



PRELIMINARY DRAFT
No. 3190

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2010 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 9-17-3-9; IC 9-31-2-30; IC 29-1; IC 29-3;
IC 30-5-4-4; IC 32-17; IC 32-17.5.

Synopsis: Various estate planning matters. Makes various changes to statutes concerning the following: (1) The transfer on death of motor vehicles and watercraft. (2) Probate notice requirements. (3) Protected persons. (4) Funeral declarations. (5) Attorneys in fact. (6) Nonprobate transferees. (7) The transfer on death act. (8) Disclaiming interests in property.

Effective: July 1, 2010.



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

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

1 SECTION 1. IC 9-17-3-9, AS AMENDED BY P.L.143-2009,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2010]: Sec. 9. (a) An individual whose certificate of title for
4 a vehicle indicates that the individual is the sole owner of the vehicle
5 may create an interest in the vehicle that is transferrable on the death
6 of the individual by obtaining a certificate of title conveying the
7 interest in the vehicle to one (1) or more named individuals as transfer
8 on death beneficiaries.

9 (b) Subject to subsection (e), an interest in a vehicle transferred
10 under this section vests upon the death of the transferor.

11 (c) A certificate of title that is:

- 12 (1) worded in substance as "A.B. transfers on death to C.D."; and
13 (2) signed by the transferor;

14 is a good and sufficient conveyance on the death of the transferor to the
15 transferee.

16 (d) A certificate of title obtained under this section is not required
17 to be:

- 18 (1) supported by consideration; or
19 (2) delivered to the named transfer on death beneficiary;

20 to be effective.

21 (e) Upon the death of an individual conveying an interest in a
22 vehicle in a certificate of title obtained under this section, the interest
23 in the vehicle is transferred to each beneficiary who **is described by**
24 **either of the following:**

25 **(1) The beneficiary:**

- 26 ~~(1)~~ **(A)** is named in the certificate; and
27 ~~(2)~~ **(B)** survives the transferor.

28 **(2) The beneficiary:**

- 29 **(A) survives the transferor; and**
30 **(B) is entitled to an interest in the vehicle under**
31 **IC 32-17-14-22 following the death of a beneficiary who:**



1 **(i) is named in the certificate; and**

2 **(ii) did not survive the transferor.**

3 (f) A transfer of an interest in a vehicle under this section is subject
4 to IC 6-4.1.

5 (g) A certificate of title designating a transfer on death beneficiary
6 is not testamentary.

7 (h) In general, IC 32-17-14 applies to a certificate of title
8 designating a transfer on death beneficiary. However, a particular
9 provision of IC 32-17-14 does not apply if it is inconsistent with the
10 requirements of this section or IC 9-17-2-2(b).

11 SECTION 2. IC 9-31-2-30, AS AMENDED BY P.L.143-2009,
12 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2010]: Sec. 30. (a) An individual whose certificate of title for
14 a watercraft indicates that the individual is the sole owner of the
15 watercraft may create an interest in the watercraft that is transferrable
16 on the death of the individual by obtaining a certificate of title
17 conveying the interest in the watercraft to one (1) or more named
18 individuals as transfer on death beneficiaries.

19 (b) Subject to subsection (e), an interest in a watercraft transferred
20 under this section vests upon the death of the transferor.

21 (c) A certificate of title that is:

22 (1) worded in substance as "A.B. transfers on death to C.D."; and

23 (2) signed by the transferor;

24 is a good and sufficient conveyance on the death of the transferor to the
25 transferee.

26 (d) A certificate of title obtained under this section is not required
27 to be:

28 (1) supported by consideration; or

29 (2) delivered to the named transfer on death beneficiary;

30 to be effective.

31 (e) Upon the death of an individual conveying an interest in a
32 watercraft in a certificate of title obtained under this section, the
33 interest in the watercraft is transferred to each beneficiary who **is**
34 **described by either of the following:**

35 **(1) The beneficiary:**

36 ~~(1)~~ **(A)** is named in the certificate; and

37 ~~(2)~~ **(B)** survives the transferor.

38 **(2) The beneficiary:**

39 **(A) survives the transferor; and**

40 **(B) is entitled to an interest in the watercraft under**

41 **IC 32-17-14-22 following the death of a beneficiary who:**

42 **(i) is named in the certificate; and**

43 **(ii) did not survive the transferor.**

44 (f) A transfer of an interest in a watercraft under this section is
45 subject to IC 6-4.1.

46 (g) A certificate of title designating a transfer on death beneficiary



1 is not testamentary.

2 (h) In general, IC 32-17-14 applies to a certificate of title
3 designating a transfer on death beneficiary. However, a particular
4 provision of IC 32-17-14 does not apply if it is inconsistent with the
5 requirements of this section or IC 9-31-2-16.

6 SECTION 3. IC 29-1-7-4.5 IS ADDED TO THE INDIANA CODE
7 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
8 1, 2010]: **Sec. 4.5. Except as provided in section 4 of this chapter,
9 each petition or other document that a personal representative files
10 in the court with:**

11 (1) a written consent to the petition or other document; or

12 (2) a written waiver of notice of proceedings in the estate;
13 **must contain a statement that the personal representative has
14 delivered a copy of the petition or other document to each person
15 whose written consent or waiver of notice of proceedings is
16 presented to the court in support of the petition or other document.**

17 SECTION 4. IC 29-1-10-6.5, AS ADDED BY P.L.143-2009,
18 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2010]: Sec. 6.5. (a) This section does not apply to the removal
20 of a personal representative under section 6 of this chapter.

21 (b) An ~~heir~~ **interested person** may petition the court for the removal
22 of a corporate fiduciary appointed by the court as personal
23 representative if there has been a change in the control of the corporate
24 fiduciary and either of the following applies:

25 (1) The change in the control of the corporate fiduciary occurred
26 after the date of the execution of the decedent's will but before the
27 decedent's death.

28 (2) The change in the control of the corporate fiduciary occurred
29 after the corporate fiduciary was appointed and during the
30 administration of the decedent's estate.

31 (c) A petition described in subsection (b) must be filed:

32 (1) not later than thirty (30) days after an ~~heir, a devisee, or a~~
33 ~~legatee~~ **interested person** receives notice under IC 29-1-7-7(c) or
34 IC 29-1-7.5-1.5, in the case of a change of control described in
35 subsection (b)(1); or

36 (2) not later than a reasonable time after the change of control, in
37 the case of a change of control described in subsection (b)(2).

