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**PRELIMINARY DRAFT**  
**No. 3156**

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

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DIGEST

**Citations Affected:** IC 30-4.

**Synopsis:** Trust administration. Defines the following for purposes of the trust code: (1) "Trust instrument". (2) "Terms of a trust", "terms of the trust", or "terms of a charitable trust". Provides that unless the trust provides otherwise, a trustee has a duty to keep current income beneficiaries and, in the case of a trust that has become irrevocable, contingent income beneficiaries, reasonably informed by providing access to the trust's accounting and financial records upon written request. Provides that unless the trust provides otherwise, the trustee has a duty after the trust becomes irrevocable to provide income beneficiaries and remaindermen with a copy of the trust instrument upon written request.

**Effective:** July 1, 2014.



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A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

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

1 SECTION 1. IC 30-4-1-2, AS AMENDED BY P.L.61-2008,  
2 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2014]: Sec. 2. As used in this article:

4 (1) "Adult" means any person eighteen (18) years of age or older.

5 (2) "Affiliate" means a parent, descendant, spouse, spouse of a  
6 descendant, brother, sister, spouse of a brother or sister,  
7 employee, director, officer, partner, joint venturer, a corporation  
8 subject to common control with the trustee, a shareholder, or  
9 corporation who controls the trustee or a corporation controlled  
10 by the trustee other than as a fiduciary, an attorney, or an agent.

11 (3) "Beneficiary" has the meaning set forth in IC 30-2-14-2.

12 (4) "Breach of trust" means a violation by the trustee of any duty  
13 which is owed to the settlor or beneficiary.

14 (5) "Charitable trust" means a trust in which all the beneficiaries  
15 are the general public or organizations, including trusts,  
16 corporations, and associations, and that is organized and operated  
17 wholly for religious, charitable, scientific, public safety testing,  
18 literary, or educational purposes. The term does not include  
19 charitable remainder trusts, charitable lead trusts, pooled income  
20 funds, or any other form of split-interest charitable trust that has  
21 at least one (1) noncharitable beneficiary.

22 (6) "Court" means a court having jurisdiction over trust matters.

23 (7) "Income", except as otherwise stated in a trust agreement, has  
24 the meaning set forth in IC 30-2-14-4.

25 (8) "Income beneficiary" has the meaning set forth in  
26 IC 30-2-14-5.

27 (9) "Inventory value" means the cost of property to the settlor or  
28 the trustee at the time of acquisition or the market value of the  
29 property at the time it is delivered to the trustee, or the value of  
30 the property as finally determined for purposes of an estate or  
31 inheritance tax.



- 1 (10) "Minor" means any person under the age of eighteen (18)  
 2 years.
- 3 (11) "Person" has the meaning set forth in IC 30-2-14-9.
- 4 (12) "Personal representative" means an executor or administrator  
 5 of a decedent's or absentee's estate, guardian of the person or  
 6 estate, guardian ad litem or other court appointed representative,  
 7 next friend, parent or custodian of a minor, attorney in fact, or  
 8 custodian of an incapacitated person (as defined in  
 9 IC 29-3-1-7.5).
- 10 (13) "Principal" has the meaning set forth in IC 30-2-14-10.
- 11 (14) "Qualified beneficiary" means:
- 12 (A) a beneficiary who, on the date the beneficiary's  
 13 qualification is determined:
- 14 (i) is a distributee or permissible distributee of trust income  
 15 or principal;
- 16 (ii) would be a distributee or permissible distributee of trust  
 17 income or principal if the interest of the distributee  
 18 described in item (i) terminated on that date;
- 19 (iii) would be a distributee or permissible distributee of trust  
 20 income or principal if the trust terminated on that date;
- 21 ~~(iv) has sent the trustee a request for notice;~~
- 22 ~~(v) (iv)~~ is a charitable organization expressly designated to  
 23 receive distributions under the terms of a charitable trust;
- 24 ~~(vi) (v)~~ is a person appointed to enforce a trust for the care  
 25 of an animal under IC 30-4-2-18; or
- 26 ~~(vii) (vi)~~ is a person appointed to enforce a trust for a  
 27 noncharitable purpose under IC 30-4-2-19; or
- 28 (B) the attorney general, if the trust is a charitable trust having  
 29 its principal place of administration in Indiana.
- 30 (15) "Remainderman" means a beneficiary entitled to principal,  
 31 including income which has been accumulated and added to the  
 32 principal.
- 33 (16) "Settlor" means a person who establishes a trust including  
 34 the testator of a will under which a trust is created.
- 35 **(17) "Terms of a trust", "terms of the trust", or "terms of a**  
 36 **charitable trust" means the manifestation of the intent of a**  
 37 **settlor or decedent with respect to the trust, expressed in a**  
 38 **manner that admits of its proof in a judicial proceeding,**  
 39 **whether by written or spoken words or by conduct.**
- 40 ~~(17)~~ **(18)** "Trust estate" means the trust property and the income  
 41 derived from its use.
- 42 ~~(18)~~ **(19)** "Trust for a benevolent public purpose" means a  
 43 charitable trust (as defined in subdivision (5)), a split-interest  
 44 trust (as defined in Section 4947 of the Internal Revenue Code),  
 45 a perpetual care fund or an endowment care fund established  
 46 under IC 23-14-48-2, a prepaid funeral plan or funeral trust



