

Members

Sen. Joseph Zakas, Chairperson  
Sen. Randall Head  
Sen. John Broden  
Rep. Trent Van Haften, Vice-Chairperson  
Rep. Ed DeLaney  
Rep. Ralph Foley  
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

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Authority: IC 2-5-16-2

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

Meeting Date: September 23, 2009  
Meeting Time: 10:00 A.M.  
Meeting Place: State House, 200 W. Washington St., Room 431  
Meeting City: Indianapolis, Indiana  
Meeting Number: 1

**Members Present:** Sen. Joseph Zakas, Chairperson; Sen. Randall Head; Rep. Ed DeLaney; Rep. Ralph Foley; Joseph H. Davis; Kris Fruehwald; Judge Thomas Lowe; James Martin; David Pendergast; Dan Reeves; Timothy Sendak; Jerry Withered.

**Members Absent:** Sen. John Broden; Rep. Trent Van Haften, Vice-Chairperson; Chris Colpaert; Thomas Hardin.

Sen. Zakas called the meeting to order shortly after 10:00 a.m.

The meeting began with the topic of whether county assessors should retain various duties associated with the administration of the state inheritance tax.

Ms. Glenna Shelby, Ms. Judy Sharp, and Ms. Stacey O'Day provided the perspective of the Indiana County Assessors Association (ICAA).

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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.

Ms. Sharp (Monroe County Assessor and President of the ICAA) explained that while some assessors have expressed frustration with inheritance tax duties, the members of the ICAA are overwhelmingly in favor of retaining those duties. Ms. O'Day (Allen County Assessor and Chairperson of the ICAA Legislative Committee) assured the Commission that the county assessors "would like to keep the job".

The assessors discussed various aspects of the county assessor's role in the inheritance tax system. Reasons offered to keep the current system in place included that the county assessors generally have good relationships with local attorneys, the belief that dealing with a state bureaucracy would be more difficult for grieving families, and that having county assessors review inheritance tax returns catches errors that might otherwise go undetected.

The second topic addressed by the Commission was SB 505-2009 (Exhibit A). Sen. Zakas asked the Commission to review the legislation in anticipation of the Commission's second meeting on October 7. The bill would have relieved trustees of some of the duties imposed by the Uniform Prudent Investor Act (UPIA) when administering life insurance policies as trust assets. Sen. Zakas described the legislative history of SB 505-2009 which was not passed by the 2009 General Assembly.

The Commission discussed the legislation briefly. Mr. Pendergast noted his opposition to relaxing trustee accountability. Ms. Fruehwald countered that volunteer trustees should not be blind sided by the requirements of the UPIA.

Attorney Jeff Kolb testified that the Probate, Trust, and Real Property Section of the Indiana State Bar Association had supported passage of the legislation.

The third topic was the presentation of the 2010 legislative proposals of the Probate, Trust, and Real Property Section of the Indiana State Bar Association (Exhibit B).

Before presenting the Section's proposals, Mr. Kolb thanked the Commission for its support of the Section's previous legislative proposals. Mr. Kolb noted that observers in other states have begun to notice the Section's legislative successes. Mr. Kolb attributed that success to an excellent working relationship between the Commission and the Section.

Mr. Kolb presented the following proposals:

- (1) Authorize asset protection trusts as now permitted by Tennessee and nine other states.
- (2) Amend the trust code to preserve the protection of tenancy by the entirety property when the property is placed into trust.
- (3) Reform the estate planning powers of guardians (HB 1040-2009).
- (4) Authorize trust decanting (the power to fix a defect of a flawed irrevocable trust by establishing a second trust to receive the assets of the flawed trust).
- (5) Require delivery of pleadings to parties who waive notices under a general waiver.
- (6) Establish a procedure to enable a trust to be closed when all that remains to do is distribute property to a beneficiary who cannot be located. The proposed legislation would establish a procedure that is analogous to a procedure available under current law with respect to probate assets in which the court accepts the property on behalf of the missing beneficiary.
- (7) Repeal the inheritance tax.

(8) Increase the inheritance tax exemption amounts for Class B and Class C transferees while making other administrative changes to the inheritance tax.

(9) Make various changes to the probate, trust, and transfer on death statutes considered technical by the Section.

Mr. Kolb answered questions from the Commission.

Following Mr. Kolb's presentation, Sen. Zakas asked the Commission if there were any other issues for the Commission to consider.

Rep. Foley noted that the Department of State Revenue is increasingly rejecting appraisal reports on the grounds that the reports have not been prepared by properly credentialed appraisers. The Commission discussed whether the standards imposed by the Department are consistent with statutory requirements. Mr. Martin stated that a legislative tweak would be much appreciated by the state's probate attorneys. Mr. Reeves added that the Department's policies are driving up the cost of obtaining appraisals.

Sen. Zakas adjourned the meeting at approximately 12:30 p.m.