

## **IC 30-4-2.1**

### **Chapter 2.1. Rules for Interpretation of Trusts**

#### **IC 30-4-2.1-1**

##### **Construction**

Sec. 1. In the absence of a contrary intent appearing in the trust, a trust shall be construed in accordance with the rules in this chapter.  
*As added by P.L.4-2003, SEC.7.*

#### **IC 30-4-2.1-2**

##### **Adopted children**

Sec. 2. (a) Except as provided in subsection (b), in construing a trust naming as beneficiary a person described by relationship to the settlor or to another, a person adopted before:

- (1) the person is twenty-one (21) years of age; and
- (2) the death of the settlor;

shall be considered the child of the adopting parent or parents and not the child of the natural or previous adopting parents.

(b) If a natural parent or previous adopting parent marries the adopting parent before the settlor's death, the adopted person shall also be considered the child of the natural or previous adopting parent.

(c) A person adopted by the settlor after the person becomes twenty-one (21) years of age shall be considered the child of the settlor. However, no other person is entitled to establish the relationship to the settlor through the child.

*As added by P.L.4-2003, SEC.7.*

#### **IC 30-4-2.1-3**

##### **No contest provision void**

Sec. 3. A provision in a trust that provides, or has the effect of providing, that a beneficiary forfeits a benefit from the trust if the beneficiary contests the trust is void.

*As added by P.L.4-2003, SEC.7.*

#### **IC 30-4-2.1-4**

##### **Children born after trust's creation**

Sec. 4. (a) Except as provided in subsection (b) and section 5 of this chapter, when a settlor fails to provide in the settlor's trust for a child who is:

- (1) born or adopted after the making of the settlor's trust; and
- (2) born before or after the settlor's death;

the child is entitled to receive a share in the trust assets. The child's share of the trust assets shall be determined by ascertaining what the child's intestate share would have been under IC 29-1-2-1 if the settlor had died intestate. The child is entitled to receive a share of the trust assets equivalent in value to the intestacy share determined under IC 29-1-2-1.

- (b) Subsection (a) does not apply to a child of the settlor if:
- (1) it appears from the trust that the settlor intentionally failed to provide in the settlor's trust for the child; or
  - (2) when the trust was executed:
    - (A) the settlor had at least one (1) child known to the settlor to be living; and
    - (B) the settlor devised substantially all of the settlor's estate to the settlor's surviving spouse.

*As added by P.L.4-2003, SEC.7.*

#### **IC 30-4-2.1-5**

##### **Mistaken belief that settlor's child deceased**

Sec. 5. (a) Except as provided in subsection (b), if, at the time of the making of the trust, the settlor:

- (1) believes a child of the settlor to be dead; and
- (2) fails to provide for the child in the settlor's trust;

the child is entitled to receive a share in the trust assets. The child's share of the trust assets shall be determined by ascertaining what the child's intestate share would have been under IC 29-1-2-1 if the settlor had died intestate. The child is entitled to receive a share of the trust assets equivalent in value to the intestacy share determined under IC 29-1-2-1.

(b) Subsection (a) does not apply to a child of the settlor if it appears from the trust or from other evidence that the settlor would not have devised anything to the child had the settlor known that the child was alive.

*As added by P.L.4-2003, SEC.7.*

#### **IC 30-4-2.1-6**

##### **Void, revoked, or lapsed devise**

Sec. 6. If a devise of real or personal property, not included in the residuary clause of the trust:

- (1) is void;
- (2) is revoked; or
- (3) lapses;

the devise becomes a part of the residue and passes to the residuary beneficiary.

*As added by P.L.4-2003, SEC.7.*

#### **IC 30-4-2.1-7**

##### **Beneficiary predeceases settlor**

Sec. 7. (a) As used in this section, "descendant" includes the following:

- (1) A child adopted before the child is twenty-one (21) years of age by:
  - (A) the settlor; or
  - (B) the settlor's descendants.
- (2) A descendant of a child adopted as set forth in subdivision (1).

(3) A child who is born of the mother out of wedlock in either of the following circumstances:

(A) The mother is a descendant of the settlor.

(B) The mother is the settlor.

(4) If the right of a child born out of wedlock to inherit from the father is or has been established in the manner provided under IC 29-1-2-7, the child, in either of the following circumstances:

(A) The father is a descendant of the settlor.

(B) The father is the settlor.

(5) A descendant of a child born out of wedlock as set forth in subdivisions (3) and (4).

(b) If:

(1) an estate, real or personal, is devised to a descendant of the settlor; and

(2) the beneficiary:

(A) dies during the lifetime of the settlor before or after the execution of the trust; and

(B) leaves a descendant who survives the settlor;

the devise does not lapse, but the property devised vests in the surviving descendant of the beneficiary as if the beneficiary had survived the settlor and died intestate.

