1) fifty cents (\$0.50) per day for each day that the return is  
 23 delinquent; or  
 24 (2) fifty dollars (\$50);

25 whichever is less. The court shall include the penalty in the inheritance  
 26 tax decree which it issues with respect to the decedent's estate. The  
 27 person to whom the penalty is charged shall pay it to the treasurer of  
 28 the county in which the resident decedent was domiciled at the time of  
 29 the resident decedent's death.

30 (b) The appropriate probate court may waive the penalty otherwise  
 31 required under subsection (a) ~~of this section~~ if the court finds that the  
 32 person had a justifiable excuse for not filing the return on or before the  
 33 due date.

34 **(c) This subsection applies to an inheritance tax return due after**  
 35 **March 31, 2016. Except as provided in subsection (d), the**  
 36 **department of state revenue shall charge a person who fails to file**  
 37 **an inheritance tax return on or before the due date a penalty in an**  
 38 **amount that equals:**

- 39 (1) fifty cents (\$0.50) per day for each day that the return is  
 40 delinquent; or  
 41 (2) fifty dollars (\$50);

42 whichever is less. The department of state revenue shall include the



1 penalty in the inheritance tax order that it issues with respect to  
 2 the decedent's estate. The person to whom the penalty is charged  
 3 shall pay the penalty to the department of state revenue.

4 (d) The department of state revenue may waive the penalty  
 5 otherwise required under subsection (c) if the department of state  
 6 revenue finds that the person had a justifiable excuse for not filing  
 7 the return on or before the due date.

8 SECTION 5. IC 6-4.1-5-2 IS AMENDED TO READ AS  
 9 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) **This section**  
 10 **does not apply to an inheritance tax return filed for a resident**  
 11 **decedent after March 31, 2016.**

12 (b) Within ten (10) days after an inheritance tax return for a resident  
 13 decedent is filed with the probate court, the court shall refer the return  
 14 to the county inheritance tax appraiser. The county inheritance tax  
 15 appraiser shall:

- 16 (1) investigate the facts concerning taxable transfers made by the  
 17 decedent before ~~his~~ **the decedent's** death;
- 18 (2) review the return for mistakes and omissions; and
- 19 (3) appraise each property interest, transferred by the decedent  
 20 under a taxable transfer, at its fair market value as of the appraisal  
 21 date prescribed by IC 6-4.1-5-1.5.

22 SECTION 6. IC 6-4.1-5-3 IS AMENDED TO READ AS  
 23 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) **This section**  
 24 **does not apply to an inheritance tax return filed for a resident**  
 25 **decedent after March 31, 2016.**

26 (b) Before making the appraisal required under section ~~2(3)~~ **2(b)(3)**  
 27 of this chapter, the county inheritance tax appraiser shall give notice of  
 28 the date, time, and place of the appraisal, by mail, to any person  
 29 designated by the probate court and each interested person who filed  
 30 a request for notice and provided a mailing address to the county  
 31 assessor. The county inheritance tax appraiser shall appraise the  
 32 property interests at the time and place stated in the notice.

33 SECTION 7. IC 6-4.1-5-4 IS AMENDED TO READ AS  
 34 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) **This section**  
 35 **does not apply to an inheritance tax return filed for a resident**  
 36 **decedent after March 31, 2016.**

37 (b) In order to make the appraisal required under section ~~2(3)~~  
 38 **2(b)(3)** of this chapter, the county inheritance tax appraiser may:

- 39 (1) issue subpoenas;
- 40 (2) compel the appearance of witnesses before ~~him~~; **the**  
 41 **appraiser**; and
- 42 (3) examine witnesses under oath.



1 Each witness examined with respect to the appraisal is entitled to  
 2 receive a fee in the same amount paid to a witness subpoenaed to  
 3 appear before a court of record. The county treasurer shall, from county  
 4 funds not otherwise appropriated, pay the witness fee which is provided  
 5 for under this section and which is allowed by the probate court under  
 6 section 10 of this chapter.

7 SECTION 8. IC 6-4.1-5-5 IS AMENDED TO READ AS  
 8 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. **(a) This section**  
 9 **does not apply to an inheritance tax return filed for a resident**  
 10 **decedent after March 31, 2016.**

11 **(b)** After an inheritance tax return filed for a resident decedent is  
 12 examined by the county inheritance tax appraiser and the probate court,  
 13 the court shall order the person responsible for filing the return to  
 14 complete the return and refile it if the court finds that the return is  
 15 incomplete. When the return is refiled, the court shall refer the refiled  
 16 return to the county inheritance tax appraiser for review. ~~by him.~~

17 SECTION 9. IC 6-4.1-5-6 IS AMENDED TO READ AS  
 18 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. **(a) This section**  
 19 **does not apply to an inheritance tax return filed for a resident**  
 20 **decedent after March 31, 2016.**

21 **(b)** After completing the duties assigned to ~~him~~ under section ~~2~~ **2(b)**  
 22 of this chapter, the county inheritance tax appraiser shall prepare an  
 23 appraisal report. The appraisal report shall:

- 24 (1) contain a list of the property interests described in section ~~2~~  
 25 **2(b)(3)** of this chapter; and  
 26 (2) indicate the fair market value of the property interests.

27 The county inheritance tax appraiser shall file one (1) copy of the  
 28 report with the probate court, and ~~he~~ shall file another copy of the  
 29 report with the department of state revenue. The appraiser shall attach  
 30 the depositions of any witnesses examined with respect to the appraisal  
 31 and any other information which the court may require to the appraisal  
 32 report ~~which he files~~ **filed** with the court.