38 (d) The court may remove the corporate fiduciary if the court
39 determines, after a hearing, that the removal is in the best interests of
40 all ~~the beneficiaries of the will:~~ **interested persons**. The court may
41 replace the corporate fiduciary with another corporate fiduciary or an
42 individual.

43 (e) For purposes of this section, a change in control of a corporate
44 fiduciary occurs whenever a person or group of persons acting in
45 concert acquires the beneficial ownership of a total of at least
46 twenty-five percent (25%) of the outstanding voting stock of:



- 1 (1) a corporate fiduciary; or
 2 (2) a corporation controlling a corporate fiduciary.
 3 (f) The removal of a corporate fiduciary after letters are duly issued
 4 does not invalidate official acts performed before the removal.
 5 (g) If a corporate fiduciary is replaced under this section, the
 6 corporate fiduciary is entitled to receive reasonable compensation for
 7 services rendered before the removal.
 8 SECTION 5. IC 29-3-4-1 IS AMENDED TO READ AS FOLLOWS
 9 [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) Upon petition by any person
 10 and after a hearing **under IC 29-3-5**, the court may issue, without the
 11 appointment of a guardian, any protective order for the benefit of a
 12 person who has been adjudicated an incapacitated person or is a minor.
 13 ~~under IC 29-3-5.~~
 14 (b) Notice of the filing of a petition under this chapter for the
 15 issuance of a protective order and the hearing on the petition shall be
 16 given under IC 29-3-6.
 17 (c) Incapacitated persons and minors have the same rights at the
 18 hearing on a petition filed under this chapter for the issuance of a
 19 protective order as they would have at a hearing for the appointment of
 20 a guardian.
 21 (d) The court may issue a protective order concerning an
 22 incapacitated person if the court finds that:
 23 (1) the incapacitated person:
 24 (A) owns property or has income requiring management or
 25 protection that cannot otherwise be provided;
 26 (B) has or may have financial or business affairs that may be
 27 jeopardized or impaired; or
 28 (C) has property that needs to be managed to provide for the
 29 support or protection of the incapacitated person;
 30 (2) the incapacitated person is unable to manage the incapacitated
 31 person's property and financial or business affairs effectively; and
 32 (3) the protection sought is necessary.
 33 The court shall make the orders that it considers proper and appropriate
 34 to protect the person, business affairs, and property of the incapacitated
 35 person.
 36 (e) The court may issue a protective order concerning a minor if the
 37 court finds that:
 38 (1) the minor:
 39 (A) owns property or has income requiring management or
 40 protection that cannot otherwise be provided;
 41 (B) has or may have financial or business affairs that may be
 42 jeopardized or impaired; or
 43 (C) has property that needs to be managed to provide for the
 44 support or protection of the minor; and
 45 (2) the protection sought is necessary.
 46 The court shall make the orders it considers proper and appropriate to



1 protect the person, business affairs, and property of the minor.

2 (f) If the court finds grounds for a protective order under subsection
3 (d) or (e), it may, without appointing a guardian, declare the person to
4 be a protected person and authorize or ratify any transaction necessary
5 or desirable to meet the needs of the protected person. Protective
6 arrangements include the following:

7 (1) The payment, delivery, deposit, or retention of property.

8 (2) The sale, mortgage, lease, or other transfer of property.

9 (3) The entry into an annuity contract, a contract for life care, a
10 deposit contract, or a contract for training and educating a person.

11 (4) The addition to or establishment of a suitable trust.

12 SECTION 6. IC 29-3-5-1 IS AMENDED TO READ AS FOLLOWS
13 [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) Any person may file a petition
14 for the appointment of a person to serve as guardian for an
15 incapacitated person or minor under this chapter or to have a protective
16 order issued under IC 29-3-4. The petition must state the following:

17 (1) The name, age, residence, and post office address of the
18 alleged incapacitated person or minor for whom the guardian is
19 sought to be appointed **or the protective order issued.**

20 (2) The nature of the incapacity.

21 (3) The approximate value and description of the property of the
22 incapacitated person or minor, including any compensation,
23 pension, insurance, or allowance to which the incapacitated
24 person or minor may be entitled.

25 (4) If a limited guardianship is sought, the particular limitations
26 requested.

27 (5) Whether a **protective order has been issued or a** guardian
28 has been appointed or is acting for the incapacitated person or
29 minor in any state.

30 (6) The residence and post office address of the proposed
31 guardian **or person to carry out the protective order** and the
32 ~~proposed guardian's~~ relationship to the alleged incapacitated
33 person **of:**

34 (A) **the proposed guardian; or**

35 (B) **the person proposed to carry out the protective order.**

36 (7) The names and addresses, as far as known or as can
37 reasonably be ascertained, of the persons most closely related by
38 blood or marriage to the person for whom the guardian is sought
39 to be appointed **or the protective order is issued.**

40 (8) The name and address of the person or institution having the
41 care and custody of the person for whom the guardian is sought
42 to be appointed **or the protective order is issued.**

43 (9) The names and addresses of any other incapacitated persons
44 or minors for whom the proposed guardian **or person to carry**
45 **out the protective order** is acting if the proposed guardian **or**
46 **person** is an individual.



- 1 (10) The reasons the appointment of a guardian **or issuance of a**
2 **protective order** is sought and the interest of the petitioner in the
3 appointment **or issuance**.
- 4 (11) The name and business address of the attorney who is to
5 represent the guardian **or person to carry out the protective**
6 **order**.
- 7 (b) Notice of a petition under this section for the appointment of a
8 guardian **or the issuance of a protective order** and the hearing on the
9 petition shall be given under IC 29-3-6.
- 10 (c) After the filing of a petition, the court shall set a date for hearing
11 on the issues raised by the petition. Unless an alleged incapacitated
12 person is already represented by counsel, the court may appoint an
13 attorney to represent the incapacitated person.
- 14 (d) A person alleged to be an incapacitated person must be present
15 at the hearing on the issues raised by the petition and any response to
16 the petition unless the court determines by evidence that:
- 17 (1) it is impossible or impractical for the alleged incapacitated
18 person to be present due to the alleged incapacitated person's
19 disappearance, absence from the state, or similar circumstance;
- 20 (2) it is not in the alleged incapacitated person's best interest to be
21 present because of a threat to the health or safety of the alleged
22 incapacitated person as determined by the court;
- 23 (3) the incapacitated person has knowingly and voluntarily
24 consented to the appointment of a guardian or the issuance of a
25 protective order and at the time of such consent the incapacitated
26 person was not incapacitated as a result of a mental condition that
27 would prevent that person from knowingly and voluntarily
28 consenting; or
- 29 (4) the incapacitated person has knowingly and voluntarily
30 waived notice of the hearing and at the time of such waiver the
31 incapacitated person was not incapacitated as a result of a mental
32 condition that would prevent that person from making a knowing
33 and voluntary waiver of notice.
- 34 (e) A person alleged to be an incapacitated person may present
35 evidence and cross-examine witnesses at the hearing. The issues raised
36 by the petition and any response to the petition shall be determined by
37 a jury if a jury is requested no later than seventy-two (72) hours prior
38 to the original date and time set for the hearing on the petition.
39 However, in no event may a request for a jury trial be made after thirty
40 (30) days have passed following the service of notice of a petition.
- 41 (f) Any person may apply for permission to participate in the
42 proceeding, and the court may grant the request with or without hearing
43 upon determining that the best interest of the alleged incapacitated
44 person or minor will be served by permitting the applicant's
45 participation. The court may attach appropriate conditions to the
46 permission to participate.



