

Route to: ☐ _____ ☐ _____ ☐ _____ ☐ _____
☐ _____ ☐ _____ ☐ _____ ☐ _____

Henry's Indiana Probate Law and Practice

Publication 62794

Release 14

September 2017

HIGHLIGHTS

Check Out What's Available from LexisNexis Matthew Bender:

- Just go to the end of this update for details about other products available from LexisNexis Matthew Bender™.
- ***Henry's Indiana Probate Law and Practice***, well-known and respected for more than a century, provides attorneys with a comprehensive and current analysis of Indiana probate law as well as estate planning and administration. Written by three experienced attorneys in Indiana estate planning and probate law, *Henry's* provides a logical, organized approach to every stage of the probate process. It includes coverage of the Indiana Probate and Trust Codes and analyzes recent legislative changes and judicial decisions.

New Legislation—Indiana amended Code Section 29-3-5-4 and 29-3-5-5 to allow a court to consider a request by a parent of a minor or de facto custodian of a minor, made directly to the court or con-

tained in the power of attorney of the parent or de facto custodian. *See* §§ 8.03, 33.42, 37.34

New Case—In *Anonymous M.D. v. Lockridge*, 60 N.E.3d 249 (Ind. Ct. App. 2016), the court held that the statute of limitations exception in I.C. 34-18-7-1(b) for minors less than six (6) years of age does not require that the minor be a party injured by the alleged negligence. The statutory exception also extends the filing period for a minor bringing a derivative claim as a non-injured party. *See* § 14.20, 14.21

New Case—In *ABC Radiology, P.C. v. Gearhart*, 69 N.E.3d 545 (Ind. Ct. App. 2017), the court clarified that, unlike traditional insurance coverage disputes where a declaratory action to determine coverage is brought separately from the underlying tort, a declaratory action determining the applicability of the Medical Malpractice Act is deemed to arise out of the same transaction or occurrence as the underlying tort, and thus is properly joined under Indiana Trial Rule 20. As a consequence, preferred venue will often lie in Marion County,

irrespective of a tortfeasor's residence, because the Indiana Patients Compensation Fund and Indiana Department of Insurance, as a result of the declaratory action, are named defendants. *See* § 14.20

New Legislation—Indiana amended Code Section 30-5-3-4 to allow a parent or de facto custodian of a minor child, or the parent of an incapacitated person, to make nominations in their power of attorney for who should serve as guardian of the minor child or incapacitated person in their care. *See* § 37.34

New Legislation—Indiana amended Code Section 16-36-1-5 in part (a) to allow an adult grandchild or a grandparent to consent to healthcare for a person without a healthcare representative, or whose named healthcare representative is unwilling or unable to act. Part (b)(3) was amended to allow an adult sibling to consent to healthcare for a minor sibling, in addition to existing requirements, only after the healthcare provider has made reasonable efforts to locate the parent or person serving in loco parentis. Part (b)(4) was added to allow a grandparent to consent to healthcare of a minor child if there is no court appointed guardian, the parent or person in loco parentis is unavailable or unwilling to consent, or the healthcare provider has made reasonable efforts to locate the parent or person serving in loco parentis. *See* § 29.25

New Case—In *Underwood v. Bunger*, 70 N.E.3d 338 (Ind. 2017) the Indiana Supreme Court determined that where warranty deed transfers to third party, husband, and spouse, with husband and spouse identified as such, “all as tenants-in-common,” the phrase “all as tenants in common” reasonably reflects the parties’ intention to establish a different form of tenancy between the spouses than the presumption,

and to instead establish a tenancy in common between and among all three parties. *See* § 34.03

New Case—In *Estate of Ecker v. Estate of Samson*, 59 N.E.3d 282 (Ind. Ct. App. 2016), the Court of Appeals, deciding a wrongful death case where the estate was insufficient to satisfy the claim, held that the language in Ind. Code Section 32-17-13-1(b)(4) and (5) excluding retirement accounts and benefits under an employee benefit plan from recovery is broadly construed to include profit sharing plans that are not otherwise protected by federal law from creditors. *See* § 34.21

New Case—In *H.S. v. W.P.*, 66 N.E.3d 623 (Ind. Ct. App. 2016), the Court of Appeals held that Guardianship petitioner was not barred by res judicata, despite prior trust action alleging undue influence on the prospective ward, where guardianship petitioner was not given notice of the voluntary motion to dismiss trust action. *See* § 37.9, 39.17, 39.38