33 SECTION 10. IC 6-4.1-5-7 IS AMENDED TO READ AS  
 34 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. If the personal  
 35 representative of a resident decedent's estate or the trustee or transferee  
 36 of property transferred by the decedent believes that no inheritance tax  
 37 is imposed under this article as a result of the decedent's death, ~~he~~ **the**  
 38 **personal representative** may file a verified petition with:

- 39 **(1) the appropriate probate court, in the case of an inheritance**  
 40 **tax return that would otherwise be due before April 1, 2016;**  
 41 **or**  
 42 **(2) the department of state revenue, in the case of an**



1 **inheritance tax return that would otherwise be due after**  
 2 **March 31, 2016;**

3 requesting that the court **or the department of state revenue,**  
 4 **whichever is applicable,** enter an order stating that no inheritance tax  
 5 is due. The petitioner must include in the petition a statement of the  
 6 value of the property interests transferred by the decedent.

7 SECTION 11. IC 6-4.1-5-8 IS AMENDED TO READ AS  
 8 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. **(a)** If a petition  
 9 is filed under section 7 of this chapter, the:

- 10 **(1) probate court, in the case of a petition filed under section**  
 11 **7(1) of this chapter; or**  
 12 **(2) department of state revenue, in the case of a petition filed**  
 13 **under section 7(2) of this chapter;**

14 may hold a hearing on the petition. If the court **or the department of**  
 15 **state revenue, whichever is applicable,** elects to hold a hearing, it  
 16 shall give notice of the hearing in the same manner prescribed for  
 17 giving the notice required under section **9 9(b)** of this chapter.

18 **(b)** After the:

- 19 **(1) probate court; or**  
 20 **(2) department of state revenue;**

21 completes its examination of the petition, the court **or the department**  
 22 **of state revenue, whichever is applicable,** may enter an order stating  
 23 that no inheritance tax is due as a result of the decedent's death.

24 **(c)** If the:

- 25 **(1) court; or**  
 26 **(2) department of state revenue;**

27 enters ~~such~~ an order **under subsection (b),** the petitioner is not  
 28 required to file an inheritance tax return.

29 **(d)** However, a person may petition the:

- 30 **(1) appropriate probate court; or**  
 31 **(2) department of state revenue;**

32 under IC 6-4.1-7 for a rehearing on the ~~court's~~ order **entered under**  
 33 **subsection (b)** or for a reappraisal of the property interests transferred  
 34 by the decedent.

35 SECTION 12. IC 6-4.1-5-9 IS AMENDED TO READ AS  
 36 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. **(a) This section**  
 37 **does not apply to an inheritance tax return filed for a resident**  
 38 **decedent after March 31, 2016.**

39 **(b)** When the county inheritance tax appraiser files an appraisal  
 40 report with the probate court, the court shall give twenty (20) days  
 41 notice by mail of the date, time, and place of a hearing on the report to  
 42 each interested person who filed a request for notice and provided a



1 mailing address under section 3 **3(b)** of this chapter.

2 SECTION 13. IC 6-4.1-5-10 IS AMENDED TO READ AS  
 3 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) After the  
 4 hearing required by section 9 **9(b)** of this chapter **for a determination**  
 5 **made before April 1, 2016**, the probate court shall determine the fair  
 6 market value of the property interests transferred by the resident  
 7 decedent and the amount of inheritance tax due as a result of ~~his~~ **the**  
 8 **decedent's** death. The court shall then enter an order stating the  
 9 amount of inheritance tax due and the fees due witnesses under section  
 10 4 of this chapter. If the court finds that no inheritance tax is due, the  
 11 court shall include a statement to that effect in the order.

12 (b) The court shall prepare the order required by ~~this section~~  
 13 **subsection (a)** on the form prescribed by the department of state  
 14 revenue. The court shall include in the order a description of all Indiana  
 15 real property owned by the resident decedent at the time of ~~his~~ **the**  
 16 **decedent's** death. The probate court shall spread the order of record in  
 17 the office of the clerk of the circuit court. The clerk shall maintain the  
 18 orders in a looseleaf ledger.

19 (c) **This subsection applies if an order stating the amount of**  
 20 **inheritance tax due as a result of the death of a decedent who died**  
 21 **before January 1, 2013, has not been issued as of the close of**  
 22 **business on March 31, 2016. The department of state revenue shall**  
 23 **determine the fair market value of the property interests**  
 24 **transferred by the resident decedent and the amount of inheritance**  
 25 **tax due as a result of the decedent's death. The department of state**  
 26 **revenue shall then enter an order stating the amount of inheritance**  
 27 **tax due and the fees due witnesses under section 4 of this chapter.**  
 28 **If the department of state revenue finds that no inheritance tax is**  
 29 **due, the department shall include a statement to that effect in the**  
 30 **order. The department of state revenue shall prepare the order**  
 31 **required by this subsection on a form prescribed by the**  
 32 **department. The department shall include in the order a**  
 33 **description of all Indiana real property owned by the resident**  
 34 **decedent at the time of the decedent's death. The department shall**  
 35 **spread the order of record in the office of the clerk of the**  
 36 **appropriate circuit court. The clerk shall maintain the orders in a**  
 37 **looseleaf ledger.**

38 ~~(c)~~ (d) ~~The order described in~~ **An order issued by the appropriate**  
 39 **probate court or the department of state revenue under this section**  
 40 **is confidential.**

41 SECTION 14. IC 6-4.1-5-11 IS AMENDED TO READ AS  
 42 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) The court,





1 **or the department of state revenue, whichever is applicable,** shall  
 2 immediately mail a copy of its determination of the fair market value  
 3 of the property interests transferred by a resident decedent and the  
 4 inheritance tax due as a result of the person's death to each interested  
 5 person who filed a request for notice and provided a mailing address  
 6 under section 3 **3(b)** of this chapter.

