

IC 32-17-13

Chapter 13. Liability of Nonprobate Transferees for Creditor Claims and Statutory Allowances

IC 32-17-13-1

"Nonprobate transfer"; transfers involving multiple party accounts, motor vehicles, and watercraft

Sec. 1. (a) As used in this chapter, "nonprobate transfer" means a valid transfer, effective at death, by a transferor:

- (1) whose last domicile was in Indiana; and
- (2) who immediately before death had the power, acting alone, to prevent transfer of the property by revocation or withdrawal and:
 - (A) use the property for the benefit of the transferor; or
 - (B) apply the property to discharge claims against the transferor's probate estate.

(b) The term does not include a transfer at death (other than a transfer to or from the decedent's probate estate) of:

- (1) a survivorship interest in a tenancy by the entireties real estate;
- (2) a life insurance policy or annuity;
- (3) the death proceeds of a life insurance policy or annuity;
- (4) an individual retirement account or a similar account or plan; or
- (5) benefits under an employee benefit plan.

(c) With respect to a nonprobate transfer involving a multiple party account, a nonprobate transfer occurs if the last domicile of the depositor whose interest is transferred under IC 32-17-11 was in Indiana.

(d) With respect to a motor vehicle or a watercraft, a nonprobate transfer occurs if the transferee obtains a certificate of title in Indiana for:

- (1) the motor vehicle under IC 9-17-2-2(b); or
- (2) the watercraft as required by IC 9-31-2-16(a).

(e) A transfer on death transfer completed under IC 32-17-14 is a nonprobate transfer.

As added by P.L.165-2002, SEC.11. Amended by P.L.143-2009, SEC.40; P.L.6-2010, SEC.22; P.L.36-2011, SEC.10; P.L.125-2012, SEC.408.

IC 32-17-13-2

Insufficiency of estate to pay claims and statutory allowances; liability of nonprobate transferee

Sec. 2. (a) Except as otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability to a decedent's probate estate for:

- (1) allowed claims against the decedent's probate estate; and
- (2) statutory allowances to the decedent's spouse and children; to the extent the decedent's probate estate is insufficient to satisfy those claims and allowances.

(b) The liability of the nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by the nonprobate transferee.

(c) The liability of the nonprobate transferee does not include the net contributions of the nonprobate transferee.

As added by P.L.165-2002, SEC.11.

IC 32-17-13-3

Priority of liability to probate estate

Sec. 3. Nonprobate transferees are liable for the insufficiency described in section 2 of this chapter in the following order:

(1) As provided in the decedent's will or other governing instrument.

(2) To the extent of the value of the nonprobate transfer received or controlled by the trustee of trusts that can be amended, modified, or revoked by the decedent during the decedent's lifetime. If there is more than one (1) such trust, in proportion to the relative value of the trusts.

(3) Other nonprobate transferees in proportion to the values received.

As added by P.L.165-2002, SEC.11.

IC 32-17-13-4

Beneficiary interests in trusts

Sec. 4. Unless otherwise provided by the trust instrument, interest of beneficiaries in all trusts incurring liabilities under this chapter shall abate as necessary to satisfy the liability as if all of the trust instruments were a single trust.

As added by P.L.165-2002, SEC.11. Amended by P.L.101-2008, SEC.11.

IC 32-17-13-5

Apportionment of liability by instrument

Sec. 5. (a) A provision made in an instrument may direct the apportionment of the liability among the nonprobate transferees taking under that or any other governing instrument.

(b) If a provision in an instrument conflicts with a provision in another instrument, the later provision prevails.

As added by P.L.165-2002, SEC.11.

IC 32-17-13-6

Enforcement proceedings; jurisdiction

Sec. 6. Upon due notice to a nonprobate transferee, the liability imposed by this chapter is enforceable in proceedings in Indiana in the county where:

(1) the transfer occurred;

(2) the transferee is located; or

(3) the probate action is pending.

As added by P.L.165-2002, SEC.11.

IC 32-17-13-7

Commencement of proceedings; immunity of personal representative

Sec. 7. (a) A proceeding under this chapter may not be commenced unless the personal representative of the decedent's estate has received a written demand for the proceeding from the surviving spouse or a surviving child, to the extent that statutory allowances are affected, or a creditor.

(b) If the personal representative declines or fails to commence a proceeding within sixty (60) days after receiving the demand, a person making the demand may commence the proceeding in the name of the decedent's estate at the expense of the person making the demand and not of the estate.

(c) A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

As added by P.L.165-2002, SEC.11. Amended by P.L.6-2010, SEC.23.

IC 32-17-13-8

Deadline for commencement of proceedings

Sec. 8. A proceeding under this chapter must be commenced not later than nine (9) months after the person's death, but a proceeding on behalf of a creditor whose claim was timely filed may be commenced within:

- (1) sixty (60) days after final allowance of the claim; or
- (2) ninety (90) days after demand is made under section 7 of this chapter if the personal representative declines or fails to commence a proceeding after receiving the demand.

As added by P.L.165-2002, SEC.11. Amended by P.L.6-2010, SEC.24.

IC 32-17-13-9

Release of obligor or trustee from liability for transfer of assets to nonprobate transferee

Sec. 9. Unless written notice asserting that a decedent's probate estate is insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, the following rules apply:

- (1) Payment or delivery of assets by a financial institution, registrar, or another obligor to a nonprobate transferee under the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered.
- (2) A trustee receiving or controlling a nonprobate transfer is released from liability under this section on any assets distributed to the trust's beneficiaries. Each beneficiary, to the extent of the distribution received, becomes liable for the amount of the trustee's liability attributable to that asset imposed by sections 2 and 3 of this chapter.

As added by P.L.165-2002, SEC.11.