1 SECTION 7. IC 29-3-6-2 IS AMENDED TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 2010]: Sec. 2. A copy of the petition shall be
 3 attached to the notice, and the notice must be in substantially the
 4 following form:

5 NOTICE

6 TO: (name and address of person receiving notice)

7 On (date of hearing) at (time of hearing) in (place of hearing) at
 8 (city), Indiana, the (name and address of court) will hold a hearing to
 9 determine whether a guardian should be appointed **or a protective**
 10 **order should be issued** for (name of alleged incapacitated person or
 11 minor). A copy of the petition requesting appointment of a guardian **or**
 12 **for the issuance of a protective order** is attached to this notice.

13 At the hearing the court will determine whether (name of alleged
 14 incapacitated person or minor) is an incapacitated person or minor
 15 under Indiana law. This proceeding may substantially affect the rights
 16 of (name of alleged incapacitated person or minor).

17 If the court finds that (name of alleged incapacitated person or
 18 minor) is an incapacitated person or minor, the court at the hearing
 19 shall also consider whether (name of proposed guardian, if any) should
 20 be appointed as guardian of (name of alleged incapacitated person or
 21 minor). The court may, in its discretion, appoint some other qualified
 22 person as guardian. The court may also, in its discretion, limit the
 23 powers and duties of the guardian to allow (name of alleged
 24 incapacitated person or minor) to retain control over certain property
 25 and activities. The court may also determine whether a protective order
 26 should be entered on behalf of (name of alleged incapacitated person
 27 or minor).

28 (Name of alleged incapacitated person) may attend the hearing and
 29 be represented by an attorney. The petition may be heard and
 30 determined in the absence of (name of alleged incapacitated person) if
 31 the court determines that the presence of (name of alleged
 32 incapacitated person) is not required. If (name of alleged incapacitated
 33 person) attends the hearing, opposes the petition, and is not represented
 34 by an attorney, the court may appoint an attorney to represent (name of
 35 alleged incapacitated person). The court may, where required, appoint
 36 a guardian ad litem to represent (name of alleged incapacitated person
 37 or minor) at the hearing.

38 The court may, on its own motion or on request of any interested
 39 person, postpone the hearing to another date and time.

40 _____
 41 (signature of clerk of the court)

42 SECTION 8. IC 30-5-4-4, AS AMENDED BY P.L.143-2009,
 43 SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 44 JULY 1, 2010]: Sec. 4. (a) Except as stated otherwise in the power of
 45 attorney, an attorney in fact fails to serve or ceases to serve when:

46 (1) the attorney in fact dies;



- 1 (2) the attorney in fact resigns;
 2 (3) the attorney in fact is adjudged incapacitated by a court;
 3 (4) the attorney in fact cannot be located upon reasonable inquiry;
 4 (5) the attorney in fact, if at one time the principal's spouse,
 5 legally is no longer the principal's spouse; or
 6 (6) a physician familiar with the condition of the current attorney
 7 in fact certifies in writing to the immediate successor attorney in
 8 fact that the current attorney in fact is unable to transact a
 9 significant part of the business required under the power of
 10 attorney.

11 (b) Except as stated otherwise in the power of attorney, if the
 12 replaced attorney in fact reappears or is subsequently able to transact
 13 business, the successor attorney in fact shall remain as the attorney in
 14 fact.

15 (c) Except as otherwise stated in the power of attorney, an attorney
 16 in fact designated as a successor has the powers granted under the
 17 power of attorney to the original attorney in fact.

18 (d) Unless a power of attorney provides a different method for an
 19 attorney in fact's resignation, an attorney in fact may resign by giving
 20 notice to the principal and, if the principal is incapacitated:

- 21 (1) to:
 22 (A) the principal's guardian, if a guardian has been appointed
 23 for the principal; and
 24 (B) a co-attorney in fact or successor attorney in fact; or
 25 (2) if there is no person described in subdivision (1), to:
 26 (A) the principal's ~~care giver~~; **caregiver**;
 27 (B) another person reasonably believed by the attorney in fact
 28 to have sufficient interest in the principal's welfare; or
 29 (C) a governmental agency having authority to protect the
 30 welfare of the principal.

31 SECTION 9. IC 32-17-13-1, AS AMENDED BY P.L.143-2009,
 32 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2010]: Sec. 1. (a) As used in this chapter, "nonprobate
 34 transfer" means a valid transfer, effective at death, by a transferor:

- 35 (1) whose last domicile was in Indiana; and
 36 (2) who immediately before death had the power, acting alone, to
 37 prevent transfer of the property by revocation or withdrawal and:
 38 (A) use the property for the benefit of the transferor; or
 39 (B) apply the property to discharge claims against the
 40 transferor's probate estate.

41 The term does not include transfer of a survivorship interest in a
 42 tenancy by the entireties real estate, transfer of a life insurance policy
 43 or annuity, or payment of the death proceeds of a life insurance policy
 44 or annuity.

45 (b) ~~With respect to a security described in IC 32-17-9 "nonprobate~~
 46 ~~transfer" means a transfer on death resulting from a registration in~~



1 beneficiary form by an owner whose last domicile was in Indiana.

2 ~~(c)~~ (b) With respect to a nonprobate transfer involving a multiple
3 party account, a nonprobate transfer occurs if the last domicile of the
4 depositor whose interest is transferred under IC 32-17-11 was in
5 Indiana.

