

WFG Informational Bulletin

To: All Indiana Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: August 9, 2017
Bulletin No: IN 2017-06
Subject: Summary of Select Legislation Passed by the 2017 Indiana General Assembly

SUMMARY OF SELECT LEGISLATION PASSED BY THE 2017 INDIANA GENERAL ASSEMBLY

To all of our Indiana agents,

Purpose:

The summary informs those conducting business in Indiana of select legislation passed by the Indiana General Assembly.

Background:

The 120th Indiana General Assembly passed 271 public laws during its general session. Full text of enrolled acts, resolutions, and related statutes incorporated in these 271 public laws can be located as of the date of this publication in the 4016 page *2017 Acts* by the Indiana Legislative Counsel at <http://iga.in.gov/legislative/laws/acts/>. A 2017 summary of enrolled legislation, including the bill number to public law number tables, can also be found as of the date of this publication at http://iga.in.gov/legislative/2017/session/enrolled_act_summary/

Advisory:

The 2017 Indiana General Assembly passed legislation which may affect those conducting business in Indiana and a summary of such changes is attached.

Contact Info. for Questions:

If you have any questions, please feel free to contact your WFG National Title Insurance Company Indiana Underwriting Counsel, Stanley J. Czaja, by email at sczaja@wfgnationaltitle.com or by phone at (773) 706-3779.

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of WFG National Title Insurance Company arising out of transactions in which the subject of this communique' may be involved.

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SUMMARY OF SELECT LEGISLATION PASSED BY THE 2017 INDIANA GENERAL ASSEMBLY

This summary provides brief highlights of laws passed during the 2017 Indiana General Assembly. The enrolled acts and related statutes for 2017 session of the Indiana General can be located as of the date of this publication at <http://iga.in.gov/legislative/laws/acts/>. A 2017 summary of enrolled legislation, including the bill number to public law number tables, can be found as of the date of this publication at http://iga.in.gov/legislative/2017/session/enrolled_act_summary/.

1. ADVERSE POSSESSION (SEA 121; P.L. 51-2017)

Although a not for profit organization generally is exempt from paying real estate taxes, a not for profit organization may qualify to possess adjacent land by adverse possession. Generally, real estate tax payments is among the criteria for adverse possession.

2. BUSINESS ENTITIES (SEA 443; P.L. 118-2017)

Effective January 1, 2018, the Uniform Business Organizations Administrative Act, under Ind. Code §§

23-0-0.5 et al (UBOAA), appears to harmonize and streamline the filing requirements with the Indiana Secretary of State for various business organizations; both domestic and foreign business entities. Many of these requirements are currently spread throughout various articles and chapters of the Indiana Code for businesses and associations. Business entities affected by UBOAA include a business corporation, nonprofit corporation, the various partnership business entities, and various limited liability company entities. Ind. Code §§ 23-0.5-1-1 et seq.; 23-0.5-1.5-1 et seq. Ind. Code § 23-0.5-3-1 outlines how to register a business's name, follow various naming conventions, reserve names, and use assumed names. Jurisdiction, filing requirements, and activities for transacting business in Indiana for foreign entities are outlined in Ind. Code §§ 23-0.5-5-1 et seq. Administrative dissolutions and filing fees are referenced under Ind. Code §§ 23-0.5-6-1 et seq. and 23-0.5-9-1 et seq. respectively.

SEA 443 also created the Uniform Business Organization Transactions Act (UBOTA) under Ind. Code §§

23-0.6 et seq. effective January 1, 2018. UBOTA primarily focuses on the acquisition, conversion, and merger of business entities with related filing criteria. Besides filing articles of merger with the Secretary of State under Ind. Code § 23-0.6-2-5, paragraph (g) Ind. Code § 23-0.6-2-5 references the effective time for the merger, and Ind. Code § 23-0.6-2-5 (h) gives the ability for the surviving entity to file articles of merger in each county where the entity's real property is located in order to transfer the title to the property. Ind. Code § 23-0.6-2-6(a) provides that "all property of each merging entity vests in the surviving entity without transfer, reversion, or impairment" and debts and liabilities of the

merged entity become the obligations of the surviving entity. Ind. Code §§ 23-0.6-4-1 et seq. can provide the procedural steps for the conversion of various domestic entities to a different business entity; either a foreign or domestic entity. Ind. Code §§ 23-0.6-5-1 et seq. of UBOTA outlines how to domesticate a foreign business entity in Indiana and how to domesticate an Indiana entity in a foreign jurisdiction.

