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**PRELIMINARY DRAFT**  
**No. 3145**

**PREPARED BY**  
**LEGISLATIVE SERVICES AGENCY**  
**2014 GENERAL ASSEMBLY**

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DIGEST

**Citations Affected:** IC 32-17-14-26.

**Synopsis:** Transfer on death affidavit. Requires, upon the death of an owner whose transfer on death deed has been recorded, that the beneficiary file an affidavit in the office of the recorder that includes the date of the owner's death (instead of a certified copy of the owner's death certificate).

**Effective:** July 1, 2014.



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

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

1 SECTION 1. IC 32-17-14-26, AS AMENDED BY P.L.149-2012,  
2 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2014]: Sec. 26. (a) If an agreement between the owner and a  
4 transferring entity is required to carry out a transfer on death transfer  
5 as described in section 7 of this chapter, a transferring entity may not  
6 adopt rules for the making, execution, acceptance, and revocation of a  
7 beneficiary designation that are inconsistent with this chapter.

8 (b) The following rules apply to a beneficiary designation:

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

13 (2) A security that is not registered in the name of the owner may  
14 be registered in beneficiary form on instructions given by a broker  
15 or person delivering the security.

16 (3) A beneficiary designation may designate one (1) or more  
17 primary beneficiaries and one (1) or more contingent  
18 beneficiaries.

19 (4) On property registered in beneficiary form, a primary  
20 beneficiary is the person shown immediately following the  
21 transfer on death direction. Words indicating that the person is a  
22 primary beneficiary are not required. The name of a contingent  
23 beneficiary in the registration must have the words "contingent  
24 beneficiary" or words of similar meaning to indicate the  
25 contingent nature of the interest being transferred.

26 (5) Multiple surviving beneficiaries share equally in the property  
27 being transferred unless a different percentage or fractional share  
28 is stated for each beneficiary. If a percentage or fractional share  
29 is designated for multiple beneficiaries, the surviving  
30 beneficiaries share in the proportion that their designated shares  
31 bear to each other.



- 1 (6) A transfer of unequal shares to multiple beneficiaries for  
 2 property registered in beneficiary form may be expressed in  
 3 numerical form following the name of the beneficiary in the  
 4 registration.
- 5 (7) A transfer on death transfer of property also transfers any  
 6 interest, rent, royalties, earnings, dividends, or credits earned or  
 7 declared on the property but not paid or credited before the  
 8 owner's death.
- 9 (8) If a distribution by a transferring entity under a transfer on  
 10 death transfer results in fractional shares in a security or other  
 11 property that is not divisible, the transferring entity may distribute  
 12 the fractional shares in the name of all beneficiaries as tenants in  
 13 common or as the beneficiaries may direct, or the transferring  
 14 entity may sell the property that is not divisible and distribute the  
 15 proceeds to the beneficiaries in the proportions to which they are  
 16 entitled.
- 17 (9) On the death of the owner, the property, minus all amounts  
 18 and charges owed by the owner to the transferring entity, belongs  
 19 to the surviving beneficiaries and, in the case of substitute  
 20 beneficiaries permitted under section 22 of this chapter, the lineal  
 21 descendants of designated beneficiaries who did not survive the  
 22 owner are entitled to the property as follows:
- 23 (A) If there are multiple primary beneficiaries and a primary  
 24 beneficiary does not survive the owner and does not have a  
 25 substitute under section 22 of this chapter, the share of the  
 26 nonsurviving beneficiary is allocated among the surviving  
 27 beneficiaries in the proportion that their shares bear to each  
 28 other.
- 29 (B) If there are no surviving primary beneficiaries and there  
 30 are no substitutes for the nonsurviving primary beneficiaries  
 31 under section 22 of this chapter, the property belongs to the  
 32 surviving contingent beneficiaries in equal shares or according  
 33 to the percentages or fractional shares stated in the  
 34 registration.
- 35 (C) If there are multiple contingent beneficiaries and a  
 36 contingent beneficiary does not survive the owner and does not  
 37 have a substitute under section 22 of this chapter, the share of  
 38 the nonsurviving contingent beneficiary is allocated among the  
 39 surviving contingent beneficiaries in the proportion that their  
 40 shares bear to each other.
- 41 (10) If a trustee designated as a beneficiary:
- 42 (A) does not survive the owner;
- 43 (B) resigns; or
- 44 (C) is unable or unwilling to execute the trust as trustee and  
 45 no successor trustee is appointed in the twelve (12) months  
 46 following the owner's death;