6 ~~(d)~~ (c) With respect to a motor vehicle or a watercraft, a nonprobate
7 transfer occurs if the transferee obtains a certificate of title in Indiana
8 for:

9 (1) the motor vehicle under IC 9-17-2-2(b); or

10 (2) the watercraft as required by IC 9-31-2-16(a)(1)(C).

11 ~~(e)~~ (d) A transfer on death transfer completed under IC 32-17-14 is
12 a nonprobate transfer.

13 SECTION 10. IC 32-17-13-7 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 7. (a) A proceeding
15 under this chapter may not be commenced unless the personal
16 representative of the decedent's estate has received a written demand
17 for the proceeding from the surviving spouse or a surviving child, to
18 the extent that statutory allowances are affected, or a creditor.

19 (b) If the personal representative declines or fails to commence a
20 proceeding **within sixty (60) days after receiving the demand**, a
21 person making **the demand** may commence the proceeding in the name
22 of the decedent's estate at the expense of the person making the demand
23 and not of the estate.

24 (c) A personal representative who declines in good faith to
25 commence a requested proceeding incurs no personal liability for
26 declining.

27 SECTION 11. IC 32-17-13-8 IS AMENDED TO READ AS
28 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 8. A proceeding under
29 this chapter must be commenced not later than nine (9) months after
30 the person's death, but a proceeding on behalf of a creditor whose claim
31 was ~~allowed after proceedings challenging disallowance of the claim~~
32 **timely filed** may be commenced within:

33 (1) sixty (60) days after final allowance of the claim; or

34 (2) **ninety (90) days after demand is made under section 7 of**
35 **this chapter if the personal representative declines or fails to**
36 **commence a proceeding after receiving the demand.**

37 SECTION 12. IC 32-17-14-2, AS ADDED BY P.L.143-2009,
38 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
39 JULY 1, 2010]: Sec. 2. (a) Except as provided elsewhere in this
40 chapter, this chapter applies to a transfer on death security, transfer on
41 death securities account, and pay on death account created before July
42 1, 2009, unless the application of this chapter would:

43 (1) adversely affect a right given to an owner or beneficiary;

44 (2) give a right to any owner or beneficiary that the owner or
45 beneficiary was not intended to have when the transfer on death
46 security, transfer on death securities account, or pay on death



- 1 account was created;
- 2 (3) impose a duty or liability on any person that was not intended
- 3 to be imposed when the transfer on death security, transfer on
- 4 death securities account, or pay on death account was created; or
- 5 (4) relieve any person from any duty or liability imposed:
- 6 (A) by the terms of the transfer on death security, transfer on
- 7 death securities account, or pay on death account; or
- 8 (B) under prior law.
- 9 (b) Subject to section 32 of this chapter, this chapter applies to a
- 10 transfer on death transfer if at the time the owner designated the
- 11 beneficiary:
- 12 (1) the owner was a resident of Indiana;
- 13 (2) the property subject to the beneficiary designation was
- 14 situated in Indiana;
- 15 (3) the obligation to pay or deliver arose in Indiana;
- 16 (4) the transferring entity was a resident of Indiana or had a place
- 17 of business in Indiana; or
- 18 (5) the transferring entity's obligation to make the transfer was
- 19 accepted in Indiana.
- 20 (c) ~~Except for section 24 of this chapter,~~ This chapter does not apply
- 21 to property, money, or benefits paid or transferred at death under a life
- 22 or accidental death insurance policy, annuity, contract, plan, or other
- 23 product sold or issued by a life insurance company unless the
- 24 provisions of this chapter are incorporated into the policy or beneficiary
- 25 designation in whole or in part by express reference.
- 26 (d) ~~Except for section 24 of this chapter,~~ This chapter does not apply
- 27 to a transfer on death transfer if the beneficiary designation or an
- 28 applicable law expressly provides that this chapter does not apply to the
- 29 transfer.
- 30 (e) Subject to IC 9-17-3-9(h) and IC 9-31-2-30(h), this chapter
- 31 applies to a beneficiary designation for the transfer on death of a motor
- 32 vehicle or a watercraft.
- 33 **(f) The provisions of:**
- 34 **(1) section 22 of this chapter; and**
- 35 **(2) section 26(b)(9) of this chapter;**
- 36 **relating to distributions to lineal descendants per stirpes apply to**
- 37 **a transfer on death or payable on death transfer created before**
- 38 **July 1, 2009.**
- 39 SECTION 13. IC 32-17-14-3, AS ADDED BY P.L.143-2009,
- 40 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 41 JULY 1, 2010]: Sec. 3. The following definitions apply throughout this
- 42 chapter:
- 43 (1) "Beneficiary" means a person designated or entitled to receive
- 44 property because of another person's death under a transfer on
- 45 death transfer.
- 46 (2) "Beneficiary designation" means a written instrument other



- 1 than a will or trust that designates the beneficiary of a transfer on
 2 death transfer.
- 3 **(3) "Governing instrument" refers to a written instrument**
 4 **agreed to by an owner that establishes the terms and**
 5 **conditions of an ownership in beneficiary form.**
- 6 ~~(3)~~ **(4) "Joint owners"** refers to persons who hold property as joint
 7 tenants with a right of survivorship. However, the term does not
 8 include a husband and wife who hold property as tenants by the
 9 entirety.
- 10 ~~(4)~~ **(5) "LDPS"** means an abbreviation of lineal descendants per
 11 stirpes, which may be used in a beneficiary designation to
 12 designate a substitute beneficiary as provided in section 22 of this
 13 chapter.
- 14 ~~(5)~~ **(6) "Owner"** refers to a person or persons who have a right to
 15 designate the beneficiary of a transfer on death transfer.
- 16 ~~(6)~~ **(7) "Ownership in beneficiary form"** means holding property
 17 under a registration in beneficiary form or other written
 18 instrument that:
- 19 (A) names the owner of the property;
 20 (B) directs ownership of the property to be transferred upon
 21 the death of the owner to the designated beneficiary; and
 22 (C) designates the beneficiary.
- 23 ~~(7)~~ **(8) "Person"** means an individual, a sole proprietorship, a
 24 partnership, an association, a fiduciary, a trustee, a corporation,
 25 a limited liability company, or any other business entity.
- 26 ~~(8)~~ **(9) "Proof of death"** means a death certificate or a record or
 27 report that is prima facie proof or evidence of an individual's
 28 death.
- 29 ~~(9)~~ **(10) "Property"** means any present or future interest in real
 30 property, intangible personal property (as defined in
 31 IC 6-4.1-1-5), or tangible personal property (as defined in
 32 IC 6-4.1-1-13). The term includes:
- 33 (A) a right to direct or receive payment of a debt;
 34 (B) a right to direct or receive payment of money or other
 35 benefits due under a contract, account agreement, deposit
 36 agreement, employment contract, compensation plan, pension
 37 plan, individual retirement plan, employee benefit plan, or
 38 trust or by operation of law;
 39 (C) a right to receive performance remaining due under a
 40 contract;
 41 (D) a right to receive payment under a promissory note or a
 42 debt maintained in a written account record;
 43 (E) rights under a certificated or uncertificated security;
 44 (F) rights under an instrument evidencing ownership of
 45 property issued by a governmental agency; and
 46 (G) rights under a document of title (as defined in