New Legislation—Indiana amended Code Section 29-3-12-1 to allow a guardian to request health records for 60 days after the death of the protected person, unless a personal representative has been appointed for the estate of the incapacitated person. *See* § 37.27

New Legislation—Indiana amended Code Section 31-17-5-3 to add paragraph (b) which states that a petition for a proceeding for grandparent’s visitation rights must be filed prior to the date a decree for adoption is entered. *See* § 38.03

New Legislation—Indiana amended Code Section 31-19-2.5-3 to require notice of an adoption to be given to the grandparent of a child who is to be adopted. *See* § 38.03

New Legislation—Indiana amended

Code Section 31-19-4.5-1 to require notice to be given to a grandparent of an adopted child in a form substantially similar to the form prescribed by Ind. Code Section 31-19-4.5-3. *See* § 38.03

New Legislation—Indiana amended Code Section 31-19-4.5-1 to effectively limit the requirement to give notice to grandparents of a child to be adopted to those parents with a right to petition for visitation rights and whose visitation rights will not be terminated after the adoption pursuant to Ind. Code Section 31-17-5-9. *See* § 38.03

New Legislation—Indiana added Indiana Code Section 31-19-4.5-1.5, which limits the grandparents' notice of adoption to the issue of visitation rights, and removes the need to give notice to a grandparent of a child who is in "the care, custody, or control of the department" of child services. *See* § 38.03

New Case—In *A.G. v. M.G.* 64 N.E.3d 1246 (Ind. Ct. App. 2016), the Court of Appeals ruled that the trial court's order granting a public defender's motion to withdraw, without notice or replacement, was an abuse of discretion because the motion was in violation of local rules, and the order thereon left the parent, whose rights were subject to termination, without counsel during the adoption hearing, despite parent's request for representation. *See* § 38.04

New Legislation—Indiana amended Code Sections 31-19-3-4, 31-19-4-4, and 31-19-4-5 to state that failure of a putative father to respond appropriately to a notice of adoption within 30 days results in the putative father losing his right to establish paternity by affidavit or otherwise both in Indiana or any other jurisdiction. *See*

§ 38.03

New Legislation—Indiana added Code Section 30-4-3-7.5 to allow a trustee to engage in self-dealing, as described in Ind. Code Section 30-4-3-7 if the trustee has the written consent of all qualified beneficiaries, or the action is approved by court order issued after notice to all qualified beneficiaries and a hearing to ensure the trust received or delivered adequate consideration. *See* § 39.27, 39.47

New Legislation—Indiana added Code Section 30-4-6-6.5 requiring that the sending of a notice or document to an interested party of a trust must be accomplished in a manner reasonably suited to the circumstances that is likely to result in the receipt of said document. Permissible methods include "first class mail, personal delivery, delivery to the person's last known residence or place of business, or electronic delivery . . . if the intended party has" agreed to receive or access "a properly directed electronic message." In addition to agreement by the sender and recipient in writing or electronic communication to the chosen method, the method meets the requirements of the Indiana Code if it is "reasonably calculated to prevent unauthorized access to the content . . . or to non-public identifying or personal information of the sender or recipient." *See* §§ 30.49, 39.57

New Legislation—Indiana added Code Section 32-18-2-23 renaming the Indiana Fraudulent Transfers Act as the Uniform Voidable Transactions Act. *See* §§ 14.10, 25.12, 32.06, 32.13, 39.23, 39.69

New Form—A form of Gun Trust has been added. *See* discussion in § 45.02[2] and Form 45.29.

Matthew Bender provides continuing customer support for all its products:

- Editorial assistance—please consult the “Questions About This Publication” directory printed on the copyright page;
- Customer Service—missing pages, shipments, billing or other customer service

matters, +1.800.833.9844.

- Outside the United States and Canada, +1.937.247.0293, or fax (+1.800.828.8341) or email (international@bender.com);
- Toll-free ordering (+1.800.223.1940) or visit www.lexisnexis.com/BrowseUs.



www.lexis.com

Copyright © 2017 Matthew Bender & Company, Inc., a member of the LexisNexis Group.
Publication 62794, Release 14, September 2017

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.