7 **(b) If the appropriate probate court made the determinations**  
 8 **under section 10 of this chapter, the court shall also mail the**  
 9 **information described in subsection (a) to** the department of state  
 10 revenue and the county treasurer.

11 SECTION 15. IC 6-4.1-6-1 IS AMENDED TO READ AS  
 12 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) For purposes  
 13 of this article, ~~county inheritance tax appraisers and~~ the department of  
 14 state revenue shall, if possible, appraise each future, contingent,  
 15 defeasible, or life interest in property and each annuity by using the  
 16 rules, methods, standards of mortality, and actuarial tables used by the  
 17 Internal Revenue Service on October 1, 1988, for federal estate tax  
 18 purposes.

19 (b) Except as otherwise provided in this chapter, the value of a  
 20 future interest in specific property equals the remainder of:

21 (1) the total value of the property; minus

22 (2) the value of all other interests in the property.

23 (c) Unless otherwise provided by the transferor, the inheritance tax  
 24 imposed on the transfer of each of the interests is payable from the  
 25 property in which the interests exist.

26 SECTION 16. IC 6-4.1-6-2 IS AMENDED TO READ AS  
 27 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. ~~County~~  
 28 ~~inheritance tax appraisers and~~ The department of state revenue shall  
 29 appraise a property interest which may be divested because of an act or  
 30 omission of the transferee as if there were no possibility of divestment.

31 SECTION 17. IC 6-4.1-6-4 IS AMENDED TO READ AS  
 32 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. **(a) This**  
 33 **subsection applies to an inheritance tax return filed before April 1,**  
 34 **2016.** For purposes of determining the inheritance tax imposed on a  
 35 decedent's transfer of specific property, the appropriate probate court  
 36 shall, so far as possible, determine the manner in which the property  
 37 will probably be distributed if:

38 (1) a contingency makes it impossible to determine each  
 39 transferee's exact interest in the property; and

40 (2) the department of state revenue and the taxpayer fail, within  
 41 a reasonable time, to enter into an agreement under section 3 of  
 42 this chapter.



1 Unless the court's determination is appealed, it is final and binding on  
2 all parties.

3 **(b) This subsection applies to an inheritance tax return filed**  
4 **after March 31, 2016. For purposes of determining the inheritance**  
5 **tax imposed on a decedent's transfer of specific property, the**  
6 **department of state revenue shall, so far as possible, determine the**  
7 **manner in which the property will probably be distributed if:**

8 **(1) a contingency makes it impossible to determine each**  
9 **transferee's exact interest in the property; and**

10 **(2) the department of state revenue and the taxpayer fail,**  
11 **within a reasonable time, to enter into an agreement under**  
12 **section 3 of this chapter.**

13 **A person may petition the department of state revenue for a**  
14 **redetermination of the amount of inheritance tax imposed under**  
15 **this subsection in the time and manner provided under IC 6-4.1-7-1**  
16 **or IC 6-4.1-7-5, whichever is applicable.**

17 SECTION 18. IC 6-4.1-6-6 IS AMENDED TO READ AS  
18 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) If  
19 proceedings have not been instituted under this chapter to determine  
20 the inheritance tax imposed on the decedent's transfer of a contingent  
21 or defeasible future interest in property or if the tax imposed on such  
22 a transfer is postponed under subsection (b), ~~of this section, the county~~  
23 ~~inheritance tax appraiser~~ or the department of state revenue shall,  
24 notwithstanding the provisions of IC 6-4.1-5, appraise the property  
25 interest at its fair market value when the transferee of the interest  
26 obtains the beneficial enjoyment or possession of the property.

27 (b) The inheritance tax imposed on the decedent's transfer of a  
28 contingent or defeasible interest in property accrues and is due when  
29 the transferee of the interest obtains the beneficial enjoyment or  
30 possession of the property if the fair market value of the property  
31 interest as of the appraisal date prescribed by IC 6-4.1-5-1.5 cannot  
32 otherwise be ascertained under this chapter.

33 SECTION 19. IC 6-4.1-7-1 IS AMENDED TO READ AS  
34 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. **(a) This**  
35 **subsection applies to an inheritance tax return filed before April 1,**  
36 **2016.** A person who is dissatisfied with an inheritance tax  
37 determination made by a probate court with respect to a resident  
38 decedent's estate may obtain a rehearing on the determination. To  
39 obtain the rehearing, the person must file a petition for rehearing with  
40 the probate court within one hundred twenty (120) days after the  
41 determination is made. In the petition, the person must state the  
42 grounds for the rehearing. The probate court shall base the rehearing



1 on evidence presented at the original hearing plus any additional  
2 evidence which the court elects to hear.

3 **(b) This subsection applies to an inheritance tax return filed**  
4 **after March 31, 2016. A person who is dissatisfied with an**  
5 **inheritance tax determination made by the department of state**  
6 **revenue with respect to a resident decedent's estate may obtain a**  
7 **hearing on the determination. To obtain the hearing, the person**  
8 **must file a petition for a hearing with the appropriate probate**  
9 **court within one hundred twenty (120) days after the**  
10 **determination is made. In the petition, the person must state the**  
11 **grounds for the hearing. The probate court shall base the hearing**  
12 **on evidence presented to the department of state revenue plus any**  
13 **additional evidence which the court elects to hear.**

14 SECTION 20. IC 6-4.1-7-2 IS AMENDED TO READ AS  
15 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. **(a) This**  
16 **subsection applies to an inheritance tax return filed before April 1,**  
17 **2016. A person who is dissatisfied with an appraisal approved by a**  
18 **probate court with respect to a resident decedent's estate may obtain a**  
19 **reappraisal of the property interest involved. To obtain the reappraisal,**  
20 **the person must file a petition for reappraisal with the probate court**  
21 **within one (1) year after the court enters an order determining the**  
22 **inheritance tax due as a result of the decedent's death. However, if the**  
23 **original appraisal is fraudulently or erroneously made, the person may**  
24 **file the reappraisal petition within two (2) years after the court enters**  
25 **the order.**

