



To: All Indiana Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Counsel
Date: December 11, 2019
Bulletin No: IN 2019-06
Subject: Summary of Select Legislation Passed by the 2019 Indiana General Assembly

To All WFG Agents doing business in Indiana,

The summary below provided information to those conducting business in Indiana of select legislation passed by the Indiana General Assembly during the 2019 regular legislative session. The 121st Indiana General Assembly passed 215 public laws during the 2018 session. Full text of enrolled acts, resolutions and related statutes can be found at <http://iga.in.gov/legislative/2019/bills>. A 2019 summary of the enrolled legislation's bill number to public law number tables can also be found as of the date of this publication at http://iga.in.gov/legislative/2019/session/blpl_report.

This communication is only a brief summary of the 2019 activity of the Indiana General Assembly. Statutes are subject to amendments and the posting of statutes by governmental departments, legal periodicals or services on the internet or any written media are subject to change: consult the appropriate governmental authority or periodical for the current form of applicable statutes. The information contained in this document and the attached summary were prepared by WFG National Title Insurance Company ("WFG") for informational purposes only and does not constitute legal advice. WFG is not a law firm and this information is not intended to be legal advice. Readers should not act upon this without seeking advice from professional advisers.

AUDITOR – CHARGES – HEA 1427-P.L. 257-2019. IC 36-2-9-18 is amended, effective July 1, 2019:

1. **SALES DISCLOSURE/TRANSFER FEE**: to permit an ordinance increasing from \$5.00 to \$10.00, the amount of the county fee that a county auditor can charge to endorse a real estate conveyance document. This charge for a new ordinance can be \$10.00 for each deed "or ...each legal description of each parcel contained in the deed."
2. **MANUFACTURED HOMES/MOBILE HOMES**: Requires a statement in the county treasurer's notice of intention to sell mobile homes that the county treasurer will apply for a court judgment against the mobile homes for an amount that is set by the county executive and that includes collection expenses. Provides that whenever no bid is received on a mobile home, the taxpayer who is delinquent in the payment of taxes causing the tax sale maintains ownership of the mobile home and liability for the delinquent taxes. Makes the filing deadlines for property tax deductions applicable to mobile homes and manufactured homes that are not assessed as

real property the same as the filing deadlines for property tax deductions applicable to real property.

ELECTRONIC RECORD REGISTRY - SEA 518 - P.L. 231-2019. IC 29-1-22 creates an electronic record registry (also known as will registry or estate planning registry) where various information and/or electronic records as to the following estate planning records, related amendments, and related revocations can be placed in this registry as established and managed by the Indiana Supreme Court and its Office of Judicial Administration: electronic wills, electronic trust, electronic power of attorney, information on locating various estate planning documents, and related document integrity information for electronic records. The online index provided by the registry administration is to be available in a searchable format to the public. The registry administrator can issue a certified report or certified transcript as to the search result or contents, respectively, of the registry as outlined in **IC 29-1-22-2(h) through (k)**. Effective July 1, 2019.

EMINENT DOMAIN – UNDERGROUND STORAGE – VIGO COUNTY - SEA 442 – P.L. 291-2019. SEA 442 permits a carbon sequestration pilot project under **IC 14-39-1** for the proposed ammonia plant at **444 W. Sanford Avenue, West Terre Haute, Indiana**. If the operator of the pilot project obtains by purchase, option, lease, or other non-condemnation rights at least 60% of the stratum or formation underlying the total surface acreage to use for such storage purchase, the operator can use eminent domain under **IC 32-24-5** to obtain easements and subsurface rights for the pilot project area. Since this project involves the capture and injection of carbon dioxide underground via injection well(s) under a Class VI well permit issued by the U.S. Environmental Protection Agency for underground storage, the State of Indiana, pursuant to **IC 14-39-1-14**, may later obtain ownership of the stored carbon dioxide and its underground storage area from the pilot project operator. Effective July 1, 2019 as to the pilot project and condemnation amendments.

If you have a transaction at or adjacent to this proposed plant’s location, contact your Indiana WFG underwriters.

