

IC 32-18

ARTICLE 18. INTERESTS OF CREDITORS IN PROPERTY

IC 32-18-1

Chapter 1. Assignment of Real and Personal Property for the Benefit of Creditors

IC 32-18-1-1

Assignment of all debtor's property in trust for creditors; fraudulent and void assignments; trustees

Sec. 1. (a) A debtor who is in embarrassed or failing circumstances may make a general assignment of all the debtor's property in trust for the benefit of all the debtor's bona fide creditors.

(b) Except as provided in this chapter, an assignment described in subsection (a) that is made after March 19, 1859, is considered fraudulent and void.

(c) A debtor who is:

- (1) in embarrassed or failing circumstances; and
- (2) making a general assignment of all the debtor's property as provided in this chapter;

may select the debtor's trustee. The trustee shall serve and qualify, unless creditors representing an amount of at least one-half (1/2) of the liabilities of the debtor petition the court for the removal of the trustee and the appointment of another trustee. If the petition is filed, the judge of the circuit or superior court in which the debtor resides shall immediately remove the trustee and appoint a suitable disinterested party to act as trustee in place of the removed trustee.

(d) This chapter may not be construed to prevent a debtor from preferring a particular creditor by an assignment not made under this chapter that:

- (1) conveys less than all of the debtor's property;
- (2) is made for the benefit of less than all of the debtor's creditors; or
- (3) is made by other means;

if the action is taken in good faith and not as a part of, or in connection with, a general assignment made under this chapter. However, a corporation may not prefer any creditor if a director of the corporation is a surety on the indebtedness preferred or has been a surety on the indebtedness within four (4) months before the preference.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-2

Filing indenture of assignment with county recorder; description of property; oaths of assignor

Sec. 2. (a) An assignment under this chapter must be:

- (1) by indenture; and

(2) signed and acknowledged before a person who is authorized to take the acknowledgment of deeds.

(b) The indenture must, within ten (10) days after the execution, be filed with the recorder of the county in which the assignor resides. The recorder shall record the indenture of assignment the same as deeds are recorded.

(c) The indenture of assignment must:

- (1) contain a full description of all real estate assigned; and
- (2) be accompanied by a schedule containing a particular enumeration and description of all the personal property assigned.

(d) The assignor shall make oath before a person authorized to administer oaths. The oath must:

- (1) verify the indenture and schedule and contain a statement of all the property, rights, and credits belonging to the assignor, or of which the assignor has knowledge, and that the assignor has not, directly or indirectly, transferred or reserved a sum of money or article of property for the assignor's own use or the benefit of another person; and
- (2) indicate the assignor has not acknowledged a debt or confessed a judgment to a person for a sum greater than was justly owing to the person, or with the intention of delaying or defrauding the assignor's creditors.

(e) An assignment under this chapter may not convey to the assignee an interest in property assigned until the assignment is recorded as provided in this section.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-3

Trustee; duties on execution of assignment; bond

Sec. 3. (a) Not later than fifteen (15) days after the execution of the assignment, the trustee shall file a copy of the assignment and schedule in the office of the clerk of the circuit court of the county in which the debtor resides. The trustee shall state under oath, before execution of the trust:

- (1) that the trustee will faithfully execute the trust, and the property assigned has been actually delivered into the trustee's possession for the uses declared in the assignment; and
- (2) what the probable value of the assigned property is.

(b) The trustee shall, at the time the assignment and schedule is filed under subsection (a), file with the clerk a written undertaking to the state with at least one (1) sufficient surety. The bond to be approved by the clerk:

- (1) must be in a sum double the amount of the value of the property assigned; and
- (2) conditioned for the faithful discharge of the duties of the trustee's trust.

The bond must be for the use of a person injured by the action of the trustee.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-4

Circuit court clerk's recording of filing of indenture, schedule, and undertaking

Sec. 4. The clerk of the circuit court shall minute the filing of the copy of indenture, schedule, and undertaking in the proper book under section 3 of this chapter.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-5

Trustee; removal upon petition of assignor or creditor

Sec. 5. (a) If the trustee fails to comply with the provisions of sections 1 through 4 of this chapter, the judge of the circuit court or the clerk of the circuit court may, at the instance of the assignor or a creditor, by petition:

- (1) remove the trustee; and
- (2) appoint another suitable person as trustee.

(b) A replacement trustee shall:

- (1) comply with the requirements specified in this chapter;
- (2) immediately take possession and control of the property assigned; and
- (3) enter upon the execution of the trust, as provided in this chapter.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-6

Trustee; notice of appointment; inventory of property

Sec. 6. (a) Immediately after complying with the requirements set forth in this chapter, the trustee shall give notice of the trustee's appointment by publication, three (3) weeks successively, in a newspaper printed and published in the county. If a newspaper is not printed and published in the county, the trustee shall:

- (1) place written notice in at least five (5) of the most public places in the county; and
- (2) publish notice in a newspaper printed and published in the nearest county, for the time and in the manner mentioned in reference to publication in the county where the assignor resides.

