

IC 30-4

ARTICLE 4. TRUST CODE

IC 30-4-1

Chapter 1. General Provisions

IC 30-4-1-1

Definition of "trust"; relationships excluded from this article; transferability of employee benefit trust

Sec. 1. (a) A trust is a fiduciary relationship between a person who, as trustee, holds title to property and another person for whom, as beneficiary, the title is held.

(b) Subject to IC 30-4-2-8, the same person may be both the trustee and a beneficiary.

(c) The rules of law contained in this article do not apply to:

- (1) trusts created by operation of law;
- (2) business trusts (as defined in IC 23-5-1);
- (3) security instruments and creditor arrangements;
- (4) voting trusts;
- (5) religious, educational, and cultural institutions, created in other than trust form, except with respect to the application of IC 30-4-5-18 through IC 30-4-5-23 as those sections relate to the maintenance of federal income tax exemption privileges to which an institution is entitled;
- (6) corporations and other entities governed by IC 23-17, except with respect to IC 30-4-5-18 through IC 30-4-5-23 as those sections relate to the maintenance of federal income tax exemption privileges to which a corporation or other entity is entitled;
- (7) except as provided in this article for trusts for a benevolent public purpose and as provided in the Indiana uniform prudent investor act (IC 30-4-3.5):
 - (A) prepaid funeral plans;
 - (B) trusts for the care and upkeep of cemeteries; and
 - (C) agreements to furnish funeral services; and
- (8) trusts created or authorized by statute other than this article.

(d) IC 30-4-3-2(a) applies to an employee benefit trust that meets the requirements set forth in IC 30-4-3-2(c). However, no other provision of this article applies to an employee benefit trust.

*(Formerly: Acts 1971, P.L.416, SEC.2; Acts 1972, P.L.11, SEC.12.)
As amended by P.L.287-1987, SEC.1; P.L.41-2000, SEC.1;
P.L.61-2008, SEC.12.*

IC 30-4-1-1.5

IC 30-2-4 and IC 30-2-5 not repealed

Sec. 1.5. This article does not repeal:

- (1) IC 30-2-4 (the Uniform Fiduciaries Act); or
- (2) IC 30-2-5 (the Uniform Act for the Simplification of Fiduciary Security Transfers).

As added by P.L.1-1989, SEC.60.

IC 30-4-1-2

Other definitions

Sec. 2. As used in this article:

- (1) "Adult" means any person eighteen (18) years of age or older.
- (2) "Affiliate" means a parent, descendant, spouse, spouse of a descendant, brother, sister, spouse of a brother or sister, employee, director, officer, partner, joint venturer, a corporation subject to common control with the trustee, a shareholder, or corporation who controls the trustee or a corporation controlled by the trustee other than as a fiduciary, an attorney, or an agent.
- (3) "Beneficiary" has the meaning set forth in IC 30-2-14-2.
- (4) "Breach of trust" means a violation by the trustee of any duty which is owed to the settlor or beneficiary.
- (5) "Charitable trust" means a trust in which all the beneficiaries are the general public or organizations, including trusts, corporations, and associations, and that is organized and operated wholly for religious, charitable, scientific, public safety testing, literary, or educational purposes. The term does not include charitable remainder trusts, charitable lead trusts, pooled income funds, or any other form of split-interest charitable trust that has at least one (1) noncharitable beneficiary.
- (6) "Court" means a court having jurisdiction over trust matters.
- (7) "Income", except as otherwise stated in a trust agreement, has the meaning set forth in IC 30-2-14-4.
- (8) "Income beneficiary" has the meaning set forth in IC 30-2-14-5.
- (9) "Inventory value" means the cost of property to the settlor or the trustee at the time of acquisition or the market value of the property at the time it is delivered to the trustee, or the value of the property as finally determined for purposes of an estate or inheritance tax.
- (10) "Minor" means any person under the age of eighteen (18) years.
- (11) "Person" has the meaning set forth in IC 30-2-14-9.
- (12) "Personal representative" means an executor or administrator of a decedent's or absentee's estate, guardian of the person or estate, guardian ad litem or other court appointed representative, next friend, parent or custodian of a minor, attorney in fact, or custodian of an incapacitated person (as defined in IC 29-3-1-7.5).
- (13) "Principal" has the meaning set forth in IC 30-2-14-10.
- (14) "Qualified beneficiary" means:
 - (A) a beneficiary who, on the date the beneficiary's qualification is determined:
 - (i) is a distributee or permissible distributee of trust income or principal;
 - (ii) would be a distributee or permissible distributee of trust income or principal if the interest of the distributee

- described in item (i) terminated on that date;
- (iii) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date;
- (iv) has sent the trustee a request for notice;
- (v) is a charitable organization expressly designated to receive distributions under the terms of a charitable trust;
- (vi) is a person appointed to enforce a trust for the care of an animal under IC 30-4-2-18; or
- (vii) is a person appointed to enforce a trust for a noncharitable purpose under IC 30-4-2-19; or

(B) the attorney general, if the trust is a charitable trust having its principal place of administration in Indiana.

(15) "Remainderman" means a beneficiary entitled to principal, including income which has been accumulated and added to the principal.

(16) "Settlor" means a person who establishes a trust including the testator of a will under which a trust is created.

(17) "Trust estate" means the trust property and the income derived from its use.

(18) "Trust for a benevolent public purpose" means a charitable trust (as defined in subdivision (5)), a split-interest trust (as defined in Section 4947 of the Internal Revenue Code), a perpetual care fund or an endowment care fund established under IC 23-14-48-2, a prepaid funeral plan or funeral trust established under IC 30-2-9, a funeral trust established under IC 30-2-10, a trust or an escrow account created from payments of funeral, burial services, or merchandise in advance of need described in IC 30-2-13, and any other form of split-interest charitable trust that has both charitable and noncharitable beneficiaries, including but not limited to charitable remainder trusts, charitable lead trusts, and charitable pooled income funds.

(19) "Trust property" means property either placed in trust or purchased or otherwise acquired by the trustee for the trust regardless of whether the trust property is titled in the name of the trustee or the name of the trust.

(20) "Trustee" has the meaning set forth in IC 30-2-14-13.

*(Formerly: Acts 1971, P.L.416, SEC.2; Acts 1973, P.L.293, SEC.5.)
As amended by P.L.33-1989, SEC.94; P.L.138-1994, SEC.1;
P.L.41-2000, SEC.2; P.L.84-2002, SEC.3; P.L.238-2005, SEC.19;
P.L.61-2008, SEC.13.*

IC 30-4-1-3

Application and interpretation of rules of law and terms of trust

Sec. 3. (Application and Interpretation of the Rules of Law and the Terms of the Trust)

The rules of law contained in this article shall be interpreted and applied to the terms of the trust so as to implement the intent of the settlor and the purposes of the trust. If the rules of law and the terms

of the trust conflict, the terms of the trust shall control unless the rules of law clearly prohibit or restrict the article which the terms of the trust purport to authorize.

(Formerly: Acts 1971, P.L.416, SEC.2.)

IC 30-4-1-4

Application of this article with respect to pre-existing trusts

Sec. 4. (Application of the Article with Respect to Pre-Existing Trusts)

Except as provided elsewhere in this article, the rules of law contained in this article shall apply to all trusts created prior to September 2, 1971 unless to do so would:

- (1) adversely affect a right given to any beneficiary;
- (2) give a right to any beneficiary which he was not intended to have when the trust was created;
- (3) impose a duty or liability on any person which was not intended to be imposed when the trust was created; or
- (4) relieve any person from any duty or liability imposed by the terms of the trust or under prior law.

(Formerly: Acts 1971, P.L.416, SEC.2.) As amended by Acts 1982, P.L.171, SEC.117.

IC 30-4-1-5

Construction of pronouns

Sec. 5. (Construction of Pronouns)

A pronoun used in this article may be construed, unless the context requires otherwise, without regard to gender or whether the person or thing to which it refers is animate or inanimate.

(Formerly: Acts 1971, P.L.416, SEC.2.)

IC 30-4-1-6

Construction of singular number

Sec. 6. (Construction of Singular Number)

Any word appearing in the singular number in this article may be construed as plural, unless the context requires otherwise.

(Formerly: Acts 1971, P.L.416, SEC.2.)

IC 30-4-1-7

Trust Code Study Commission report

Sec. 7. The report of the Trust Code Study Commission made according to IC 2-5-11 (repealed) may be consulted by the courts to determine the reasons, purpose and policies of this article, and may be used as a guide to its construction and application.

(Formerly: Acts 1971, P.L.416, SEC.2.) As amended by P.L.1-2009, SEC.153.

IC 30-4-1-8

Effect of requirement of exercising power of appointment by reference

Sec. 8. If a trust creating a power of appointment expressly

requires that the power be exercised by a reference, an express reference, or a specific reference to the power or its source, it is presumed that the settlor's intention, in requiring that the grantee exercise the power by making reference to the particular power or to the creating instrument, was to prevent an inadvertent exercise of the power.

As added by P.L.252-2001, SEC.30.

IC 30-4-1-9

Specific indication of power of appointment required

Sec. 9. A trust shall not operate as to the exercise of a power of appointment, which the settlor may have with respect to any real or personal property, unless by its terms the trust specifically indicates that the settlor intended to exercise the power.

As added by P.L.252-2001, SEC.31.

IC 30-4-1-10

Distribution under laws of intestate succession when manner not specified

Sec. 10. If a distribution in favor of "descendants", "issue", or "heirs of the body" does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the distribution is to take effect in possession or enjoyment, in such shares they would receive, under the applicable law of intestate succession, as if the designated ancestor had then died intestate, unmarried, and owning the subject matter of the distribution.

As added by P.L.252-2001, SEC.32.

IC 30-4-1-11

Choice of law

Sec. 11. The meaning and legal effect of a distribution under a trust shall be determined by the law of the state selected by the settlor in the trust, unless the application of that law is contrary to the public policy of this state.

As added by P.L.252-2001, SEC.33.

IC 30-4-1-12

Persons born out of wedlock

Sec. 12. In construing a trust making a distribution to a person described by relationship to the settlor or to another person, a person born out of wedlock shall be considered the child of the person's mother. If the right of a person born out of wedlock to inherit from the person's father is established under IC 29-1-2-7, the person shall also be considered a child of the person's father.

As added by P.L.252-2001, SEC.34.

IC 30-4-1-13

Applicability of constructive trust provisions

Sec. 13. IC 29-1-2-12.1 applies to a trust.

As added by P.L.238-2005, SEC.20.

IC 30-4-2

Chapter 2. Rules Governing the Creation of Trusts

IC 30-4-2-1

Written evidence of terms; definite terms; validity of inter vivos trust; existence of trust beneficiaries; creation of trust by exercise of power of appointment

Sec. 1. (a) A trust in either real or personal property is enforceable only if there is written evidence of its terms bearing the signature of the settlor or the settlor's authorized agent.

(b) Except as required in the applicable probate law for the execution of wills, no formal language is required to create a trust, but its terms must be sufficiently definite so that the trust property, the identity of the trustee, the nature of the trustee's interest, the identity of the beneficiary, the nature of the beneficiary's interest and the purpose of the trust may be ascertained with reasonable certainty.

(c) It is not necessary to the validity of a trust that the trust be funded with or have a corpus that includes property other than the present or future, vested or contingent right of the trustee to receive proceeds or property, including:

- (1) as beneficiary of an estate under IC 29-1-6-1;
- (2) life insurance benefits under section 5 of this chapter;
- (3) retirement plan benefits; or
- (4) the proceeds of an individual retirement account.

(d) A trust created under:

- (1) section 18 of this chapter for the care of an animal; or
- (2) section 19 of this chapter for a noncharitable purpose;

has a beneficiary.

(e) A trust has a beneficiary if the beneficiary can be presently ascertained or ascertained in the future, subject to any applicable rule against perpetuities.

(f) A power of a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

(g) A trust may be created by exercise of a power of appointment in favor of a trustee.

(Formerly: Acts 1971, P.L.416, SEC.3.) As amended by P.L.132-1992, SEC.1; P.L.238-2005, SEC.21.

IC 30-4-2-1.5

Trust not created by will; requirements

Sec. 1.5. (a) Except as provided in subsection (b), a trust that is not created by a will is validly created if the trust's creation complies with the law of the jurisdiction in which the trust instrument was executed or the law of the jurisdiction in which, at the time of creation:

- (1) the settlor was domiciled, had a place of abode, or was a national;

- (2) a trustee was domiciled or had a place of business; or
- (3) any trust property is located.
- (b) A valid trust must be:
 - (1) in writing; and
 - (2) signed by:
 - (A) the settlor; or
 - (B) an agent of the settlor who is an attorney in fact.

As added by P.L.238-2005, SEC.22.

IC 30-4-2-2

Acceptance by trustee

Sec. 2. (a) This section applies to the acceptance of a trust by a person named as trustee.

(b) The appearance of the named person's signature on the writing which is the evidence of the trust or on a separate written acceptance will be conclusive that the named person accepted the trust.

(c) Except as provided in subsection (e), if the named person exercises powers or performs duties under the trust, the named person will be presumed to have accepted the trust.

(d) The named person may reject the trust in writing and, if the named person does so, will incur no liability. If, after being informed that the named person has been named as trustee, the named person neither expressly accepts the trust nor exercises powers or performs duties under the trust within a reasonable time, the named person will be presumed to have rejected the trust.

(e) If there is an immediate risk of damage to the trust estate, the named person may act to preserve the trust estate and will not be presumed to have accepted the trust, provided the named person delivers a written rejection to the settlor at or within a reasonable time after the named person acts, or, if the settlor is dead, to the beneficiary or the court having jurisdiction over the administration of the trust estate.

(Formerly: Acts 1971, P.L.416, SEC.3.) As amended by P.L.238-2005, SEC.23.

IC 30-4-2-3

Repealed

(Repealed by P.L.293-1983, SEC.2.)

IC 30-4-2-4

Repealed

(Repealed by P.L.293-1983, SEC.2.)

IC 30-4-2-5

Life insurance trusts

Sec. 5. (Life Insurance Trusts)

Proceeds of life insurance policies heretofore made payable to a trustee or trustees named as beneficiary or hereafter to be named beneficiary under an inter vivos trust shall be paid directly to the trustee or trustees and held and disposed of by the trustee or trustees

as provided in the trust agreement or declaration of trust in writing made and in existence on the date of death of the insured, whether or not such trust or declaration of trust is amendable or revocable or both, or whether it may have been amended, and notwithstanding the reservation of any or all rights of ownership under the insurance policy or annuity contract; subject, however, to a valid assignment of any part of the proceeds. It is not necessary to the validity of such trust agreement or declaration of trust that it be funded or have a corpus other than the right, which need not be irrevocable, of the trustee or trustees named therein to receive such proceeds as beneficiary. A policy of life insurance or annuity contract may designate as beneficiary a trustee or trustees named or to be named by will if the designation is made in accordance with the provisions of the policy or contract whether or not the will is in existence at the time of the designation.

(Formerly: Acts 1971, P.L.416, SEC.3.)

IC 30-4-2-6

Nature of trustee's estate

Sec. 6. (Nature of the Trustee's Estate)

(a) The trustee takes the title to the trust property.

(b) The extent of the trustee's estate in the trust property is limited to that which is necessary to enable him to perform the trust.

(Formerly: Acts 1971, P.L.416, SEC.3.)

IC 30-4-2-7

Nature of beneficiary's estate

Sec. 7. (Nature of the Beneficiary's Estate)

(a) The beneficiary takes an equitable interest in the trust property.