HEIRSHIP AFFIDAVIT - SEA 518 – P.L. 231-2019. Effective, July 1, 2019, Ind. Code § 29-17-23(b), provides nine elements of an heirship affidavit that may establish “prima facie evidence” of the transfer of real estate to an heir or devisee. This affidavit has no requirements as to the value of the decedent’s estate. Upon presentation of this heirship affidavit, the county auditor “must” endorse this affidavit and reflect the transfer of the property to the heir(s) or devisee(s) in the auditor’s record and the county recorder must record and index this affidavit. **IC 29-1-7-23(c) and (d)**. “Any person may rely upon an affidavit...made in good faith... and ... under this section as evidence of an effective transfer of title of record (as defined in **IC 32-20-31**).” **IC 29-1-7-23(e)**.

INDIAN TRIBES - HEA 1001- P.L. 108-2019. IC 5-33.5 was added as a new article by this Act, effective July 1, 2019, to provide for Indiana and its agencies to enter into cooperative agreements with federally recognized Indian tribes. A cooperative agreement can include: 1. An effective waiver of sovereign immunity from the federally recognized Indian tribe; and 2. Subject to **IC 5-33.5-3-6**, a waiver of sovereign immunity by the state. A cooperative agreement must be filed with the Indiana state board of accounts for audit purposes not later than sixty (60) days after the agreement effective date. **IC 5-33.5-3-3**. The Bureau of Indian Affairs of the U.S. Department of the Interior’s December 20, 2018 notice in the Federal Register (<https://www.govinfo.gov/content/pkg/FR-2019-02-01/pdf/2019-00897.pdf>) indicated that the Pokagon Band of Potawatomi Indians is a federally recognized Indian tribe for Indiana.

LIENS – MUNICIPAL UTILITY FEES - HEA 1347 – P.L. 105-2019. Effective upon its passage on April 25, 2019, **IC 8-1.5-3-8(j)** provides that services by certain municipality owned utilities cannot become a lien

on real property when a person occupying the real estate, who is not the owner of land, applies for and is responsible for the utility services and its related fees. This bill provides that rates, charges, and fees assessed by a municipally owned utility (other than services rendered by a municipally owned sewer utility or by a department of public utilities for a consolidated city) with respect to property occupied by someone other than the owner, do not constitute a lien against the property. The occupant must have an account / billing records with the utility for the provisions to apply.

MARKETABLE TITLE ACT – CLAIMS - SEA 604 – P.L. 196-2019. Effective July 1, 2019, **IC 32-20-4-4** provides a recorded a marketable title claim can be challenged when an interest holder in the land serves a notice on the claimant to file an action to enforce the claim. If the notice is provided by certified or registered mail and the claimant has not filed an action in the county of the land’s location within 30 days after receipt of the notice, the notice provider can record an affidavit with the county recorder explaining the following information: A. facts about satisfying the notice provisions of **IC 32-20-4-4**; B. the lack of a pending enforcement action on the claim during the 30 day time period after receipt of the notice; C. no unsatisfied judgment exists as to the claim; and D. a cross-reference to the recorded claim. The recording of the affidavit with that information results in the release of the land from the claim.

NOTARIES - HEA 1487 – P.L. 177-2019. IC 33-42-17-1(a), effective July 1, 2019, discloses that the Indiana Code chapter on remote notarial acts (**IC 33-42-17**) “applies only to a remote notarial act performed after the earlier of: (1) the effective date of rules adopted under **IC 33-42-16-2**; or (2) July 1, 2020. Although the implementation timeline of **IC 33-42-17-1(a)** is a different time, the following amendments are effective July 1, 2019:

1. **IC 33-42-17-2** was modified to require that any remote notary public applicant must also pass a remote notarial act examination as administered by the Indiana Secretary of State;
2. The fee chargeable by a remote notarial public for each remote notarial act was increased to not more than \$25.00. **IC 33-42-17- 9**; and
3. A resigned remote notary public is to keep the electronic journal for ten years (instead of five years) after the last remote notarial act. **IC 33-42-17-8(h)**;