3. EMINENT DOMAIN (HEA 1260; P.L. 146-2017)

Effective July 1, 2017, an Indiana rail carrier corporation or a rail carrier authorized to do business in Indiana can utilize eminent domain. The rail carrier must demonstrate that the subject property will be used for a public use before employing eminent domain to take the property.

4. LAND CONTRACTS (SEA 505; P.L. 127-2017)

Language as to land contracts and related memorandums were clarified in Ind. Code § 32-21-3-4 and Ind. Code § 36-2-11-20 to actually permit the recording of a land contract memorandum. A recorded land contract memorandum can also be the basis for qualifying for a homestead real estate tax deduction.

5. NOTARIES (SEA 539; P.L. 128-2017)

This act updated various areas of the notarial acts including the appointment, responsibilities, and requirements of a notary public effective January 1, 2018 and July 1, 2018. These updates include provisions for an authentic notarial certificate (Ind. Code § 33-42-9-12), and notary public application requirements (Ind. Code § 33-42-12-1) with a surety of \$25,000.00. The act also adds a two hour education requirement to be completed every two years by a notary public (Ind. Code 33-42-12-2). The act continues to describe the personal appearance of a signatory or a witness before a notary. SB 539's original bill language regarding remote/online notarization was eliminated from the bill before SB 539's passage by both houses of the Indiana General Assembly and the Indiana Governor's signature of SEA 539.

6. OWNERSHIP INTERESTS – DEDUCTIONS (HEA 1450; P.L. 255-2017)

Effective April 18, 2017, House Enrolled Act 1450's amendment to Ind. Code § 6-1.1-1-9 aids property owners with fractional ownership or life estate interests to obtain real estate property deductions. These amendments recognize that the holder of legal title in fee to real property, is the owner of that property, "regardless of whether the holder of the legal title holds a fractional interest, a remainder interest, a life estate, or a tenancy for a term of years." If a life tenant of real property or "a holder of a tenancy for a term of years in real property" is in possession of the real property, only the life tenant or the holder of a tenancy for a term of years is the owner of that property.

7. RECORDING FEES (SEA 505; P.L. 127-2017)

This enrolled act is a comprehensive overhaul of various recording statutes and recorder responsibilities. Effective July 1, 2017, Ind. Code § 36-2-7-10(c) requires the following recording fees in 91 of the 92 Indiana counties:

- \$55.00 for mortgages;
- \$25.00 for all other documents submitted for recording;

- For pages larger than 8.5 x 14 inches, \$25.00 for the first page and \$5.00 for each additional page; and
- If multiple transactions are referred to in a release, partial release, or assignment of any mortgage, judgment, lien, or oil and gas lease attested to by the recorder, the “the fee for each transaction after the first is seven dollars (\$7) plus” the \$25.00 for a non-mortgage instrument.

Ind. Code § 36-2-7-10.7 permits Marion County, as a consolidated city and county, to add \$10.00 per document to the above referenced recording fees due to the existence of a housing trust fund under Ind. Code § 36-7-15.1-35.5(e) and where related ordinances exist in Marion County. Ind. Code §§ 36-2-7-10(c)(8) and (9) permit additional fees if ordinances are passed and an affordable housing fund under Ind. Code § 5-20-5-15.5 or a housing trust fund under Ind. Code § 6-7-15.1-35.5(e) are created in the future. Because of the interplay of the effective date of the fee changes and coordination of applicable ordinance for some of the fee calculations, it is important to have an understanding of the county recorder’s implementation of new recording fees and the county’s recording fee schedule in order to collect and remit accurate recording fees and to aid in disclosing applicable recording fees with a Closing Disclosure (CD) and/or settlement statement.