*As added by P.L.4-2003, SEC.7.*

#### **IC 30-4-2.1-8**

##### **Kindred of the half blood**

Sec. 8. Kindred of the half blood are entitled to receive the same trust interest that they would have received if they had been of the whole blood.

*As added by P.L.4-2003, SEC.7.*

#### **IC 30-4-2.1-9**

##### **Applicability of adultery and abandonment forfeiture provisions**

Sec. 9. A trust of a deceased spouse is subject to the following:

(1) IC 29-1-2-14.

(2) IC 29-1-2-15.

*As added by P.L.238-2005, SEC.28.*

#### **IC 30-4-2.1-11**

##### **Written statement or list disposing of tangible personal property**

Sec. 11. (a) A written statement or list that:

(1) complies with this section; and

(2) is referred to in a settlor's trust that was revocable during the settlor's lifetime;

may be used to dispose of items of tangible personal property, other than property used in a trade or business, not otherwise specifically disposed of by the trust.

(b) To be admissible under this section as evidence of the intended disposition, the writing must be signed by the settlor and must describe the items and the beneficiaries with reasonable certainty.

The writing may be prepared before or after the execution of the trust. The writing may be altered by the settlor after the writing is prepared. The writing may have no significance apart from the writing's effect on the dispositions made by the trust.

(c) If more than one (1) otherwise effective writing exists, then, to the extent of a conflict among the writings, the provisions of the most recent writing revoke the inconsistent provisions of each earlier writing.

*As added by P.L.238-2005, SEC.29.*

#### **IC 30-4-2.1-11.1**

##### **Trust referencing writing; effect to be given to writing**

Sec. 11.1. Except as provided in section 11 of this chapter, if a trust refers to a writing of any kind, the referenced writing, whether subsequently amended or revoked, as it existed at the time of the execution of the trust, shall be given the same effect as if set forth at length in the trust, if the referenced writing is clearly identified in the trust and is in existence at the time of the execution of the trust.

*As added by P.L.81-2015, SEC.19.*

#### **IC 30-4-2.1-12**

##### **Order of abatement; other rules governing abatement**

Sec. 12. (a) If a trust is terminated or partially terminated and the available trust property is not sufficient to fully satisfy the interests of all beneficiaries, the interests must be abated in the following order:

- (1) The interests that would be characterized as residuary devises if the trust were a will.
- (2) The interests that would be characterized as general devises if the trust were a will.
- (3) The interests that would be characterized as specific devises if the trust were a will.

The amount abated for each beneficiary within each classification described in subdivisions (1) through (3) must be proportional to the amount of property that each beneficiary would have received if full distribution of the trust property had been made in accordance with the terms of the trust instrument.

(b) If:

- (1) a trust instrument expresses an order of abatement that differs from the order set forth in subsection (a); or
- (2) the order of abatement stated in subsection (a) would impair an express or implied purpose of the trust;

the interests of the beneficiaries must be abated in the manner determined appropriate to give effect to the settlor's intent.

(c) If, under the terms of a trust that was revocable at the time of the settlor's death, the subject of a preferred devise is sold or used to pay debts, expenses, taxes, or other obligations incident to the settlement of the settlor's affairs, abatement must be achieved by adjustment in, or contribution from, other interests in the remaining

trust property.

(d) Where applicable, the abatement of beneficiary interests in a trust is subject to IC 32-17-13-4.

*As added by P.L.101-2008, SEC.8.*

### **IC 30-4-2.1-13**

#### **Repealed**

*(As added by P.L.6-2010, SEC.13. Repealed by P.L.149-2012, SEC.12.)*

### **IC 30-4-2.1-14**

#### **Rules of interpretation concerning discretionary interests**

Sec. 14. (a) The following rules apply only to discretionary interests (as defined in section 14.5 of this chapter):

(1) A discretionary interest is a mere expectancy that is neither a property interest nor an enforceable right.

(2) A creditor may not:

(A) require a trustee to exercise the trustee's discretion to make a distribution; or

(B) cause a court to foreclose a discretionary interest.

(3) A court may review a trustee's distribution discretion only if the trustee acts dishonestly or with an improper motive.

(b) Words such as sole, absolute, uncontrolled, or unfettered discretion dispense with the trustee acting reasonably.

(c) Absent express language to the contrary, if the distribution language in a discretionary interest permits unequal distributions between beneficiaries or distributions to the exclusion of other beneficiaries, a trustee may, in the trustee's discretion, distribute all of the accumulated, accrued, or undistributed income and principal to one (1) beneficiary to the exclusion of the other beneficiaries.

