
PRELIMINARY DRAFT
No. 3433

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2009 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 29-3-8-6.5; IC 32-17-14; IC 34-30-2-134.8.

Synopsis: Comprehensive transfer on death act. Provides the method for determining the amount a joint owner or beneficiary of a protected person's multiple party account is entitled to receive from the protected person's estate when a guardian has used assets of the multiple party account. Authorizes individuals to designate beneficiaries to receive property, including real property, upon the death of the individual. Provides that the authorization is in addition to the transactions that become effective upon the death of the owner under current law.

Effective: July 1, 2009.



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

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

1 SECTION 1. IC 29-3-8-6.5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6.5. (a) If:

3 (1) a guardian takes possession of property that is:

4 (A) jointly owned by or titled in the names of the protected
5 person and another person with rights of survivorship; **or**

6 (B) **owned as a multiple party account with another person
7 as joint owner or beneficiary;**

8 (2) the guardian:

9 (A) severs the joint ownership of the property; **or**

10 (B) **uses the assets of the multiple party account;** and

11 (3) the protected person subsequently dies while the other person
12 is living;

13 the other person may elect to receive from the protected person's estate
14 property in an amount determined under subsection (b).

15 (b) The amount of property the other person described in subsection
16 (a) may elect to receive is determined in STEP THREE of the following
17 formula:

18 STEP ONE: Subtract:

19 (A) the value of the severed **or used** property retained by the
20 other person at the time ownership was severed **or used**, if
21 any; from

22 (B) the value of the joint property **or multiple party account**
23 at the time ownership was severed **or the assets were used.**

24 STEP TWO: Divide:

25 (A) the remainder determined under STEP ONE; by

26 (B) the value of the protected person's property, including the
27 jointly held property **or multiple party account**, at the time
28 ownership was severed **or the assets were used.**

29 STEP THREE: Multiply:

30 (A) the quotient determined under STEP TWO; by

31 (B) the value of the deceased protected person's net estate.



1 (c) As used in this section, "multiple party account" refers to
 2 both multiple party accounts described in IC 32-17-11 and transfer
 3 on death securities described in IC 32-17-9.

4 SECTION 2. IC 32-17-14 IS ADDED TO THE INDIANA CODE
 5 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2009]:

7 **Chapter 14. Transfer on Death Property Act**

8 **Sec. 1. This chapter may be cited as the Transfer on Death**
 9 **Property Act.**

10 **Sec. 2. (a) This chapter applies to property subject to a transfer**
 11 **on death transfer made after June 30, 2009.**

12 **(b) Subject to section 32 of this chapter, this chapter applies to**
 13 **a transfer on death transfer if at the time the owner designated the**
 14 **beneficiary:**

15 (1) the owner was a resident of Indiana;

16 (2) the property subject to the beneficiary designation was
 17 situated in Indiana;

18 (3) the obligation to pay or deliver arose in Indiana;

19 (4) the transferring entity was a resident of Indiana or had a
 20 place of business in Indiana; or

21 (5) the transferring entity's obligation to make the transfer
 22 was accepted in Indiana.

23 (c) Except for section 24 of this chapter, this chapter does not
 24 apply to property, money, or benefits paid or transferred at death
 25 under a life or accidental death insurance policy, annuity, contract,
 26 plan, or other product sold or issued by a life insurance company
 27 unless the provisions of this chapter are incorporated into the
 28 policy or beneficiary designation in whole or in part by express
 29 reference.

30 (d) Except for section 24 of this chapter, this chapter does not
 31 apply to a transfer on death transfer if the beneficiary designation
 32 or an applicable law expressly provides that this chapter does not
 33 apply to the transfer.

34 **Sec. 3. The following definitions apply throughout this chapter:**

35 (1) "Beneficiary" means a person designated or entitled to
 36 receive property because of another person's death under a
 37 transfer on death transfer.

38 (2) "Beneficiary designation" means a written instrument
 39 other than a will or trust that designates the beneficiary of a
 40 transfer on death transfer.

41 (3) "Joint owners" refers to persons who hold property as
 42 joint tenants with a right of survivorship. However, the term
 43 does not include a husband and wife who hold property as
 44 tenants by the entirety.

45 (4) "LDPS" means an abbreviation of lineal descendants per
 46 stirpes, which may be used in a beneficiary designation to



- 1 designate a substitute beneficiary as provided in section 22 of
 2 this chapter.
- 3 (5) "Owner" refers to a person or persons who have a right to
 4 designate the beneficiary of a transfer on death transfer.
- 5 (6) "Ownership in beneficiary form" means holding property
 6 under a registration in beneficiary form or other written
 7 instrument that:
- 8 (A) names the owner of the property;
 9 (B) directs ownership of the property to be transferred
 10 upon the death of the owner to the designated beneficiary;
 11 and
 12 (C) designates the beneficiary.
- 13 (7) "Person" means an individual, a sole proprietorship, a
 14 partnership, an association, a fiduciary, a trustee, a
 15 corporation, a limited liability company, or any other business
 16 entity.
- 17 (8) "Proof of death" means a death certificate or a record or
 18 report that is prima facie proof or evidence of an individual's
 19 death.
- 20 (9) "Property" means any present or future interest real
 21 property, intangible personal property (as defined in
 22 IC 6-4.1-1-5), or tangible personal property (as defined in
 23 IC 6-4.1-1-13). The term includes:
- 24 (A) a right to direct or receive payment of a debt;
 25 (B) a right to direct or receive payment of money or other
 26 benefits due under a contract, account agreement, deposit
 27 agreement, employment contract, compensation plan,
 28 pension plan, individual retirement plan, employee benefit
 29 plan, or trust or by operation of law;
 30 (C) a right to receive performance remaining due under a
 31 contract;
 32 (D) a right to receive payment under a promissory note or
 33 a debt maintained in a written account record;
 34 (E) rights under a certificated or uncertificated security;
 35 (F) rights under an instrument evidencing ownership of
 36 property issued by a governmental agency; and
 37 (G) rights under a document of title (as defined in
 38 IC 26-1-1-201).
- 39 (10) "Registration in beneficiary form" means titling of an
 40 account record, certificate, or other written instrument that:
- 41 (A) provides evidence of ownership of property in the
 42 name of the owner;
 43 (B) directs ownership of the property to be transferred
 44 upon the death of the owner to the designated beneficiary;
 45 and
 46 (C) designates the beneficiary.