(b) The trustee shall, within thirty (30) days after beginning the duties of the trust, make and file, under oath, a full and complete inventory of all the property, real and personal, the rights, credits, interests, profits, and collaterals that the trustee obtains, or of which the trustee may have obtained knowledge as belonging to the assignor. If:

- (1) any property not mentioned in an inventory comes into the trustee's hands; or
- (2) the trustee obtains satisfactory information of the existence of property not mentioned in an inventory;

the trustee shall file an additional inventory of the property as described in this section.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-7

Appraisers; oath required

Sec. 7. The trustee, not more than twenty (20) days after filing the inventory mentioned in section 6 of this chapter, shall cause the property mentioned in the inventory to be appraised by two (2) reputable householders of the neighborhood. The appraisers, before proceeding to discharge their duty, must take and subscribe an oath that they will honestly appraise the property mentioned in the inventory filed by the trustee. The oath must be filed, together with the appraisal, with the clerk of the circuit court.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-8

Appraisal of property

Sec. 8. The appraisers shall, in the presence of the trustee:

- (1) appraise each article mentioned in the inventory at its true value; and
- (2) set down opposite each article respectively the value fixed by them in dollars and cents.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-9

Appraisal; set off to resident household assignor

Sec. 9. (a) If the assignor is a resident householder of Indiana, the appraisers shall set off to the assignor articles of property or so much of the real estate mentioned in the inventory as the assignor may select, not to exceed three hundred dollars (\$300).

(b) The appraisers shall, in an appraisal, specify what articles of property and the value of the property, or what part of the real estate and its value, they have set apart to the assignor.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-10

Sale of property; partition of land

Sec. 10. (a) The trustee, as soon as possible after an appraisal is filed, shall collect the rights and credits of the assignor. Except for property set off by the assignor as exempt, the trustee shall sell at public auction the appraised property after giving thirty (30) days notice of the time and place of sale:

- (1) by publication in a newspaper printed and published in the county; or
- (2) if a newspaper is not printed and published in the county, by posting written or printed notices in at least five (5) of the most public places in the county.

(b) The trustee shall sell the appraised property to the highest

bidder for cash, or upon credit, the trustee taking notes with security to be approved by the trustee, waiving relief from valuation or appraisal laws, payable not more than twelve (12) months after the date, with interest.

(c) The trustee must make a full return, under oath, of the sale to the clerk of the circuit court. The clerk shall file the return with the other papers in the case. However, a court may, upon the sworn petition of the trustee, a creditor, or the assignor, for good cause shown, extend the time for selling the property, or any part of the property, for as much time as the court determines will serve the best interests of the creditors. The court may extend the credit on sales for not more than two (2) years.

(d) The court may, upon the sworn petition of the trustee or of a majority of the creditors showing that the property may deteriorate in value by delay or that it will be beneficial to the creditors to have an early sale order the property sold upon notice of the time, place, and terms of sale, and in a manner the court determines is best.

(e) The court may authorize the property sold at private sale at not less than its appraised value if it is shown that a private sale would be beneficial to the creditors of the assignor. The court shall supervise the estate of the assignor and may make all necessary orders in the interest of the creditors for its control and management by the trustee before the sale. In the interest of all parties, the court may upon petition of the assignee, if the wife of the assignor is a party to the petition, order partition of the land of the assignor, before sale, between the assignee and wife of the assignor. The court shall set off to the wife her inchoate one-third (1/3) in the land before sale. If the court finds that the land cannot be partitioned without detriment to the interest of the creditors of the assignor, the court may make an order directing the sale of all the land conveyed to the assignee by the assignor, including the wife's one-third (1/3) inchoate interest. The one-third (1/3) of the money for which the land is sold shall be paid to the wife of the assignor when collected. The assignee shall, after sale, compel the trustee to report the money in the trustee's hands for distribution, and shall compel the money to be paid into court for distribution if the assets are shown to be sufficient to pay a ten percent (10%) dividend upon the indebtedness. The distribution may be ordered from time to time when, on application of any person interested, it is shown to the court that there is sufficient funds in the hands of the trustee to pay the dividend of ten percent (10%).

As added by P.L.2-2002, SEC.3.

IC 32-18-1-11

Report of trustee

Sec. 11. The trustee shall, within six (6) months after beginning the duties of the trust, report to the judge of the circuit court, under oath:

- (1) the amount of money in the trustee's hands from:
 - (A) the sale of property; and

- (B) collections; and
- (2) the amount still uncollected.

The trustee shall also, in the report, list all claims of creditors that have been presented to the trustee against the assignor. The trustee shall denote the claims that the trustee concludes should be allowed and those that the trustee determines not to allow.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-12

Trial of disallowed claims

Sec. 12. The clerk of the court shall spread the report and list upon the appearance docket of the court. The clerk shall distinguish between the claims the trustee has determined to allow and the claims the trustee has refused to allow. In all cases in which the trustee has refused to allow a claim, and in which a creditor objects to the allowance of the claim of another creditor, the judge may order the case to stand for trial at the next term of the court. The trial shall be governed by the rules regulating the trials of similar actions in the circuit court. If, after trial of the claim, the court is satisfied that the claim is valid and just, the court shall order the claim to be allowed and paid as other similar claims are paid. The court shall also make an order with respect to costs as the court considers just.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-13

Lien or encumbrance on property sold

Sec. 13. (a) A part of the property assigned on which there are liens or encumbrances may be sold by the trustee subject to the liens or encumbrances.