(b) The extent of the beneficiary's estate shall be determined from the terms of the trust. The Rule in Shelley's Case and the Doctrine of Worthier Title shall not be applied to determine the meaning or application of the terms.

(c) Except as provided in 30-4-2-14, if, under the terms of the trust, the trustee is required at some time to distribute real property from the trust estate to a beneficiary, that beneficiary's equitable interest is real property. In all other cases the beneficiary's interest is personal property.

(Formerly: Acts 1971, P.L.416, SEC.3.)

IC 30-4-2-8

Merger of estates

Sec. 8. (a) If the settlor transfers both the title and the entire equitable interest in property to the same person as both the sole trustee and the sole beneficiary, no trust will be deemed to have been created and the transferee shall treat the property as the transferee's own.

(b) Except as provided in subsection (c), if the title to the trust property and the entire beneficial interest becomes united in one (1)

person the trust terminates. If:

- (1) a beneficiary is serving as trustee; and
- (2) the trust creates an interest in a beneficiary who is not the trustee, whether the interest is contingent or vested;

the entire beneficial interest shall not be construed to be united in one (1) person.

(c) The title to the trust property and the entire beneficial interest shall not become united in a beneficiary whose interest is protected under a trust with protective provisions, and in that case the court shall appoint a new trustee to administer the trust for the beneficiary's benefit.

(Formerly: Acts 1971, P.L.416, SEC.3.) As amended by P.L.200-1991, SEC.2.

IC 30-4-2-9

Necessity of powers or duties

Sec. 9. (Necessity of Powers or Duties)

Subject to 30-4-2-13, if the trustee has neither a power nor a duty related to the administration of the trust, the title to the trust property will be treated as having vested directly in the beneficiary on the date of delivery to the trustee.

(Formerly: Acts 1971, P.L.416, SEC.3.)

IC 30-4-2-10

Capacity of settlor

Sec. 10. (a) If a trust is created by a will, the settlor's capacity that is required to create the trust is determined by the applicable probate law.

(b) The capacity of a settlor that is required to create, amend, revoke, or add property to a revocable trust is the same as the capacity of a testator that is required to make a will.

(c) To create or add property to an irrevocable trust, the settlor or transferor must be of sound mind and have a reasonable understanding of the nature and effect of the act and the terms of the trust.

(d) To direct the actions of the trustee of a trust, the settlor or other person must:

- (1) have the capacity to hold and deal with property for the settlor's or person's own benefit;
- (2) be at least eighteen (18) years of age; and
- (3) be of sound mind.

(Formerly: Acts 1971, P.L.416, SEC.3.) As amended by P.L.238-2005, SEC.24.

IC 30-4-2-11

Capacity of trustee

Sec. 11. (Trustee's Capacity)

(a) If the trustee is a natural person, he must have the capacity to take, hold, and deal with property for his own benefit and must be at least eighteen (18) years of age, be of sound mind and of good moral

character.

(b) If the trustee is a corporation, it must have the power to take, hold, and deal with property for its own benefit and have the power to act as a trustee.

(c) Subject to IC 1971, 30-4-2-8, the fact that the person named to be trustee is also a beneficiary will not disqualify him from acting as trustee if he is otherwise qualified.

(Formerly: Acts 1971, P.L.416, SEC.3; Acts 1973, P.L.293, SEC.6.)

IC 30-4-2-12

Illegality

Sec. 12. (Illegality)

(a) The terms of the trust may not require the trustee to commit a criminal or tortious act or an act which is contrary to public policy.

(b) A trust with terms which violate subsection (a) of this section is invalid unless the prohibited term is separable. If the prohibited term is separable, only it is invalid and the remainder of the trust is valid.

(Formerly: Acts 1971, P.L.416, SEC.3.)

IC 30-4-2-13

Application of statute of uses

Sec. 13. (Application of Statute of Uses)

If the trust property includes real property, and, under the terms of the trust,

(a) The beneficiary has the power to manage the trust property, including the power to direct the trustee to sell the property; and

(b) The trustee may sell the trust property only on direction by the beneficiary or other person or may sell it after a period of time stipulated in the terms of the trust in the absence of a direction: then 30-4-2-9 shall not apply to defeat the trustee's title.

(Formerly: Acts 1971, P.L.416, SEC.3.) As amended by Acts 1979, P.L.268, SEC.8.

IC 30-4-2-14

Assignment of beneficiary's interest

Sec. 14. (Assignment of Beneficiary's Interest)

(a) If the terms of the trust give the trustee the power to sell the trust property upon direction by the beneficiary or other person or to sell it after a stipulated period of time in the absence of a direction as provided in 30-4-2-13, the beneficiary may treat his interest as personal property and may assign it to any person notwithstanding the provisions of 30-4-2-7(c).

(b) The trustee will be bound by an assignment made under subsection (a) of this section only after he receives written notice of it.

(Formerly: Acts 1971, P.L.416, SEC.3.)

IC 30-4-2-15

Divorce or annulment of marriage; effect on revocable trust

Sec. 15. (a) This section does not apply to a trust:

- (1) that is irrevocable on the date of a divorce or an annulment;
or
- (2) created by:
 - (A) the settlor and the settlor's spouse or former spouse under a written agreement with each other that requires the creation of the trust; or
 - (B) a court order.

(b) If, after creating a revocable trust, the settlor is divorced or the marriage of the settlor to the settlor's spouse is annulled, the settlor's former spouse shall for the purposes of the trust be treated as if the spouse had died before the settlor died.

As added by P.L.200-1991, SEC.3.

IC 30-4-2-16

Election by surviving spouse to take share against settlor's will; distribution of remainder

Sec. 16. (a) This section applies to:

- (1) property in a trust that is subject to a spouse's right of election under IC 29-1-3; and
- (2) a trust that receives property from the settlor's estate;

if the settlor's spouse files an effective election to take a share of the settlor's estate against the settlor's will under IC 29-1-3.

(b) The trustee shall dispose of the assets received from the settlor's estate and the portion of the trust remaining after the spouse's election as if the settlor's spouse had died before the settlor died.

As added by P.L.200-1991, SEC.4.

IC 30-4-2-17

Valid purposes of charitable trust; selection of purpose or beneficiary if not specified by trust

Sec. 17. (a) A charitable trust may be created for the following purposes:

- (1) The relief of poverty.
- (2) The advancement of education or religion.
- (3) The promotion of health.
- (4) Governmental and municipal purposes.
- (5) A purpose that is beneficial to the community.

(b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select at least one (1) charitable purpose or beneficiary. The selection must be consistent with the settlor's intention to the extent the intention can be ascertained.

(c) The settlor of a charitable trust, among other persons, may maintain a proceeding to enforce the charitable trust.

As added by P.L.238-2005, SEC.25.

IC 30-4-2-18

Trust for care of animal

Sec. 18. (a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime.

(b) A trust authorized by this section terminates as follows:

(1) If the trust is created to provide for the care of one (1) animal alive during the settlor's lifetime, the trust terminates on the death of the animal.

(2) If the trust is created to provide for the care of more than one (1) animal alive during the settlor's lifetime, the trust terminates on the death of the last surviving animal.

(c) A trust authorized by this section may be enforced by the following:

(1) A person appointed in the terms of the trust.

(2) A person appointed by the court, if the terms of the trust do not appoint a person.

(d) A person having an interest in the welfare of an animal for whose care a trust is established may request the court to:

(1) appoint a person to enforce the trust; or

(2) remove a person appointed to enforce the trust.

(e) Property of a trust authorized by this section may be applied only to the trust's intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the trust's intended use.

(f) Except as provided in the terms of the trust, property not required for the trust's intended use must be distributed to the following:

(1) The settlor, if the settlor is living.

(2) The settlor's successors in interest, if the settlor is deceased.

As added by P.L.238-2005, SEC.26.

IC 30-4-2-19

Trust for noncharitable purpose

Sec. 19. (a) Except as provided in section 18 of this chapter, a trust may be created for a:

(1) noncharitable purpose without a beneficiary; or

(2) noncharitable and valid purpose to be selected by the trustee.

(b) A trust authorized by this section may be enforced for not more than twenty-one (21) years.

(c) A trust authorized by this section may be enforced by the following:

(1) A person appointed in the terms of the trust.

(2) A person appointed by the court, if the terms of the trust do not appoint a person.

(d) Property of a trust authorized by this section may be applied only to the trust's intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the trust's intended use.

(e) Except as provided in the terms of the trust, property not required for the trust's intended use must be distributed to the following:

(1) The settlor, if the settlor is living.

(2) The settlor's successors in interest, if the settlor is deceased.

As added by P.L.238-2005, SEC.27.

IC 30-4-2.1

Chapter 2.1. Rules for Interpretation of Trusts

IC 30-4-2.1-1

Construction

Sec. 1. In the absence of a contrary intent appearing in the trust, a trust shall be construed in accordance with the rules in this chapter.
As added by P.L.4-2003, SEC.7.

IC 30-4-2.1-2

Adopted children

Sec. 2. (a) Except as provided in subsection (b), in construing a trust naming as beneficiary a person described by relationship to the settlor or to another, a person adopted before:

- (1) the person is twenty-one (21) years of age; and
- (2) the death of the settlor;

shall be considered the child of the adopting parent or parents and not the child of the natural or previous adopting parents.

(b) If a natural parent or previous adopting parent marries the adopting parent before the settlor's death, the adopted person shall also be considered the child of the natural or previous adopting parent.

(c) A person adopted by the settlor after the person becomes twenty-one (21) years of age shall be considered the child of the settlor. However, no other person is entitled to establish the relationship to the settlor through the child.

As added by P.L.4-2003, SEC.7.

IC 30-4-2.1-3

No contest provision void

Sec. 3. A provision in a trust that provides, or has the effect of providing, that a beneficiary forfeits a benefit from the trust if the beneficiary contests the trust is void.

As added by P.L.4-2003, SEC.7.

IC 30-4-2.1-4

Children born after trust's creation

Sec. 4. (a) Except as provided in subsection (b) and section 5 of this chapter, when a settlor fails to provide in the settlor's trust for a child who is:

- (1) born or adopted after the making of the settlor's trust; and
- (2) born before or after the settlor's death;

the child is entitled to receive a share in the trust assets. The child's share of the trust assets shall be determined by ascertaining what the child's intestate share would have been under IC 29-1-2-1 if the settlor had died intestate. The child is entitled to receive a share of the trust assets equivalent in value to the intestacy share determined under IC 29-1-2-1.

(b) Subsection (a) does not apply to a child of the settlor if:

- (1) it appears from the trust that the settlor intentionally failed

to provide in the settlor's trust for the child; or

(2) when the trust was executed:

(A) the settlor had at least one (1) child known to the settlor to be living; and

(B) the settlor devised substantially all of the settlor's estate to the settlor's surviving spouse.

As added by P.L.4-2003, SEC.7.

IC 30-4-2.1-5

Mistaken belief that settlor's child deceased

Sec. 5. (a) Except as provided in subsection (b), if, at the time of the making of the trust, the settlor:

(1) believes a child of the settlor to be dead; and

(2) fails to provide for the child in the settlor's trust;

the child is entitled to receive a share in the trust assets. The child's share of the trust assets shall be determined by ascertaining what the child's intestate share would have been under IC 29-1-2-1 if the settlor had died intestate. The child is entitled to receive a share of the trust assets equivalent in value to the intestacy share determined under IC 29-1-2-1.

(b) Subsection (a) does not apply to a child of the settlor if it appears from the trust or from other evidence that the settlor would not have devised anything to the child had the settlor known that the child was alive.

As added by P.L.4-2003, SEC.7.

IC 30-4-2.1-6

Void, revoked, or lapsed devise

Sec. 6. If a devise of real or personal property, not included in the residuary clause of the trust:

(1) is void;

(2) is revoked; or

(3) lapses;

the devise becomes a part of the residue and passes to the residuary beneficiary.

As added by P.L.4-2003, SEC.7.

IC 30-4-2.1-7

Beneficiary predeceases settlor

Sec. 7. (a) As used in this section, "descendant" includes the following:

(1) A child adopted before the child is twenty-one (21) years of age by:

(A) the settlor; or

(B) the settlor's descendants.

(2) A descendant of a child adopted as set forth in subdivision (1).

(3) A child who is born of the mother out of wedlock in either of the following circumstances:

(A) The mother is a descendant of the settlor.

- (B) The mother is the settlor.
 - (4) If the right of a child born out of wedlock to inherit from the father is or has been established in the manner provided under IC 29-1-2-7, the child, in either of the following circumstances:
 - (A) The father is a descendant of the settlor.
 - (B) The father is the settlor.
 - (5) A descendant of a child born out of wedlock as set forth in subdivisions (3) and (4).
 - (b) If:
 - (1) an estate, real or personal, is devised to a descendant of the settlor; and
 - (2) the beneficiary:
 - (A) dies during the lifetime of the settlor before or after the execution of the trust; and
 - (B) leaves a descendant who survives the settlor;
- the devise does not lapse, but the property devised vests in the surviving descendant of the beneficiary as if the beneficiary had survived the settlor and died intestate.

As added by P.L.4-2003, SEC.7.

IC 30-4-2.1-8

Kindred of the half blood

Sec. 8. Kindred of the half blood are entitled to receive the same trust interest that they would have received if they had been of the whole blood.

As added by P.L.4-2003, SEC.7.

IC 30-4-2.1-9

Applicability of adultery and abandonment forfeiture provisions

Sec. 9. A trust of a deceased spouse is subject to the following:

- (1) IC 29-1-2-14.
- (2) IC 29-1-2-15.

As added by P.L.238-2005, SEC.28.

IC 30-4-2.1-10

Reserved

IC 30-4-2.1-11

Written statement or list disposing of tangible personal property

Sec. 11. (a) A written statement or list that:

- (1) complies with this section; and
- (2) is referred to in a settlor's trust that was revocable during the settlor's lifetime;

may be used to dispose of items of tangible personal property, other than property used in a trade or business, not otherwise specifically disposed of by the trust.

(b) To be admissible under this section as evidence of the intended disposition, the writing must be signed by the settlor and must describe the items and the beneficiaries with reasonable certainty. The writing may be prepared before or after the execution

of the trust. The writing may be altered by the settlor after the writing is prepared. The writing may have no significance apart from the writing's effect on the dispositions made by the trust.

(c) If more than one (1) otherwise effective writing exists, then, to the extent of a conflict among the writings, the provisions of the most recent writing revoke the inconsistent provisions of each earlier writing.

As added by P.L.238-2005, SEC.29.

IC 30-4-2.1-12

Order of abatement; other rules governing abatement

Sec. 12. (a) If a trust is terminated or partially terminated and the available trust property is not sufficient to fully satisfy the interests of all beneficiaries, the interests must be abated in the following order:

- (1) The interests that would be characterized as residuary devises if the trust were a will.
- (2) The interests that would be characterized as general devises if the trust were a will.
- (3) The interests that would be characterized as specific devises if the trust were a will.

The amount abated for each beneficiary within each classification described in subdivisions (1) through (3) must be proportional to the amount of property that each beneficiary would have received if full distribution of the trust property had been made in accordance with the terms of the trust instrument.

(b) If:

- (1) a trust instrument expresses an order of abatement that differs from the order set forth in subsection (a); or
- (2) the order of abatement stated in subsection (a) would impair an express or implied purpose of the trust;

the interests of the beneficiaries must be abated in the manner determined appropriate to give effect to the settlor's intent.