1 (11) "Security" means a share, participation, or other interest
 2 in property, in a business, or in an obligation of an enterprise
 3 or other issuer. The term includes a certificated security, an
 4 uncertificated security, and a security account.

5 (12) "Transfer on death deed" means a deed that conveys an
 6 interest in real property to a grantee by beneficiary
 7 designation.

8 (13) "Transfer on death transfer" refers to a transfer of
 9 property that takes effect upon the death of the owner under
 10 a beneficiary designation made under this chapter.

11 (14) "Transferring entity" means a person who:

12 (A) owes a debt or is obligated to pay money or benefits;

13 (B) renders contract performance;

14 (C) delivers or conveys property; or

15 (D) changes the record of ownership of property on the
 16 books, records, and accounts of an enterprise or on a
 17 certificate or document of title that evidences property
 18 rights.

19 The term includes a governmental agency, business entity, or
 20 transfer agent that issues certificates of ownership or title to
 21 property and a person acting as a custodial agent for an
 22 owner's property. However, the term does not include a
 23 governmental office charged with endorsing, entering, or
 24 recording the transfer of real property in the public records.

25 Sec. 4. (a) The following transfers of ownership are not
 26 considered transfer on death transfers for purposes of this chapter:

27 (1) Transfers by rights of survivorship in property held as
 28 joint tenants or tenants by the entirety.

29 (2) A transfer to a remainderman on the termination of a life
 30 tenancy.

31 (3) An inter vivos or a testamentary transfer under a trust
 32 established by an individual.

33 (4) A transfer made under the exercise or nonexercise of a
 34 power of appointment.

35 (5) A transfer made on the death of a person who did not have
 36 the right to designate the person's estate as the beneficiary of
 37 the transfer.

38 (b) A beneficiary designation made under this chapter must do
 39 the following:

40 (1) Designate the beneficiary of a transfer on death transfer.

41 (2) Make the transfer effective upon the death of the owner of
 42 the property being transferred.

43 (3) Comply with the requirements of this chapter, the
 44 conditions of any governing instrument, and any other
 45 applicable law.

46 (c) For purposes of construing this chapter or a beneficiary



1 designation made under this chapter, the death of the last surviving
 2 owner of property held by joint owners is considered the death of
 3 the owner.

4 (d) Except as otherwise provided in this chapter, a transfer on
 5 death direction is accomplished in a form substantially similar to
 6 the following:

7 (1) Insert Name of the Owner or Owners.

8 (2) Insert "Transfer on death to" or "TOD" or "Pay on death
 9 to" or "POD".

10 (3) Insert the Name of the Beneficiary or Beneficiaries.

11 (e) An owner may revoke or change a beneficiary designation at
 12 any time before the owner's death.

13 **Sec. 5. A transfer on death transfer:**

14 (1) is effective with or without consideration;

15 (2) is not considered testamentary;

16 (3) is not subject to the requirements for a will or for
 17 probating a will under IC 29-1; and

18 (4) may be subject to an agreement between the owner and a
 19 transferring entity to carry out the owner's intent to transfer
 20 the property under this chapter.

21 **Sec. 6. For the purpose of discharging its duties under this**
 22 **chapter, the authority of a transferring entity acting as agent for**
 23 **an owner of property subject to a transfer on death transfer does**
 24 **not cease at the death of the owner. The transferring entity shall**
 25 **transfer the property to the designated beneficiary in accordance**
 26 **with the beneficiary designation and this chapter.**

27 **Sec. 7. (a) If any of the following are required, an agreement**
 28 **between the owner and the transferring entity is necessary to carry**
 29 **out a transfer on death transfer, which may be made in accordance**
 30 **with the rules, terms, and conditions set forth in the agreement:**

31 (1) The submission to the transferring entity of a beneficiary
 32 designation under a governing instrument.

33 (2) Registration by a transferring entity of a transfer on death
 34 direction on any certificate or record evidencing ownership of
 35 property.

36 (3) Consent of a contract obligor for a transfer of
 37 performance due under the contract.

38 (4) Consent of a financial institution for a transfer of an
 39 obligation of the financial institution.

40 (5) Consent of a transferring entity for a transfer of an
 41 interest in the transferring entity.

42 (b) When subsection (a) applies, a transferring entity is not
 43 required to accept an owner's request to assist the owner in
 44 carrying out a transfer on death transfer.

45 (c) If a beneficiary designation, revocation, or change is subject
 46 to acceptance by a transferring entity, the transferring entity's



1 acceptance of the beneficiary designation, revocation, or change
 2 relates back to and is effective as of the time the request was
 3 received by the transferring entity.

4 **Sec. 8. (a)** If a transferring entity accepts a beneficiary
 5 designation or beneficiary assignment or registers property in
 6 beneficiary form, the acceptance or registration constitutes the
 7 agreement of the owner and the transferring entity that, subject to
 8 this section, the owner's property will be transferred to and placed
 9 in the name and control of the beneficiary in accordance with the
 10 beneficiary designation or transfer on death direction, the
 11 agreement between the parties, and this chapter.

12 **(b)** An agreement described in subsection (a) is subject to the
 13 owner's power to revoke or change a beneficiary designation
 14 before the owner's death.

15 **(c)** A transferring entity's duties under an agreement described
 16 in subsection (a) are subject to the following:

- 17 (1) Receiving proof of the owner's death.
- 18 (2) Complying with the transferring entity's requirements for
 19 proof that the beneficiary is entitled to receive the property.

20 **Sec. 9. (a)** Except as provided in subsection (c), a beneficiary
 21 designation that satisfies the requirements of subsection (b):

- 22 (1) authorizes a transfer of property under this chapter;
- 23 (2) is effective on the death of the owner of the property; and
- 24 (3) transfers the right to receive the property to the
 25 designated beneficiary who survives the death of the owner.

26 **(b)** A beneficiary designation is effective under subsection (a) if
 27 the beneficiary designation is:

- 28 (1) executed; and
- 29 (2) delivered;

30 in proper form to the transferring entity before the death of the
 31 owner.

32 **(c)** A transferring entity shall make a transfer described in
 33 subsection (a)(3) unless there is clear and convincing evidence of
 34 the owner's different intention at the time the beneficiary
 35 designation was created.