26 **(b) This subsection applies to an inheritance tax return filed**  
27 **after March 31, 2016. A person who is dissatisfied with an**  
28 **appraisal made by the department of state revenue with respect to**  
29 **a resident decedent's estate may obtain a reappraisal of the**  
30 **property interest involved. To obtain the reappraisal, the person**  
31 **must file a petition for reappraisal with the probate court within**  
32 **one (1) year after the department of state revenue enters an order**  
33 **determining the inheritance tax due as a result of the decedent's**  
34 **death. However, if the original appraisal is fraudulently or**  
35 **erroneously made, the person may file the reappraisal petition**  
36 **within two (2) years after the department of state revenue enters**  
37 **the order.**

38 SECTION 21. IC 6-4.1-7-3 IS AMENDED TO READ AS  
39 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. When a  
40 reappraisal petition is filed under section 2 of this chapter, the probate  
41 court may appoint a competent person to reappraise the property  
42 interests transferred by the resident decedent under taxable transfers.



1 An appraiser appointed by the court under this section has the same  
 2 powers and duties, including the duty to give notice of the appraisal  
 3 and the duty to make an appraisal report to the court, as the county  
 4 inheritance tax appraiser **had under this article as of January 1,**  
 5 **2016.** The appointed appraiser is entitled to receive an amount fixed by  
 6 the court and approved by the department of revenue as compensation  
 7 for ~~his~~ **the appointed appraiser's** services. After the probate court  
 8 certifies to the county treasurer the amount of compensation due the  
 9 appointed appraiser, the county treasurer shall pay the appraiser from  
 10 county funds not otherwise appropriated.

11 SECTION 22. IC 6-4.1-7-4 IS AMENDED TO READ AS  
 12 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) After the  
 13 appraiser, if any, appointed under section 3 of this chapter files ~~his~~ **an**  
 14 appraisal report, the probate court shall redetermine the inheritance tax  
 15 due with respect to the property interests transferred by the resident  
 16 decedent. In making the redetermination, the court shall follow the  
 17 same procedures:

- 18 (1) ~~it the court~~ is required to follow under IC 6-4.1-5-9,  
 19 IC 6-4.1-5-10, and IC 6-4.1-5-11 when making an original  
 20 inheritance tax determination, **in the case of an inheritance tax**  
 21 **return filed before April 1, 2016; or**  
 22 (2) **the department of state revenue is required to follow**  
 23 **under IC 6-4.1-5-9, IC 6-4.1-5-10, and IC 6-4.1-5-11 when**  
 24 **making an original inheritance tax determination, in the case**  
 25 **of an inheritance tax return filed after March 31, 2016.**

26 (b) The probate court's redetermination of the inheritance tax due  
 27 supersedes:

- 28 (1) the court's original determination; **or**  
 29 (2) **an original determination by the department of state**  
 30 **revenue;**

31 **whichever is applicable.** The court shall file a copy of the  
 32 redetermination with the clerk of the court.

33 SECTION 23. IC 6-4.1-7-6.5 IS ADDED TO THE INDIANA  
 34 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 35 [EFFECTIVE UPON PASSAGE]: **Sec. 6.5. An inheritance tax**  
 36 **determination or an appraisal made by the department of state**  
 37 **revenue may not be directly appealed to the tax court. A person**  
 38 **dissatisfied with an inheritance tax determination or an appraisal**  
 39 **made by the department of state revenue must have the inheritance**  
 40 **tax determination or appraisal reviewed by the appropriate**  
 41 **probate court under section 1, 2, or 5 of this chapter, whichever is**  
 42 **applicable. The probate court's action on the inheritance tax**



1 **determination or an appraisal made by the department of state**  
 2 **revenue may be appealed to the tax court under section 7 of this**  
 3 **chapter.**

4 SECTION 24. IC 6-4.1-9-1 IS AMENDED TO READ AS  
 5 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Except as  
 6 otherwise provided in IC 6-4.1-6-6(b), the inheritance tax imposed as  
 7 a result of a decedent's death is due twelve (12) months after the  
 8 person's date of death. If a person liable for payment of inheritance tax  
 9 does not pay the tax on or before the due date, the person shall, except  
 10 as provided in subsection (b), ~~of this section~~; pay interest on the  
 11 delinquent portion of the tax at the rate of ten percent (10%) per year  
 12 from the date of the decedent's death to the date payment is made.

13 (b) If an unavoidable delay, such as necessary litigation, prevents a  
 14 determination of the amount of inheritance tax due, the:

15 (1) appropriate probate court, in the case of a resident decedent  
 16 **for whom an inheritance tax return is filed before April 1,**  
 17 **2016; or**

18 (2) ~~the~~ department of state revenue, ~~in the case of a non-resident~~  
 19 ~~decedent~~; **all other cases;**

20 may reduce the rate of interest imposed under this section, for the time  
 21 period beginning on the date of the decedent's death and ending when  
 22 the cause of delay is removed, to six percent (6%) per year.