FILING INSTRUCTIONS

Henry's Indiana Probate Law and Practice

Publication 62794 Release 14

September 2017

**Check
As
Done**

- ☐ 1. Check the Title page in the front of your present Volume 1. It should indicate that your set is filed through Release Number 13. If the set is current, proceed with the filing of this release. If your set is not filed through Release Number 13, DO NOT file this release. Please call Customer Services at 1-800-833-9844 for assistance in bringing your set up to date.
- ☐ 2. This Release Number 14 contains only White Revision pages.
- ☐ 3. Circulate the "Publication Update" among those individuals interested in the contents of this release.

**Check
As
Done**

*Remove Old
Pages Numbered*

*Insert New
Pages Numbered*

For faster and easier filing, all references are to right-hand pages only.

VOLUME 1

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	2-1 thru 2-43	2-1 thru 2-39
<input type="checkbox"/>	4-5 thru 4-12.3	4-5 thru 4-12.3
<input type="checkbox"/>	4-24.1 thru 4-53.	4-25 thru 4-53
<input type="checkbox"/>	7-1 thru 8-57	7-1 thru 8-57
<input type="checkbox"/>	8-71	8-71
<input type="checkbox"/>	9-1 thru 11-11.	9-1 thru 11-11
<input type="checkbox"/>	11-21 thru 11-23	11-21 thru 11-23

VOLUME 2

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	14-10.1 thru 14-17	14-11 thru 14-18.1
<input type="checkbox"/>	14-29 thru 14-36.1	14-29 thru 14-35
<input type="checkbox"/>	14-47 thru 14-55	14-47 thru 14-53
<input type="checkbox"/>	14-65 thru 14-129.	14-65 thru 14-130.1
<input type="checkbox"/>	14-139	14-139 thru 14-140.1
<input type="checkbox"/>	14-167 thru 14-168.1	14-167 thru 14-168.1
<input type="checkbox"/>	14-185 thru 14-196.1	14-185 thru 14-196.1
<input type="checkbox"/>	14-206.1 thru 14-233	14-207 thru 14-237

VOLUME 3

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	20-3 thru 20-13	20-3 thru 20-13
<input type="checkbox"/>	20-45 thru 20-67	20-45 thru 20-65
<input type="checkbox"/>	20-77 thru 21-3	20-77 thru 21-3
<input type="checkbox"/>	21-12.1 thru 21-15	21-13 thru 21-16.1
<input type="checkbox"/>	21-29 thru 21-32.1	21-29 thru 21-31
<input type="checkbox"/>	22-9 thru 22-11	22-9 thru 22-12.1
<input type="checkbox"/>	22-25.	22-25
<input type="checkbox"/>	24-5 thru 24-45	24-5 thru 24-45
<input type="checkbox"/>	24-53.	24-53
<input type="checkbox"/>	24-60.1 thru 24-69	24-61 thru 24-71
<input type="checkbox"/>	25-103	25-103
<input type="checkbox"/>	26-7 thru 26-13	26-7 thru 26-13

Check As Done	<u>Remove Old Pages Numbered</u>	<u>Insert New Pages Numbered</u>
<input type="checkbox"/>	26-63 thru 26-69	26-63 thru 26-69

VOLUME 4

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	27-14.1 thru 27-25	27-15 thru 27-25
<input type="checkbox"/>	27-119 thru 27-121	27-119 thru 27-121
<input type="checkbox"/>	27-155 thru 27-163	27-155 thru 27-163
<input type="checkbox"/>	27-185	27-185
<input type="checkbox"/>	27-197 thru 27-203	27-197 thru 27-203
<input type="checkbox"/>	27-213	27-213
<input type="checkbox"/>	27-239	27-239 thru 27-240.1
<input type="checkbox"/>	29-7	29-7 thru 29-8.1
<input type="checkbox"/>	29-55 thru 29-57	29-55 thru 29-57
<input type="checkbox"/>	29-113	29-113
<input type="checkbox"/>	29-187 thru 29-189	29-187 thru 29-189
<input type="checkbox"/>	29-207 thru 29-210.1	29-207 thru 29-210.1
<input type="checkbox"/>	30-9	30-9
<input type="checkbox"/>	30-27 thru 30-49	30-27 thru 30-49
<input type="checkbox"/>	30-117	30-117
<input type="checkbox"/>	30-160.1 thru 30-160.7	30-160.1 thru 30-160.7