(c) If, under the terms of a trust that was revocable at the time of the settlor's death, the subject of a preferred devise is sold or used to pay debts, expenses, taxes, or other obligations incident to the settlement of the settlor's affairs, abatement must be achieved by adjustment in, or contribution from, other interests in the remaining trust property.

(d) Where applicable, the abatement of beneficiary interests in a trust is subject to IC 32-17-13-4.

As added by P.L.101-2008, SEC.8.

IC 30-4-2.1-13

Construction of trusts with respect to federal estate tax laws in 2010

Sec. 13. (a) A trust of a decedent who dies after December 31, 2009, and before January 1, 2011, that contains a formula referring to:

- (1) the unified credit;

- (2) the estate tax exemption;
- (3) the applicable credit amount;
- (4) the applicable exclusion amount;
- (5) the generation-skipping transfer tax exemption;
- (6) the GST exemption;
- (7) the marital deduction;
- (8) the maximum marital deduction;
- (9) the unlimited marital deduction;
- (10) the inclusion ratio;
- (11) the applicable fraction;
- (12) any section of the Internal Revenue Code:
 - (A) relating to the:
 - (i) federal estate tax; or
 - (ii) generation-skipping transfer tax; and
 - (B) that measures a share of trust;
based on the amount that can pass free of federal estate taxes
or the amount that can pass free of federal
generation-skipping transfer tax law; or
- (13) a provision of federal estate tax or generation-skipping
transfer tax law that is similar to subdivisions (1) through (12);

refers to the federal estate tax and generation-skipping transfer tax
laws as they applied with respect to estates of decedents on
December 31, 2009.

(b) Subsection (a) does not apply to a trust:

- (1) that is executed or amended after December 31, 2009; or
- (2) that manifests an intent that a contrary rule apply if the
decedent dies on a date on which there is no then applicable
federal estate or generation-skipping transfer tax.

(c) If the federal estate or generation-skipping transfer tax
becomes effective before January 1, 2011, the reference to January
1, 2011, in subsection (a) shall refer instead to the first date on which
the tax becomes legally effective.

(d) Within three (3) months following the latest to occur of the:

- (1) decedent's death;
- (2) trustee's appointment; or
- (3) enactment of this subsection;

the trustee of a trust to which subsection (a) applies shall give written
notice regarding the beneficiary's right to commence a proceeding
under subsection (e) to any beneficiary having a right to trust income
or principal under subsection (a), of the existence of this statute, and
of the beneficiary's right to commence a proceeding under subsection
(e).

(e) The trustee of any beneficiary under the trust having a present
right to income or principal of the trust may initiate a proceeding to
determine whether the decedent intended that a formula described in
subsection (a) be construed with respect to the law as it existed after
December 31, 2009. A proceeding under this subsection must be
commenced within nine (9) months after the death of the settlor.

As added by P.L.6-2010, SEC.13.

IC 30-4-2.1-14

Rules of interpretation concerning discretionary interests

Sec. 14. (a) The following rules apply only to discretionary interests:

(1) A discretionary interest is a mere expectancy that is neither a property interest nor an enforceable right.

(2) A creditor may not:

(A) require a trustee to exercise the trustee's discretion to make a distribution; or

(B) cause a court to foreclose a discretionary interest.

(3) A court may review a trustee's distribution discretion only if the trustee acts dishonestly or with an improper motive.

(b) Words such as sole, absolute, uncontrolled, or unfettered discretion dispense with the trustee acting reasonably.

(c) Absent express language to the contrary, if the distribution language in a discretionary interest permits unequal distributions between beneficiaries or distributions to the exclusion of other beneficiaries, a trustee may, in the trustee's discretion, distribute all of the accumulated, accrued, or undistributed income and principal to one (1) beneficiary to the exclusion of the other beneficiaries.

(d) Regardless of whether a beneficiary has any outstanding creditors, a trustee of a discretionary interest may directly pay any expense on behalf of the beneficiary and may exhaust the income and principal of the trust for the benefit of the beneficiary. A trustee is not liable to a creditor for paying the expenses of a beneficiary who holds a discretionary interest.

As added by P.L.6-2010, SEC.14.

IC 30-4-2.1-15

Rules of interpretation concerning a beneficiary's influence over a trust

Sec. 15. If a party challenges a settlor or a beneficiary's influence over a trust, none of the following factors, alone or in combination, may be considered dominion and control over a trust:

(1) A beneficiary serving as a trustee or co-trustee.

(2) The settlor or beneficiary holds an unrestricted power to remove or replace a trustee.

(3) The settlor or a beneficiary:

(A) is a trust administrator, a general partner of a partnership, a manager of a limited liability company, or an officer of a corporation; or

(B) has any other managerial function in any other entity; that is owned in whole or in part by the trust.

(4) A person related by blood or adoption to a settlor or beneficiary is appointed as trustee.

(5) An agent, accountant, attorney, financial adviser, or friend of the settlor or a beneficiary is appointed as trustee.

(6) A business associate of the settlor or a beneficiary is appointed as trustee.

(7) A beneficiary holds any power of appointment over part or

all of the trust property.

(8) The settlor holds a power to substitute property of equivalent value.

(9) The trustee may loan trust property to the settlor for less than a full and adequate rate of interest or without adequate security.

(10) The trust contains broad purposes or highly discretionary distribution language.

(11) The trust has only one (1) beneficiary eligible for current distributions.

As added by P.L.6-2010, SEC.15.

IC 30-4-2.1-16

Rules of interpretation concerning a trustee's independence from the settlor

Sec. 16. Absent clear and convincing evidence otherwise, a settlor of an irrevocable trust may not be considered the alter ego of a trustee. The following factors, alone or in combination, are not sufficient evidence to conclude that the settlor controls a trustee or is the alter ego of the trustee:

(1) Any combination of the factors listed in section 15 of this chapter.

(2) Isolated occurrences of the settlor signing checks, making disbursements, or executing other documents related to the trust as a trustee when the settlor is, in fact, not a trustee.

(3) Requesting a trustee to make distributions on behalf of a beneficiary.

(4) Requesting a trustee to hold, purchase, or sell any trust property.

As added by P.L.6-2010, SEC.16.

IC 30-4-2.1-17

Limits on creditors of beneficiaries who may replace or remove a trustee or who are also trustees or co-trustees

Sec. 17. (a) A creditor may not reach, exercise, or otherwise acquire an interest of a beneficiary or any other person who holds an unconditional or conditional removal or replacement power over a trustee. A power described in this subsection is personal to a beneficiary or other person and may not be exercised by the person's creditors. A court may not direct a person to exercise the power.

(b) A creditor may not:

(1) reach an interest of a beneficiary who is also a trustee or co-trustee; or

(2) otherwise compel a distribution to a beneficiary who is also a trustee or co-trustee.

(c) A court may not foreclose against an interest held by a beneficiary described in subsection (b).

As added by P.L.6-2010, SEC.17.

IC 30-4-3

Chapter 3. Rules Governing the Rights, Powers, Duties, Liabilities, and Remedies of the Parties to a Trust

IC 30-4-3-1

Repealed

(Repealed by P.L.238-2005, SEC.63.)

IC 30-4-3-1.5

Revocation or amendment of trust by settlor

Sec. 1.5. (a) This subsection applies to a trust created under an instrument executed after June 30, 2005. Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust.

(b) This subsection applies to a revocable trust created or funded by at least two (2) settlors. Unless the terms of the trust provide otherwise:

(1) to the extent the trust consists of community property, the trust may be:

(A) revoked by either spouse acting alone; and

(B) amended only by the joint action of both spouses; and

(2) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the part of the trust property attributable to that settlor's contribution.

(c) The settlor may revoke or amend a revocable trust as follows:

(1) The settlor may comply with a method provided in the terms of the trust.

(2) If the terms of the trust do not provide a method or the terms of the trust provide a method that is not expressly made the exclusive method to revoke or amend the trust, the settlor may revoke or amend the trust by:

(A) executing a later will or codicil that:

(i) expressly refers to the trust; or

(ii) specifically devises property that would otherwise have passed according to the terms of the trust; or

(B) any other method that:

(i) is in writing; and

(ii) manifests clear and convincing evidence of the settlor's intent.

(d) If a revocable trust is revoked, the trustee shall deliver the trust property as the settlor directs.

(e) A settlor's powers with respect to revocation, amendment, and distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power of attorney.

(f) A guardian of a settlor may exercise the settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the guardianship.

(g) A trustee who does not know that a trust has been revoked or

amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been revoked or amended.

As added by P.L.238-2005, SEC.30.

IC 30-4-3-2

Power to restrain transfer of a beneficiary's interest

Sec. 2. (a) The settlor may provide in the terms of the trust that the interest of a beneficiary may not be either voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.

(b) Except as otherwise provided in subsection (c), if the settlor is also a beneficiary of the trust, a provision restraining the voluntary or involuntary transfer of his beneficial interest will not prevent his creditors from satisfying claims from his interest in the trust estate.

(c) Subsection (a) applies to a trust that meets both of the following requirements, regardless of whether or not the settlor is also a beneficiary of the trust:

(1) The trust is a qualified trust under 26 U.S.C. 401(a).

(2) The limitations on each beneficiary's control over the beneficiary's interest in the trust complies with 29 U.S.C. 1056(d).

(d) A trust containing terms authorized under subsection (a) may be referred to wherever appropriate as a trust with protective provisions.

(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by P.L.287-1987, SEC.2.

IC 30-4-3-3

Powers of trustees

Sec. 3. (a) Except as provided in the terms of the trust and subject to subsection (c), a trustee has the power to perform without court authorization, except as provided in sections 4(b) and 5(a) of this chapter, every act necessary or appropriate for the purposes of the trust including, by way of illustration and not of limitation, the following powers:

(1) The power to:

(A) deal with the trust estate;

(B) buy, sell, or exchange and convey or transfer all property (real, personal, or mixed) for cash or on credit and at public or private sale with or without notice; and

(C) invest and reinvest the trust estate.

(2) The power to receive additions to the assets of the trust.

(3) The power to acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest.

(4) The power to manage real property in every way, including:

(A) the adjusting of boundaries;

(B) erecting, altering, or demolishing buildings;

(C) dedicating of streets, alleys, or other public uses;

- (D) subdividing;
 - (E) developing;
 - (F) obtaining vacation of plats;
 - (G) granting of easements and rights-of-way;
 - (H) partitioning;
 - (I) entering into party wall agreements; and
 - (J) obtaining title insurance for trust property.
- (5) The power to:
- (A) grant options concerning disposition of trust property, including the sale of covered security options; and
 - (B) take options for acquisition of trust property, including the purchase back of previously sold covered security options.
- (6) The power to enter into a lease as lessor or lessee, with or without option to renew.
- (7) The power to enter into arrangements for exploration and removal of minerals or other natural resources and enter into a pooling or unitization agreement.
- (8) The power to continue the operation or management of any business or other enterprise placed in trust.
- (9) The power to:
- (A) borrow money, to be repaid from trust property or otherwise; and
 - (B) encumber, mortgage, pledge, or grant a security interest in trust property in connection with the exercise of any power.
- (10) The power to:
- (A) advance money for the benefit of the trust estate and for all expenses or losses sustained in the administration of the trust; and
 - (B) collect any money advanced, without interest or with interest, at no more than the lowest rate prevailing when advanced.
- (11) The power to prosecute or defend actions, claims, or proceedings for the protection of:
- (A) trust property; and
 - (B) the trustee in the performance of the trustee's duties.
- (12) The power to:
- (A) pay or contest any claim;
 - (B) settle a claim by or against the trust by compromise or arbitration; and
 - (C) abandon or release, totally or partially, any claim belonging to the trust.
- (13) The power to insure the:
- (A) trust estate against damage or loss; and
 - (B) trustee against liability with respect to third persons.
- (14) The power to pay taxes, assessments, and other expenses incurred in the:
- (A) acquisition, retention, and maintenance of the trust property; and

(B) administration of the trust.

(15) The power to:

(A) vote securities, in person or by a general or special proxy;

(B) hold the securities in the name of a nominee if the trustee is a corporate trustee; and

(C) effect or approve, and deposit securities in connection with, any change in the form of the corporation, including:

(i) dissolution;

(ii) liquidation;

(iii) reorganization;

(iv) acquisition; and

(v) merger.

(16) The power to employ persons, including:

(A) attorneys;

(B) accountants;

(C) investment advisors; and

(D) agents;

to advise and assist the trustee in the performance of the trustee's duties.

(17) The power to effect distribution of property in cash, in kind, or partly in cash and partly in kind, in divided or undivided interests.

(18) The power to execute and deliver all instruments necessary or appropriate to accomplishing or facilitating the exercise of the trustee's powers.

(19) With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or another form of business or enterprise, the power to:

(A) continue the business or enterprise; and

(B) take any action that may be taken by shareholders, members, or property owners, including:

(i) merging;

(ii) dissolving; or

(iii) changing the form of business organization or contributing additional capital.

(20) With respect to possible liability for violation of environmental law, the power to:

(A) inspect or investigate property:

(i) the trustee holds or has been asked to hold; or

(ii) owned or operated by an organization in which the trustee holds an interest or has been asked to hold an interest;

to determine the application of environmental law with respect to the property;

(B) take action to prevent, abate, or remedy an actual or potential violation of an environmental law affecting property held directly or indirectly by the trustee before or after the assertion of a claim or the initiation of governmental enforcement;

- (C) decline to accept property into the trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;
 - (D) compromise claims against the trust that may be asserted for an alleged violation of environmental law; and
 - (E) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law.
- (21) The power to exercise elections with respect to federal, state, and local taxes.
- (22) The power to select a mode of payment under any employee benefit plan or retirement plan, annuity, or life insurance payable to the trustee and exercise rights under the plan, annuity, or insurance, including the right to:
- (A) indemnification:
 - (i) for expenses; and
 - (ii) against liabilities; and
 - (B) take appropriate action to collect the proceeds.
- (23) The power to make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee determines fair and reasonable under the circumstances. The trustee has a lien on future distributions for repayment of the loans.
- (24) The power to pledge trust property to guarantee loans made by others to the beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances. The trustee has a lien on future distributions for repayment of the loans.
- (25) The power to:
- (A) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction;
 - (B) confer on the appointed trustee all the appointing trustee's powers and duties;
 - (C) require the appointed trustee to furnish security; and
 - (D) remove the appointed trustee.
- (26) With regard to a beneficiary who is under a legal disability or whom the trustee reasonably believes is incapacitated, the power to pay an amount distributable to the beneficiary by:
- (A) paying the amount directly to the beneficiary;
 - (B) applying the amount for the beneficiary's benefit;
 - (C) paying the amount to the beneficiary's guardian;
 - (D) paying the amount to the beneficiary's custodian under IC 30-2-8.5 to create a custodianship or custodial trust;
 - (E) paying the amount to an adult relative or another person having legal or physical care or custody of the beneficiary to be expended on the beneficiary's behalf, if the trustee does not know of a guardian, custodian, or custodial trustee; or
 - (F) managing the amount as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution.
- (27) The power to:

(A) combine at least two (2) trusts into one (1) trust; or

(B) divide one (1) trust into at least two (2) trusts;

after notice to the qualified beneficiaries, if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the trust.

(b) Any act under subsection (a)(4), an option under subsection (a)(5), a lease under subsection (a)(6), an arrangement under subsection (a)(7), and an encumbrance, mortgage, pledge, or security interest under subsection (a)(9) may be for a term either within or extending beyond the term of the trust.