- 1 IC 26-1-1-201).
- 2 ~~(10)~~ **(11)** "Registration in beneficiary form" means titling of an
- 3 account record, certificate, or other written instrument that:
- 4 (A) provides evidence of ownership of property in the name of
- 5 the owner;
- 6 (B) directs ownership of the property to be transferred upon
- 7 the death of the owner to the designated beneficiary; and
- 8 (C) designates the beneficiary.
- 9 ~~(11)~~ **(12)** "Security" means a share, participation, or other interest
- 10 in property, in a business, or in an obligation of an enterprise or
- 11 other issuer. The term includes a certificated security, an
- 12 uncertificated security, and a security account.
- 13 ~~(12)~~ **(13)** "Transfer on death deed" means a deed that conveys an
- 14 interest in real property to a grantee by beneficiary designation.
- 15 ~~(13)~~ **(14)** "Transfer on death transfer" refers to a transfer of
- 16 property that takes effect upon the death of the owner under a
- 17 beneficiary designation made under this chapter.
- 18 ~~(14)~~ **(15)** "Transferring entity" means a person who:
- 19 (A) owes a debt or is obligated to pay money or benefits;
- 20 (B) renders contract performance;
- 21 (C) delivers or conveys property; or
- 22 (D) changes the record of ownership of property on the books,
- 23 records, and accounts of an enterprise or on a certificate or
- 24 document of title that evidences property rights.
- 25 The term includes a governmental agency, business entity, or
- 26 transfer agent that issues certificates of ownership or title to
- 27 property and a person acting as a custodial agent for an owner's
- 28 property. However, the term does not include a governmental
- 29 office charged with endorsing, entering, or recording the transfer
- 30 of real property in the public records.
- 31 SECTION 14. IC 32-17-14-7, AS ADDED BY P.L.143-2009,
- 32 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 33 JULY 1, 2010]: Sec. 7. (a) If any of the following are required **by the**
- 34 **transferring entity**, an agreement between the owner and the
- 35 transferring entity is necessary to carry out a transfer on death transfer,
- 36 which may be made in accordance with the rules, terms, and conditions
- 37 set forth in the agreement:
- 38 (1) The submission to the transferring entity of a beneficiary
- 39 designation under a governing instrument.
- 40 (2) Registration by a transferring entity of a transfer on death
- 41 direction on any certificate or record evidencing ownership of
- 42 property.
- 43 (3) Consent of a contract obligor for a transfer of performance due
- 44 under the contract.
- 45 (4) Consent of a financial institution for a transfer of an obligation
- 46 of the financial institution.



- 1 (5) Consent of a transferring entity for a transfer of an interest in
 2 the transferring entity.
- 3 (b) When subsection (a) applies, a transferring entity is not required
 4 to accept an owner's request to assist the owner in carrying out a
 5 transfer on death transfer.
- 6 (c) If a beneficiary designation, revocation, or change is subject to
 7 acceptance by a transferring entity, the transferring entity's acceptance
 8 of the beneficiary designation, revocation, or change relates back to
 9 and is effective as of the time the request was received by the
 10 transferring entity.
- 11 SECTION 15. IC 32-17-14-9, AS ADDED BY P.L.143-2009,
 12 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2010]: Sec. 9. (a) Except as provided in subsection (c), a
 14 beneficiary designation that satisfies the requirements of subsection
 15 (b):
- 16 (1) authorizes a transfer of property under this chapter;
 17 (2) is effective on the death of the owner of the property; and
 18 (3) transfers the right to receive the property to the designated
 19 beneficiary who survives the death of the owner.
- 20 (b) A beneficiary designation is effective under subsection (a) if the
 21 beneficiary designation is:
- 22 (1) executed; and
 23 (2) delivered;
 24 ~~in proper form~~ to the transferring entity before the death of the owner.
- 25 (c) A transferring entity shall make a transfer described in
 26 subsection (a)(3) unless there is clear and convincing evidence of the
 27 owner's different intention at the time the beneficiary designation was
 28 created.
- 29 SECTION 16. IC 32-17-14-10, AS ADDED BY P.L.143-2009,
 30 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2010]: Sec. 10. (a) A written assignment of a contract right
 32 that:
- 33 (1) assigns the right to receive any performance remaining due
 34 under the contract to an assignee designated by the owner; and
 35 (2) expressly states that the assignment does not take effect until
 36 the death of the owner;
 37 transfers the right to receive performance due under the contract to the
 38 designated assignee beneficiary if the assignment satisfies the
 39 requirements of subsection (b).
- 40 (b) A written assignment described in subsection (a) is effective
 41 upon the death of the owner if the assignment is:
- 42 (1) executed; and
 43 (2) delivered;
 44 ~~in proper form~~ to the contract obligor before the death of the owner.
- 45 (c) A beneficiary assignment described in this section is not
 46 required to be supported by consideration or delivered to the assignee



1 beneficiary.

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

5 SECTION 17. IC 32-17-14-11, AS ADDED BY P.L.143-2009,
6 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2010]: Sec. 11. (a) A transfer on death deed transfers the
8 interest provided to the beneficiary if the transfer on death deed is:

9 (1) ~~executed in proper form;~~ **by the owner or owner's legal**
10 **representative;** and

11 (2) recorded with the recorder of deeds in the county in which the
12 real property is situated before the death of the owner.

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

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

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

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

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

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

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

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

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

37 (6) If the owner's interest is any other interest, the interest passes
38 in accordance with this chapter and the terms and conditions of
39 the conveyance establishing the interest. If a conflict exists
40 between the conveyance establishing the interest and this chapter,
41 the terms and conditions of the conveyance establishing the
42 interest prevail.

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



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

4 (h) This section does not preclude other methods of conveying real
 5 property that are permitted by law and have the effect of postponing
 6 enjoyment of an interest in real property until after the death of the
 7 owner. This section applies only to transfer on death deeds and does
 8 not invalidate any deed that is otherwise effective by law to convey title
 9 to the interest and estates provided in the deed.