36 **Sec. 10. (a)** A written assignment of a contract right that:

- 37 (1) assigns the right to receive any performance remaining
 38 due under the contract to an assignee designated by the
 39 owner; and
- 40 (2) expressly states that the assignment does not take effect
 41 until the death of the owner;

42 transfers the right to receive performance due under the contract
 43 to the designated assignee beneficiary if the assignment satisfies the
 44 requirements of subsection (b).

45 **(b)** A written assignment described in subsection (a) is effective
 46 upon the death of the owner if the assignment is:



1 (1) executed; and
 2 (2) delivered;
 3 in proper form to the contract obligor before the death of the
 4 owner.

5 (c) A beneficiary assignment described in this section is not
 6 required to be supported by consideration or delivered to the
 7 assignee beneficiary.

8 (d) This section does not preclude other methods of assignment
 9 that are permitted by law and have the effect of postponing the
 10 enjoyment of the contract right until after the death of the owner.

11 Sec. 11. (a) A transfer on death deed transfers the interest
 12 provided to the beneficiary if the transfer on death deed is:

13 (1) executed in proper form; and
 14 (2) recorded with the recorder of deeds in the county in which
 15 the real property is situated before the death of the owner.

16 (b) A transfer on death deed is void if it is not recorded with the
 17 recorder of deeds in the county in which the real property is
 18 situated before the death of the owner.

19 (c) A transfer on death deed is not required to be supported by
 20 consideration or delivered to the grantee beneficiary.

21 (d) A transfer on death deed may be used to transfer an interest
 22 in real property to either a revocable or an irrevocable trust.

23 (e) If the owner makes a transfer on death deed, the effect of the
 24 conveyance is determined as follows:

25 (1) If the owner's interest in the real property is as a tenant by
 26 the entirety, the conveyance is inoperable and void unless the
 27 other spouse joins in the conveyance.

28 (2) If the owner's interest in the real property is as a joint
 29 tenant with rights of survivorship, the conveyance severs the
 30 joint tenancy and the cotenancy becomes a tenancy in
 31 common.

32 (3) If the owner's interest in the real property is as a joint
 33 tenant with rights of survivorship and the property is subject
 34 to a beneficiary designation, a conveyance of any joint
 35 owner's interest has no effect on the original beneficiary
 36 designation for the nonsevering joint tenant.

37 (4) If the owner's interest is as a tenant in common, the
 38 owner's interest passes to the beneficiary as a transfer on
 39 death transfer.

40 (5) If the owner's interest is a life estate determined by the
 41 owner's life, the conveyance is inoperable and void.

42 (6) If the owner's interest is any other interest, the interest
 43 passes in accordance with this chapter and the terms and
 44 conditions of the conveyance establishing the interest. If a
 45 conflict exists between the conveyance establishing the
 46 interest and this chapter, the terms and conditions of the



1 conveyance establishing the interest prevail.

2 (f) A beneficiary designation in a transfer on death deed may be
3 worded in substance as "(insert owner's name) conveys and
4 warrants (or quitclaims) to (insert owner's name), TOD to (insert
5 beneficiary's name)". This example is not intended to be
6 exhaustive.

7 (g) A transfer on death deed using the phrase "pay on death to"
8 or the abbreviation "POD" may not be construed to require the
9 liquidation of the real property being transferred.

10 (h) This section does not preclude other methods of conveying
11 real property that are permitted by law and have the effect of
12 postponing enjoyment of an interest in real property until after the
13 death of the owner. This section applies only to transfer on death
14 deeds and does not invalidate any deed that is otherwise effective
15 by law to convey title to the interest and estates provided in the
16 deed.

17 Sec. 12. (a) A deed of gift, bill of sale, or other writing intended
18 to transfer an interest in tangible personal property is effective on
19 the death of the owner and transfers ownership to the designated
20 transferee beneficiary if the document:

- 21 (1) expressly creates ownership in beneficiary form;
- 22 (2) is in other respects sufficient to transfer the type of
23 property involved; and
- 24 (3) is executed by the owner and acknowledged before a
25 notary public or other person authorized to administer oaths.

26 (b) A beneficiary transfer document described in this section is
27 not required to be supported by consideration or delivered to the
28 transferee beneficiary.

29 (c) This section does not preclude other methods of transferring
30 ownership of tangible personal property that are permitted by law
31 and have the effect of postponing enjoyment of the property until
32 after the death of the owner.

33 Sec. 13. (a) A transferor of property, with or without
34 consideration, may execute a written instrument directly
35 transferring the property to a transferee to hold as owner in
36 beneficiary form.

37 (b) A transferee under an instrument described in subsection (a)
38 is considered the owner of the property for all purposes and has all
39 the rights to the property provided by law to the owner of the
40 property, including the right to revoke or change the beneficiary
41 designation.

42 (c) A direct transfer of property to a transferee to hold as owner
43 in beneficiary form is effective when the written instrument
44 perfecting the transfer becomes effective to make the transferee the
45 owner.

46 Sec. 14. (a) Property may be held or registered in beneficiary



1 form by including in the name in which the property is held or
 2 registered a direction to transfer the property on the death of the
 3 owner to a beneficiary designated by the owner.

4 (b) Property is registered in beneficiary form by showing on the
 5 account record, security certificate, or instrument evidencing
 6 ownership of the property:

7 (1) the name of the owner and, if applicable, the estate by
 8 which two (2) or more joint owners hold the property; and

9 (2) an instruction substantially similar in form to "transfer on
 10 death to (insert name of beneficiary)".

11 An instruction to "pay on death to (insert name of the
 12 beneficiary)" and the use of the abbreviations "TOD" and "POD"
 13 are also permitted by this section.

14 (c) Only a transferring entity or a person authorized by the
 15 transferring entity may place a transfer on death direction
 16 described by this section on an account record, a security
 17 certificate, or an instrument evidencing ownership of property.

18 (d) A transfer on death direction described by this section is
 19 effective on the death of the owner and transfers the owner's
 20 interest in the property to the designated beneficiary if:

21 (1) the property is registered in beneficiary form before the
 22 death of the owner; or

23 (2) the transfer on death direction is delivered in proper form
 24 to the transferring entity before the owner's death.