(c) In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for any trust, the trustee thereof shall exercise the judgment and care required by IC 30-4-3.5. Within the limitations of the foregoing standard, the trustee is authorized to acquire and retain every kind of property, real, personal, or mixed, and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing, bonds, debentures, and other corporate obligations, stocks, preferred or common, and real estate mortgages, which persons of prudence, discretion, and intelligence acquire or retain for their own account, and within the limitations of the foregoing standard, the trustee is authorized to retain property properly acquired, without limitation as to time and without regard to its suitability for original purchase. Within the limitations of the foregoing standard, the trustee is authorized to sell covered security options and to purchase back previously sold covered security options.

(d) If a distribution of particular trust assets is to be made to two (2) or more beneficiaries entitled to receive fractional shares in those assets, the trustee may distribute the particular assets without distributing to each beneficiary a pro rata share of each asset. However, the trustee shall:

(1) distribute to each beneficiary a pro rata share of the total fair market value of all of the particular assets as of the date of distribution; and

(2) cause the distribution to result in a fair and equitable division among the beneficiaries of capital gain or loss on the assets.

(e) If the trust is terminated or partially terminated, the trustee may send to the beneficiaries a proposal for distribution. If the proposal for distribution informs the beneficiary that the beneficiary:

(1) has a right to object to the proposed distribution; and

(2) must object not later than thirty (30) days after the proposal for distribution was sent;

the right of the beneficiary to object to the proposed distribution terminates if the beneficiary fails to notify the trustee of an objection within the time limit set forth in subdivision (2).

(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by Acts 1977, P.L.300, SEC.1; P.L.277-1983, SEC.1; P.L.137-1999, SEC.1; P.L.238-2005, SEC.31.

IC 30-4-3-4

Exercise of powers by multiple, successor, or surviving trustees

Sec. 4. (Exercise of Powers by Multiple, Successor, or Surviving Trustees)

Unless the terms of the trust provide otherwise:

(a) Any power vested in two (2) trustees must be exercised by them jointly; any power vested in three (3) or more trustees must be exercised by a majority.

(b) If there are two (2) or more trustees and they are unable to exercise a power under subsection (a) of this section:

(1) If there is an immediate risk of irreparable damage to the trust property or the interest of any beneficiary before court approval could be obtained, any trustee may exercise the power and petition the court for approval after the power has been exercised; but

(2) if there is no immediate risk of irreparable damage to the trust property or the interest of any beneficiary, any trustee may petition the court for permission to exercise the power, but none may exercise the power prior to obtaining permission from the court.

(c) A co-trustee is excused from liability incurred because of the exercise by a majority of a power vested in three (3) or more trustees if he:

(1) refuses to join in the exercise of the power and mails a written dissent to any of the co-trustees; or

(2) if the power was exercised without his knowledge, mails a written dissent to any co-trustee within a reasonable time after being informed that it has been exercised.

(d) A successor trustee, additional trustee or surviving or remaining co-trustee may exercise all powers previously vested in the predecessor trustee or co-trustee.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-5

Conflict of interest in exercise of powers

Sec. 5. (a) If the duty of the trustee in the exercise of any power conflicts with the trustee's individual interest or the trustee's interest as trustee of another trust, the power may be exercised only under one (1) of the following circumstances:

(1) The trustee receives court authorization to exercise the power with notice to interested persons as the court may direct.

(2) The trustee gives notice of the proposed action in accordance with IC 30-2-14-16 and:

(A) the trustee receives the written authorization of all interested persons to the proposed action within the period specified in the notice of the proposed action; or

(B) a beneficiary objects to the proposed action within the period specified in the notice of the proposed action, but the trustee receives court authorization to exercise the power.

(3) The exercise of the power is specifically authorized by the terms of the trust.

(b) For purposes of this section, the interest of an affiliate of the

trustee will be deemed to be the interest of the trustee.

(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by P.L. 61-2006, SEC.7.

IC 30-4-3-6

Duties of trustee

Sec. 6. (a) The trustee has a duty to administer a trust according to its terms.

(b) Unless the terms of the trust provide otherwise, the trustee also has a duty to do the following:

(1) Administer the trust in a manner consistent with IC 30-4-3.5.

(2) Take possession of and maintain control over the trust property.

(3) Preserve the trust property.

(4) Make the trust property productive for both the income and remainder beneficiary. As used in this subdivision, "productive" includes the production of income or investment for potential appreciation.

(5) Keep the trust property separate from the trustee's individual property and separate from or clearly identifiable from property subject to another trust.

(6) Maintain clear and accurate accounts with respect to the trust estate.

(7) Upon reasonable request, give the beneficiary complete and accurate information concerning any matter related to the administration of the trust and permit the beneficiary or the beneficiary's agent to inspect the trust property, the trustee's accounts, and any other documents concerning the administration of the trust.

(8) Take whatever action is reasonable to realize on claims constituting part of the trust property.

(9) Defend actions involving the trust estate.

(10) Supervise any person to whom authority has been delegated.

(11) Determine the trust beneficiaries by acting on information:

(A) the trustee, by reasonable inquiry, considers reliable; and

(B) with respect to heirship, relationship, survivorship, or any other issue relative to determining a trust beneficiary.

(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by P.L.198-1996, SEC.1; P.L.137-1999, SEC.2; P.L.238-2005, SEC.32.

IC 30-4-3-6.5

Liability of trustee for lack of knowledge of event affecting administration or distribution of trust

Sec. 6.5. If the happening of an event, including:

(1) marriage;

(2) divorce;

(3) performance of educational requirements; or

(4) death;

affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.
As added by P.L.238-2005, SEC.33.

IC 30-4-3-7

Self-dealing; transactions between trusts

Sec. 7. (a) Unless the terms of the trust provide otherwise or the transaction is authorized under IC 28-1-12-8 or IC 28-6.1-6-26, the trustee has a duty:

- (1) not to loan funds to the trustee or an affiliate;
- (2) not to purchase or participate in the purchase of trust property from the trust for the trustee's own or an affiliate's account;
- (3) not to sell or participate in the sale of the trustee's own or an affiliate's property to the trust; or
- (4) if a corporate trustee, not to purchase for or retain in the trust its own or a parent or subsidiary corporation's stock, bonds, or other capital securities. However, the trustee may retain such securities already held in trusts created prior to September 2, 1971.

(b) Unless the terms of the trust provide otherwise, a corporate trustee may invest in, purchase for, or retain in the trust its own or an affiliate's obligations, including savings accounts and certificates of deposit, without the investment, purchase, or retention constituting a conflict of interest under section 5 of this chapter.

(c) Unless the terms of the trust provide otherwise, a corporate trustee does not violate subsection (a) by investing in, purchasing for, or retaining in the trust its own or an affiliate's obligations, including savings accounts and certificates of deposit, if the payment of each obligation is fully insured by the Bank Insurance Fund or the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or any insurer approved by the department of financial institutions under IC 28-7-1-31.5.

(d) If the terms of the trust permit the trustee to deal with a beneficiary for the trustee's own account, the trustee has a duty to deal fairly with and to disclose to the beneficiary all material facts related to the transaction which the trustee knows or should know.

(e) Unless the terms of the trust provide otherwise, the trustee may sell, exchange, or participate in the sale or exchange of trust property from one (1) trust to the trustee as trustee of another trust, provided the sale or exchange is fair and reasonable with respect to the beneficiaries of both trusts and the trustee discloses to the beneficiaries of both trusts all material facts related to the sale or exchange which the trustee knows or should know.

(f) This section does not prohibit a trustee from enforcing or fulfilling any enforceable contract or agreement:

- (1) executed during the settlor's lifetime; and
- (2) between the settlor and the trustee in the trustee's individual

capacity.

(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by Acts 1982, P.L.171, SEC.118; P.L.174-1986, SEC.1; P.L.8-1991, SEC.34; P.L.176-1996, SEC.34; P.L.238-2005, SEC.34; P.L.202-2007, SEC.3; P.L.226-2007, SEC.22.

IC 30-4-3-8

Duties of co-trustees

Sec. 8. (Duties of Co-Trustee)

Unless the terms of the trust provide otherwise, if there are two (2) or more trustees, each has a duty to:

- (a) participate in the administration of the trust;
- (b) take whatever action is reasonable to prevent a co-trustee from committing a breach of trust; and
- (c) take whatever action is reasonable to compel a co-trustee to redress a breach of trust.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-9

Duty of trustee under control of third persons

Sec. 9. (Duty of Trustee under Control of Third Person)

(a) If the terms of the trust give a person a power to direct the trustee in the administration of the trust and those terms expressly direct the trustee to rely, or relieve the trustee from liability if he does rely, on that person's directions, the trustee may do so and will incur no liability for any loss to the trust estate.

(b) If the terms of the trust give a person a power to direct the trustee in the administration of the trust, except as provided in subsection (a) of this section:

(1) If the person holds the power as a fiduciary, the trustee has a duty to refuse to comply with any direction which he knows or should know would constitute a breach of a duty owed by that person as a fiduciary.

(2) If the person holds the power solely for his own benefit, the trustee may refuse to comply only if the attempted exercise of the power violates the terms of the trust with respect to that power.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-10

Liability to third persons

Sec. 10. (Liability to Third Persons)

(a) Unless the terms of the contract or other non-negotiable obligation expressly provide otherwise, the trustee is not personally liable on a contract or other non-negotiable obligation with a third person made by him in the administration of the trust.

(b) When a third person is entitled to compensation for injury suffered in the course of the administration of the trust:

(1) If the injury is the result of the trustee's personal act or omission as trustee, the trustee will be personally liable and the injured party will be entitled to satisfaction of his claim from the

trustee's individual property first and then, to the extent the claim is yet unsatisfied, from the trust estate.

(2) If the injury is the result of the act or omission of an agent of the trustee, and the agent was properly selected and supervised and there was no improper delegation of authority to the agent, the injured party will be entitled to satisfaction of his claim from the trust estate first and then, to the extent that the claim is yet unsatisfied, from the trustee's individual property.

(3) If the injury is the result of the act or omission of the settlor or his agent, and not that of the trustee or his agent, the injured party will be entitled to satisfaction of his claim from the trust estate and not from the trustee's individual property.

(4) The question of ultimate liability as between the trust estate and the trustee individually, if it is to be determined, shall be determined in a proceeding for accounting, surcharge or indemnification.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-11

Potential of liability of trustee to beneficiary; remedies; removal of trustee

Sec. 11. (a) The trustee is accountable to the beneficiary for the trust estate.

(b) If the trustee commits a breach of trust, the trustee is liable to the beneficiary for:

- (1) any loss or depreciation in the value of the trust property as a result of the breach;
- (2) any profit made by the trustee through the breach;
- (3) any reasonable profit which would have accrued on the trust property in the absence of a breach; and
- (4) reasonable attorney's fees incurred by the beneficiary in bringing an action on the breach.

(c) In the absence of a breach of trust, the trustee has no liability to the beneficiary either for any loss or depreciation in value of the trust property or for a failure to make a profit. However, if:

- (1) a loss or depreciation in value of the trust property; or
- (2) the trust's failure to make a profit;

is the result of a violation by the trustee of IC 28-1-12-8 or IC 28-6.1-6-26, one (1) or more beneficiaries of the trust may petition the court for any remedy described in subsection (b) or for removal of the trustee under section 22(a)(4) of this chapter, regardless of whether the transaction under IC 28-1-12-8 or IC 28-6.1-6-26 constitutes or involves a breach of trust. The court may award one (1) or more remedies described in subsection (b) or remove the trustee, or both, if the court determines that the remedy or the removal of the trustee is in the best interests of all beneficiaries of the trust. The burden of proof is on the one (1) or more petitioning beneficiaries to demonstrate that the remedy or the removal of the trustee is in the best interests of all beneficiaries of the trust.

(d) The trustee is liable to the beneficiary for acts of an agent which, if committed by the trustee, would be a breach of the trust if the trustee:

- (1) directs or permits the act of the agent;
- (2) delegates the authority to perform an act to the agent which the trustee is under a duty not to delegate;
- (3) fails to use reasonable care in the selection or retention of the agent;
- (4) fails to exercise proper supervision over the conduct of the agent;
- (5) approves, acquiesces in, or conceals the act of the agent; or
- (6) fails to use reasonable effort to compel the agent to reimburse the trust estate for any loss or to account to the trust estate for any profit.

(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by P.L.202-2007, SEC.4; P.L.226-2007, SEC.23; P.L.3-2008, SEC.228.

IC 30-4-3-12

Liability for breach of trust by co-trustee

Sec. 12. (Liability for Breach of Trust by Co-Trustee)

A trustee becomes liable to the beneficiary for a breach of trust committed by his co-trustee if he:

- (a) participates in the breach of trust;
- (b) improperly delegates the administration of the trust to the co-trustee;
- (c) approves, acquiesces in or conceals a breach of trust;
- (d) enables the co-trustee to commit a breach of trust by his failure to exercise care in the administration of the trust; or
- (e) fails to use reasonable effort to compel the co-trustee, or, if the co-trustee has died, his estate, to redress a breach of trust.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-13

Liability of a successor trustee

Sec. 13. (Liability of a Successor Trustee)

A successor trustee becomes liable for a breach of trust of his predecessor if he:

- (a) fails to take whatever action is necessary to compel the predecessor trustee to deliver the trust property; or
- (b) fails to make a reasonable effort to compel a redress of a breach of trust committed by the predecessor trustee.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-14

Contribution and indemnity

Sec. 14. (Contribution and Indemnity)

(a) Except as stated in subsection (b) of this section, if two (2) or more co-trustees are liable to the beneficiary, each co-trustee is entitled to contribution from the other, provided, however, that:

- (1) if one (1) co-trustee is substantially more at fault than another,

the co-trustee who is most at fault is not entitled to contribution, and the other co-trustee is entitled to indemnity from him; or

(2) if one (1) of the co-trustees receives a profit from the administration of the trust or a benefit from a breach of trust, the other co-trustee is entitled to indemnity from him to the extent of the profit or benefit received by that co-trustee.

(b) If a trustee commits a breach of trust in bad faith, he is not entitled to either contribution or indemnity from his co-trustee.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-15

Remedies of trustee against third persons

Sec. 15. (Remedies of the Trustee against Third Persons)

The trustee may maintain in his representative capacity a civil action for any legal or equitable remedy against a third person that he could maintain in his own right if he were the owner.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-16

Remedies among co-trustees

Sec. 16. (Remedies among Co-Trustees)

Any trustee may maintain an action against a co-trustee to:

- (a) compel him to perform his duties under the trust;
- (b) enjoin him from committing a breach of trust; or
- (c) compel him to redress a breach of trust committed by him.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-17

Remedies of trustee against beneficiary

Sec. 17. (Remedies of Trustee against Beneficiary)

The trustee may maintain a civil action against a beneficiary for any legal or equitable remedy, including, among others, a charge against the beneficiary's interest in the trust estate, in any case in which the beneficiary is liable under 30-4-3-20.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-18

Other remedies of the trustee

Sec. 18. (Other Remedies of the Trustee)

(a) If there is reasonable doubt with respect to any matter relating to the administration of the trust, the trustee is entitled to be instructed by the court.

(b) The trustee is entitled to a review and settlement by the court of the accounts of his administration.