10 SECTION 18. IC 32-17-14-14, AS ADDED BY P.L.143-2009,
 11 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2010]: Sec. 14. (a) Property may be held or registered in
 13 beneficiary form by including in the name in which the property is held
 14 or registered a direction to transfer the property on the death of the
 15 owner to a beneficiary designated by the owner.

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

- 19 (1) the name of the owner and, if applicable, the estate by which
- 20 two (2) or more joint owners hold the property; and
- 21 (2) an instruction substantially similar in form to "transfer on
- 22 death to (insert name of beneficiary)".

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

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

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

- 33 (1) the property is registered in beneficiary form before the death
- 34 of the owner; or
- 35 (2) the transfer on death direction is delivered ~~in proper form~~
- 36 to the transferring entity before the owner's death.

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

- 42 (1) regularly made by the owner;
- 43 (2) accepted by the transferring entity; and
- 44 (3) not revoked or changed before the owner's death.

45 SECTION 19. IC 32-17-14-16, AS ADDED BY P.L.143-2009,
 46 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2010]: Sec. 16. (a) A beneficiary designation may be revoked
2 or changed during the lifetime of the owner.

3 (b) A revocation or change of a beneficiary designation involving
4 property owned as tenants by the entirety must be made with the
5 agreement of both tenants for so long as both tenants are alive. After an
6 individual dies owning as a tenant by the entirety property that is
7 subject to a beneficiary designation, the individual's surviving spouse
8 may revoke or change the beneficiary designation.

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

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

17 (e) A subsequent beneficiary designation revokes a prior beneficiary
18 designation unless the subsequent beneficiary designation expressly
19 provides otherwise.

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

23 (g) A beneficiary designation may not be revoked or changed by a
24 will **or trust** unless the beneficiary designation expressly grants the
25 owner the right to revoke or change the beneficiary designation by a
26 will **or trust**.

27 (h) A transfer during the owner's lifetime of the owner's interest in
28 the property, with or without consideration, terminates the beneficiary
29 designation with respect to the property transferred.

30 (i) The effective date of a revocation or change in a beneficiary
31 designation is determined in the same manner as the effective date of
32 a beneficiary designation.

33 (j) An owner may revoke a beneficiary designation made in a
34 transfer on death deed by executing and recording **before the death of**
35 **the owner** with the recorder of deeds in the county in which the real
36 property is situated either:

37 (1) a subsequent deed of conveyance revoking, omitting, or
38 changing the beneficiary designation; or

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

41 (k) A physical act, such as a written modification on or the
42 destruction of a transfer on death deed after the transfer on death deed
43 has been recorded, has no effect on the beneficiary designation.

44 (l) A transfer on death deed may not be revoked or modified by will
45 or trust.

46 SECTION 20. IC 32-17-14-25, AS ADDED BY P.L.143-2009,



1 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2010]: Sec. 25. (a) ~~No law intended to protect a spouse or~~
3 ~~child from disinheritance by the will of a testator applies to a transfer~~
4 ~~on death transfer. An election under IC 29-1-3-1 does not apply to~~
5 ~~a valid transfer on death transfer. In accordance with IC 32-17-13,~~
6 ~~a transfer on death transfer may be subject to the payment of the~~
7 ~~surviving spouse and family allowances under IC 29-1-4-1.~~

8 (b) A beneficiary designation designating the children of the owner
9 or children of any other person as a class and not by name includes all
10 children of the person regardless of whether the child is born or
11 adopted before or after the beneficiary designation is made.

12 (c) Except as provided in subsection (d), a child of the owner born
13 or adopted after the owner makes a beneficiary designation that names
14 another child of the owner as the beneficiary is entitled to receive a
15 fractional share of the property that would otherwise be transferred to
16 the named beneficiary. The share of the property to which each child
17 of the owner is entitled to receive is expressed as a fraction in which
18 the numerator is one (1) and the denominator is the total number of the
19 owner's children.

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

24 (e) If a beneficiary designation does not name any child of the
25 owner as the designated beneficiary with respect to a particular
26 property interest, a child of the owner born or adopted after the owner
27 makes the beneficiary designation is not entitled to any share of the
28 property interest subject to the designation.

29 SECTION 21. IC 32-17-14-26, AS ADDED BY P.L.143-2009,
30 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
31 JULY 1, 2010]: Sec. 26. (a) If an agreement between the owner and a
32 transferring entity is required to carry out a transfer on death transfer
33 as described in section 7 of this chapter, a transferring entity may not
34 adopt rules for the making, execution, acceptance, and revocation of a
35 beneficiary designation that are inconsistent with this chapter. A
36 transferring entity may adopt the rules imposed by subsection (b) in
37 whole or in part by incorporation by reference.

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

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

45 (2) A security that is not registered in the name of the owner may
46 be registered in beneficiary form on instructions given by a broker



- 1 or person delivering the security.
- 2 (3) A beneficiary designation may designate one (1) or more
3 primary beneficiaries and one (1) or more contingent
4 beneficiaries.
- 5 (4) On property registered in beneficiary form, a primary
6 beneficiary is the person shown immediately following the
7 transfer on death direction. Words indicating that the person is a
8 primary beneficiary are not required. The name of a contingent
9 beneficiary in the registration must have the words "contingent
10 beneficiary" or words of similar meaning to indicate the
11 contingent nature of the interest being transferred.
- 12 (5) Multiple surviving beneficiaries share equally in the property
13 being transferred unless a different percentage or fractional share
14 is stated for each beneficiary. If a percentage or fractional share
15 is designated for multiple beneficiaries, the surviving
16 beneficiaries share in the proportion that their designated shares
17 bear to each other.
- 18 (6) A transfer of unequal shares to multiple beneficiaries for
19 property registered in beneficiary form may be expressed in
20 numerical form following the name of the beneficiary in the
21 registration.
- 22 (7) A transfer on death transfer of property also transfers any
23 interest, rent, royalties, earnings, dividends, or credits earned or
24 declared on the property but not paid or credited before the
25 owner's death.
- 26 (8) If a distribution by a transferring entity under a transfer on
27 death transfer results in fractional shares in a security or other
28 property that is not divisible, the transferring entity may distribute
29 the fractional shares in the name of all beneficiaries as tenants in
30 common or as the beneficiaries may direct, or the transferring
31 entity may sell the property that is not divisible and distribute the
32 proceeds to the beneficiaries in the proportions to which they are
33 entitled.
- 34 (9) On the death of the owner, the property, minus all amounts
35 and charges owed by the owner to the transferring entity, belongs
36 to the surviving beneficiaries and, in the case of substitute
37 beneficiaries permitted under section 22 of this chapter, the lineal
38 descendants of designated beneficiaries who did not survive the
39 owner are entitled to the property as follows:
- 40 (A) If there are multiple primary beneficiaries and a primary
41 beneficiary does not survive the owner and does not have a
42 substitute under section 22 of this chapter, the share of the
43 nonsurviving beneficiary is allocated among the surviving
44 beneficiaries in the proportion that their shares bear to each
45 other.
- 46 (B) If there are no surviving primary beneficiaries and there