1 established under IC 30-2-9, a funeral trust established under  
 2 IC 30-2-10, a trust or an escrow account created from payments  
 3 of funeral, burial services, or merchandise in advance of need  
 4 described in IC 30-2-13, and any other form of split-interest  
 5 charitable trust that has both charitable and noncharitable  
 6 beneficiaries, including but not limited to charitable remainder  
 7 trusts, charitable lead trusts, and charitable pooled income funds.

8 **(20) "Trust instrument" means an instrument, agreement, or**  
 9 **other written document executed by the settlor that contains**  
 10 **the terms of the trust, including any amendments to the terms**  
 11 **of the trust.**

12 ~~(19)~~ **(21) "Trust property"** means property either placed in trust or  
 13 purchased or otherwise acquired by the trustee for the trust  
 14 regardless of whether the trust property is titled in the name of the  
 15 trustee or the name of the trust.

16 ~~(20)~~ **(22) "Trustee"** has the meaning set forth in IC 30-2-14-13.

17 SECTION 2. IC 30-4-2-1, AS AMENDED BY P.L.238-2005,  
 18 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 19 JULY 1, 2014]: Sec. 1. (a) A trust in either real or personal property is  
 20 enforceable only if there is written evidence of **the terms of the trust**  
 21 bearing the signature of the settlor or the settlor's authorized agent.

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

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

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

37 (d) A trust created under:

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

40 has a beneficiary.

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

44 (f) A power of a trustee to select a beneficiary from an indefinite  
 45 class is valid. If the power is not exercised within a reasonable time, the  
 46 power fails and the property subject to the power passes to the persons



1 who would have taken the property had the power not been conferred.  
 2 (g) A trust may be created by exercise of a power of appointment in  
 3 favor of a trustee.

4 SECTION 3. IC 30-4-3-6, AS AMENDED BY P.L.238-2005,  
 5 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 6 JULY 1, 2014]: Sec. 6. (a) The trustee has a duty to administer a trust  
 7 according to ~~its terms:~~ **the terms of the trust.**

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

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

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

13 (3) Preserve the trust property.

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

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

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

23 (7) ~~Upon reasonable request, give the beneficiary complete and~~  
 24 ~~accurate information concerning any matter related to the~~  
 25 ~~administration of the trust and permit the beneficiary or the~~  
 26 ~~beneficiary's agent to inspect the trust property, the trustee's~~  
 27 ~~accounts, and any other documents concerning the administration~~  
 28 ~~of the trust. **Keep the following beneficiaries reasonably**~~  
 29 ~~**informed about the administration of the trust and of the**~~  
 30 ~~**material facts necessary for the beneficiaries to protect their**~~  
 31 ~~**interests:**~~

32 (A) **A current income beneficiary.**

33 (B) **A beneficiary who will become an income beneficiary**  
 34 **upon the expiration of the term of the current income**  
 35 **beneficiary, if the trust has become irrevocable by:**

36 (i) **the terms of the trust instrument; or**

37 (ii) **the death of the settlor.**

38 **A trustee satisfies the requirements of this subdivision by**  
 39 **providing a beneficiary described in clause (A) or (B), upon**  
 40 **the beneficiary's written request, access to the trust's**  
 41 **accounting and financial records concerning the**  
 42 **administration of trust property and the administration of the**  
 43 **trust.**