(c) The trustee is entitled to a lien against the trust estate:

(1) for any advances made by him under 30-4-3-3(a) (10); and

(2) for the value of his services for which he is entitled to, but has not received, compensation as provided either under the terms of the trust or under 30-4-5-16.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-19

Relief of trustee's liability for breach of trust

Sec. 19. (Relief of Trustee's Liability for Breach of Trust)

(a) Unless the terms of the trust provide otherwise or unless if to do so would frustrate, impair or defeat the purposes of the trust, a beneficiary, except as provided in subsection (b) of this section, relieves the trustee from liability for breach of trust as to that beneficiary's interest if he:

(1) consents to or acquiesces in the act or omission which constitutes a breach of trust;

(2) agrees to release or discharge the trustee from liability for breach of trust after the act or omission constituting the breach occurs;

(3) elects, under an option to affirm or reject a transaction entered into as a breach of trust, to affirm the transaction; or

(4) participates in the act of the trustee which constitutes the breach of trust.

(b) The consent, acquiescence, agreement to release or discharge, affirmance, or participation by a beneficiary will not relieve the trustee from liability if:

(1) at the time it was given the beneficiary was under an incapacity;

(2) at the time it was given the beneficiary did not know of his rights or all of the material facts which the trustee knew or should have known;

(3) it was induced by the trustee's improper conduct;

(4) the trustee had an adverse interest in the transaction and the transaction was not fair and reasonable; or

(5) the trustee pays or delivers a beneficiary's interest to that beneficiary contrary to the terms of a trust with protective provisions.
(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-20

Liability of beneficiary

Sec. 20. (Liability of Beneficiary)

(a) A beneficiary is liable for loss to the trust estate if he has:

(1) misappropriated or otherwise wrongfully dealt with the trust property;

(2) expressly consented to, participated in or agreed with the trustee to be liable for a breach of trust committed by the trustee;

(3) failed to repay an advance or loan of trust funds;

(4) failed to repay a distribution or disbursement from the trust estate in excess of that to which he is entitled; or

(5) breached a contract to pay money or deliver property to the trustee to be held by the trustee as part of the trust estate.

(b) Unless the terms of the trust provide otherwise a beneficiary of a trust is liable to the extent of his interest in the trust estate for the amount of any debt owed the trust estate by him.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-21

Remedies of beneficiary against third persons

Sec. 21. (Remedies of the Beneficiary against Third Persons)

If the trustee has a claim against a third person for which he may maintain a civil action under 30-4-3-15 but he is unable, unwilling or neglects to commence the action within a reasonable time not to exceed thirty (30) days after written demand, any beneficiary may commence the action in his own right for the benefit of all the beneficiaries.

(Formerly: Acts 1971, P.L.416, SEC.4; Acts 1972, P.L.11, SEC.13.)

IC 30-4-3-22

Remedies of the beneficiary against the trustee

Sec. 22. (Remedies of the Beneficiary against the Trustee)

(a) A beneficiary of a trust may maintain an action:

- (1) to compel the trustee to perform his duties;
- (2) to enjoin the trustee from committing an act which may be a breach of trust;
- (3) to compel the trustee to redress a breach of trust; or
- (4) to remove a trustee for cause and to appoint a successor trustee.

(b) If the trustee acquires property and wrongfully holds it outside the trust, a beneficiary is entitled at his option to either:

- (1) require the property to be transferred to the trust or
- (2) impose an equitable lien upon it to secure his claim for damages for breach of trust.

(c) If the trustee commingles the trust funds or property with his own funds or property or converts the trust fund or property into another form which is wrongfully held outside the trust:

(1) if the fund or property can be traced and identified, the beneficiary is entitled to restoration of the fund or property to the trust; or

(2) if the fund or property cannot be traced and identified,

(A) In a case of commingling of funds or property, the beneficiary is entitled to a lien against the trustee's individual property from the date and in the amount of the fund or the value of the property at the time of the commingling.

(B) In a case of conversion of property, the beneficiary is entitled to a lien against the trustee's individual property from the date and according to the value of the property at the time of the conversion.

(d) If the trustee is also a beneficiary, the other beneficiaries will be entitled to a charge against the trustee's beneficial interest to secure their claims against him for a breach of trust.

(e) If a beneficiary successfully maintains an action under subsection (a) of this section or is entitled to a judgment under subsections (b), (c), or (d) of this section, he is entitled to a judgment for reasonable attorney's fees.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-23

Remedy of a beneficiary against a co-beneficiary

Sec. 23. (Remedy of a Beneficiary against a Co-Beneficiary)

(a) If no recovery can be made from the trustee for a breach of trust, a beneficiary may maintain an action against a co-beneficiary who consented to the breach for a redress of the breach, if the co-beneficiary:

(1) knows or should have known that the act of the trustee to which he consented constituted a breach of trust;

(2) agreed with the trustee or the other beneficiaries to be liable for any loss which might result from the act constituting the breach; or

(3) participated in the act constituting the breach.

(b) The consenting co-beneficiary shall be personally liable for any loss for which the other beneficiaries are entitled to redress under subsection (a) of this section and his beneficial interest in the trust estate may be charged for the amount of the loss if the court deems it proper to do so.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-24

Repealed

(Repealed by P.L.238-2005, SEC.63.)

IC 30-4-3-24.4

Modification or termination of trust by court

Sec. 24.4. (a) The court may modify the administrative or dispositive terms of a trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

(b) The court may modify the administrative terms of a trust or terminate the trust if:

(1) the purpose of the trust has been fulfilled; or

(2) continuation of the trust on the trust's existing terms would:

(A) be illegal, impossible, impracticable, or wasteful; or

(B) impair the trust's administration.

(c) If the trust terminates under this section, the court shall direct the trustee to distribute the trust property in a manner consistent with the purposes of the trust.

(d) The court may modify the terms of a trust to give the settlor the power to revoke and modify the trust if the:

(1) settlor intended to reserve the power;

(2) settlor believed the power was reserved; and

(3) power was omitted from the terms of the trust by mistake.

As added by P.L.238-2005, SEC.35.

IC 30-4-3-24.5

Termination by trustee of trust with value less than \$75,000

Sec. 24.5. (a) This section does not apply to an easement for conservation or preservation.

(b) This subsection applies to a trust consisting of trust property having a total value of less than seventy-five thousand dollars (\$75,000). Unless the terms of the trust provide otherwise, the trustee may terminate the trust:

- (1) if the trustee concludes the value of the trust property is insufficient to justify the cost of administration; and
- (2) after providing notice of the trust termination to qualified beneficiaries.

(c) The court may:

- (1) modify or terminate a trust; or
- (2) remove the trustee and appoint a different trustee;

if the court determines that the value of the trust property is insufficient to justify the cost of administration. If a trust terminates under this subsection, the court shall direct the trustee to distribute the trust property in a manner consistent with the purposes of the trust.

(d) If a trust terminates under subsection (b), the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

As added by P.L.238-2005, SEC.36.

IC 30-4-3-25

Rescission and reformation

Sec. 25. (Rescission and Reformation)

Upon petition by an interested party, the court may rescind or reform a trust according to the same general rules applying to rescission or reformation of non-trust transfers of property.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-25.5

Distribution of terminated trust; payment of federal and state taxes

Sec. 25.5. (a) This section applies beginning October 1, 2009.

(b) Except as provided in subsection (d), when a trust created to comply with 42 U.S.C. 1396p(d)(4)(A) is terminated, the trustee shall not distribute trust property to any person entitled to payment from the trust until the office of Medicaid policy and planning has been fully reimbursed for assistance rendered to the person for whom the trust was created.

(c) The primary purpose of a trust described in subsection (b) is to ensure that the state is repaid Medicaid benefits provided in return for excepting the trust from the general requirements of 42 U.S.C. 1396(d).

(d) A trustee may pay federal and state taxes from the trust before reimbursing the office of Medicaid policy and planning.

As added by P.L.14-2009, SEC.3.

IC 30-4-3-26

Power to direct a deviation from the terms of the trust

Sec. 26. (Power to Direct a Deviation from the Terms of the Trust)

(a) Upon petition by the trustee or a beneficiary, the court shall direct or permit the trustee to deviate from a term of the trust if, owing to circumstances not known to the settlor and not anticipated by him, compliance would defeat or substantially impair the accomplishment of the purposes of the trust. In that case, if necessary to carry out the purposes of the trust, the court may direct or permit the trustee to do acts which are not authorized or are forbidden by the terms of the trust, or may prohibit the trustee from performing acts required by the terms of the trust.

(b) The trustee may deviate from the terms of the trust as provided in subsection (a) of this section, without first obtaining the permission of the court, if there is an emergency or if he reasonably believes that there is an emergency, and before deviating he has no opportunity to apply to the court for permission to deviate.

(c) The trustee is liable for any loss or damage which results if he fails to apply to the court for permission to deviate from the terms of the trust, when he knows or should know that, owing to circumstances not known to the settlor and not anticipated by him, compliance will defeat or substantially impair the accomplishment of the purposes of the trust.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-27

Cy pres doctrine

Sec. 27. (a) If property is given to a trust for a benevolent public purpose and the property is to be applied to a particular charitable purpose, and it is or becomes impossible, impracticable, wasteful, or illegal to carry out the particular purpose, and if the settlor manifested a more general intention to devote the property to charitable purposes, the trust need not fail, but the court may direct the application of the property to some charitable purpose which falls within the general charitable intention of the settlor.

(b) The terms of a charitable trust that would result in the distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection (a) to apply the cy pres doctrine to modify or terminate the trust only if, when the provision takes effect:

- (1) the trust property is to revert to the settlor and the settlor is still alive; or
- (2) less than twenty-one (21) years have elapsed since the trust was created.

(c) A living heir of the settlor or a living beneficiary named in the original trust agreement may present evidence to the court of:

- (1) the heir's or beneficiary's opinion of the settlor's intent; and
- (2) the heir's or beneficiary's wishes;

regarding the property given in trust.

(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by P.L.41-2000, SEC.3; P.L.238-2005, SEC.37.

IC 30-4-3-28

Repealed

(Repealed by P.L.238-2005, SEC.63.)

IC 30-4-3-29

Removal, resignation, and appointment of trustees

Sec. 29. (a) A trustee may be removed as follows:

- (1) By the court.
- (2) By the person, if any, who by the terms of the trust is authorized to remove the trustee.
- (3) Unless the terms of the trust instrument provide otherwise, by a beneficiary of the trust whose petition is granted by the court under subsection (d).

(b) Unless the terms of the trust requires a different time, the trustee may resign:

- (1) if the trustee gives at least thirty (30) days notice to:
 - (A) the qualified beneficiaries;
 - (B) the settlor, if living; and
 - (C) all cotrustees; or
- (2) with the approval of the court.

In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property. Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

(c) For good cause shown, the court may at any time appoint a temporary trustee for such period of time, and to perform such duties, as the court may direct.

(d) This subsection applies only to a trust executed after June 30, 1996. A beneficiary of a trust may petition the court for the removal of a corporate trustee if there has been a change in control of the corporate trustee after the date of the execution of the trust. The court may remove the corporate trustee if the court determines the removal is in the best interests of all the beneficiaries of the trust. For purposes of this subsection a change in control of the corporate trustee occurs whenever a person or group of persons acting in concert acquires the beneficial ownership of an aggregate of at least twenty-five percent (25%) of the outstanding shares of voting stock of:

- (1) a trustee; or
- (2) a corporation controlling a trustee;

after June 30, 1996.

(e) A trustee who has resigned or been removed shall expeditiously deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to the trust property. A trustee who has resigned or been removed has the duties of trustee and the powers necessary to protect the trust property:

- (1) unless a cotrustee remains in the office of trustee or the court orders otherwise; and
- (2) until the trust property is delivered to a successor trustee or

other person entitled to the trust property.
(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by P.L.199-1996, SEC.1; P.L.165-2002, SEC.6; P.L.238-2005, SEC.38.

IC 30-4-3-29.5

Corporate trustee that acquires trust due to change in control

Sec. 29.5. (a) Except as provided in subsection (b) and unless the trust instrument provides otherwise, a corporate trustee that acquires a trust as a result of a change in control may not:

- (1) decline to accept the trust property;
- (2) resign as trustee; or
- (3) otherwise refuse to administer the trust;

based upon the amount of property or funds held in the trust estate.

(b) A court may, at the court's discretion, allow a trustee described in subsection (a) to resign if:

- (1) the trustee petitions the court; and
- (2) the court determines that the trustee's resignation will be in the best interests of all the beneficiaries of the trust.

As added by P.L.199-1996, SEC.2.

IC 30-4-3-30

Effect of this article on the court's equity powers

Sec. 30. (Effect of This Article on the Court's Equity Powers)

Except as otherwise provided in this article, the article shall not be construed to limit the general equity powers of the court over the administration of trusts.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-31

Judicial modification of trusts for benevolent public purpose and certain transfers not in trust; federal compliance

Sec. 31. (a) This section is enacted for the purpose of confirming the power of Indiana courts to modify trusts for a benevolent public purpose, and transfers not in trust as described in Section 170(f)(3)(A) of the Internal Revenue Code, to effect compliance with Sections 170, 664, 2055, 2106, and 2522 of the Internal Revenue Code so that these trusts and transfers may obtain the income tax exemption afforded by Section 664 of the Internal Revenue Code and donors or other contributors of gifts or contributions to these trusts and transfers may secure the income, estate, and gift tax charitable deductions granted by Sections 170, 2055, 2106, and 2522 of the Internal Revenue Code.

(b) Upon petition, any court of general or probate jurisdiction in Indiana may, in its discretion, modify the instrument of an inter vivos or testamentary trust for a benevolent public purpose, or transfer not in trust as described in Section 170(f)(3)(A) of the Internal Revenue Code, so that the trust or transfer complies with and conforms to the provisions of Sections 170, 664, 2055, 2106, and 2522 of the Internal Revenue Code and regulations thereunder from the date of the trust's or transfer's creation, if consent to the modification is given by:

- (1) all beneficiaries of the trust or transfer; and
- (2) the settlor of the trust or transfer if the settlor is living at the date of modification.

(Formerly: Acts 1973, P.L.294, SEC.1.) As amended by Acts 1977, P.L.301, SEC.1; Acts 1982, P.L.180, SEC.1; P.L.2-1987, SEC.46; P.L.41-2000, SEC.4.

IC 30-4-3-32

Trustee's liability for breach of trust

Sec. 32. (a) Except as stated in subsections (b) and (c), the trustee, by provisions of the trust, can be relieved of liability for breach of trust.

(b) A provision in the trust instrument is not effective to relieve the trustee of liability for breach of trust committed in bad faith, intentionally, or with reckless indifference to the interest of the beneficiary, or of liability for any profit that the trustee has derived from a breach of trust.

(c) A provision that relieves the trustee of liability for breach of trust is ineffective if it is inserted in the trust instrument as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

As added by P.L.149-1984, SEC.1.

IC 30-4-3-33

Trustee vacancies; priority for filling vacancy

Sec. 33. (a) In addition to the terms of a trust regarding the circumstances under which a trustee vacancy occurs, a trustee vacancy occurs if:

- (1) a person designated as trustee does not accept being trustee;
- (2) a person designated as trustee cannot be identified or does not exist;
- (3) a trustee resigns;
- (4) a trustee is disqualified or removed;
- (5) a trustee dies; or
- (6) the person designated as trustee lacks capacity.

(b) Except as provided in the terms of a trust, if a trust has at least two (2) cotrustees and at least one (1) cotrustee remains in office, a cotrustee vacancy is not required to be filled. A cotrustee vacancy must be filled if the trust has no remaining cotrustee.

(c) Except as provided in the terms of a trust, a trustee vacancy of a noncharitable trust that is required to be filled must be filled according to the following priority:

- (1) A person designated in the terms of the trust to act as successor trustee.
- (2) A person appointed by a majority of the qualified beneficiaries.
- (3) A person appointed by the court.