- 1 are no substitutes for the nonsurviving primary beneficiaries
 2 under section 22 of this chapter, the property belongs to the
 3 surviving contingent beneficiaries in equal shares or according
 4 to the percentages or fractional shares stated in the
 5 registration.
- 6 (C) If there are multiple contingent beneficiaries and a
 7 contingent beneficiary does not survive the owner and does not
 8 have a substitute under section 22 of this chapter, the share of
 9 the nonsurviving contingent beneficiary is allocated among the
 10 surviving contingent beneficiaries in the proportion that their
 11 shares bear to each other.
- 12 (10) If a trustee designated as a beneficiary:
- 13 (A) does not survive the owner;
- 14 (B) resigns; or
- 15 (C) is unable or unwilling to execute the trust as trustee and
 16 no successor trustee is appointed in the twelve (12) months
 17 following the owner's death;
- 18 the transferring entity may make the distribution as if the trust did
 19 not survive the owner.
- 20 (11) If a trustee is designated as a beneficiary and no **affidavit of**
 21 **certification of trust instrument** or probated will creating an
 22 express trust is presented to the transferring entity **within the**
 23 **twelve (12) months after the owner's death**, the transferring
 24 entity may make the distribution as if the trust did not survive the
 25 owner.
- 26 (12) If the transferring entity is not presented evidence during the
 27 twelve (12) months after the owner's death that there are lineal
 28 descendants of a nonsurviving beneficiary for whom LDPS
 29 distribution applies who survived the owner, the transferring
 30 entity may make the transfer as if the nonsurviving beneficiary's
 31 descendants also failed to survive the owner.
- 32 (13) If a beneficiary cannot be located at the time the transfer is
 33 made to located beneficiaries, the transferring entity shall hold the
 34 missing beneficiary's share. If the missing beneficiary's share is
 35 not claimed by the beneficiary or by the beneficiary's personal
 36 representative or successor during the twelve (12) months after
 37 the owner's death, the transferring entity shall transfer the share
 38 as if the beneficiary did not survive the owner.
- 39 (14) A transferring entity has no obligation to attempt to locate a
 40 missing beneficiary, to pay interest on the share held for a missing
 41 beneficiary, or to invest the share in any different property.
- 42 (15) Cash, interest, rent, royalties, earnings, or dividends payable
 43 to a missing beneficiary may be held by the transferring entity at
 44 interest or reinvested by the transferring entity in the account or
 45 in a dividend reinvestment account associated with a security held
 46 for the missing beneficiary.



- 1 (16) If a transferring entity is required to make a transfer on death
 2 transfer to a minor or an incapacitated adult, the transfer may be
 3 made under the Indiana Uniform Transfers to Minors Act, the
 4 Indiana Uniform Custodial Trust Act, or a similar law of another
 5 state.
- 6 (17) A written request for the execution of a transfer on death
 7 transfer may be made by any beneficiary, a beneficiary's legal
 8 representative or attorney in fact, or the owner's personal
 9 representative.
- 10 (18) A transfer under a transfer on death deed occurs
 11 automatically upon the owner's death subject to the requirements
 12 of subdivision (20) and does not require a request for the
 13 execution of the transfer.
- 14 (19) A written request for the execution of a transfer on death
 15 transfer must be accompanied by the following:
- 16 (A) A certificate or instrument evidencing ownership of the
 17 contract, account, security, or property.
- 18 (B) Proof of the deaths of the owner and any nonsurviving
 19 beneficiary.
- 20 (C) An inheritance tax waiver from states that require it.
- 21 (D) In the case of a request by a legal representative, a copy of
 22 the instrument creating the legal authority or a certified copy
 23 of the court order appointing the legal representative.
- 24 (E) Any other proof of the person's entitlement that the
 25 transferring entity may require.
- 26 (20) On the death of an owner whose transfer on death deed has
 27 been recorded, the beneficiary shall file an affidavit in the office
 28 of the recorder of the county in which the real property is located.
 29 The affidavit must contain the following:
- 30 (A) The legal description of the property.
- 31 (B) A certified copy of the death certificate certifying the
 32 owner's death.
- 33 (C) The name and address of each designated beneficiary who
 34 survives the owner or is in existence on the date of the owner's
 35 death.
- 36 (D) The name of each designated beneficiary who has not
 37 survived the owner's death or is not in existence on the date of
 38 the owner's death.
- 39 (E) A cross-reference to the recorded transfer on death deed.
- 40 (c) A beneficiary designation is presumed to be valid. A party may
 41 rely on the presumption of validity unless the party has actual
 42 knowledge that the beneficiary designation was not validly executed.
 43 A person who acts in good faith reliance on a transfer on death deed is
 44 immune from liability to the same extent as if the person had dealt
 45 directly with the named owner and the named owner had been
 46 competent and not incapacitated.



1 SECTION 22. IC 32-17-14-28, AS ADDED BY P.L.143-2009,
 2 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2010]: Sec. 28. (a) The protections provided to a transferring
 4 entity or to a purchaser or lender for value by this chapter do not affect
 5 the rights of beneficiaries or others involved in disputes that:

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

8 (2) concern the ownership of property transferred under this
 9 chapter.