8. TAX SALES (HEA 1536-2017; P.L. 32-2017)

Effective July 1, 2017, the following deadlines apply when a county assigns a tax certificate of sale for real property to a political subdivision:

- The redemption time is 120 days after the assignment date;
- The assignee must transmit the Ind. Code § 6-1.1-25-4.5 notices not later than 90 days after the assignment date;
- If the real property is not redeemed during the redemption period, the certificate assignee may petition the court for a tax deed under Ind. Code § 6-1.1-25-4.6 not later than 90 days after the expiration of the period of redemption.

9. TAXES – PROPERTY DEDUCTIONS (HEA 1450; P.L. 255-2017)

Ind. Code § 6-1.1-12-1 amendments refine the definition of “mortgage” and “installment loans” and promotes the ability of reverse mortgages and installment loans as the basis for property deductions. Ind. Code § 6-1.1-12-45 now clarifies reapplication for a mortgage deduction if the existing mortgage is refinanced. Amended Ind. Code § 6-1.1-12-17.8 further refines when marriage, new co-owner, and divorce may impact the need to reapply for deductions and where a surviving entireties spouse or sole surviving joint tenant does not require reapplication for various real property tax deductions. HEA 1450 modifies Ind. Code § 6-1.1-12-37 in two primary areas for a homestead deduction. First, an individual who does not have a Social Security number, driver’s license number, or state identification card number may provide the last five digits of a preparer’s IRS tax identification number. This change aids an applicant for the homestead deduction when the applicant has a conscientious objection to obtaining a Social Security number. Second, amended Ind. Code § 6-1.1-12-37 requires a person ineligible for a homestead deduction to notify the auditor as to whether this ineligibility results from a changed use of the property, an existing homestead deduction in the person’s name, or receipt of a comparable homestead deduction in another state. For example, if Bob and Joe co-own House A and Bob claims a homestead deduction in his name on House A as Bob’s principal place of residence, Joe is not precluded from claiming a homestead deduction in his name on House B, which Joe uses as his principal place of residence. In other words, Joe’s co-ownership of House A does not disqualify him from claiming a homestead deduction on House B.

10. TRUSTEES (HEA 1407; P.L. 255-2017)

In amending Ind. Code § 30-4-3-7 and adding Ind. Code § 30-4-3-7.5, HEA 1407 permits the trustee's prohibited transaction outlined in Ind. Code § 30-4-3-7 if:

- All qualified trust beneficiaries approve the transaction in writing; or
- A court order approves the transaction after a notice to all qualified trust beneficiaries and a hearing "to ensure that adequate consideration is received by or delivered for the interest transferred.

11. UNIFORM VOIDABLE TRANSACTIONS ACT (SEA 316; P.L. 61-2017)

Effective July 1, 2017, this act replaces and amends Indiana's Uniform Fraudulent Transfer Act. The act defines a "transfer" as "every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or another encumbrance." Ind. Code § 32-18-2-2's definition of "asset" excludes the following property:

- Property to the extent that it is encumbered by a valid lien;
- Property to the extent it is generally exempt under nonbankruptcy law, including property exempt from execution under Ind. Code § 34-55-10; or
- Tenancy by the entireties property where the creditor has a claim against only one entireties tenant.

The standard of proof for a voidable transfer is preponderance of the evidence which appears to reduce the presumption in favor of bona fide purchasers.

12. WILL CONTESTS (HEA 1407; P.L. 194-2017)

Revisions to Ind. Code § 29-1-7-17 provide that an interested person's filing of a will contest occurs as a separate complaint in the same court with jurisdiction over the probate proceeding for the submitted will. The filing of the will contest should occur within three months after the date of the court's order admitting the will to probate.

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If you have any questions regarding this or other bulletins, please contact your Indiana underwriting counsel Stanley J. Czaja at (773) 706-3779 or via email at SCzaja@wfnationaltitle.com.

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