(b) However, if the trustee is satisfied that the general fund would be materially increased by the payment of the liens or encumbrances, the trustee shall make application, by petition, to the judge of the circuit court for an order to pay the liens and encumbrances before selling the property. Before the holder of any lien or encumbrance is entitled to receive any part of the holder's debt from the general fund, the holder shall proceed to enforce the payment of the debt by sale, or otherwise, of the property on which the lien or encumbrance exists. For the residue of the claim, the holder of the lien or encumbrance shall share pro rata with the other creditors, if entitled to do so under Indiana law.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-14

Distribution of money in possession of trustee

Sec. 14. If the court confirms the report made as provided under section 11 of this chapter and if no contested claims are standing on the docket as provided under section 12 of this chapter, the court shall order the trustee to pay all money in the trustee's hands to the clerk of the court. The clerk, after deducting the costs incident to the

execution of the trust, including an allowance to the trustee as the court considers just, shall:

- (1) distribute the money among the creditors according to this chapter; and
- (2) take receipts from each creditor.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-15

Examination of assignor or transferee

Sec. 15. (a) If a creditor or the trustee, by verified petition, asks the court for the examination of the assignor or any person to whom any part of the person's property has been transferred within six (6) months before the assignment, the circuit or superior court may issue an order for the examination of:

- (1) the assignor;
- (2) a person or officer of a corporation to whom a transfer is believed to have been fraudulently made;
- (3) a person or officer of an association to whom a transfer is believed to have been fraudulently made; and
- (4) a person alleged to have been concerned in the transfer.

(b) A person described in subsection (a) may be brought before the court and, on oath, be compelled to answer all questions put to the person pertinent to the alleged transaction. The court may stay further transfers and subject property that has been fraudulently withheld or transferred to the operation of the general trust. The assignor or person shall be interrogated or be compelled to answer all questions concerning the disposition of the property of the assignor. The assignor may be interrogated and compelled to answer all questions concerning the management of the assignor's business and affairs for the six (6) months before the assignment. The assignor shall be compelled to produce all books, papers, and accounts in reference to the assignor's business affairs during the six (6) months preceding the assignment.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-16

Oath of persons filing claims

Sec. 16. A person who files a claim with the trustee must make oath that the claim is just and lawful and no part of the claim is for usurious interest. If a claim or part of a claim is for usurious interest, it must be deducted from the claims before they are allowed. The trustee may administer an oath to a creditor in reference to the validity and justice of a claim.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-17

Debt or claim belonging to assignor; compounding or compromising

Sec. 17. A trustee may compound or compromise a debt or claim

belonging to the assignor that cannot be otherwise recovered without endangering the recovery of the claim or debt.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-18

Trustee; final report; discharge from trust

Sec. 18. (a) The trustee shall, at the expiration of one (1) year after entering upon the duties of the trust or at the next term of the court after the expiration of one (1) year after entering upon the duties of the trust, make a final report to the court.

(b) After a hearing and determination, if the judge is satisfied with and approves the report, the judge shall order the trustee to be discharged from the trust. However, the judge may, for good cause shown, grant further time to the trustee to file a final account.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-19

Trustee; removal; vacancy

Sec. 19. (a) The judge of the circuit court may, upon the petition of a creditor or the assignor, remove a trustee under this chapter for good cause shown and appoint a successor.

(b) If a vacancy occurs by death, resignation, or removal of a trustee from Indiana, the judge may fill the vacancy and shall order a trustee who is removed to surrender all property in the trustee's hands belonging to the trust to the successor. The court may require a trustee removed under this section to pay to the clerk of the court all money in the trustee's hands, and on or before the next term, the trustee shall make and file a full and final report showing the condition of the trust and the trustee's management of the trust while under the trustee's control. If the court is satisfied with the report and the trustee has fully complied with this chapter and paid all money in the trustee's hands to the clerk of the court, the court may discharge the trustee.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-20

Right to appeal

Sec. 20. This chapter may not be construed to prevent a party aggrieved by an order or decree of the court under this chapter from having an appeal as in other civil actions.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-21

Fees allowed clerk of court; compensation of appraisers and trustee

Sec. 21. (a) For whatever services the clerk of the circuit court is required to perform under this chapter, the clerk is allowed the same fees as are allowed the clerk by law for similar services in other civil proceedings.

(b) The appraisers under this chapter are entitled to one dollar (\$1)

per day each for their services.

(c) The judge shall remunerate the trustee for the trustee's services in executing the trust out of the general fund as the judge considers just and proper.

As added by P.L.2-2002, SEC.3.

IC 32-18-1-22

Power of surviving partner to make assignments

Sec. 22. A surviving partner of a firm doing business in Indiana has full power to make assignments under this chapter.

As added by P.L.2-2002, SEC.3. Amended by P.L.1-2003, SEC.80.