- 1 the transferring entity may make the distribution as if the trust did  
2 not survive the owner.
- 3 (11) If a trustee is designated as a beneficiary and no affidavit of  
4 certification of trust or probated will creating an express trust is  
5 presented to the transferring entity within the twelve (12) months  
6 after the owner's death, the transferring entity may make the  
7 distribution as if the trust did not survive the owner.
- 8 (12) If the transferring entity is not presented evidence during the  
9 twelve (12) months after the owner's death that there are lineal  
10 descendants of a nonsurviving beneficiary for whom LDPS  
11 distribution applies who survived the owner, the transferring  
12 entity may make the transfer as if the nonsurviving beneficiary's  
13 descendants also failed to survive the owner.
- 14 (13) If a beneficiary cannot be located at the time the transfer is  
15 made to located beneficiaries, the transferring entity shall hold the  
16 missing beneficiary's share. If the missing beneficiary's share is  
17 not claimed by the beneficiary or by the beneficiary's personal  
18 representative or successor during the twelve (12) months after  
19 the owner's death, the transferring entity shall transfer the share  
20 as if the beneficiary did not survive the owner.
- 21 (14) A transferring entity has no obligation to attempt to locate a  
22 missing beneficiary, to pay interest on the share held for a missing  
23 beneficiary, or to invest the share in any different property.
- 24 (15) Cash, interest, rent, royalties, earnings, or dividends payable  
25 to a missing beneficiary may be held by the transferring entity at  
26 interest or reinvested by the transferring entity in the account or  
27 in a dividend reinvestment account associated with a security held  
28 for the missing beneficiary.
- 29 (16) If a transferring entity is required to make a transfer on death  
30 transfer to a minor or an incapacitated adult, the transfer may be  
31 made under the Indiana Uniform Transfers to Minors Act, the  
32 Indiana Uniform Custodial Trust Act, or a similar law of another  
33 state.
- 34 (17) A written request for the execution of a transfer on death  
35 transfer may be made by any beneficiary, a beneficiary's legal  
36 representative or attorney in fact, or the owner's personal  
37 representative.
- 38 (18) A transfer under a transfer on death deed occurs  
39 automatically upon the owner's death subject to the requirements  
40 of subdivision (20) and does not require a request for the  
41 execution of the transfer.
- 42 (19) A written request for the execution of a transfer on death  
43 transfer must be accompanied by the following:
- 44 (A) A certificate or instrument evidencing ownership of the  
45 contract, account, security, or property.
- 46 (B) Proof of the deaths of the owner and any nonsurviving



- 1 beneficiary.
- 2 (C) An inheritance tax waiver from states that require it.
- 3 (D) In the case of a request by a legal representative, a copy of
- 4 the instrument creating the legal authority or a certified copy
- 5 of the court order appointing the legal representative.
- 6 (E) Any other proof of the person's entitlement that the
- 7 transferring entity may require.
- 8 (20) On the death of an owner whose transfer on death deed has
- 9 been recorded, the beneficiary shall file an affidavit in the office
- 10 of the recorder of the county in which the real property is located.
- 11 The affidavit must be endorsed by the county auditor under
- 12 IC 36-2-11-14 in order to be recorded. The affidavit must contain
- 13 the following:
- 14 (A) The legal description of the property.
- 15 ~~(B) A certified copy of the death certificate certifying the~~
- 16 ~~owner's death.~~
- 17 **(B) The date of death of the owner.**
- 18 (C) The name and address of each designated beneficiary who
- 19 survives the owner or is in existence on the date of the owner's
- 20 death.
- 21 (D) The name of each designated beneficiary who has not
- 22 survived the owner's death or is not in existence on the date of
- 23 the owner's death.
- 24 (E) A cross-reference to the recorded transfer on death deed.
- 25 (c) A beneficiary designation is presumed to be valid. A party may
- 26 rely on the presumption of validity unless the party has actual
- 27 knowledge that the beneficiary designation was not validly executed.
- 28 A person who acts in good faith reliance on a transfer on death deed is
- 29 immune from liability to the same extent as if the person had dealt
- 30 directly with the named owner and the named owner had been
- 31 competent and not incapacitated.