25 (e) An account record, security certificate, or instrument
 26 evidencing ownership of property that contains a transfer on death
 27 direction written as part of the name in which the property is held
 28 or registered is conclusive evidence, in the absence of fraud, duress,
 29 undue influence, lack of capacity, or mistake, that the direction
 30 was:

31 (1) regularly made by the owner;

32 (2) accepted by the transferring entity; and

33 (3) not revoked or changed before the owner's death.

34 Sec. 15. (a) Before the death of the owner, a beneficiary has no
 35 rights in the property because of the beneficiary designation. The
 36 signature or agreement of the beneficiary is not required for any
 37 transaction relating to property transferred under this chapter. If
 38 a lienholder takes action to enforce a lien, by foreclosure or
 39 otherwise through a court proceeding, it is not necessary to join the
 40 beneficiary as a party defendant in the action unless the
 41 beneficiary has another interest in the real property that has
 42 vested.

43 (b) On the death of one (1) of two (2) or more joint owners,
 44 property with respect to which a beneficiary designation has been
 45 made belongs to the surviving joint owner or owners. If at least two
 46 (2) joint owners survive, the right of survivorship continues as



1 between the surviving owners.

2 (c) On the death of a tenant by the entirety, property with
3 respect to which a beneficiary designation has been made belongs
4 to the surviving tenant.

5 (d) On the death of the owner, property with respect to which
6 a beneficiary designation has been made passes by operation of law
7 to the beneficiary.

8 (e) If two (2) or more beneficiaries survive, there is no right of
9 survivorship among the beneficiaries when the death of a
10 beneficiary occurs after the death of the owner unless the
11 beneficiary designation expressly provides for survivorship among
12 the beneficiaries. Except as expressly provided otherwise, the
13 surviving beneficiaries hold their separate interest in the property
14 as tenants in common. The share of any beneficiary who dies after
15 the owner dies belongs to the deceased beneficiary's estate.

16 (f) If no beneficiary survives the owner, the property belongs to
17 the estate of the owner unless the beneficiary designation directs
18 the transfer to a substitute beneficiary in the manner required by
19 section 22 of this chapter.

20 Sec. 16. (a) A beneficiary designation may be revoked or
21 changed during the lifetime of the owner.

22 (b) A revocation or change of a beneficiary designation
23 involving property owned as tenants by the entirety must be made
24 with the agreement of both tenants for so long as both tenants are
25 alive. After an individual dies owning as a tenant by the entirety
26 property that is subject to a beneficiary designation, the
27 individual's surviving spouse may revoke or change the beneficiary
28 designation.

29 (c) A revocation or change of a beneficiary designation involving
30 property owned in a form of ownership (other than as tenants by
31 the entirety) that restricts conveyance of the interest unless another
32 person joins in the conveyance must be made with the agreement
33 of each living owner required to join in a conveyance.

34 (d) A revocation or change of a beneficiary designation
35 involving property owned by joint owners with a right of
36 survivorship must be made with the agreement of each living
37 owner.

38 (e) A subsequent beneficiary designation revokes a prior
39 beneficiary designation unless the subsequent beneficiary
40 designation expressly provides otherwise.

41 (f) A revocation or change in a beneficiary designation must
42 comply with the terms of any governing instrument, this chapter,
43 and any other applicable law.

44 (g) A beneficiary designation may not be revoked or changed by
45 a will unless the beneficiary designation expressly grants the owner
46 the right to revoke or change the beneficiary designation by a will.



1 **(h) A transfer during the owner's lifetime of the owner's interest**
 2 **in the property, with or without consideration, terminates the**
 3 **beneficiary designation with respect to the property transferred.**

4 **(i) The effective date of a revocation or change in a beneficiary**
 5 **designation is determined in the same manner as the effective date**
 6 **of a beneficiary designation.**

7 **(j) An owner may revoke a beneficiary designation made in a**
 8 **transfer on death deed by executing and recording with the**
 9 **recorder of deeds in the county in which the real property is**
 10 **situated either:**

11 **(1) a subsequent deed of conveyance revoking, omitting, or**
 12 **changing the beneficiary designation; or**

13 **(2) an affidavit acknowledged or proved under IC 32-21-2-3**
 14 **that revokes or changes the beneficiary designation.**

15 **(k) A physical act, such as a written modification on or the**
 16 **destruction of a transfer on death deed after the transfer on death**
 17 **deed has been recorded, has no effect on the beneficiary**
 18 **designation.**

19 **(l) A transfer on death deed may not be revoked or modified by**
 20 **will or trust.**

21 **Sec. 17. (a) An attorney in fact, guardian, conservator, or other**
 22 **agent acting on the behalf of the owner of property may make,**
 23 **revoke, or change a beneficiary designation if:**

24 **(1) the action complies with the terms of this chapter and any**
 25 **other applicable law; and**

26 **(2) the action is not expressly forbidden by the document**
 27 **establishing the agent's right to act on behalf of the owner.**

28 **(b) An attorney in fact, guardian, conservator, or other agent**
 29 **may withdraw, sell, pledge, or otherwise transfer property that is**
 30 **subject to a beneficiary designation notwithstanding the fact that**
 31 **the effect of the transaction may be to extinguish a beneficiary's**
 32 **right to receive a transfer of the property at the death of the owner.**

33 **(c) The rights of a beneficiary to any part of property that is**
 34 **subject to a beneficiary designation after the death of the owner**
 35 **are determined under IC 29-3-8-6.5 if:**

36 **(1) a guardian or conservator takes possession of the**
 37 **property;**

38 **(2) the guardian sells, transfers, encumbers, or consumes the**
 39 **property during the protected person's lifetime; and**

40 **(3) the owner subsequently dies.**

41 **Sec. 18. If property subject to a beneficiary designation is lost,**
 42 **destroyed, damaged, or involuntarily converted during the owner's**
 43 **lifetime, the beneficiary succeeds to any right with respect to the**
 44 **loss, destruction, damage, or involuntary conversion that the**
 45 **owner would have had if the owner had survived. However, the**
 46 **beneficiary has no interest in any payment or substitute property**



1 received by the owner during the owner's lifetime.