(d) Except as provided in the terms of a trust, a trustee vacancy of a charitable trust that is required to be filled must be filled according to the following priority:

(1) A person designated in the terms of the trust to be successor trustee.

(2) A person:

(A) selected by the charitable organizations expressly designated to receive distributions under the terms of the trust; and

(B) whose selection is approved by the attorney general.

(3) A person appointed by the court.

(e) Regardless of whether a trustee vacancy exists or is required to be filled, the court may appoint an additional trustee or a special fiduciary if the court considers the appointment necessary for the administration of the trust.

As added by P.L.238-2005, SEC.39.

IC 30-4-3-34

Petition to determine heirs and interests in trust estate

Sec. 34. (a) At any time during the administration of a trust, a trustee or any interested person may petition the court to determine the:

(1) heirs of:

(A) the settlor; or

(B) any person named in the trust; and

(2) respective interests of the persons described in subdivision

(1) in the trust estate or any part of the trust estate.

(b) If a petition is filed under this section, the court shall fix the time for a hearing on the petition. Notice of the hearing shall be given in the following manner:

(1) Personally or by mail to persons who are named in the trust and:

(A) are known to claim;

(B) are believed to claim; or

(C) have;

an interest in the trust estate or any part of the trust estate as heir or through an heir of the settlor.

(2) By publication to any unknown heirs.

(c) When a hearing is held on the petition, the issues set forth in the petition under subsection (a) may be determined by:

(1) competent evidence; or

(2) affidavit, if there are no objections.

A record shall be made of the oral evidence. The record and affidavits must be a part of the files in the trust proceeding.

(d) If there is satisfactory proof, the court shall make a decree that determines the issues set forth in the petition under subsection (a). The court's decree is conclusive of the facts determined by the court with regard to any interested person who has been notified personally or by mail in accordance with subsection (b)(1), subject to the interested person's right of appeal.

(e) An act of the trustee is valid with regard to the rights and liabilities of a purchaser, a lessee, or other person who deals with the trustee for value and in good faith, if the trustee acts in:

- (1) accordance with the facts as determined by the court's decree under subsection (d);
- (2) accordance with the law; and
- (3) good faith.

As added by P.L.238-2005, SEC.40.

IC 30-4-3-35

Matrimonial trusts; election; effect of the death of a spouse or the dissolution of the marriage; revocation

Sec. 35. (a) As used in this section, "joint matrimonial trust" means a single inter vivos trust established under this section by settlors who are related as husband and wife.

(b) As used in this section, "matrimonial property" means real property that:

- (1) is subject to a written election to treat the property as matrimonial property under this section; and
- (2) is owned by a matrimonial trust.

(c) As used in this section, "matrimonial trust" means a trust established under this section to own matrimonial property.

(d) As used in this section, "separate matrimonial trust" means a separate trust that is also a matrimonial trust.

(e) As used in this section, "separate trust" means a trust established by one (1) individual.

(f) A matrimonial trust may be established:

- (1) jointly by a husband and wife; or
- (2) in two (2) or more separate trusts.

(g) A husband and wife may elect to treat real property as matrimonial property with a written statement of the election:

- (1) in an instrument or instruments conveying the real property to a matrimonial trust or trusts; or
- (2) in a separate writing that must be recorded in the county where the real property is situated and indexed in the records of the county recorder's office to the instrument or instruments that convey the real property to a matrimonial trust or trusts.

(h) A guardian of a husband and wife may make an election under this section:

- (1) without the approval of the court if the guardian has unlimited powers under IC 29-3-8-4; and
- (2) with the approval of the court in all other cases.

(i) An attorney in fact of a husband and wife may make an election under this section under the powers conferred upon the attorney in fact by IC 30-5-5-2 if the power of attorney is recorded in the county where the real property is situated and indexed in the records of the county recorder's office to the instrument or instruments that convey the real property to a matrimonial trust or trusts.

(j) An interest in matrimonial property is not severable during the marriage of the husband and wife unless:

- (1) both the husband and wife join in the severance in writing;
- or

(2) a third party owns and forecloses a mortgage or other lien against the interests of both the husband and wife in the matrimonial property.

(k) Notwithstanding any other provision of this section, the legal rights of a lienholder that exist at the time of an election to treat the real property subject to the lien as matrimonial property may not be subject to a severance described in subsection (j) without the lienholder's written consent.

(l) A matrimonial trust established by an individual continues to be a matrimonial trust after the death of the settlor if the deceased settlor's separate trust provides to the surviving spouse:

(1) a life estate;

(2) an interest that qualifies for a deduction from the gross estate of the decedent under Section 2056 of the Internal Revenue Code regardless of whether an election is made to qualify the interest for the deduction; or

(3) in some respect the current right to occupy or receive rent, royalties, or other kinds of income with respect to the matrimonial property.

(m) A separate matrimonial trust ceases to be a matrimonial trust upon the termination of payments to the surviving spouse as a result of the surviving spouse's death or the surviving spouse's disclaimer of all interests in the separate matrimonial trust.

(n) A joint matrimonial trust ceases to be a matrimonial trust upon the death of one (1) of the settlors.

(o) A matrimonial trust ceases to be a matrimonial trust upon the dissolution of the marriage of the settlors.

(p) A husband and wife may revoke a matrimonial trust by together executing a writing expressing the revocation.

As added by P.L.6-2010, SEC.18.

IC 30-4-3-36

Trust decanting; notice; rules of construction

Sec. 36. (a) Unless a trust expressly provides otherwise, a trustee who has absolute power under the terms of a trust (referred to in this section as the "first trust") to invade the principal of the trust to make distributions to or for the benefit of one (1) or more persons may instead exercise the power by appointing all or part of the principal of the first trust in favor of a trustee of another trust (referred to in this section as the "second trust") for the benefit of one (1) or more persons under the same trust instrument or under a different trust instrument as long as:

(1) the beneficiaries of the second trust are the same as the beneficiaries of the first trust;

(2) the second trust does not reduce any income, annuity, or unitrust interest in the assets of the first trust; and

(3) if any contributions to the first trust qualified for a marital or charitable deduction for purposes of the federal income, gift, or estate taxes, the second trust does not contain any provision that, if included in the first trust, would have prevented the first

trust from qualifying for a deduction or reduced the amount of a deduction.

(b) For purposes of this section, an absolute power to invade principal includes a power to invade principal that is not limited to specific or ascertainable purposes, such as health, education, maintenance, and support regardless of whether the term "absolute" is used.

(c) The exercise of a power to invade principal under subsection (a) must be by an instrument that is:

- (1) in writing;
- (2) signed and acknowledged by the trustee; and
- (3) filed with the records of the first trust.

(d) The exercise of a power to invade principal under subsection (a) is considered the exercise of a power of appointment, other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate. The exercise of the power does not extend the time at which the permissible period of the rule against perpetuities begins and the law that determines the permissible period of the rule against perpetuities of the first trust.

(e) The trustee shall notify in writing all qualified beneficiaries of the first trust at least sixty (60) days before the effective date of the trustee's exercise of the power to invade principal under subsection (a) of the manner in which the trustee intends to exercise the power. A copy of the proposed instrument exercising the power satisfies the trustee's notice obligation under this subsection. If all qualified beneficiaries waive the notice period by signed written instrument delivered to the trustee, the trustee's power to invade principal may be exercised immediately. The trustee's notice under this subsection does not limit the right of any beneficiary to object to the exercise of the trustee's power to invade principal, except as otherwise provided by this article.

(f) The exercise of the power to invade principal under subsection (a) is not prohibited by a spendthrift clause or by a provision in the trust instrument that prohibits amending or revoking the trust.

(g) This section is not intended to create or imply a duty to exercise a power to invade principal. No inference of impropriety may be made as a result of a trustee not exercising the power to invade principal conferred under subsection (a).

(h) This section may not be construed to abridge the right of any trustee who has a power of invasion to appoint property in further trust that arises under the terms of the first trust, under any other provision of this article or any other statute, or under common law.
As added by P.L.6-2010, SEC.19.

IC 30-4-3-37

Unclaimed trust shares; disposition procedures

Sec. 37. (a) If a beneficiary of a trust cannot be found after a reasonable search, the trustee may file a petition setting out the facts of the unsuccessful search. The court may order the trustee to sell the shares of the trust to which the beneficiary is entitled and to pay the

proceeds to the clerk of the court. The clerk shall hold the proceeds for the use and benefit of the person or persons thereafter determined by law to be entitled to the proceeds.

(b) If a trustee pays any money to the clerk of the court under this section, the trustee shall file a receipt with the court. Filing the receipt is sufficient to discharge the trustee in the same manner and to the same extent as though the trustee had paid or distributed the appropriate share of the trust to the unlocated beneficiary.

(c) This section does not apply to stocks, dividends, capital credits, patronage, refunds, utility deposits, membership fees, account balances, or book equities for which the owner cannot be found that are the result of distributable savings of a rural electric membership corporation formed under IC 8-1-13, a rural telephone cooperative corporation formed under IC 8-1-17, or an agricultural cooperative association formed under IC 15-12-1.

As added by P.L.6-2010, SEC.20.

IC 30-4-3.5

Chapter 3.5. Indiana Uniform Prudent Investor Act

IC 30-4-3.5-1

Compliance with prudent investor rule

Sec. 1. (a) Except as otherwise provided in subsection (b), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this chapter.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provision of the trust.

(c) This chapter applies to a trustee or escrow agent, acting as fiduciary, of:

- (1) a perpetual care fund or an endowment care fund established under IC 23-14-48-2;
- (2) a prepaid funeral plan or funeral trust established under IC 30-2-9;
- (3) a funeral trust established under IC 30-2-10; or
- (4) a trust or escrow account created from payments of funeral, burial services, or merchandise in advance of need, as described in IC 30-2-13.

As added by P.L.137-1999, SEC.3. Amended by P.L.61-2008, SEC.14.

IC 30-4-3.5-2

Prudent investor rule

Sec. 2. (a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are those of the following that are relevant to the trust or its beneficiaries:

- (1) General economic conditions.
- (2) The possible effect of inflation or deflation.
- (3) The expected tax consequences of investment decisions or strategies.
- (4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property.
- (5) The expected total return from income and the appreciation

of capital.

(6) Other resources of the beneficiaries.

(7) Needs for liquidity, regularity of income, and preservation or appreciation of capital.

(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one (1) or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this chapter.

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use the special skills or expertise.

As added by P.L.137-1999, SEC.3.

IC 30-4-3.5-3

Diversification of investments

Sec. 3. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

As added by P.L.137-1999, SEC.3.

IC 30-4-3.5-4

Review of trust assets

Sec. 4. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this chapter.

As added by P.L.137-1999, SEC.3.

IC 30-4-3.5-5

Trust managed in interest of beneficiaries

Sec. 5. A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

As added by P.L.137-1999, SEC.3.

IC 30-4-3.5-6

Impartial management

Sec. 6. If a trust has at least two (2) beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

As added by P.L.137-1999, SEC.3.

IC 30-4-3.5-7

Costs

Sec. 7. In investing and managing trust assets, a trustee may only

incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

As added by P.L.137-1999, SEC.3.

IC 30-4-3.5-8

Determination of compliance with prudent investor rule

Sec. 8. Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

As added by P.L.137-1999, SEC.3.

IC 30-4-3.5-9

Delegation of functions by trustee

Sec. 9. (a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

- (1) selecting an agent;
- (2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
- (3) reviewing the agent's actions periodically in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care.

(c) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of Indiana, an agent submits to the jurisdiction of the courts of Indiana.

As added by P.L.137-1999, SEC.3.

IC 30-4-3.5-10

Authorization of investments or strategies

Sec. 10. The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this chapter:

- (1) "Investments permissible by law for investment of trust funds".
- (2) "Legal investments".
- (3) "Authorized investments".
- (4) "Using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital".
- (5) "Prudent man rule".
- (6) "Prudent trustee rule".
- (7) "Prudent person rule".
- (8) "Prudent investor rule".

As added by P.L.137-1999, SEC.3.

IC 30-4-3.5-11

Applicability of chapter

Sec. 11. This chapter applies to trusts existing on and created after June 30, 1999. As applied to trusts existing on June 30, 1999, this chapter governs only decisions or actions occurring after June 30, 1999.

As added by P.L.137-1999, SEC.3.

IC 30-4-3.5-12

Purpose of chapter

Sec. 12. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among the states enacting it.

As added by P.L.137-1999, SEC.3.

IC 30-4-3.5-13

Short title

Sec. 13. This chapter may be cited as the "Indiana Uniform Prudent Investor Act".

As added by P.L.137-1999, SEC.3.

IC 30-4-4

Chapter 4. Rules Governing the Rights of Third Parties

IC 30-4-4-1

Presumption of trustee's authority

Sec. 1. (Presumption of Trustee's Authority)

(a) Except as provided in subsection (b) of this section, any third person dealing with the trustee or assisting him in conducting a transaction:

(1) may assume without inquiry that the trustee has the powers he purports to exercise and has exercised them properly; and

(2) shall not be responsible for the application of money or property paid or delivered to the trustee.

(b) If the third person has actual knowledge that the trustee is exceeding his powers or is improperly exercising them, that person will not be protected under subsection (a) of this section.

(c) If a trust which includes real estate is a public record in the county in which the real estate is situated, a third person dealing with the trustee with respect to that real estate shall be deemed to have actual notice of the terms of the trust.

(Formerly: Acts 1971, P.L.416, SEC.5.)

IC 30-4-4-2

Transfers by the trustee to third persons

Sec. 2. (Transfers by the Trustee to Third Persons)

(a) If, in transferring an interest in trust property to a third party, the trustee is not committing a breach of trust, the transferee holds the interest free of the trust and incurs no liability to the beneficiary.

(b) A third person, to whom an interest in trust property is transferred by the trustee in breach of trust, takes his interest free of the trust if he:

(1) takes for value and without notice of the breach of trust; and

(2) is not taking part in what he knows to be an illegal transaction.

(Formerly: Acts 1971, P.L.416, SEC.5.)

IC 30-4-4-3

Judgment lien against the trustee or beneficiary

Sec. 3. (Judgment Lien against the Trustee or Beneficiary)

(a) A judgment against a person individually who may also be a trustee shall not be a lien against the trust estate.

(b) When trust property is properly sold or disposed of by the trustee to a third person, the liens against a beneficiary's interest in the trust estate, if any, will be divested from that property and will attach to the interest of that beneficiary in the proceeds from its sale or other disposition.

(Formerly: Acts 1971, P.L.416, SEC.5.)

IC 30-4-4-4

Disclosure of information concerning beneficiaries

Sec. 4. (Disclosure of Information Concerning Beneficiaries)

(a) Any person may petition the court for disclosure of information concerning beneficiaries or the trust estate. The court may order the disclosure of all or any part of the information requested in the petition only after the petitioner has shown both a reasonable need for it and that the trustee has either refused or neglected to provide the information on written request delivered to the trustee.

(b) The court shall, upon petition, order the disclosure of the identity of the beneficiaries or their agents, if any, and any other information concerning the trust, in any case in which:

(1) in a trust of real estate, there is a violation of a state law or an ordinance or resolution of a political subdivision relating to the structure or condition of buildings, or the health and safety of occupants of or visitors to buildings; or

(2) there has been or may be a deed, sale, lease, purchase, mortgage, assignment or similar transfer of any interest in trust property to or from any unit of state or local government or agency or official thereof;

and the trustee has refused to disclose the identities of the beneficiaries within a reasonable time after written demand.

