

### **IC 29-1-7-23 Real and personal property; devolution; prima facie evidence**

Sec. 23. (a) When a person dies, the person's real and personal property passes to persons to whom it is devised by the person's last will or, in the absence of such disposition, to the persons who succeed to the person's estate as the person's heirs; but it shall be subject to the possession of the personal representative and to the election of the surviving spouse and shall be chargeable with the expenses of administering the estate, the payment of other claims and the allowances under [IC 29-1-4-1](#), except as otherwise provided in [IC 29-1](#).

(b) A person may sign and record an affidavit to establish prima facie evidence of the passage of real estate title to distributees under this section. An affidavit under this section may contain the following information:

- (1) The decedent's name and date of death.
- (2) A statement of the affiant's relationship to the decedent.
- (3) A description of how the following deeds or other instruments vested in the decedent an ownership or leasehold interest in real property, with a cross-reference if applicable, under [IC 36-2-7-10\(l\)](#) to each deed or other instrument:
  - (A) Deeds or other instruments recorded in the office of the recorder where the real property is located.
  - (B) Deeds or other instruments that disclose a title transaction (as defined in [IC 32-20-2-7](#)).
- (4) The legal description of the conveyed real property as it appears in instruments described in subdivision (3).
- (5) The names of all distributees known to the affiant.
- (6) An explanation of how each interest in the real property passed upon the decedent's death to each distributee by:
  - (A) intestate succession under [IC 29-1-2-1](#); or
  - (B) the decedent's last will and testament that has been admitted to probate under section 13 of this chapter, with references to:
    - (i) the name and location of the court that issued the order admitting the will to probate; and
    - (ii) the date when the court admitted the decedent's will to probate.
- (7) An explanation of how any fractional interests in the real property that may have passed to multiple distributees were calculated and apportioned.

(c) Upon presentation of an affidavit described in subsection (b), the auditor of the county where the real property described in the affidavit is located must endorse the affidavit as an instrument that is exempt from the requirements to file a sales disclosure form and must enter the names of the distributees shown on the affidavit on the tax duplicate on which the real property is transferred, assessed, and taxed under [IC 6-1.1-5-7](#).

(d) Upon presentation of an affidavit described in subsection (b), the recorder of the county where the real property described in the affidavit is located must:

- (1) record the affidavit; and
- (2) index the affidavit as the most recent instrument responsible for the transfer of the real property described in subsection (b)(4).

(e) Any person may rely upon an affidavit recorded with the county recorder:

- (1) made in good faith; and
- (2) under this section;

as prima facie evidence of an effective transfer of the decedent's title to the real property interest under subsection (a) to the distributee described in the affidavit.

(f) If:

- (1) at least seven (7) months have elapsed since the decedent's death;
- (2) the clerk of the court described in subsection (b)(6)(B) has not issued letters testamentary or letters of administration to the court appointed personal representative for the decedent within the time limits specified under section 15.1(d) of this chapter; and
- (3) the court described in subsection (b)(6)(B) has not issued findings and an accompanying order preventing the limitations in section 15.1(b) of this chapter from applying to the decedent's real property;

any person may rely upon the affidavit described in subsection (e) as evidence that the real property may not be sold by an executor or administrator of the decedent's estate to pay a debt or obligation of the decedent, which is not a lien of record in the county in which the real property is located, or to pay any costs of administration of the decedent's estate.

*Formerly: Acts 1953, c.112, s.723. As amended by Acts 1976, P.L.125, SEC.2; Acts 1979, P.L.268, SEC.3; P.L.231-2019, SEC.10; P.L.56-2020, SEC.2.*