VOLUME 5

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	32-46.1	32-46.1
<input type="checkbox"/>	32-75 thru 32-76.1	32-75
<input type="checkbox"/>	32-95.	32-95
<input type="checkbox"/>	32-131 thru 32-133	32-131 thru 32-133

VOLUME 6

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	34-9 thru 34-11	34-9 thru 34-11
<input type="checkbox"/>	34-21 thru 34-22.1	34-21 thru 34-22.1
<input type="checkbox"/>	34-55.	34-55
<input type="checkbox"/>	34-103	34-103
<input type="checkbox"/>	34-189 thru 34-190.1	34-189 thru 34-190.1
<input type="checkbox"/>	34-211	34-211 thru 34-212.1
<input type="checkbox"/>	37-43.	37-43
<input type="checkbox"/>	37-231 thru 37-236.1	37-231 thru 37-236.1

Check As Done	<i><u>Remove Old Pages Numbered</u></i>	<i><u>Insert New Pages Numbered</u></i>
<input type="checkbox"/>	37-243	37-243 thru 37-244.1
<input type="checkbox"/>	37-273 thru 37-275	37-273 thru 37-275
<input type="checkbox"/>	37-285	37-285 thru 37-286.1
<input type="checkbox"/>	37-295 thru 38-9	37-295 thru 38-10.1
<input type="checkbox"/>	38-27 thru 38-35	38-27 thru 38-36.1

VOLUME 7

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	39-17.	39-17
<input type="checkbox"/>	39-67 thru 39-71	39-67 thru 39-72.1
<input type="checkbox"/>	39-77 thru 39-91	39-77 thru 39-91
<input type="checkbox"/>	39-115 thru 39-123	39-115 thru 39-124.3
<input type="checkbox"/>	39-141 thru 39-142.3	39-141 thru 39-142.3
<input type="checkbox"/>	39-183	39-183
<input type="checkbox"/>	39-195 thru 39-201	39-195 thru 39-202.1
<input type="checkbox"/>	39-237 thru 39-239	39-237 thru 39-240.1
<input type="checkbox"/>	39-277 thru 39-279	39-277 thru 39-279
<input type="checkbox"/>	39-289 thru 39-291	39-289 thru 39-292.1
<input type="checkbox"/>	39-331 thru 39-347	39-331 thru 39-347
<input type="checkbox"/>	39-371 thru 39-390.1	39-371 thru 39-390.3
<input type="checkbox"/>	39-453	39-453
<input type="checkbox"/>	40-57 thru 40-59	40-57 thru 40-59
<input type="checkbox"/>	40-71 thru 40-73	40-71 thru 40-73
<input type="checkbox"/>	40-103 thru 40-105	40-103 thru 40-105
<input type="checkbox"/>	43-1 thru 43-5	43-1 thru 43-5

VOLUME 8

Revision

<input type="checkbox"/>	Title page thru iii	Title page thru iii
<input type="checkbox"/>	45-1 thru 45-12.1	45-1 thru 45-12.1
<input type="checkbox"/>	45-23 thru 45-24.7	45-23 thru 45-24.9
<input type="checkbox"/>	45-369	45-369 thru 45-379
<input type="checkbox"/>	47-11.	47-11 thru 47-12.1
<input type="checkbox"/>	I-1 thru I-19	I-1 thru I-19

FILE IN THE FRONT OF THE FIRST VOLUME
OF YOUR SET

To order missing pages log on to our self service center, www.lexisnexis.com/printcdsc or call Customer Services at 1 (800) 833-9844 and have the following information ready:

- (1) the publication title;
- (2) specific volume, chapter and page numbers; and
- (3) your name, phone number, and Matthew Bender account number.

Please recycle removed pages.

MISSING FILING INSTRUCTIONS?
FIND THEM AT www.lexisnexis.com/printcdsc

Use the search tool provided to find and download missing filing instructions, or sign on to the Print & CD Service Center to order missing pages or replacement materials. Visit us soon to see what else the Print & CD Service Center can do for you!



LexisNexis®

www.lexis.com

Copyright © 2017 Matthew Bender & Company, Inc., a member of the LexisNexis Group.
Publication 62794, Release 14, September 2017

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.