2 **Sec. 19. (a) A beneficiary of a transfer on death transfer takes**
 3 **the owner's interest in the property at the death of the owner**
 4 **subject to all conveyances, assignments, contracts, set offs, licenses,**
 5 **easements, liens, and security interests made by the owner or to**
 6 **which the owner was subject during the owner's lifetime.**

7 **(b) A beneficiary of a transfer on death transfer of an account**
 8 **with a bank, savings and loan association, credit union, broker, or**
 9 **mutual fund takes the owner's interest in the property at the death**
 10 **of the owner subject to all requests for payment of money issued by**
 11 **the owner before the owner's death, whether paid by the**
 12 **transferring entity before or after the owner's death, or unpaid.**
 13 **The beneficiary is liable to the payee of an unsatisfied request for**
 14 **payment to the extent that the request represents an obligation that**
 15 **was enforceable against the owner during the owner's lifetime.**

16 **(c) Each beneficiary's liability with respect to an unsatisfied**
 17 **request for payment is limited to the same proportionate share of**
 18 **the request for payment as the beneficiary's proportionate share**
 19 **of the account under the beneficiary designation. Each beneficiary**
 20 **has the right of contribution from the other beneficiaries with**
 21 **respect to a request for payment that is satisfied after the owner's**
 22 **death, to the extent that the request for payment would have been**
 23 **enforceable by the payee during the owner's lifetime.**

24 **Sec. 20. An individual who is a beneficiary of a transfer on death**
 25 **transfer is not entitled to a transfer unless the individual:**

26 **(1) survives the owner; and**

27 **(2) survives the owner by the period of time, if any, required**
 28 **by the terms of the beneficiary designation.**

29 **Sec. 21. (a) A trustee of a trust may be a designated beneficiary**
 30 **regardless of whether the trust is amendable, revocable,**
 31 **irrevocable, funded, unfunded, or amended after the designation**
 32 **is made.**

33 **(b) Unless a beneficiary designation provides otherwise, a trust**
 34 **that is revoked or terminated before the death of the owner is**
 35 **considered nonexistent at the owner's death.**

36 **(c) Unless a beneficiary designation provides otherwise, a legal**
 37 **entity or trust that does not:**

38 **(1) exist; or**

39 **(2) come into existence effective as of the owner's death;**
 40 **is considered nonexistent at the owner's death.**

41 **Sec. 22. (a) Notwithstanding sections 9 and 20 of this chapter, a**
 42 **designated beneficiary's rights under this chapter are not**
 43 **extinguished when the designated beneficiary does not survive the**
 44 **owner if:**

45 **(1) subsection (b) applies in the case of a designated**
 46 **beneficiary who is a lineal descendant of the owner; or**



- 1 (2) subsection (d) applies in the case of a designated
2 beneficiary who is not a lineal descendant of the owner.
- 3 (b) If a designated beneficiary who is a lineal descendant of the
4 owner:
- 5 (1) is deceased at the time the beneficiary designation is made;
6 (2) does not survive the owner; or
7 (3) is treated as not surviving the owner;
- 8 the beneficiary's right to a transfer on death transfer belongs to the
9 beneficiary's lineal descendants per stirpes who survive the owner
10 unless the owner provides otherwise under subsection (c).
- 11 (c) An owner may execute a beneficiary designation to which
12 subsection (b) does not apply by:
- 13 (1) making the notation "No LDPS" after a beneficiary's
14 name; or
15 (2) including other words negating an intention to direct the
16 transfer to the lineal descendant substitutes of the
17 nonsurviving beneficiary.
- 18 (d) An owner may execute a beneficiary designation that
19 provides that the right to a transfer on death transfer belonging to
20 a beneficiary who is not a lineal descendant of the owner and does
21 not survive the owner belongs to the beneficiary's lineal
22 descendants per stirpes who survive the owner. An owner's intent
23 to direct the transfer to the nonsurviving beneficiary's lineal
24 descendants must be shown by either of the following on the
25 beneficiary designation after the name of the beneficiary:
- 26 (1) The words "and lineal descendants per stirpes".
27 (2) The notation "LDPS".
- 28 (e) When two (2) or more individuals receive a transfer on death
29 transfer as substitute beneficiaries under subsection (b) or (d), the
30 individuals are entitled to equal shares of the property if they are
31 of the same degree of kinship to the nonsurviving beneficiary. If the
32 substitute beneficiaries are of unequal degrees of kinship, an
33 individual of a more remote degree is entitled by representation to
34 the share that would otherwise belong to the individual's parent.
- 35 (f) If:
- 36 (1) a designated beneficiary of a transfer on death transfer
37 does not survive the owner;
38 (2) either subsection (b) or (d) applies; and
39 (3) no lineal descendant of the designated beneficiary survives
40 the owner;
- 41 the right to receive the property transferred belongs to the other
42 surviving beneficiaries. If no other beneficiary survives the owner,
43 the property belongs to the owner's estate.
- 44 Sec. 23. (a) If, after an owner makes a beneficiary designation,
45 the owner's marriage is dissolved or annulled, any provision of the
46 beneficiary designation in favor of the owner's former spouse is



1 revoked on the date the marriage is dissolved or annulled.
 2 Revocation under this subsection is effective regardless of whether
 3 the beneficiary designation refers to the owner's marital status.
 4 The beneficiary designation is given effect as if the former spouse
 5 had not survived the owner.

6 (b) Subsection (a) does not apply to a provision of a beneficiary
 7 designation that:

8 (1) has been made irrevocable, or revocable only with the
 9 spouse's consent;

10 (2) is made after the marriage is dissolved or annulled; or

11 (3) expressly states that the dissolution or annulment of the
 12 marriage does not affect the designation of a spouse or a
 13 relative of the spouse as a beneficiary.

14 (c) A provision of a beneficiary designation that is revoked
 15 solely by subsection (a) is revived by the owner's remarriage to the
 16 former spouse or by a nullification of the dissolution or annulment
 17 of the marriage.

18 (d) This section does not apply to any employee benefit plan
 19 governed by the Employee Retirement Income Security Act of
 20 1974.

21 Sec. 24. (a) A beneficiary designation or a revocation of a
 22 beneficiary designation that is procured by fraud, duress, undue
 23 influence, or mistake or because the owner lacked capacity is void.

24 (b) A beneficiary designation made under this chapter is subject
 25 to IC 29-1-2-12.1.

26 Sec. 25. (a) No law intended to protect a spouse or child from
 27 disinheritance by the will of a testator applies to a transfer on
 28 death transfer.