(d) Regardless of whether a beneficiary has any outstanding creditors, a trustee of a discretionary interest may directly pay any expense on behalf of the beneficiary and may exhaust the income and principal of the trust for the benefit of the beneficiary. A trustee is not liable to a creditor for paying the expenses of a beneficiary who holds a discretionary interest.

*As added by P.L.6-2010, SEC.14. Amended by P.L.36-2011, SEC.7; P.L.6-2012, SEC.202.*

### **IC 30-4-2.1-14.5**

#### **"Discretionary interest"; rules of construction**

Sec. 14.5. (a) As used in this section and section 14 of this chapter, "discretionary interest" refers to any interest over which the trustee has any discretion to make or withhold a distribution.

(b) A discretionary interest may be evidenced by permissive language such as "may make distributions" or may be evidenced by mandatory distribution language that is negated by the discretionary language of the trust such as "the trustee shall make distributions in the trustee's sole and absolute discretion".

(c) An interest that includes distribution language that appears mandatory but is subsequently qualified by discretionary distribution language is considered a discretionary interest.

(d) Trust provisions that create discretionary interests include the following examples:

(1) "The trustee may, in the trustee's sole and absolute discretion, make distributions for health, education, maintenance, and support."

(2) "The trustee shall, in the trustee's sole and absolute discretion, make distributions for health, education, maintenance, and support."

(3) "The trustee may make distributions for health, education, maintenance, and support."

(4) "The trustee shall make distributions for health, education, maintenance, and support. The trustee may exclude any beneficiary or make unequal distributions among the beneficiaries."

(5) "The trustee may make distributions for health, education, maintenance, support, comfort, and general welfare."

*As added by P.L.36-2011, SEC.8.*

#### **IC 30-4-2.1-15**

##### **Rules of interpretation concerning a beneficiary's influence over a trust**

Sec. 15. If a party challenges a settlor or a beneficiary's influence over a trust, none of the following factors, alone or in combination, may be considered dominion and control over a trust:

(1) A beneficiary serving as a trustee or co-trustee.

(2) The settlor or beneficiary holds an unrestricted power to remove or replace a trustee.

(3) The settlor or a beneficiary:

(A) is a trust administrator, a general partner of a partnership, a manager of a limited liability company, or an officer of a corporation; or

(B) has any other managerial function in any other entity; that is owned in whole or in part by the trust.

(4) A person related by blood or adoption to a settlor or beneficiary is appointed as trustee.

(5) An agent, accountant, attorney, financial adviser, or friend of the settlor or a beneficiary is appointed as trustee.

(6) A business associate of the settlor or a beneficiary is appointed as trustee.

(7) A beneficiary holds any power of appointment over part or all of the trust property.

(8) The settlor holds a power to substitute property of equivalent value.

(9) The trustee may loan trust property to the settlor for less than a full and adequate rate of interest or without adequate security.

(10) The trust contains broad purposes or highly discretionary

distribution language.

(11) The trust has only one (1) beneficiary eligible for current distributions.

*As added by P.L.6-2010, SEC.15.*

#### **IC 30-4-2.1-16**

##### **Rules of interpretation concerning a trustee's independence from the settlor**

Sec. 16. Absent clear and convincing evidence otherwise, a settlor of an irrevocable trust may not be considered the alter ego of a trustee. The following factors, alone or in combination, are not sufficient evidence to conclude that the settlor controls a trustee or is the alter ego of the trustee:

- (1) Any combination of the factors listed in section 15 of this chapter.
- (2) Isolated occurrences of the settlor signing checks, making disbursements, or executing other documents related to the trust as a trustee when the settlor is, in fact, not a trustee.
- (3) Requesting a trustee to make distributions on behalf of a beneficiary.
- (4) Requesting a trustee to hold, purchase, or sell any trust property.

*As added by P.L.6-2010, SEC.16.*

#### **IC 30-4-2.1-17**

##### **Limits on creditors of beneficiaries who may replace or remove a trustee or who are also trustees or co-trustees**

Sec. 17. (a) A creditor may not reach, exercise, or otherwise acquire an interest of a beneficiary or any other person who holds an unconditional or conditional removal or replacement power over a trustee. A power described in this subsection is personal to a beneficiary or other person and may not be exercised by the person's creditors. A court may not direct a person to exercise the power.

(b) A creditor may not:

- (1) reach an interest of a beneficiary who is also a trustee or co-trustee; or
- (2) otherwise compel a distribution to a beneficiary who is also a trustee or co-trustee.

(c) A court may not foreclose against an interest held by a beneficiary described in subsection (b).

*As added by P.L.6-2010, SEC.17.*