23 SECTION 25. IC 6-4.1-9-5 IS AMENDED TO READ AS  
 24 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) A person  
 25 who is liable for inheritance tax imposed as a result of a resident  
 26 decedent's death shall pay the tax to the:

27 (1) treasurer of the county in which the resident decedent was  
 28 domiciled at the time of the resident decedent's death **if an**  
 29 **inheritance tax return is filed for the resident decedent before**  
 30 **April 1, 2016; or**

31 (2) **department of state revenue, in all other cases.**

32 If such a person believes that more inheritance tax is due as a result of  
 33 the resident decedent's death than the amount of tax determined by the  
 34 court **or the department of state revenue** under IC 6-4.1-5-10, the  
 35 person may, without obtaining another ~~court~~ determination **from the**  
 36 **court or the department of state revenue**, pay the additional tax and  
 37 any interest due on the additional tax to the county treasurer **or the**  
 38 **department of state revenue, whichever is applicable.**

39 (b) **This subsection applies only to inheritance taxes paid under**  
 40 **subsection (a)(1).** The county treasurer shall collect the tax, shall issue  
 41 a receipt for the tax payment in duplicate, and shall send one (1) copy  
 42 of the receipt to the department of state revenue. The department shall



1 countersign the receipt, shall affix its seal to the receipt, and shall  
 2 return the signed and sealed receipt to the payor. The department shall  
 3 also charge the county treasurer with the amount of inheritance tax  
 4 collected. ~~by him.~~

5 SECTION 26. IC 6-4.1-9-7 IS AMENDED TO READ AS  
 6 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) **This section**  
 7 **does not apply to inheritance taxes paid to the department of state**  
 8 **revenue after March 31, 2016.**

9 (b) On the first day of January, April, July, and October of each  
 10 year, each county treasurer shall, under oath, send a written inheritance  
 11 tax report to the department of state revenue. Each report shall state the  
 12 amount of inheritance taxes collected by the county treasurer during the  
 13 preceding three (3) months and shall indicate the estates for which the  
 14 taxes were paid, who paid the taxes, and when the taxes were paid. The  
 15 county treasurer shall prepare each report on the form prescribed by the  
 16 state board of accounts.

17 ~~(b)~~ (c) On the first day of January, April, July, and October of each  
 18 year, each county auditor shall issue a warrant to the state treasurer for  
 19 the amount of inheritance taxes, interest charges, and penalties which  
 20 the state is to receive under section 6 of this chapter. The county  
 21 treasurer shall stamp and countersign the warrant. The county treasurer  
 22 shall send the warrant to the department of state revenue not more than  
 23 thirty (30) days after the county treasurer is required to send the related  
 24 inheritance tax report for the preceding three (3) months under  
 25 subsection ~~(a)~~: (b).

26 SECTION 27. IC 6-4.1-9-8 IS AMENDED TO READ AS  
 27 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) The  
 28 department of state revenue shall receipt and account for each warrant  
 29 which it receives under section ~~7(b)~~ 7(c) of this chapter. The  
 30 department shall then forward the warrant to the state treasurer. The  
 31 state treasurer shall deposit the warrants in a special account within the  
 32 state general fund to be known as the Inheritance Tax Account.

33 (b) At the end of each month, the state auditor shall issue a quietus  
 34 to the department of state revenue for the money collected by the  
 35 department under section ~~7(b)~~ 7(c) of this chapter. The state auditor  
 36 shall issue the quietus under the same terms and conditions established  
 37 for issuing a quietus to similar state agencies.

38 SECTION 28. IC 6-4.1-12-1 IS AMENDED TO READ AS  
 39 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) **Except as**  
 40 **otherwise provided in this article,** the probate court of the county:

41 (1) in which a resident decedent was domiciled at the time of the  
 42 decedent's death; or



1 (2) in which the resident decedent's estate is being administered,  
 2 if different from the county described in subdivision (1);  
 3 has jurisdiction to determine the inheritance tax imposed as a result of  
 4 the resident decedent's death and to hear all matters related to the tax  
 5 determination. However, if two (2) or more courts in a county have  
 6 probate jurisdiction, the first court acquiring jurisdiction under this  
 7 article acquires exclusive jurisdiction over the inheritance tax  
 8 determination.

9 **(b) In the case of an inheritance tax return filed after March 31,**  
 10 **2016, the probate court having jurisdiction under subsection (a)**  
 11 **does not have the power to make original inheritance tax**  
 12 **determinations. The probate court may hear the following matters**  
 13 **with respect to an inheritance tax return filed after March 31,**  
 14 **2016, for a resident decedent:**

- 15 (1) Any matter subject to IC 6-4.1-4-3 through IC 6-4.1-4-5.  
 16 (2) Any matter subject to IC 6-4.1-5-13.  
 17 (3) Petitions for a redetermination of inheritance tax due or  
 18 a reappraisal of a property interest under IC 6-4.1-7.  
 19 (4) An appeal of a refund order under IC 6-4.1-10-4.

20 SECTION 29. IC 6-4.1-12-2 IS AMENDED TO READ AS  
 21 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. **(a) Except as**  
 22 **provided in subsection (b),** each county assessor shall serve as the  
 23 county inheritance tax appraiser for the county ~~he~~ **the assessor** serves.  
 24 However, the appropriate probate court shall appoint a competent and  
 25 qualified resident of the county to appraise property transferred by a  
 26 resident decedent if the county assessor is:

- 27 (1) beneficially interested as an heir of the decedent's estate;  
 28 (2) the personal representative of the decedent's estate; or  
 29 (3) related to the decedent or a beneficiary of the decedent's estate  
 30 within the third degree of consanguinity or affinity.

31 A person who is appointed to act as the county inheritance tax  
 32 appraiser under this section shall receive a fee for ~~his~~ **the person's**  
 33 services. The court, subject to the approval of the department of state  
 34 revenue, shall set the fee.