29 (b) A beneficiary designation designating the children of the
 30 owner or children of any other person as a class and not by name
 31 includes all children of the person regardless of whether the child
 32 is born or adopted before or after the beneficiary designation is
 33 made.

34 (c) Except as provided in subsection (d), a child of the owner
 35 born or adopted after the owner makes a beneficiary designation
 36 that names another child of the owner as the beneficiary is entitled
 37 to receive a fractional share of the property that would otherwise
 38 be transferred to the named beneficiary. The share of the property
 39 to which each child of the owner is entitled to receive is expressed
 40 as a fraction in which the numerator is one (1) and the
 41 denominator is the total number of the owner's children.

42 (d) A beneficiary designation or a governing instrument may
 43 provide that subsection (c) does not apply to an owner's beneficiary
 44 designation. In addition, a transferring entity is not obligated to
 45 apply subsection (c) to property registered in beneficiary form.

46 (e) If a beneficiary designation does not name any child of the



1 owner as the designated beneficiary with respect to a particular
2 property interest, a child of the owner born or adopted after the
3 owner makes the beneficiary designation is not entitled to any
4 share of the property interest subject to the designation.

5 Sec. 26. (a) When an agreement between the owner and a
6 transferring entity is required to carry out a transfer on death
7 transfer as described in section 7 of this chapter, a transferring
8 entity may not adopt rules for the making, execution, acceptance,
9 and revocation of a beneficiary designation that are inconsistent
10 with this chapter. A transferring entity may adopt the rules
11 imposed by subsection (b) in whole or in part by incorporation by
12 reference.

13 (b) Except as otherwise provided in a beneficiary designation,
14 a governing instrument, or any other applicable law, the following
15 rules apply to a beneficiary designation:

16 (1) A beneficiary designation or a request for registration of
17 property in beneficiary form must be made in writing, signed
18 by the owner, dated, and, in the case of a transfer on death
19 deed, compliant with all requirements for the recording of
20 deeds.

21 (2) A security that is not registered in the name of the owner
22 may be registered in beneficiary form on instructions given by
23 a broker or person delivering the security.

24 (3) A beneficiary designation may designate one (1) or more
25 primary beneficiaries and one (1) or more contingent
26 beneficiaries.

27 (4) On property registered in beneficiary form, a primary
28 beneficiary is the person shown immediately following the
29 transfer on death direction. Words indicating that the person
30 is a primary beneficiary are not required. The name of a
31 contingent beneficiary in the registration must have the words
32 "contingent beneficiary" or words of similar meaning to
33 indicate the contingent nature of the interest being
34 transferred.

35 (5) Multiple surviving beneficiaries share equally in the
36 property being transferred unless a different percentage or
37 fractional share is stated for each beneficiary. When a
38 percentage or fractional share is designated for multiple
39 beneficiaries, the surviving beneficiaries share in the
40 proportion that their designated shares bear to each other.

41 (6) A transfer of unequal shares to multiple beneficiaries for
42 property registered in beneficiary form may be expressed in
43 numerical form following the name of the beneficiary in the
44 registration.

45 (7) A transfer on death transfer of property also transfers any
46 interest, rent, royalties, earnings, dividends, or credits earned



1 or declared on the property but not paid or credited before
2 the owner's death.

3 **(8) If a distribution by a transferring entity under a transfer**
4 **on death transfer results in fractional shares in a security or**
5 **other property that is not divisible, the transferring entity**
6 **may distribute the fractional shares in the name of all**
7 **beneficiaries as tenants in common or as the beneficiaries may**
8 **direct, or the transferring entity may sell the property that is**
9 **not divisible and distribute the proceeds to the beneficiaries**
10 **in the proportions to which they are entitled.**

11 **(9) On the death of the owner, the property, minus all**
12 **amounts and charges owed by the owner to the transferring**
13 **entity, belongs to the surviving beneficiaries and, in the case**
14 **of substitute beneficiaries permitted under section 22 of this**
15 **chapter, the lineal descendants of designated beneficiaries**
16 **who did not survive the owner are entitled to the property as**
17 **follows:**

18 **(A) If there are multiple primary beneficiaries and a**
19 **primary beneficiary does not survive the owner and does**
20 **not have a substitute under section 22 of this chapter, the**
21 **share of the nonsurviving beneficiary is allocated among**
22 **the surviving beneficiaries in the proportion that their**
23 **shares bear to each other.**

24 **(B) If there are no surviving primary beneficiaries and**
25 **there are no substitutes for the nonsurviving primary**
26 **beneficiaries under section 22 of this chapter, the property**
27 **belongs to the surviving contingent beneficiaries in equal**
28 **shares or according to the percentages or fractional shares**
29 **stated in the registration.**

30 **(C) If there are multiple contingent beneficiaries and a**
31 **contingent beneficiary does not survive the owner and does**
32 **not have a substitute under section 22 of this chapter, the**
33 **share of the nonsurviving contingent beneficiary is**
34 **allocated among the surviving contingent beneficiaries in**
35 **the proportion that their shares bear to each other.**

36 **(10) If a trustee designated as a beneficiary:**

37 **(A) does not survive the owner;**

38 **(B) resigns; or**

39 **(C) is unable or unwilling to execute the trust as trustee**
40 **and no successor trustee is appointed in the twelve (12)**
41 **months following the owner's death;**

42 **the transferring entity may make the distribution as if the**
43 **trust did not survive the owner.**

44 **(11) If a trustee is designated as a beneficiary and no trust**
45 **instrument or probated will creating an express trust is**
46 **presented to the transferring entity, the transferring entity**



