

**PUBLICATION UPDATE**

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# INDIANA ESTATE PLANNING AND PROBATE PRACTICE

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Publication 493      Release 59      November 2019

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**HIGHLIGHTS**

- Release 59 of Indiana Estate Planning and Probate Practice is completely up-to-date for the latest rulings, regulations, forms and cases.

New                    Legislation—Indiana amended Code Section 12-15-9-0.6 to clarify that the section applies to decedents who die after July 1, 2018. §§ 53.21.

New                    Legislation—Indiana amended Code Section 29-1-1-3 to change the definition of “child,” add the definition for “Petition for administration,” add a definition for “Unit,” and add a definition for “Unit Address.” §§ 11.22, 14.21, 14.205, 31.32, 51.21.

New                    Legislation—Indiana

amended Code Section 29-1-7-15.1 regarding the timing and procedures for making a claim against real estate transferred in an estate. §§ 2.121, 2.140, 30.53, 31.30.

New Legislation—Indiana enacted a new Code Section 29-1-7-17.5 to allow for, at the discretion of the court, the contest of two or more wills when an action is pending pursuant to either Ind. Code Section 29-1-7-16 (objections to probate) or Ind. Code Section 29-1-7-17 (Action to Contest Will). §§ 2.121, 31.50, 40.20.

New                    Legislation—Indiana amended Code Section 29-1-7-23 to create an “Affidavit of Devolution of Real Estate.” The exact requirements of the affidavit are specified in Ind. Code Section 29-1-7-23(b). If prop-

erly drafted, the auditor of the county in which the real estate is held must endorse the affidavit and record the estate title transfer in the county ownership records as an instrument that is exempt from sales disclosure requirements. The county recorder must then record and index the affidavit as the most recent transfer instrument. The transfer affidavit may be relied on by any person as evidence of an effective transfer of the title of record as defined in Ind. Code Section 32-20-3-1. § 31.21.

New Legislation—Indiana amended Code Sections 29-1-8-1, 29-1-8-3, and 29-1-8-4 regarding the effective dates of the increase of estates covered by small estates from \$25,000 to \$50,000. Ind. Code §§ 29-1-8-3 and 29-1-8-4 now define the term “fiduciary” as the personal representative of an unsupervised estate and a person appointed by the court to act on behalf of the decedent or decedent’s distributees. Ind. Code § 29-1-8-4 also modified closing procedures. §§ 2.120, 30.53, 30.61, 52.20, 52.21, 52.22, 52.23, 52.24, 52.110, 52.120, 52.200, 52.201, 52.204, 52.205, 52.206, 52.207, 61.20, 71.31.

New Legislation—Indiana amended Code Section 29-1-10-14 to define devisee as any person prosecuting or defending any will under Ind. Code § 29-1-7-16 or Ind. Code § 29-1-7-17.5 and, if multiple wills are being challenged under Ind. Code § 29-1-7-17.5, any person prosecuting or defending a will next prior to the earliest will being challenged under

Ind. Code § 29-1-7-17.5. §§ 31.30, 40.23.

New Legislation—Indiana enacted a new Code Chapter 29-1-22 to allow for the creation and administration of an electronic estate planning document registry. §§ 11.52, 22.54.

New Legislation—Indiana amended Code Sections 32-17-13-7 and 8 to remove technical errors, internal conflicts, and clarify effective dates. § 53.21.

New Legislation—Indiana enacted a new Code Chapter 29-3-14 creating Supported Decision Making Agreements, which outline the decision making supports that the adult chooses to receive from one or more supporters. §§ 19.33, 80.28.

New Legislation—Indiana enacted a new Code Section 30-4-3-6 affirmatively approving “silent trusts.” The terms of a silent trust limit the amount of information that a trustee must provide to a trust beneficiary about the trust instrument and its administration. § 22.20.

New Legislation—Indiana enacted a new Code Chapter 30-4-8. The chapter establishes Legacy Trusts. A legacy trust is a type of irrevocable trust and may include one or more of the following without being deemed a revocable trust: (1) a transferor’s power to veto a trust distribution; (2) a power of appointment; (3) a transferor’s ability to receive income or principal, including a retained right to income over trust property; (4) a transferor’s ability to receive income or principal from a charitable remain-

der unitrust or charitable remainder annuity trust; (5) the transferor's potential or actual receipt of income or principal from a grantor retained annuity trust or grantor retained unitrust allowed under Section 2702 of the Internal Revenue Code; (6) a transferor's potential or actual receipt or use of principal resulting from the qualified trustee acting in its discretion or at the direction of a trust director; (7) a transferor's right to remove a trustee or trust director and appoint a new trustee or trust director; and (8) the transferor's potential use of real property held under a qualified personal residence trust. § 22.20.

New Legislation—Indiana enacted a new Code Chapter 30-4-9 establishing directed trusts. “Power of direction” means a power over a trust granted to a person by the terms of the trust to the extent the power is exercisable while the person is not serving as a trustee. “Trust director” means a person that is granted a power of direction by the terms of a trust to the extent the power is exercisable while the person is not serving as a trustee. However, Ind. Code § 30-4-9-5 excludes power of appointment, power to appoint and remove a trustee or trust director, power over a settlor's right to revoke a trust, the power of a beneficiary over a trust to the extent the power affects a beneficiary's interests, and powers that are to be held in a nonfiduciary capacity to achieve the settlor's tax objectives. § 22.20.

New Legislation—Indiana enacted

a new Code Section 30-4-5-14.5 to provide for non-judicial settlement of accounts. § 22.55.

New Legislation—Indiana enacted a new Code Chapter 30-4-5-25 which provides the framework for non-judicial settlement agreements relating to the administration of trusts. § 22.55.

New Case—In *Tipton v. Estate of Hofmann*, 118 N.E.3d 771 (Ind. Ct. App. 2019), the Court of Appeals refused to consider the substantive arguments raised in the pro se appellant's brief and assessed appellate attorney fees against her estate share because pro se appellant's brief failed to comply with the form and content requirements of the Indiana Rules of Appellate Procedure. A pro se litigant is held to the same standard as trained legal counsel with respect to the appeal of an Order approving a Final Account. § 50.22.

New Case—In *Homan v. Unsupervised Estate of Homan*, 121 N.E.3d 1104 (Ind. Ct. App. 2019), the Court of Appeals ruled that the settlor failed to effectuate a transfer because the settlor never specifically declared in his trust instrument, or trust exhibit A, that he transferred the farm land into trust. §§ 18.21, 22.54, 22.270.

New Case—In *In re Gabriel*, 120 N.E.3d 189 (Ind. 2019), the court held that an attorney appointed as guardian remains subject to the Indiana Rules of Professional Conduct while serving as guardian. §§ 19.41, 80.25.

New Case—In *Horejs v. Milford*,

117 N.E.3d 559 (Ind. 2019), the Indiana Supreme Court held that there is no language in Ind. Code § 34-9-3-1 (the survival statute) that requires a surviving heir in order for a wrongful death claim to be pursued. Rather, the action does not abate simply be-

cause a party to a wrongful death/survivor claim dies because the action may be brought by the personal representative or a successor in interest to the claim. § 31.50, 31.244, 53.21, 61.51.

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# **INDIANA ESTATE PLANNING AND PROBATE PRACTICE**

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Publication 493 Release 59

November 2019

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