

**Members**

Rep. Trent Van Haaften, Chairperson  
Rep. Jeb Bardon  
Rep. Ralph Foley  
Sen. Joseph Zakas  
Sen. Brent Steele  
Sen. John Broden  
Chris Colpaert  
Joseph H. Davis  
Kris Fruehwald  
Thomas Hardin  
Judge Thomas Lowe  
James Martin  
David Pendergast  
Dan Reeves  
Timothy Sendak  
Jerry Withered



# PROBATE CODE STUDY COMMISSION

Legislative Services Agency  
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**LSA Staff:**

Ross Hooten, Attorney for the Commission  
James Landers, Fiscal Analyst for the Commission

Authority: IC 2-5-16-2

## MEETING MINUTES<sup>1</sup>

**Meeting Date:** October 29, 2008  
**Meeting Time:** 1:00 P.M.  
**Meeting Place:** State House, 200 W. Washington St., Room 404  
**Meeting City:** Indianapolis, Indiana  
**Meeting Number:** 3

**Members Present:** Rep. Trent Van Haaften, Chairperson; Rep. Ralph Foley; Sen. Joseph Zakas; Sen. Brent Steele; Kris Fruehwald; James Martin; David Pendergast; Dan Reeves; Jerry Withered.

**Members Absent:** Rep. Jeb Bardon; Sen. John Broden; Chris Colpaert; Joseph H. Davis; Thomas Hardin; Judge Thomas Lowe; Timothy Sendak.

Rep. Van Haaften called the meeting to order at approximately 1:15 p.m.

The Commission discussed with attorney Jeff Kolb Preliminary Draft (PD) 3433 (Exhibit A) concerning a comprehensive transfer on death statute. Mr. Kolb and Mr. Martin compared the draft and the transfer on death transfers permitted by current law. Both noted that authority to execute transfer on death deeds for real estate is the key innovation contained in the draft.

Ross Hooten, Legislative Services Agency, described the differences between PD 3433 and PD 3337 which was presented to the Commission at the October 15 meeting.

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

The Commission discussed the interaction between PD 3433 and the existing transfer on death statutes. It was determined that language to protect existing contractual relationships while allowing the comprehensive statute to replace the existing statutes is necessary. Rep. Van Haaften stated that he would have the language ready for the General Assembly's consideration of the legislation in January.

The Commission voted 9-0 to recommend PD 3433 to the General Assembly.

Mr. Hooten presented PD 3400 (Exhibit B) noting that it contained language not discussed by the Commission when it amended and adopted PD 3339 at the October 15 meeting. Mr. Hooten explained that the new language consists of a paragraph on the statutory form for a funeral planning declaration in which the declarant designates an individual to serve as the declarant's designee for the purpose of carrying out the instructions of the declaration. Ms. Fruehwald suggested additional conforming changes to the declaration form. The Commission consented to the new paragraph and Ms. Fruehwald's suggestions before voting 9-0 to adopt PD 3400, as amended.

Mr. Kolb presented PD 3346 (Exhibit C) which would authorize the creation of asset protection trusts in Indiana. Mr. Kolb reviewed the history of the asset protection trust which is now available in ten states. Mr. Kolb described how an Indiana asset protection trust would benefit the settlor establishing the trust.

The Commission discussed some of the practical implications of the asset protection trust but took no official action on PD 3346.

Sen. Zakas asked the Commission to consider recommending the General Assembly to revive SB 294-2008 (Exhibit D) which would have relieved trustees of certain duties concerning life insurance policies. Attorney Theodore Nowacki, Indiana Bankers Association, expressed the Association's support for the bill. The Commission discussed the bill and the issues surrounding life insurance trusts that the members have encountered in their professional lives.

Ms. Fruehwald suggested that the legislation should allow a settlor to specify in a trust document that the relief provided by SB 294 does not apply to the settlor's trustee. The Commission agreed and moved to consider recommending SB 294-2008 to the General Assembly with that caveat. However, the motion failed with only eight affirmative votes when at least nine were needed to take official action.

Rep. Foley distributed PD 3204 (Exhibit E) concerning certain notice requirements in the inheritance tax law and the taxability of personal injury damages that inure to a decedent's estate under certain circumstances. The Commission took no action on the draft.

Mr. Hooten submitted a proposed final report (Exhibit F) to the Commission and explained the additions required by the October 29 meeting. The Commission adopted the final report 9-0.

Sen. Zakas asked the Commission to recommend to the General Assembly that the Chair of the Probate Code Study Commission serve a two year term. Rep. Van Haaften noted that the General Assembly will have to amend IC 2-5-16-4 which specifies that the chair serves a one year term. The Commission voted 9-0 to recommend the change to the General Assembly.

Rep. Van Haaften adjourned the meeting at approximately 3:30 p.m.