- 1 may make the distribution as if the trust did not survive the
2 owner.
- 3 (12) If the transferring entity is not presented evidence during
4 the twelve (12) months after the owner's death that there are
5 lineal descendants of a nonsurviving beneficiary for whom
6 LDPS distribution applies who survived the owner, the
7 transferring entity may make the transfer as if the
8 nonsurviving beneficiary's descendants also failed to survive
9 the owner.
- 10 (13) If a beneficiary cannot be located at the time the transfer
11 is made to located beneficiaries, the transferring entity shall
12 hold the missing beneficiary's share. If the missing
13 beneficiary's share is not claimed by the beneficiary or by the
14 beneficiary's personal representative or successor during the
15 twelve (12) months after the owner's death, the transferring
16 entity shall transfer the share as if the beneficiary did not
17 survive the owner.
- 18 (14) A transferring entity has no obligation to attempt to
19 locate a missing beneficiary, to pay interest on the share held
20 for a missing beneficiary, or to invest the share in any
21 different property.
- 22 (15) Cash, interest, rent, royalties, earnings, or dividends
23 payable to a missing beneficiary may be held by the
24 transferring entity at interest or reinvested by the
25 transferring entity in the account or in a dividend
26 reinvestment account associated with a security held for the
27 missing beneficiary.
- 28 (16) If a transferring entity is required to make a transfer on
29 death transfer to a minor or an incapacitated adult, the
30 transfer may be made under the Indiana Uniform Transfers
31 to Minors Act, the Indiana Uniform Custodial Trust Act, or
32 a similar law of another state.
- 33 (17) A written request for the execution of a transfer on death
34 transfer may be made by any beneficiary, a beneficiary's legal
35 representative or attorney in fact, or the owner's personal
36 representative.
- 37 (18) A transfer under a transfer on death deed occurs
38 automatically upon the owner's death subject to the
39 requirements of subdivision (20) and does not require a
40 request for the execution of the transfer.
- 41 (19) A written request for the execution of a transfer on death
42 transfer must be accompanied by the following:
- 43 (A) A certificate or instrument evidencing ownership of the
44 contract, account, security, or property.
- 45 (B) Proof of the deaths of the owner and any nonsurviving
46 beneficiary.



- 1 (C) An inheritance tax waiver from states that require it.
 2 (D) In the case of a request by a legal representative, a
 3 copy of the instrument creating the legal authority or a
 4 certified copy of the court order appointing the legal
 5 representative.
 6 (E) Any other proof of the person's entitlement that the
 7 transferring entity may require.
- 8 (20) On the death of an owner whose transfer on death deed
 9 has been recorded, the beneficiary shall file an affidavit in the
 10 office of the recorder of the county in which the real property
 11 is located. The affidavit must contain the following:
- 12 (A) The legal description of the property.
 13 (B) A certified copy of the death certificate certifying the
 14 owner's death.
 15 (C) The name and address of each designated beneficiary
 16 who survives the owner or is in existence on the date of the
 17 owner's death.
 18 (D) The name of each designated beneficiary who has not
 19 survived the owner's death or is not in existence on the
 20 date of the owner's death.
 21 (E) A cross-reference to the recorded transfer on death
 22 deed.
- 23 (c) A beneficiary designation is presumed to be valid. A party
 24 may rely on the presumption of validity unless the party has actual
 25 knowledge that the beneficiary designation was not validly
 26 executed. A person who acts in good faith reliance on a transfer on
 27 death deed is immune from liability to the same extent as if the
 28 person had dealt directly with the named owner and the named
 29 owner had been competent and not incapacitated.
- 30 Sec. 27. (a) An owner who makes arrangements for a transfer
 31 on death transfer under this chapter gives to the transferring entity
 32 the protections provided in this section for executing the owner's
 33 beneficiary designation.
- 34 (b) A transferring entity may execute a transfer on death
 35 transfer with or without a written request for execution.
- 36 (c) A transferring entity may rely and act on:
- 37 (1) a certified or authenticated copy of a death certificate
 38 issued by an official or an agency of the place where the death
 39 occurred as showing the fact, place, date, and time of death
 40 and the identity of the decedent; and
 41 (2) a certified or authenticated copy of a report or record of
 42 any governmental agency that a person is missing, detained,
 43 dead, or alive, and the dates, circumstances, and places
 44 disclosed by the record or report.
- 45 (d) A transferring entity has no duty to verify the information
 46 contained within a written request for the execution of a



1 beneficiary designation. The transferring entity may rely and act
 2 on a request made by a beneficiary or a beneficiary's attorney in
 3 fact, guardian, conservator, or other agent.

4 (e) A transferring entity has no duty to:

5 (1) except as provided in subsection (g), give notice to any
 6 person of the date, manner, and persons to whom a transfer
 7 will be made under beneficiary designation;

8 (2) attempt to locate any beneficiary or lineal descendant
 9 substitute;

10 (3) determine whether a nonsurviving beneficiary or
 11 descendant had a lineal descendant who survived the owner;

12 (4) locate a trustee or custodian;

13 (5) obtain the appointment of a successor trustee or custodian;

14 (6) discover the existence of a trust instrument or will that
 15 creates an express trust; or

16 (7) determine any fact or law that would:

17 (A) cause the beneficiary designation to be revoked in
 18 whole or in part as to any person because of a change in
 19 marital status or other reason; or

20 (B) cause a variation in the distribution provided in the
 21 beneficiary designation.

22 (f) A transferring entity has no duty to withhold making a
 23 transfer based on knowledge of any fact or claim adverse to the
 24 transfer to be made unless before making the transfer the
 25 transferring entity receives a written notice that:

26 (1) in manner, place, and time affords a reasonable
 27 opportunity to act on the notice before making the transfer;
 28 and

29 (2) does the following:

30 (A) Asserts a claim of beneficial interest in the transfer
 31 adverse to the transfer to be made.

32 (B) Gives the name of the claimant and an address for
 33 communications directed to the claimant.

34 (C) Identifies the deceased owner.

35 (D) States the nature of the claim as it affects the transfer.

36 (g) If a transferring entity receives a timely notice meeting the
 37 requirements of subsection (f), the transferring entity may
 38 discharge any duty to the claimant by sending a notice by certified
 39 mail to the claimant at the address provided by the claimant's
 40 notice of claim. The notice must advise the claimant that a transfer
 41 to the claimant's asserted claim will be made not less than
 42 forty-five (45) days after the date of the mailing unless the transfer
 43 is restrained by a court order. If the transferring entity mails the
 44 notice described by this subsection to the claimant, the transferring
 45 entity shall withhold making the transfer for at least forty-five (45)
 46 days after the date of the mailing. Unless the transfer is restrained



1 by court order, the transferring entity may make the transfer not
2 less than forty-five (45) days after the date of the mailing.

3 (h) Neither notice that does not comply with the requirements
4 of subsection (f) nor any other information shown to have been
5 available to a transferring entity, its transfer agent, or its
6 employees affects the transferring entity's right to the protections
7 provided by this chapter.

8 (i) A transferring entity is not responsible for the application or
9 use of property transferred to a fiduciary entitled to receive the
10 property.