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

14 (1) the return of the money or property, including income earned
 15 on the money or property, to the transferring entity; or

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

18 **In addition, the transferee is liable for the amount of attorney's**
 19 **fees and costs incurred by the rightful transferee in bringing the**
 20 **action in court.**

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

24 (1) the value of the property as of the date of the disposition; ~~and~~

25 (2) the income and gain that the transferee received from the
 26 property and its proceeds; **and**

27 **(3) the amount of attorney's fees and costs incurred by the**
 28 **rightful transferee in bringing the action in court.**

29 (d) If a transferee of money or property under a transfer on death
 30 transfer that was improperly distributed or paid encumbers the
 31 property, the transferee:

32 **(1)** shall satisfy the debt incurred in an amount sufficient to
 33 release any security interest, lien, or other encumbrance on the
 34 property; **and**

35 **(2) is liable for the amount of attorney's fees and costs**
 36 **incurred by the rightful transferee in bringing action in court.**

37 (e) A purchaser for value of property or a lender who acquires a
 38 security interest in the property from a beneficiary of a transfer on
 39 death transfer:

40 (1) in good faith; or

41 (2) without actual knowledge that:

42 (A) the transfer was improper; or

43 (B) information in an affidavit provided under section
 44 26(b)(20) of this chapter was not true;

45 takes the property free of any claims of or liability to the owner's estate,
 46 creditors of the owner's estate, persons claiming rights as beneficiaries



1 of the transfer on death transfer, or heirs of the owner's estate. A
 2 purchaser or lender for value has no duty to verify sworn information
 3 relating to the transfer on death transfer.

4 (f) The protection provided by subsection (e) applies to information
 5 that relates to the beneficiary's ownership interest in the property and
 6 the beneficiary's right to sell, encumber, and transfer good title to a
 7 purchaser or lender but does not relieve a purchaser or lender from the
 8 notice provided by instruments of record with respect to the property.

9 (g) A transfer on death transfer that is improper under section 22,
 10 23, 24, or 25 of this chapter imposes no liability on the transferring
 11 entity if the transfer is made in good faith. The remedy of a rightful
 12 transferee must be obtained in an action against the improper
 13 transferee.

14 SECTION 23. IC 32-17.5-1-1 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. This article applies
 16 to a disclaimer of an interest in or power over property ~~regardless of~~
 17 ~~when the interest or power was created~~ **after June 30, 2003.**

18 SECTION 24. IC 32-17.5-1-2 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. This chapter does not
 20 limit the right of a person to waive, release, disclaim, or renounce an
 21 interest in or power over property under a ~~law~~ **statute** other than this
 22 article.

23 SECTION 25. IC 32-17.5-4-1, AS AMENDED BY P.L.238-2005,
 24 SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2010]: Sec. 1. Except for a disclaimer under IC 32-17.5-5 or
 26 IC 32-17.5-6-1, the following rules apply to a disclaimer of an interest
 27 in property:

28 (1) A disclaimer takes effect:

29 (A) when the instrument creating the interest becomes
 30 irrevocable; or

31 (B) upon the intestate's death if the interest arose under the law
 32 of intestate succession.

33 (2) A disclaimed interest passes according to any provision in the
 34 instrument creating the interest:

35 (A) that provides for the disposition of the interest should the
 36 interest be disclaimed; or

37 (B) that concerns disclaimed interests in general.

38 (3) If the instrument creating the disclaimed interest does not
 39 contain a provision described in subdivision (2), the following
 40 rules apply:

41 (A) If the disclaimant is an individual, the following rules
 42 apply:

43 (i) Except as provided in ~~item~~ **items (ii) and (iii)**, the
 44 disclaimed interest passes as if the disclaimant had died
 45 immediately before the time of distribution.

46 (ii) If, by law or under the instrument, the descendants of the



1 disclaimant would share in the disclaimed interest by any
 2 method of representation had the disclaimant died before the
 3 time of distribution, the disclaimed interest passes only to
 4 the descendants of the disclaimant who survive at the time
 5 of distribution.

6 **(iii) If the disclaimed interest would have passed to the**
 7 **disclaimant's estate had the disclaimant died before the**
 8 **time of distribution, the disclaimed interest passes by**
 9 **representation to the descendants of the disclaimant who**
 10 **survive at the time of distribution. If no descendant of**
 11 **the disclaimant survives the time of distribution, the**
 12 **disclaimed interest becomes part of the residue under the**
 13 **instrument creating the disclaimed interest.**

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

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

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

20 (A) a future interest held by a person other than the
 21 disclaimant takes effect as if the disclaimant had died or
 22 ceased to exist immediately before the time of distribution;
 23 and

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

26 SECTION 26. IC 32-17.5-5-1 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) **This subsection**
 28 **applies** upon the death of a holder of jointly held property ~~a surviving~~
 29 ~~holder may disclaim, in whole or part, the greater of the following: only~~
 30 **if, during the deceased holder's lifetime, the deceased holder could**
 31 **have unilaterally regained a portion of the property attributable to**
 32 **the deceased holder's contribution without consent of any other**
 33 **holder. Another holder may disclaim an amount that may not**
 34 **exceed the amount determined in STEP THREE of the following**
 35 **formula:**

36 **STEP ONE: Determine the amount of the property**
 37 **attributable to the deceased holder's contributions.**

38 ~~(1) A fractional share of the property determined by dividing~~

39 **STEP TWO: Determine the quotient of:**

40 (1) one (1); divided by

41 (2) the number of joint holders alive immediately before the
 42 death of the holder to whose death the disclaimer relates.

43 **STEP THREE: Determine the product of:**

44 (1) the STEP ONE amount; multiplied by

45 (2) the STEP TWO quotient.

46 ~~(2) All of the property except that part of the value of the entire~~



- 1 interest attributable to the contribution furnished by the
 2 disclaimant.
- 3 **(b) This subsection applies in the case of the death of a holder of**
 4 **jointly held property that is not subject to subsection (a). Another**
 5 **holder may disclaim an amount that may not exceed the amount**
 6 **determined in STEP FOUR of the following formula:**
- 7 **STEP ONE: Determine the value of the total amount of the**
 8 **jointly held property.**
- 9 **STEP TWO: Determine the product of:**
- 10 **(1) the number of joint holders alive immediately before**
 11 **the death of the holder to whose death the disclaimer**
 12 **relates; multiplied by**
- 13 **(2) the number of joint holders alive immediately after the**
 14 **death of the holder to whose death the disclaimer relates.**
- 15 **STEP THREE: Determine the quotient of:**
- 16 **(1) one (1); divided by**
 17 **(2) the STEP TWO result.**
- 18 **STEP FOUR: Determine the product of:**
- 19 **(1) the value determined in STEP ONE; multiplied by**
 20 **(2) the quotient determined in STEP THREE.**
- 21 ~~(b)~~ **(c)** A disclaimer under subsection (a) **or (b)** takes effect as of the
 22 death of the holder of jointly held property to whose death the
 23 disclaimer relates.
- 24 ~~(c)~~ **(d)** An interest in jointly held property disclaimed by a surviving
 25 holder of the property passes as if the disclaimant predeceased the
 26 holder to whose death the disclaimer relates.