35 **(b) For purposes of determining the inheritance tax with respect**  
 36 **to an inheritance tax return filed after March 31, 2016, the duty to**  
 37 **appraise property interest transferred by a resident decedent is**  
 38 **transferred to the department of state revenue.**

39 SECTION 30. IC 6-4.1-12-4 IS AMENDED TO READ AS  
 40 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. **Before April 1,**  
 41 **2016,** the county assessor shall receive funds from the county to pay the  
 42 actual cost of equipment which ~~he~~ **the assessor** needs to perform the



1 duties assigned to **him the assessor** under this article.

2 SECTION 31. IC 29-1-1-3, AS AMENDED BY P.L.81-2015,  
3 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2016]: Sec. 3. (a) The following definitions apply throughout  
5 this article, unless otherwise apparent from the context:

6 (1) "Child" includes an adopted child but does not include a  
7 grandchild or other more remote descendants, nor, except as  
8 provided in ~~IC 29-1-2-5~~, **IC 29-1-2-7**, a child born out of  
9 wedlock.

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

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

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

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

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

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

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

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

32 (10) "Expenses of administration" includes expenses incurred by  
33 or on behalf of a decedent's estate in the collection of assets, the  
34 payment of debts, and the distribution of property to the persons  
35 entitled to the property, including funeral expenses, expenses of  
36 a tombstone, expenses incurred in the disposition of the  
37 decedent's body, executor's commissions, attorney's fees, and  
38 miscellaneous expenses.

39 (11) "Fiduciary" includes a:

- 40 (A) personal representative;  
41 (B) guardian;  
42 (C) conservator;





- 1 (D) trustee; and  
 2 (E) person designated in a protective order to act on behalf of  
 3 a protected person.
- 4 (12) "Heirs" denotes those persons, including the surviving  
 5 spouse, who are entitled under the statutes of intestate succession  
 6 to the real and personal property of a decedent on the decedent's  
 7 death intestate, unless otherwise defined or limited by the will.
- 8 (13) "Incapacitated" has the meaning set forth in IC 29-3-1-7.5.
- 9 (14) "Interested persons" means heirs, devisees, spouses,  
 10 creditors, or any others having a property right in or claim against  
 11 the estate of a decedent being administered. This meaning may  
 12 vary at different stages and different parts of a proceeding and  
 13 must be determined according to the particular purpose and  
 14 matter involved.
- 15 (15) "Issue" of a person, when used to refer to persons who take  
 16 by intestate succession, includes all lawful lineal descendants  
 17 except those who are lineal descendants of living lineal  
 18 descendants of the intestate.
- 19 (16) "Lease" includes an oil and gas lease or other mineral lease.
- 20 (17) "Letters" includes letters testamentary, letters of  
 21 administration, and letters of guardianship.
- 22 (18) "Minor" or "minor child" or "minority" refers to any person  
 23 under the age of eighteen (18) years.
- 24 (19) "Mortgage" includes deed of trust, vendor's lien, and chattel  
 25 mortgage.
- 26 (20) "Net estate" refers to the real and personal property of a  
 27 decedent less the allowances provided under IC 29-1-4-1 and  
 28 enforceable claims against the estate.
- 29 (21) "Person" means:
- 30 (A) an individual;  
 31 (B) a corporation;  
 32 (C) a trust;  
 33 (D) a limited liability company;  
 34 (E) a partnership;  
 35 (F) a business trust;  
 36 (G) an estate;  
 37 (H) an association;  
 38 (I) a joint venture;  
 39 (J) a government or political subdivision;  
 40 (K) an agency;  
 41 (L) an instrumentality; or  
 42 (M) any other legal or commercial entity.



- 1 (22) "Personal property" includes interests in goods, money,  
 2 choses in action, evidences of debt, and chattels real.
- 3 (23) "Personal representative" includes executor, administrator,  
 4 administrator with the will annexed, administrator de bonis non,  
 5 and special administrator.
- 6 (24) "Probate estate" denotes the property transferred at the death  
 7 of a decedent under the decedent's will or under IC 29-1-2, in the  
 8 case of a decedent dying intestate.
- 9 (25) "Property" includes both real and personal property.
- 10 (26) "Protected person" has the meaning set forth in IC 29-3-1-13.
- 11 (27) "Real property" includes estates and interests in land,  
 12 corporeal or incorporeal, legal or equitable, other than chattels  
 13 real.
- 14 (28) "Will" includes all wills, testaments, and codicils. The term  
 15 also includes a testamentary instrument which merely appoints an  
 16 executor or revokes or revives another will.
- 17 (b) The following rules of construction apply throughout this article  
 18 unless otherwise apparent from the context:
- 19 (1) The singular number includes the plural and the plural number  
 20 includes the singular.
- 21 (2) The masculine gender includes the feminine and neuter.
- 22 SECTION 32. IC 29-1-2-7 IS AMENDED TO READ AS  
 23 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 7. (a) For the purpose  
 24 of inheritance (on the maternal side) to, through, and from a child born  
 25 out of wedlock, the child shall be treated as if the child's mother were  
 26 married to the child's father at the time of the child's birth, so that the  
 27 child and the child's issue shall inherit from the child's mother and from  
 28 the child's maternal kindred, both descendants and collaterals, in all  
 29 degrees, and they may inherit from the child. The child shall also be  
 30 treated as if the child's mother were married to the child's father at the  
 31 time of the child's birth, for the purpose of determining homestead  
 32 rights and the making of family allowances.
- 33 (b) For the purpose of inheritance (on the paternal side) to, through,  
 34 and from a child born out of wedlock, the child shall be treated as if the  
 35 child's father were married to the child's mother at the time of the  
 36 child's birth, if one (1) of the following requirements is met:
- 37 (1) The paternity of a child who was at least twenty (20) years of  
 38 age when the father died has been established by law in a cause  
 39 of action that is filed during the father's lifetime.
- 40 (2) The paternity of a child who was less than twenty (20) years  
 41 of age when the father died has been established by law in a cause  
 42 of action that is filed:



- 1 (A) during the father's lifetime; or
- 2 (B) within five (5) months after the father's death.
- 3 (3) The paternity of a child born after the father died has been
- 4 established by law in a cause of action that is filed within eleven
- 5 (11) months after the father's death.
- 6 (4) The putative father marries the mother of the child and
- 7 acknowledges the child to be his own.
- 8 **(5) The putative father executed a paternity affidavit in**
- 9 **accordance with IC 31-6-6.1-9(b) (before its repeal).**
- 10 ~~(5)~~ (6) The putative father executes a paternity affidavit as set
- 11 forth in IC 16-37-2-2.1.