(Formerly: Acts 1971, P.L.416, SEC.5.)

IC 30-4-4-5

Certification of trust; contents; liability of person relying on certification of trust

Sec. 5. (a) A trustee may furnish to a person other than a beneficiary a certification of trust instead of a copy of the trust instrument. The certification of trust must contain the following information:

(1) That the trust exists and the date the trust instrument was executed.

(2) The identity of the settlor.

(3) The identity and address of the currently acting trustee.

(4) The powers of the trustee.

(5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust.

(6) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all the cotrustees are required in order to exercise the powers of the trustee.

(7) The manner of taking title to trust property.

(b) A certification of trust may be signed or authenticated by any trustee.

(c) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(d) A certification of trust may contain the dispositive terms of a trust.

(e) A recipient of a certification of trust may require the trustee to furnish copies of excerpts from the original trust instrument and later amendments that:

(1) designate the trustee; and

(2) confer on the trustee the power to act in a pending transaction in which the recipient has an interest.

(f) A person who acts in reliance on a certification of trust without knowledge that the representations contained in the certification of trust are incorrect:

(1) is not liable to any person for acting in reliance on the certification of trust; and

(2) may assume without inquiry the existence of the facts contained in the certification of trust.

Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying on the certification.

(g) A person who in good faith enters into a transaction in reliance on a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(h) A person making a demand for the trust instrument in addition to a certification of trust or excerpts from the original trust instrument is liable for damages if the court determines that a person did not act in good faith in demanding the trust instrument.

(i) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

As added by P.L.238-2005, SEC.41. Amended by P.L.95-2007, SEC.18; P.L.202-2007, SEC.5.

IC 30-4-5

Chapter 5. Rules Governing the Administration of a Trust

IC 30-4-5-0.5

Application of Uniform Principal and Income Act

Sec. 0.5. The Uniform Principal and Income Act (IC 30-2-14) applies to the administration of a trust under this article.

As added by P.L.84-2002, SEC.4.

IC 30-4-5-1

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-2

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-3

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-4

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-5

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-6

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-7

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-8

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-9

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-10

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-11

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-12

Accounting by trustees

Sec. 12. (Accounting by Trustees)

(a) Unless the terms of the trust provide otherwise or unless waived in writing by an adult, competent beneficiary, the trustee shall deliver a written statement of accounts to each income beneficiary or his personal representative annually. The statement shall contain at least:

- (1) all receipts and disbursements since the last statement; and
- (2) all items of trust property held by the trustee on the date of the statement at their inventory value.

(b) This subsection applies to a charitable trust with assets of at least five hundred thousand dollars (\$500,000). The trustee of a charitable trust shall annually file a verified written certification with the attorney general stating that a written statement of accounts has been prepared showing at least the items listed in section 13(a) of this chapter. The certification must state that the statement of accounts is available to the attorney general and any member of the general public upon request. A charitable trust may not be exempted from this requirement by a provision in a will, trust agreement, indenture, or other governing instrument. This subsection does not prevent a trustee from docketing a charitable trust to finalize a written statement of account or any other lawful purpose in the manner provided in this article. However, this subsection does not apply to an organization that is not required to file a federal information return under Section 6033(a)(2)(A)(i) or Section 6033(a)(2)(A)(ii) of the Internal Revenue Code.

(c) Upon petition by the settlor, a beneficiary or his personal representative, a person designated by the settlor to have advisory or supervisory powers over the trust, or any other person having an interest in the administration or the benefits of the trust, including the attorney general in the case of a trust for a benevolent public purpose, the court may direct the trustee to file a verified written statement of accounts showing the items listed in section 13(a) of this chapter. The petition may be filed at any time, provided, however, that the court will not, in the absence of good cause shown, require the trustee to file a statement more than once a year.

(d) If the court's jurisdiction is of a continuing nature as provided in IC 30-4-6-2, the trustee shall file a verified written statement of accounts containing the items shown in section 13(a) of this chapter with the court biennially, and the court may, on its own motion, require the trustee to file such a statement at any other time provided there is good cause for requiring a statement to be filed.

(Formerly: Acts 1971, P.L.416, SEC.6.) As amended by P.L.41-2000, SEC.5.

IC 30-4-5-13

Content of written statements of account filed with the court

Sec. 13. (Content of Written Statements of Account Filed with the Court)

(a) A verified written statement of accounts filed with the court under 30-4-5-12 or by the trustee under 30-4-3-18(b) shall show:

- (1) the period covered by the account;
- (2) the total principal with which the trustee is chargeable according to the last preceding written statement of accounts or the original inventory if there is no preceding statement;
- (3) an itemized schedule of all principal cash and property received and disbursed, distributed, or otherwise disposed of during the period;
- (4) an itemized schedule of income received and disbursed, distributed, or otherwise disposed of during the period;
- (5) the balance of principal and income remaining at the close of the period, how invested, and both the inventory and current market values of all investments;
- (6) a statement that the trust has been administered according to its terms;
- (7) the names and addresses of all living beneficiaries and a statement identifying any beneficiary known to be under a legal disability;
- (8) a description of any possible unborn or unascertained beneficiary and his interest in the trust estate; and
- (9) the business addresses, if any, or the residence addresses of all the trustees.

(b) The court may, either on petition or on its own motion, require the trustee to submit such proof as it deems necessary to support his verified written statement of accounts. The court may accept the unqualified certificate of a certified public accountant in lieu of other proof.

(Formerly: Acts 1971, P.L.416, SEC.6.)

IC 30-4-5-14

Settlements; objections; hearing; surcharge

Sec. 14. (Settlements; Objections; Hearing; Surcharge)

(a) With respect to the annual written statement required by 30-4-5-12(a), a beneficiary or his personal representative will be deemed to have discharged the trustee from liability as to that beneficiary for all matters disclosed in the statement if he approves in writing the trustee's statement.

(b) In a proceeding in which the court has been requested by petition to approve a verified written statement of accounts, any person authorized by 30-4-5-12(c) to petition for an accounting may file an appropriate responsive pleading, and if he does so, he must file it within the period of time after notice that a responsive pleading is required to be filed after service of a prior pleading under the Indiana Rules of Procedure.

(c) When a responsive pleading filed under subsection (b) of this

section includes objections to any matter contained in the trustee's statement, those objections must be specific unless the court orders otherwise.

(d) Upon request for approval of a verified written statement of accounts and the filing of objections, if any, the court shall determine the correctness of the statement and the validity and propriety of all actions of the trustee described in the statement and may take any additional action that it deems necessary.

(Formerly: Acts 1971, P.L.416, SEC.6.)

IC 30-4-5-15

Judgment; fees

Sec. 15. (Judgment; Fees)

(a) Subject to the right of appeal, a judgment rendered by the court under 30-4-5-14, either approving the statement or disapproving it and surcharging the trustee, is final, conclusive and binding upon all the parties to the action who are subject to the jurisdiction of the court.

(b) Entry of the judgment by the court finally disposes of the matter and the clerk may not tax or charge a service fee for any year beyond that in which the judgment is rendered.

(Formerly: Acts 1971, P.L.416, SEC.6.)

IC 30-4-5-16

Right to compensation

Sec. 16. (a) Unless the terms of the trust provide otherwise, and except as provided in section 17 of this chapter, the trustee is entitled to reasonable compensation from the trust estate for acting as trustee.

(b) If the terms of the trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:

(1) the duties of the trustee are substantially different from those contemplated when the trust was created; or

(2) the compensation specified in the terms of the trust would be unreasonably low or high.

(c) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

(1) expenses that were properly incurred in the administration of the trust; and

(2) expenses that were not properly incurred in the administration of the trust, to the extent necessary to prevent unjust enrichment of the trust.

An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

(Formerly: Acts 1971, P.L.416, SEC.6.) As amended by P.L.238-2005, SEC.42.

IC 30-4-5-17

Compensation if trustee breaches trust

Sec. 17. (Compensation if Trustee Breaches Trust)

(a) In a proceeding in which the trustee is found to be in breach of trust, the court may in its discretion either deny him all compensation, allow him a reduced compensation, or allow him full compensation.

(b) In the exercise of its discretion under subsection (a) of this section, the court may consider, among others, the following facts:

(1) whether the breach of trust was intentional, negligent, or without fault;

(2) whether or not the trustee acted in good faith;

(3) whether or not the breach of trust resulted in a loss to the trust estate;

(4) if a loss results, whether the trustee has indemnified the trust estate; and

(5) whether the trustee's services were of value to the trust estate.
(Formerly: Acts 1971, P.L.416, SEC.6.)

IC 30-4-5-18

Private foundations

Sec. 18. Subject to section 20 of this chapter, every corporation which is organized under the laws of this state and which is a private foundation as defined in Section 509(a) of the Internal Revenue Code shall, unless otherwise provided in the articles of incorporation of such corporation:

(a) distribute each taxable year amounts sufficient for such corporation to avoid liability for the tax imposed by Section 4942 of the Internal Revenue Code;

(b) not engage in any act of self-dealing (as defined in Section 4941(d) of the Internal Revenue Code) which would subject such corporation to liability for the taxes imposed by Section 4941 of the Internal Revenue Code;

(c) not retain any excess business holding (as defined in Section 4943(c) of the Internal Revenue Code) which would subject such corporation to liability for the taxes imposed by Section 4943 of the Internal Revenue Code;

(d) not make any investment which would jeopardize the carrying out of any of such corporation's exempt purposes (within the meaning of Section 4944 of the Internal Revenue Code) and which would subject such corporation to liability for the taxes imposed by Section 4944 of the Internal Revenue Code; and

(e) not make any taxable expenditure (as defined in Section 4945(d) of the Internal Revenue Code) which would subject such corporation to liability for the taxes imposed by Section 4945 of the Internal Revenue Code.

(Formerly: Acts 1971, P.L.416, SEC.6.) As amended by P.L.2-1987, SEC.47.

IC 30-4-5-19

Private corporate foundations organized before January 1, 1970;

application of IC 30-4-5-18

Sec. 19. The provisions of 30-4-5-18 shall not apply to any such corporation organized before January 1, 1970, to the extent that a court of competent jurisdiction shall determine that application of such section to such corporation would be contrary to the terms of any instrument which may not be changed to conform to such section and by which such corporation is bound.

(Formerly: Acts 1971, P.L.416, SEC.6.)

IC 30-4-5-20

Private corporate foundations; effective dates of IC 30-4-5-18

Sec. 20. The provisions of 30-4-5-18 shall be effective as to corporations to which such section applies in accordance with the following subsections (a) and (b):

(a) With respect to each such corporation organized on or after January 1, 1970, the provisions of 30-4-5-18 shall be effective from and after the date of such corporation's organization.

(b) With respect to each such corporation organized before January 1, 1970, the provisions of 30-4-5-18 shall be effective during taxable years commencing after December 31, 1971.

(Formerly: Acts 1971, P.L.416, SEC.6.)

IC 30-4-5-21

Trusts for benevolent public purpose; general rules

Sec. 21. Subject to the provisions of this section and of section 23 of this chapter, every trust for a benevolent public purpose that is subject to the provisions of Subchapter A of Chapter 42 of Subtitle D of the Internal Revenue Code shall:

- (1) distribute each taxable year amounts sufficient for such trust to avoid liability for the tax imposed by Section 4942 of the Internal Revenue Code, except that this subdivision shall not apply to split-interest trusts;
- (2) not engage in any act of self-dealing (as defined in Section 4941(d) of the Internal Revenue Code) which would subject such trust to liability for the taxes imposed by Section 4941 of the Internal Revenue Code;
- (3) not retain any excess business holding (as defined in Section 4943(c) of the Internal Revenue Code) which would subject such trust to liability for the taxes imposed by Section 4943 of the Internal Revenue Code;
- (4) not make any investment which would jeopardize the carrying out of any of such trust's exempt purposes (within the meaning of Section 4944 of the Internal Revenue Code) and which would subject such trust to liability for the taxes imposed by Section 4944 of the Internal Revenue Code; and
- (5) not make any taxable expenditure (as defined in Section 4945(d) of the Internal Revenue Code) which would subject such trust to liability for the taxes imposed by Section 4945 of the Internal Revenue Code.

The provisions of this section shall not apply to split-interest trusts

or amounts thereof to the extent that such split-interest trusts and amounts are not, under Section 4947 of the Internal Revenue Code, subject to the prohibitions applicable to private foundations.

(Formerly: Acts 1971, P.L.416, SEC.6.) As amended by P.L.2-1987, SEC.48; P.L.41-2000, SEC.6.

IC 30-4-5-22

Private and charitable trust foundations; split-interest trusts; creation before January 1, 1970; application of IC 30-4-5-21

Sec. 22. The provisions of 30-4-5-21 shall not apply to any such trust created before January 1, 1970, to the extent that a court of competent jurisdiction shall determine that application of such section to such trust would be contrary to the terms of any instrument which may not be changed to conform to such section and by which such trust is bound.

(Formerly: Acts 1971, P.L.416, SEC.6.)

IC 30-4-5-23

Private and charitable trust foundations; split-interest trusts; effective date of IC 30-4-5-21

Sec. 23. The provisions of 30-4-5-21 shall be effective as to trusts to which such section applies in accordance with the following subsections (a) and (b):

(a) With respect to each such trust first existing on or after January 1, 1970, the provisions of 30-4-5-21 shall be effective from and after the date such trust comes into existence.

(b) With respect to each such trust existing before January 1, 1970, the provisions of 30-4-5-21 shall be effective during taxable years commencing after December 31, 1971.

(Formerly: Acts 1971, P.L.416, SEC.6.)

IC 30-4-5-24

Repealed

(Repealed by P.L.2-1987, SEC.53.)

IC 30-4-5.5

Chapter 5.5. Enforcement Powers of Attorney General

IC 30-4-5.5-1

Remedies by attorney general against certain trustees and other individuals

Sec. 1. (a) This section applies to the following:

- (1) A trustee of a benevolent trust, including a perpetual care fund or endowment care fund established under IC 23-14-48 or a prepaid funeral trust or escrow account established under IC 30-2-9, IC 30-2-10, or IC 30-2-13.
- (2) A cemetery owner.
- (3) A funeral home.
- (4) A beneficiary of a contract entered into under IC 30-2-9.
- (5) A seller (as defined in IC 30-2-13-10) under IC 30-2-13.
- (6) Any other person that holds a perpetual care fund, an endowment care fund, or a prepaid funeral trust fund.

(b) A person described in subsection (a) may not do any of the following:

- (1) Commit a breach of trust.
- (2) Violate the mandate of a charitable trust.
- (3) Violate a duty listed in this article.
- (4) Fail to comply with a requirement or prohibition set forth in any of the following:
 - (A) IC 23-14-48.
 - (B) IC 23-14-48.5.
 - (C) IC 23-14-49.
 - (D) IC 23-14-51.
 - (E) IC 30-2-9.
 - (F) IC 30-2-10.
 - (G) IC 30-2-13.
 - (H) IC 30-4.

(c) The attorney general may petition a court to issue one (1) or more of the following remedies for a breach, violation, or failure enumerated in subsection (b):

- (1) Injunctive relief.
- (2) Appointment of temporary or permanent receivers.
- (3) Permanent removal of trustees.
- (4) Appointment of permanent replacement trustees subject to court approval.

A remedy under this subsection is in addition to any other remedy.

(d) The attorney general may seek a remedy listed in subsection (c) against a trustee, a trust, or any other person described in subsection (a) for a breach, violation, or failure enumerated in subsection (b).