This Act made various technical correction of the notarial acts including but not limited to the certificate of a notary public’s disclosure of the county of the notary public’s commission or the Indiana county of the notary public’s primary employment for a notary public who is not an Indiana resident. **IC 33-42-9 12**. A modification to **IC 33-42-14-1** clarifies that the \$10.00 fee by a notary public is “per signature” for certain notarial acts. The Indiana Secretary of State can also issue a certificate of fact on or after July 1, 2019 disclosing a notary public commission’s status, expiration date, county, and name. **IC 33-42-16-5**.

RECORDING - DEPARTMENT OF TRANSPORTATION - HEA 1605 – P.L. 14-2019. Although the digest indicates HEA 1605 “[e]xempts the [Indiana Department of Transportation] from certain real property recording requirements, a review of the enrolled act appears to exempt Indiana Department of Transportation from:

1. The writing, acknowledgment or proof requirements for recording deeds, mortgages, or other instruments under **IC 32-21-2-3(a)**;
2. The grantee’s mailing address in recorded instruments as required under **IC 32-21-23(b)**; and
3. The recording of leases and voiding of unrecorded leases with a term longer than three years as currently provided under **IC 32-31-2-1 and 2**, respectively, for any lease entered by the Indiana Department of Transportation pursuant to **IC 8-23-2**.

The changes to IC 32-21-2-3 and 32-31-2-1 and 2 from HEA 1605 are effective July 1, 2019.

SMALL ESTATE AFFIDAVIT -SEA 518 – P.L. 231-2019. Effective July 1, 2019, a small estate affidavit can only be used for the transfer of the decedent’s real property when the court has appointed one of the following fiduciaries:

1. a personal representative of an unsupervised estate; or
2. a person appointed by the court under Title 29 of the Indiana Code to act on behalf of the decedent or the decedent's distributees. IC 29-1- 8-3.

HB 1375 STATE BOARD OF ACCOUNTS: Among other provisions, it makes changes to the procedure governing the payment of delinquent property taxes and specifies how delinquent property tax payments are to be applied.

SURVEY – INDIANA-MICHIGAN STATE LINE - HEA 1001 – P.L. 108-2019. A new chapter, effective July 1, 2019 is added to the Indiana Code for the formation of the Indiana-Michigan Boundary Line Commission; IC 1-3-2.2. This commission is charged with the surveying, review, and re-monumentation of the state boundary line between Indiana and Michigan. This commission shall submit the completed survey to the general assembly for ratification. If the survey is ratified, the commission shall file the ratified survey with the state land office established by IC 14-18-1.51 and with the county recorder's office of each county along the state boundary line with those counties also receiving: 1. A report detailing the facts and evidence pertaining to the survey; and 2. References to mile posts, posts originally set at or near lake shores or large river shores, and any witness corners consistent with coordinate systems published by a state or federal agency.

TAX WARRANTS - SEA 565 – P.L. 234-2019. IC 6-8.1-8-2 is amended effective July 1, 2019, that if the Indiana Department of State Revenue (the “Department”) does not: (1) issue a timely demand notice; (2) file a timely tax warrant; or (3) renew tax warrants; the tax liability is extinguished. The Department may also domesticate a valid tax warrant in one or more other states or countries, and a judgment on a tax warrant must be filed in at least one Indiana county not later than 10 years after the first date on which a demand notice could be issued. If a judgment on a tax warrant is entered in at least one Indiana county, the Department may file an additional tax warrant in one or more Indiana counties during the period in which one or more tax warrants are valid.

TRANSFER ON DEATH DEED - SEA 518 – 231-2019. Various deed and transfer on death deed (“TOD”) statutes were amended, effective July 1, 2019, because of TOD matters presented for recording after the death of the TOD grantor(s) (“Owner”). If a TOD deed is recorded before the Owner’s death in the county where the land is located, any subsequent conveyance, beneficiary change, or beneficiary revocation is void unless recorded before the Owner’s death in the county where the land is located. IC 32-17-1-2(c); 32-17-14-16(h) and (j); and 32-21-1-13 and 15.