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

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

25 SECTION 33. IC 29-1-7-17 IS AMENDED TO READ AS  
 26 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 17. Any interested  
 27 person may contest the validity of any will in the court having  
 28 jurisdiction over the probate of the will within three (3) months after  
 29 the date of the order admitting the will to probate by filing in the **same**  
 30 court, **in a separate cause of action**, the person's allegations in writing  
 31 verified by affidavit, setting forth:

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

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

40 SECTION 34. IC 29-2-19-17, AS AMENDED BY P.L.6-2012,  
 41 SECTION 201, IS AMENDED TO READ AS FOLLOWS  
 42 [EFFECTIVE JULY 1, 2016]: Sec. 17. The right to control the



1 disposition of a decedent's body, to make arrangements for funeral  
 2 services, and to make other ceremonial arrangements after an  
 3 individual's death devolves on the following, in the priority listed:

4 (1) A person:

5 (A) granted the authority to serve in a funeral planning  
 6 declaration executed by the decedent under this chapter; or

7 (B) named in a United States Department of Defense form  
 8 "Record of Emergency Data" (DD Form 93) or a successor  
 9 form adopted by the United States Department of Defense, if  
 10 the decedent died while serving in any branch of the United  
 11 States Armed Forces (as defined in 10 U.S.C. 1481) and  
 12 completed the form.

13 (2) An individual specifically granted the authority in a power of  
 14 attorney or a health care power of attorney executed by the  
 15 decedent under IC 30-5-5-16.

16 (3) The decedent's surviving spouse.

17 **(4) The person appointed to administer the decedent's estate**  
 18 **under IC 29-1.**

19 ~~(4)~~ **(5)** A surviving adult child of the decedent or, if more than  
 20 one (1) adult child is surviving, the majority of the other adult  
 21 children. However, less than half of the surviving adult children  
 22 have the rights under this subdivision if the adult children have  
 23 used reasonable efforts to notify the other surviving adult children  
 24 of their intentions and are not aware of any opposition to the final  
 25 disposition instructions by more than half of the surviving adult  
 26 children.

27 ~~(5)~~ **(6)** The surviving parent or parents of the decedent. If one (1)  
 28 of the parents is absent, the parent who is present has the rights  
 29 under this subdivision if the parent who is present has used  
 30 reasonable efforts to notify the absent parent.

31 ~~(6)~~ **(7)** The decedent's surviving sibling or, if more than one (1)  
 32 sibling is surviving, the majority of the surviving siblings.  
 33 However, less than half of the surviving siblings have the rights  
 34 under this subdivision if the siblings have used reasonable efforts  
 35 to notify the other surviving siblings of their intentions and are  
 36 not aware of any opposition to the final disposition instructions by  
 37 more than half of the surviving siblings.

38 ~~(7)~~ **(8)** An individual in the next degree of kinship under  
 39 IC 29-1-2-1 to inherit the estate of the decedent or, if more than  
 40 one (1) individual of the same degree survives, the majority of  
 41 those who are of the same degree of kinship. However, less than  
 42 half of the individuals who are of the same degree of kinship have



1 the rights under this subdivision if they have used reasonable  
 2 efforts to notify the other individuals who are of the same degree  
 3 of kinship of their intentions and are not aware of any opposition  
 4 to the final disposition instructions by more than half of the  
 5 individuals who are of the same degree of kinship.

6 **(9) If none of the persons described in subdivisions (1)**  
 7 **through (8) are available, or willing, to act and arrange for**  
 8 **the final disposition of the decedent's remains, a stepchild (as**  
 9 **defined in IC 6-4.1-1-3(f)) of the decedent. If more than one**  
 10 **(1) stepchild survives the decedent, then a majority of the**  
 11 **surviving stepchildren. However, less than half of the**  
 12 **surviving stepchildren have the rights under this subdivision**  
 13 **if they have used reasonable efforts to notify the other**  
 14 **stepchildren of their intentions and are not aware of any**  
 15 **opposition to the final disposition instructions by more than**  
 16 **half of the stepchildren.**

17 ~~(8)~~ **(10)** If none of the persons described in subdivisions (1)  
 18 through ~~(7)~~ **(9)** are available, any other person willing to act and  
 19 arrange for the final disposition of the decedent's remains,  
 20 including a funeral home that:

21 (A) has a valid prepaid funeral plan executed under IC 30-2-13  
 22 that makes arrangements for the disposition of the decedent's  
 23 remains; and

24 (B) attests in writing that a good faith effort has been made to  
 25 contact any living individuals described in subdivisions (1)  
 26 through ~~(7)~~: **(9)**.

27 SECTION 35. IC 29-3-5-4 IS AMENDED TO READ AS  
 28 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 4. The court shall  
 29 appoint as guardian a qualified person or persons most suitable and  
 30 willing to serve, having due regard to the following:

31 (1) Any request made by a person alleged to be an incapacitated  
 32 person, including designations in a durable power of attorney  
 33 under IC 30-5-3-4(a).