44 (8) **Upon:**

45 (A) **the trust becoming irrevocable:**

46 (i) **by the terms of the trust instrument; or**



- 1                   (ii) the death of the settlor; and  
 2                   (B) the written request of an income beneficiary or  
 3                   remainderman;  
 4                   **promptly provide a copy of the complete trust instrument to**  
 5                   **the income beneficiary or remainderman.**  
 6                   ~~(8)~~ (9) Take whatever action is reasonable to realize on claims  
 7                   constituting part of the trust property.  
 8                   ~~(9)~~ (10) Defend actions involving the trust estate.  
 9                   ~~(10)~~ (11) Supervise any person to whom authority has been  
 10                   delegated.  
 11                   ~~(11)~~ (12) Determine the trust beneficiaries by acting on  
 12                   information:  
 13                   (A) the trustee, by reasonable inquiry, considers reliable; and  
 14                   (B) with respect to heirship, relationship, survivorship, or any  
 15                   other issue relative to determining a trust beneficiary.  
 16                   SECTION 4. IC 30-4-3.5-2 IS AMENDED TO READ AS  
 17                   FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. (a) A trustee shall  
 18                   invest and manage trust assets as a prudent investor would, by  
 19                   considering the purposes, terms **of the trust**, distribution requirements,  
 20                   and other circumstances of the trust. In satisfying this standard, the  
 21                   trustee shall exercise reasonable care, skill, and caution.  
 22                   (b) A trustee's investment and management decisions respecting  
 23                   individual assets must be evaluated not in isolation but in the context  
 24                   of the trust portfolio as a whole and as a part of an overall investment  
 25                   strategy having risk and return objectives reasonably suited to the trust.  
 26                   (c) Among circumstances that a trustee shall consider in investing  
 27                   and managing trust assets are those of the following that are relevant  
 28                   to the trust or its beneficiaries:  
 29                   (1) General economic conditions.  
 30                   (2) The possible effect of inflation or deflation.  
 31                   (3) The expected tax consequences of investment decisions or  
 32                   strategies.  
 33                   (4) The role that each investment or course of action plays within  
 34                   the overall trust portfolio, which may include financial assets,  
 35                   interests in closely held enterprises, tangible and intangible  
 36                   personal property, and real property.  
 37                   (5) The expected total return from income and the appreciation of  
 38                   capital.  
 39                   (6) Other resources of the beneficiaries.  
 40                   (7) Needs for liquidity, regularity of income, and preservation or  
 41                   appreciation of capital.  
 42                   (8) An asset's special relationship or special value, if any, to the  
 43                   purposes of the trust or to one (1) or more of the beneficiaries.  
 44                   (d) A trustee shall make a reasonable effort to verify facts relevant  
 45                   to the investment and management of trust assets.  
 46                   (e) A trustee may invest in any kind of property or type of



1 investment consistent with the standards of this chapter.

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

5 SECTION 5. IC 30-4-3.5-4 IS AMENDED TO READ AS  
6 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. Within a reasonable  
7 time after accepting a trusteeship or receiving trust assets, a trustee  
8 shall review the trust assets and make and implement decisions  
9 concerning the retention and disposition of assets in order to bring the  
10 trust portfolio into compliance with the purposes, terms **of the trust**,  
11 distribution requirements, and other circumstances of the trust, and  
12 with the requirements of this chapter.

13 SECTION 6. IC 30-4-5-13 IS AMENDED TO READ AS  
14 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 13. (~~Content of Written~~  
15 ~~Statements of Account Filed with the Court~~)

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

18 (1) the period covered by the account;

19 (2) the total principal with which the trustee is chargeable according  
20 to the last preceding written statement of accounts or the original  
21 inventory if there is no preceding statement;

22 (3) an itemized schedule of all principal cash and property received  
23 and disbursed, distributed, or otherwise disposed of during the period;

24 (4) an itemized schedule of income received and disbursed,  
25 distributed, or otherwise disposed of during the period;

26 (5) the balance of principal and income remaining at the close of the  
27 period, how invested, and both the inventory and current market values  
28 of all investments;

29 (6) a statement that the trust has been administered according to ~~its~~  
30 **terms; the terms of the trust;**

31 (7) the names and addresses of all living beneficiaries and a  
32 statement identifying any beneficiary known to be under a legal  
33 disability;

34 (8) a description of any possible unborn or unascertained  
35 beneficiary and ~~his~~ **the possible beneficiary's** interest in the trust  
36 estate; and

37 (9) the business addresses, if any, or the residence addresses of all  
38 the trustees.

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