Additionally, the following bills may be of some interest to the title insurance industry in Indiana:

SB 265 VARIOUS TRUST MATTERS. Defines "designated representative", "judicial proceeding", and "nonjudicial matter" for purposes of the trust code. Authorizes the establishment of legacy trusts and prescribes procedures for establishing a legacy trust and requirements for claims. Adopts the uniform directed trust act, which allows for the terms of a trust to grant a person other than a trustee power over some aspect of the trust's administration. Provides that current law regarding the duties and liabilities of a trustee of a trust under the control of a third person applies to directions given to a trustee before July 1, 2019, by a person who has power under the terms of the trust to direct the trustee. Allows for the use of quiet trusts.

SB 518 PROBATE MATTERS. There are many aspects to this bill, but the most relevant for real estate transactions include:

1. **Small Estate:** This changes the "small estate affidavit" as commonly used by requiring a Court appointed fiduciary (personal representative or person acting on behalf of decedent or distributees) to record an affidavit and file a closing statement in order to sell real estate free from claims. [NOTE: Watch for a separate Bulletin]
2. **Transfer on Death Deeds:** Provides that if a transfer on death deed has been recorded before the death of the owner, a subsequent conveyance is void if it is not recorded before the death of the owner with the recorder of deeds in the county where the real property is situated.
3. **Electronic Estate Planning Documents:** Authorizes the Indiana supreme court and office of judicial administration to establish and administer a statewide electronic estate planning documents registry (registry). Allows certain individuals to deposit the following items into the registry: (1) An electronic will. (2) An electronic trust instrument. (3) An electronic power of attorney. (4) Any electronic document that revokes or amends an electronic will, electronic trust instrument, or electronic power of attorney. Requires the registry administrator to make the registry index: (1) available to; and (2) searchable by; the public; and documents submitted to or deposited with the registry private, secure, and inaccessible to the public.
4. **Medicaid Recovery:** Requires the estate recovery unit of the office of Medicaid policy and planning to provide notice of a claim against an estate in certain instances and changes time period to 75 days for filing a claim against an estate upon proper notice. A Notice of Administration sent to the Indiana Medicaid Estate Recovery unit is required for any decedent in a probate estate who was at least 55 years of age at the time of death.

SB 566 RESIDENTIAL TAX INCREMENT FINANCING. This bill permits a redevelopment commission to establish a program for residential housing development and a tax increment funding allocation area for the program if the average of new, residential houses constructed in the county or municipality in the preceding three years is less than 1% of the total number of residential houses in the county or municipality.

SB 604 VOIDING & RELEASING CLAIMS IN LAND INTEREST (SOVEREIGN ISSUES). Adds a provision to the statute concerning marketable title for real property to provide that, after a person has filed a claim for an interest in land, the claim is void if: (1) the owner of the property subject to the claim (or any person having an interest in the property) provides written notice to the claimant to file an action to enforce the claim; and (2) the claimant fails to file, within 30 days after receiving the notice to enforce the claim, an action to enforce the claim in the county where the property is located. Provides that upon the claimant's failure to file an action to enforce the claim within the 30 day period, the person who provided the notice to the claimant may file with the recorder of the county where the property is located an affidavit stating that the person has served notice on the claimant to enforce the claim and that no action for enforcement

of the claim is pending. Requires the county recorder to record the affidavit of service. Allows a county recorder to certify certain records by cross reference to the records, rather than on the records themselves.

We truly value your business and the relationship that we have with you. Please let us know if there is anything that we can do for you.

If you have any questions at all pertaining to this Bulletin or to Indiana transactions in general, please do not hesitate to contact your Indiana state underwriter, Stanley J. Czaja, at (773) 706-3779 or via email SCzaja@wfgnationaltitle.com.

Information Bulletins are designed to provide our agents with information we think will help in managing their business or just being better title professionals, but which does not rise to the level of being an underwriting mandate and are not within the scope of the agency agreement.