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

35 **(3) A designation of a standby guardian under IC 29-3-3-7.**

36 ~~(3)~~ **(4)** Any request made by a minor who is at least fourteen (14)  
 37 years of age.

38 ~~(4)~~ **(5)** Any request made by the spouse of the alleged  
 39 incapacitated person.

40 ~~(5)~~ **(6)** The relationship of the proposed guardian to the individual  
 41 for whom guardianship is sought.

42 ~~(6)~~ **(7)** Any person acting for the incapacitated person under a



1 durable power of attorney.  
 2 ~~(7)~~ **(8)** The best interest of the incapacitated person or minor and  
 3 the property of the incapacitated person or minor.  
 4 SECTION 36. IC 29-3-5-5 IS AMENDED TO READ AS  
 5 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 5. (a) The following are  
 6 entitled to consideration for appointment as a guardian under section  
 7 4 of this chapter in the order listed:  
 8 (1) A person designated in a durable power of attorney.  
 9 **(2) A person designated as a standby guardian under**  
 10 **IC 29-3-3-7.**  
 11 ~~(2)~~ **(3)** The spouse of an incapacitated person.  
 12 ~~(3)~~ **(4)** An adult child of an incapacitated person.  
 13 ~~(4)~~ **(5)** A parent of an incapacitated person, or a person nominated  
 14 by will of a deceased parent of an incapacitated person or by any  
 15 writing signed by a parent of an incapacitated person and attested  
 16 to by at least two (2) witnesses.  
 17 ~~(5)~~ **(6)** Any person related to an incapacitated person by blood or  
 18 marriage with whom the incapacitated person has resided for  
 19 more than six (6) months before the filing of the petition.  
 20 ~~(6)~~ **(7)** A person nominated by the incapacitated person who is  
 21 caring for or paying for the care of the incapacitated person.  
 22 (b) With respect to persons having equal priority, the court shall  
 23 select the person it considers best qualified to serve as guardian. The  
 24 court, acting in the best interest of the incapacitated person or minor,  
 25 may pass over a person having priority and appoint a person having a  
 26 lower priority or no priority under this section.  
 27 SECTION 37. IC 32-17.5-4-1, AS AMENDED BY P.L.6-2010,  
 28 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 29 JULY 1, 2016]: Sec. 1. Except for a disclaimer under IC 32-17.5-5 or  
 30 IC 32-17.5-6-1, the following rules apply to a disclaimer of an interest  
 31 in property:  
 32 (1) A disclaimer takes effect:  
 33 (A) when the instrument creating the interest becomes  
 34 irrevocable; or  
 35 (B) upon the intestate's death if the interest arose under the law  
 36 of intestate succession.  
 37 (2) A disclaimed interest passes according to any provision in the  
 38 instrument creating the interest:  
 39 (A) that provides for the disposition of the interest should the  
 40 interest be disclaimed; or  
 41 (B) that concerns disclaimed interests in general.  
 42 (3) If the instrument creating the disclaimed interest does not



1 contain a provision described in subdivision (2), the following  
 2 rules apply:

3 (A) If the disclaimant is an individual, the following rules  
 4 apply:

5 (i) Except as provided in items (ii) and (iii), the disclaimed  
 6 interest passes as if the disclaimant had died immediately  
 7 before the time of distribution.

8 (ii) If, by law or under the instrument, the descendants of the  
 9 disclaimant would share in the disclaimed interest by any  
 10 method of representation had the disclaimant died before the  
 11 time of distribution, the disclaimed interest passes only to  
 12 the descendants of the disclaimant who survive at the time  
 13 of distribution.

14 (iii) If the disclaimed interest would have passed to the  
 15 disclaimant's estate had the disclaimant died before the time  
 16 of distribution, the disclaimed interest passes by  
 17 representation to the descendants of the disclaimant who  
 18 survive at the time of distribution. If no descendant of the  
 19 disclaimant survives the time of distribution, the disclaimed  
 20 interest becomes part of the residue under the instrument  
 21 creating the disclaimed interest.

22 (B) If the disclaimant is not an individual, the disclaimed  
 23 interest passes as if the disclaimant did not exist.

24 (4) If the disclaimed interest arose under the law of intestate  
 25 succession, the disclaimed interest passes as if the disclaimant  
 26 had died immediately before the intestate's death.

27 (5) Upon the disclaimer of a preceding interest:

28 (A) a future interest held by a person other than the  
 29 disclaimant takes effect as if the disclaimant had died or  
 30 ceased to exist immediately before the time of distribution;  
 31 and

32 (B) a future interest held by the disclaimant is not accelerated  
 33 in possession or enjoyment.

34 **(6) If a beneficiary of a transfer on death transfer (as defined**  
 35 **in IC 32-17-14-3(16)) disclaims an interest in the property, the**  
 36 **disclaimant's interest in the property passes as follows:**

37 **(A) In the case of a disclaimant who is an individual, as if**  
 38 **the disclaimant had died immediately before the death of**  
 39 **the owner (as defined in IC 32-17-14-3(7)).**

40 **(B) In the case of a disclaimant who is not an individual, as**  
 41 **if the disclaimant did not exist before the death of the**  
 42 **owner (as defined in IC 32-17-14-3(7)).**



1           SECTION 38. [EFFECTIVE UPON PASSAGE] (a) **IC 6-4.1-6-1,**  
2 **IC 6-4.1-6-2, and IC 6-4.1-6-6, each as amended by this act, apply**  
3 **to an appraisal occurring after March 31, 2016, with respect to**  
4 **property interests transferred by a decedent who died before**  
5 **January 1, 2013.**  
6           **(b) This SECTION expires January 1, 2017.**  
7           SECTION 39. An emergency is declared for this act.