11 (j) Notwithstanding the protections provided a transferring
12 entity by this chapter, a transferring entity may require parties
13 engaged in a dispute over the propriety of a transfer to:

14 (1) adjudicate their respective rights; or

15 (2) furnish an indemnity bond protecting the transferring
16 entity.

17 (k) A transfer by a transferring entity made in accordance with
18 this chapter and under the beneficiary designation in good faith
19 and reliance on information the transferring entity reasonably
20 believes to be accurate discharges the transferring entity from all
21 claims for the amounts paid and the property transferred.

22 (l) All protections provided by this chapter to a transferring
23 entity are in addition to the protections provided by any other
24 applicable Indiana law.

25 **Sec. 28. (a)** The protections provided to a transferring entity or
26 to a purchaser or lender for value by this chapter do not affect the
27 rights of beneficiaries or others involved in disputes that:

28 (1) are with parties other than a transferring entity or
29 purchaser or lender for value; and

30 (2) concern the ownership of property transferred under this
31 chapter.

32 (b) Unless the payment or transfer can no longer be challenged
33 because of adjudication, estoppel, or limitations, a transferee of
34 money or property under a transfer on death transfer that was
35 improperly distributed or paid is liable for:

36 (1) the return of the money or property, including income
37 earned on the money or property, to the transferring entity;
38 or

39 (2) the delivery of the money or property, including income
40 earned on the money or property, to the rightful transferee.

41 (c) If a transferee of money or property under a transfer on
42 death transfer that was improperly distributed or paid does not
43 have the property, then the transferee is liable for an amount equal
44 to the sum of:

45 (1) the value of the property as of the date of the disposition;
46 and



- 1 **(2) the income and gain that the transferee received from the**
 2 **property and its proceeds.**
- 3 **(d) If a transferee of money or property under a transfer on**
 4 **death transfer that was improperly distributed or paid encumbers**
 5 **the property, the transferee shall satisfy the debt incurred in an**
 6 **amount sufficient to release any security interest, lien, or other**
 7 **encumbrance on the property.**
- 8 **(e) A purchaser for value of property or a lender who acquires**
 9 **a security interest in the property from a beneficiary of a transfer**
 10 **on death transfer:**
- 11 **(1) in good faith; or**
 12 **(2) without actual knowledge that:**
- 13 **(A) the transfer was improper; or**
 14 **(B) information in an affidavit provided under section**
 15 **26(b)(20) of this chapter was not true;**
 16 **takes the property free of any claims of or liability to the owner's**
 17 **estate, creditors of the owner's estate, persons claiming rights as**
 18 **beneficiaries of the transfer on death transfer, or heirs of the**
 19 **owner's estate. A purchaser or lender for value has no duty to**
 20 **verify sworn information relating to the transfer on death transfer.**
- 21 **(f) The protection provided by subsection (e) applies to**
 22 **information that relates to the beneficiary's ownership interest in**
 23 **the property and the beneficiary's right to sell, encumber, and**
 24 **transfer good title to a purchaser or lender but does not relieve a**
 25 **purchaser or lender from the notice provided by instruments of**
 26 **record with respect to the property.**
- 27 **(g) A transfer on death transfer that is improper under section**
 28 **22, 23, 24, or 25 of this chapter imposes no liability on the**
 29 **transferring entity if the transfer is made in good faith. The**
 30 **remedy of a rightful transferee must be obtained in an action**
 31 **against the improper transferee.**
- 32 **Sec. 29. (a) This chapter does not limit the rights of an owner's**
 33 **creditors against beneficiaries and other transferees that may be**
 34 **available under any other applicable Indiana law.**
- 35 **(b) The liability of a beneficiary for creditor claims and**
 36 **statutory allowances is determined under IC 32-17-13.**
- 37 **Sec. 30. Except as otherwise provided by law, a transfer on**
 38 **death transfer and the obligation of a transferring entity to execute**
 39 **the transfer on death transfer that are subject to this chapter**
 40 **under section 2(b) of this chapter remain subject to this chapter**
 41 **notwithstanding a change in the:**
- 42 **(1) beneficiary designation;**
 43 **(2) residency of the owner;**
 44 **(3) residency or place of business of the transferring entity; or**
 45 **(4) location of the property.**
- 46 **Sec. 31. (a) The probate court shall hear and determine**



1 questions and issue appropriate orders concerning the
 2 determination of the beneficiary who is entitled to receive a
 3 transfer on death transfer and the proper share of each
 4 beneficiary.

5 (b) The probate court shall hear and determine questions and
 6 issue appropriate orders concerning any action to:

7 (1) obtain the distribution of any money or property from a
 8 transferring entity; or

9 (2) with respect to money or property that was improperly
 10 distributed to any person, obtain the return of:

11 (A) any money or property and income earned on the
 12 money or property; or

13 (B) an amount equal to the sum of the value of the money
 14 or property plus income and gain realized from the money
 15 or property.

16 **Sec. 32. (a) Except for transfer on death deeds, a beneficiary**
 17 **designation that purports to have been made and is valid under:**

18 (1) the Uniform Probate Code as enacted by another state;

19 (2) the Uniform TOD Security Registration Law as enacted by
 20 another state; or

21 (3) a similar law of another state;

22 is governed by the law of that state.

23 (b) A transfer on death transfer subject to a law described in
 24 subsection (a) may be executed and enforced in Indiana.

25 (c) Except for transfer on death deeds, the meaning and legal
 26 effect of a transfer on death transfer is determined by the law of
 27 the state selected in a governing instrument or beneficiary
 28 designation.

29 **Sec. 33. Transfer on death transfers authorized by this chapter**
 30 **are in addition to transfers authorized by the following:**

31 (1) IC 9-17-3-9 (motor vehicles).

32 (2) IC 9-31-2-30 (watercraft).

33 (3) IC 32-17-9 (Indiana Uniform Act on Transfer on Death
 34 Securities).

35 (4) IC 32-17-11 (pay on death accounts).

36 SECTION 3. IC 34-30-2-134.8 IS ADDED TO THE INDIANA
 37 CODE AS A NEW SECTION TO READ AS FOLLOWS
 38 [EFFECTIVE JULY 1, 2009]: **Sec. 134.8. IC 32-17-14-26(b)**
 39 **(Concerning a person acting in good faith reliance on a transfer on**
 40 **death deed).**