(e) A court in which an action is brought under this section may do the following:

- (1) Issue a temporary restraining order, preliminary injunction, or permanent injunction.
- (2) Order a trustee, an escrow agent, a seller (as defined in

IC 30-2-13-10), a cemetery owner, or a funeral home to pay restitution or money unlawfully received or retained from purchasers and deposit the restitution or money into an escrow account for distribution to aggrieved purchasers.

(3) Order a trustee, an escrow agent, a seller (as defined in IC 30-2-13-10), a cemetery owner, or a funeral home to reimburse the state for reasonable costs incurred by the attorney general in investigating and prosecuting a violation of this section.

(4) Impose civil penalties.

(5) Provide for the appointment of a receiver.

As added by P.L.245-2005, SEC.8. Amended by P.L.61-2008, SEC.15.

IC 30-4-6

Chapter 6. Procedure

IC 30-4-6-1

Jurisdiction

Sec. 1. (Jurisdiction)

Jurisdiction in this state for all matters arising under this article shall be with the court exercising probate jurisdiction.

(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-2

Continuing jurisdiction

Sec. 2. (Continuing Jurisdiction)

The court will have continuing jurisdiction to supervise the administration of the trust only if the settlor expressly directs in the terms of the trust that the court is to have that jurisdiction.

(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-3

Venue; transfer of trust's principal place of administration; notice; objection to transfer

Sec. 3. (a) Venue in a proceeding brought by the attorney general against a trustee or a trust lies in Marion County, unless a court determines that venue in Marion County would be a hardship for a trustee or a trust.

(b) Unless the terms of the trust provide otherwise, venue in a proceeding brought by a party other than the attorney general for matters arising under this article shall be exclusively in the county in which the principal place of administration of the trust is located. The principal place of administration of a trust is that usual place at which the records pertaining to the trust are kept or, if there is no such place, the trustee's residence. If there are cotrustees, the principal place of administration is either that of the corporate trustee, if there is only one (1); that of the individual trustee who has custody of the records, if there is but one (1) such person and there is no corporate cotrustee; or, if neither of these alternatives apply, that of any of the cotrustees.

(c) Unless the trust provides otherwise, a trustee is under a continuing duty to administer the trust at a place appropriate to the trust's purposes and administration.

(d) Unless the trust provides otherwise, and without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of a duty prescribed by subsection (b), may transfer the trust's principal place of administration to another state or to a jurisdiction outside the United States.

(e) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than sixty (60) days before initiating the transfer. The notice of proposed transfer must include the following information:

(1) The name of the jurisdiction to which the principal place of

administration is to be transferred.

(2) The address and telephone number of the new location at which the trustee can be contacted.

(3) An explanation of the reasons for the proposed transfer.

(4) The date on which the proposed transfer is anticipated to occur.

(5) The date, not less than sixty (60) days after the giving of notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

(f) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(g) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed under IC 30-4-3-33.

(h) If the principal place of administration is maintained in another state, venue in this state for any matters arising under this article shall be in the county stipulated in writing by the parties to the trust or, if there is no such stipulation, in the county where the trust property, or the evidence of the trust property, which is the subject of the action is either situated or generally located.

(i) Any party to an action or proceeding shall be entitled to a change of venue or change of judge as provided in the Indiana Rules of Procedure. A change of venue in any action shall not be construed to authorize a permanent change of venue for all matters arising under this article, and, upon conclusion of the action, venue shall return to the court where the action was initiated.

(Formerly: Acts 1971, P.L.416, SEC.7.) As amended by P.L.238-2005, SEC.43; P.L.245-2005, SEC.9; P.L.1-2006, SEC.494.

IC 30-4-6-4

Docketing of trusts in general

Sec. 4. Except as provided in section 7 of this chapter and IC 30-4-7, unless the terms of the trust expressly direct that the court is to have continuing jurisdiction over the administration of the trust:

(1) a trustee need not docket a trust in the records of the court nor may the court require a trust to be docketed; and

(2) with respect to a decedent's estate docketed for the purpose of probate or administration, which either establishes a trust or makes a devise to another trust, the court shall have no continuing jurisdiction over the administration of the trust after any distribution from the estate is paid or delivered to the trustee.

(Formerly: Acts 1971, P.L.416, SEC.7.) As amended by P.L.200-1991, SEC.5.

IC 30-4-6-5

Pleadings

Sec. 5. (Pleadings)

Any proceedings under this article may be initiated on either a petition or complaint and upon notice as provided in 30-4-6-6.

(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-6

Notice

Sec. 6. (Notice)

(a) Notice must be given to any person or his personal representative who is named as a party in a petition or complaint, whose rights may be affected or upon whom a liability might be imposed by any proceeding; to the Attorney General if the trust is for a benevolent public purpose; and to any other person whom the court may order to be given notice.

(b) The form of notice required shall be in the form of a summons as provided for in the Indiana Rules of Procedure or in such other form as may be ordered or approved by the court.

(c) The manner of service of a notice shall be the same as that provided in the Indiana Rules of Procedure for service of summons or such other manner as may be ordered or approved by the court.

(d) Any person who is a nonresident of this state or whose address is unknown may be served by publication according to the Indiana Rules of Procedure. All persons served by publication whose names and addresses are known or can by reasonable diligence be ascertained by the party seeking service shall, in addition to such published notice, be served by registered or certified mail or other public means by which a return receipt may be requested.

(e) The court shall give notice in any case in which it acts on its own motion.

(f) Any person not under a legal disability or a personal representative may waive in writing notice of the proceeding.

(g) An order of the court is binding as to all persons who are given notice of the proceeding, even though less than all interested persons receive notice.

(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-7

Docketing as part of proceeding

Sec. 7. (Docketing as Part of Proceeding)

(a) If it is necessary to the determination of any issue of law or fact in a proceeding, the court may direct that a copy of the trust instrument, if any, be kept in its records.

(b) The filing of the trust instrument under subsection (a) of this section shall not result in continuing supervisory jurisdiction by the court. Upon conclusion of the proceeding, the trust instrument shall be removed from the court's records.

(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-8

Bonding

Sec. 8. (a) Unless the terms of the trust provide otherwise, the trustee need not provide a bond to secure the trustee's performance as trustee.

(b) If the trust is subject to continuing supervisory jurisdiction by the court, the court may, on its own motion, direct the trustee to provide a bond to secure performance of the trustee's duties.

(c) Upon petition by an interested party, the court may direct the trustee to provide a bond to secure the trustee's performance, if the court deems it reasonably necessary to protect the interest of any beneficiary.

(d) Unless the terms of the trust provide otherwise, the court may, in its discretion, direct a trustee appointed by the court under IC 30-4-3-33 to file a bond to secure the performance of the trustee's duties.

(e) In any case in which bond is required, unless otherwise specified, the court shall determine the amount, term and surety of the bond to be provided. The court may also excuse a requirement of bond, reduce or increase the amount of the bond, release the surety, or permit substitution of another bond with the same or different sureties.

(Formerly: Acts 1971, P.L.416, SEC.7.) As amended by P.L.238-2005, SEC.44.

IC 30-4-6-9

Suit on bond

Sec. 9. (Suit on Bond)

(a) The court may, on breach of the obligation of the bond of the trustee, after notice to the obligors on the bond and to such other persons as the court directs, determine the damages, and by appropriate proceeding enforce the collection thereof from those liable on the bond. Such determination and enforcement may be made by the court upon its own motion or upon application of a successor trustee, or of any other interested person. Damages may be assessed on behalf of all interested persons and may be paid over to the successor or other non-defaulting trustee or any other person the court may direct.

(b) The bond of the trustee shall not be void upon the first recovery, but may be proceeded upon from time to time until the whole penalty is exhausted.

(c) If the court has already determined the liability of the trustee, the sureties shall not be permitted thereafter to deny such liability in any action or hearing to determine their liability; but the surety may intervene in any hearing to determine the liability of the trustee.

(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-10

Representation by class or similar interest

Sec. 10. (Representation by Class or Similar Interest)

Any adjudication involving the interests of persons represented by a personal representative shall be lawful and binding upon all

interested persons, whether born or unborn, whether notified or not notified, and whether represented or not, provided, those interested persons are of the same class or have interests similar to the predominant interests of any person so notified or represented.
(Formerly: *Acts 1971, P.L.416, SEC.7.*)

IC 30-4-6-10.5

Persons who represent interests of and bind other persons

Sec. 10.5. (a) Except as provided in the terms of a trust, and to the extent there is not a conflict of interest between the representative and the person represented or among those being represented:

- (1) a guardian may represent and bind the protected person who is subject to the guardianship;
- (2) an attorney in fact who has authority to act with respect to the particular question or dispute may represent and bind the principal;
- (3) a trustee may represent and bind the beneficiaries of the trust;
- (4) a personal representative of a decedent's estate may represent and bind persons interested in the estate; and
- (5) a parent may represent and bind the parent's minor, unborn, or not yet adopted child if a guardian for the child has not been appointed;

with regard to a particular question or dispute.

(b) The holder of a general power of appointment, including a general testamentary power of appointment, may represent and bind persons whose interests are subject to the power of appointment, including:

- (1) permissible appointees; and
- (2) takers in default.

(c) Unless otherwise represented:

- (1) a minor;
- (2) an incapacitated person;
- (3) an unborn or a not yet adopted child; or
- (4) a person whose identity or location is unknown and not reasonably ascertainable;

may be represented by and bound by another person who has a substantially identical interest with respect to the particular question or dispute but only to the extent there is not a conflict of interest between the representative and the person represented.

(d) If the court determines that an interest is not represented under this section or that the otherwise available representation might be inadequate, the court may appoint a guardian ad litem to receive notice, give consent, and otherwise represent, bind, and act on behalf of:

- (1) a minor;
- (2) an incapacitated person;
- (3) an unborn child; or
- (4) a person whose identity or location is unknown.

If not precluded by conflict of interest, a guardian ad litem may be

appointed to represent several persons or interests. A guardian ad litem may act on behalf of the person represented with respect to any matter arising under this title, regardless of whether a judicial proceeding concerning the trust is pending. In making decisions, a guardian ad litem may consider general benefits accruing to the living members of the family of the persons represented.

(e) Notice to a person who may represent and bind another person under this section has the same effect as if notice were given directly to the other person.

(f) The consent of a person who may represent and bind another person under this section is binding on the person represented unless the person represented objects to the representation before the consent would have become effective.

As added by P.L.238-2005, SEC.45.

IC 30-4-6-11

Appeals

Sec. 11. (Appeals)

(a) Any person considering himself aggrieved by any decision of a court having jurisdiction in proceedings under this article may prosecute an appeal to the court having jurisdiction of such an appeal. That appeal shall be taken as appeals are taken in civil causes.

(b) In an appeal, the trustee will be entitled to a stay of proceedings without bond.

(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-12

Statute of limitations

Sec. 12. Unless previously barred by adjudication, consent or limitation, any right against a trustee for breach of trust shall be barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the right is commenced within three (3) years after receipt of the final account or statement if, being an adult, it is received by him personally or if, being a minor or person with a disability, it is received by his personal representative. The rights thus barred do not include the rights to recover from a trustee for fraud, misrepresentation or inadequate disclosure related to the settlement of the trust.

(Formerly: Acts 1971, P.L.416, SEC.7.) As amended by P.L.99-2007, SEC.195.

IC 30-4-6-13

Application of rules of procedure

Sec. 13. (Application of Rules of Procedure)

Except as otherwise provided in this article, the Indiana Rules of Procedure shall apply with respect to procedure in any matter arising under this article.

(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-14

Contesting validity of revocable trust; time limits

Sec. 14. (a) A person must commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of the following:

(1) Ninety (90) days after the person receives from the trustee a copy of the trust certification and a notice informing the person of:

(A) the trust's existence;

(B) the trustee's name and address; and

(C) the time allowed for commencing the proceeding.

(2) Three (3) years after the settlor's death.

(b) More than one hundred twenty (120) days after the death of the settlor of a trust that was revocable at the settlor's death, the trustee may distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for the distribution unless:

(1) the trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(2) a potential contestant notifies the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced not later than sixty (60) days after the contestant sends the trustee the notification.

(c) A beneficiary of a trust that is determined to be invalid shall return any distribution received.

As added by P.L.238-2005, SEC.46.

IC 30-4-7

Chapter 7. Adjudicated Compromise of Controversies

IC 30-4-7-1

Application of chapter

Sec. 1. This chapter applies to the compromise of a contest or controversy with respect to the following:

- (1) The construction, validity, or effect of a trust instrument.
- (2) The identity, rights, or interests of a beneficiary of a trust.
- (3) The administration of a trust.

As added by P.L.200-1991, SEC.6.

IC 30-4-7-2

Binding effect of compromise

Sec. 2. A compromise executed under this chapter is binding on all parties to the compromise, including a party represented by a guardian or guardian ad litem.

As added by P.L.200-1991, SEC.6.

IC 30-4-7-3

Rights of creditors or taxing authorities

Sec. 3. A compromise executed under this chapter does not impair the rights of creditors or taxing authorities that are not parties to the compromise.

As added by P.L.200-1991, SEC.6.

IC 30-4-7-4

Appointment of guardian or guardian ad litem

Sec. 4. The court may appoint a guardian or a guardian ad litem to represent the following persons or interests in a compromise executed under this chapter if the persons or interests do not have a guardian or guardian ad litem:

- (1) A minor.
- (2) A person who is without legal capacity to personally act.
- (3) A person whose present existence or whereabouts cannot be ascertained.
- (4) A person who is not yet born or adopted.
- (5) An inalienable estate.
- (6) A future contingent interest.

As added by P.L.200-1991, SEC.6.

IC 30-4-7-5

Law governing appointment of guardian or guardian ad litem

Sec. 5. IC 29-1-1-20 applies to the appointment of a guardian or guardian ad litem under section 4 of this chapter.

As added by P.L.200-1991, SEC.6.

IC 30-4-7-6

Agreement of compromise

Sec. 6. The terms of a compromise executed under this chapter

must be set forth in an agreement that is:

- (1) in writing; and
- (2) executed by all persons or the guardians or guardians ad litem appointed under section 4 of this chapter of all persons who:
 - (A) have an interest in the trust; or
 - (B) have a claim against the trust.

As added by P.L.200-1991, SEC.6.

IC 30-4-7-7

Docket of documents

Sec. 7. After a compromise is executed, an interested person may docket the trust and submit the following documents to the court for the court's approval:

- (1) The agreement executed under section 6 of this chapter.
- (2) A copy of the trust instrument.
- (3) Any other relevant documents.

As added by P.L.200-1991, SEC.6.

IC 30-4-7-8

Notice and hearing on agreement

Sec. 8. After notice has been given in the manner directed by the court to:

- (1) all interested persons;
- (2) the guardians or guardians ad litem of interested persons;
- (3) the personal representative of an estate affected by the agreement; and
- (4) the trustee of a trust affected by the agreement;

the court shall hold a hearing on the agreement.

As added by P.L.200-1991, SEC.6.

IC 30-4-7-9

Court order

Sec. 9. If the court finds:

- (1) the contest or controversy is in good faith; and
- (2) the effect of the agreement on the interests of all the parties is just and reasonable;

the court shall enter an order approving the agreement submitted under section 7 of this chapter and directing the trustee and the parties to the agreement to carry out the terms of the agreement.

As added by P.L.200-1991, SEC.6.

IC 30-4-7-10

Effect of entry of order

Sec. 10. If the court enters an order under section 9 of this chapter, all further disposition of the trust that is within the scope of the agreement shall be made under the terms of the agreement.

As added by P.L.200-1991, SEC.6.