

INDIANA REAL AND PERSONAL PROPERTY TITLE PASSAGE AND CREDITORS' RIGHTS

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TWO ASSET CHANNELS:

1. Decedent's Probate Estate
2. Title Transfer Systems that Bypass the Probate Estate

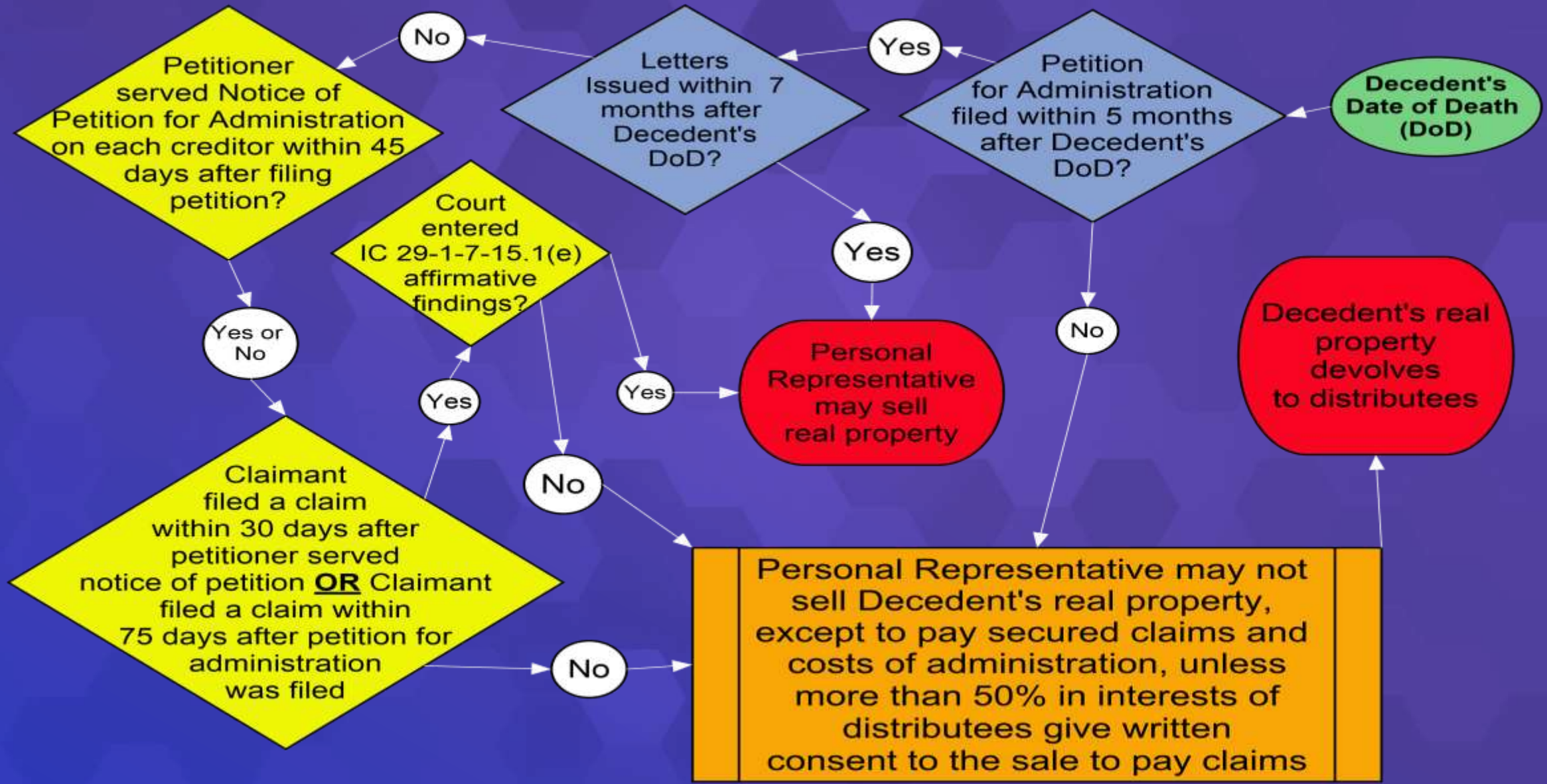
WHEN, WHAT, WHERE & HOW - IC 29-1-7-23(a):

(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.

Claim Priorities Under IC 29-1-14-9:

1. Costs and expenses of administration (including PR & lawyer fees).
2. Reasonable funeral expenses and related expenses subject to caps for deceased public assistance recipients.
3. Surviving spouse and child allowances under IC 29-1-14-1.
4. Debts and taxes having preference under United States laws.
5. Medical expenses of decedent's last illness.
6. Debts and taxes having preference under Indiana law (2022).
7. All other claims.

Personal Representative's Authority to Sell Decedent's Real Property Under IC 29-1-7-15.1 (b)-(e)



Strategies to Protect Property for Distributees:

1. Skip probate administration and claim real property by real property title passage affidavit under IC 29-1-7-23(b) if:
 - the probate estate only comprises real property,
 - the distributees are mutually cooperative, and
 - none of the distributees has judgment liens or other legal or financial vulnerabilities.

Strategies to Protect Property for Distributees:

2. Petition for administration more than 5 months after decedent's death if:

- probate estate only comprises real property and
- distributees are either uncooperative or financially vulnerable.

IC 29-1-7-15.2 protects sale proceeds like IC 29-1-7-15.1(b) protects real property from sale to pay claims.

Strategies to Protect Property for Distributees:

3. If a claim is filed and the petition for administration of a real property-only estate was filed more than 5 months after the decedent's death:
 - **ALLOW THE CLAIM**, unless the PR has an affirmative claim defense; and
 - **Include a claim allowance statement stating:**
 - Applicability of IC 29-1- 7-15.1(b);
 - Probate estate lacks personal property to satisfy the claim; and
 - PR will file an insolvent estate closing statement and distribute or sell real property.

Strategies to Protect Property for Distributees:

4. Pursue real property under IC 29-1-7-23(b)-(d) and temporarily abandon low-value personal property if:
 - Probate estate comprises real property and intangible personal property held by banks or other third parties worth a total probate estate value (real and personal) exceeding the \$50,000 limit (\$100,000 for the decedents dying after June 30, 2022);
 - Distributees are mutually cooperative; and
 - Distributees are financially sound.

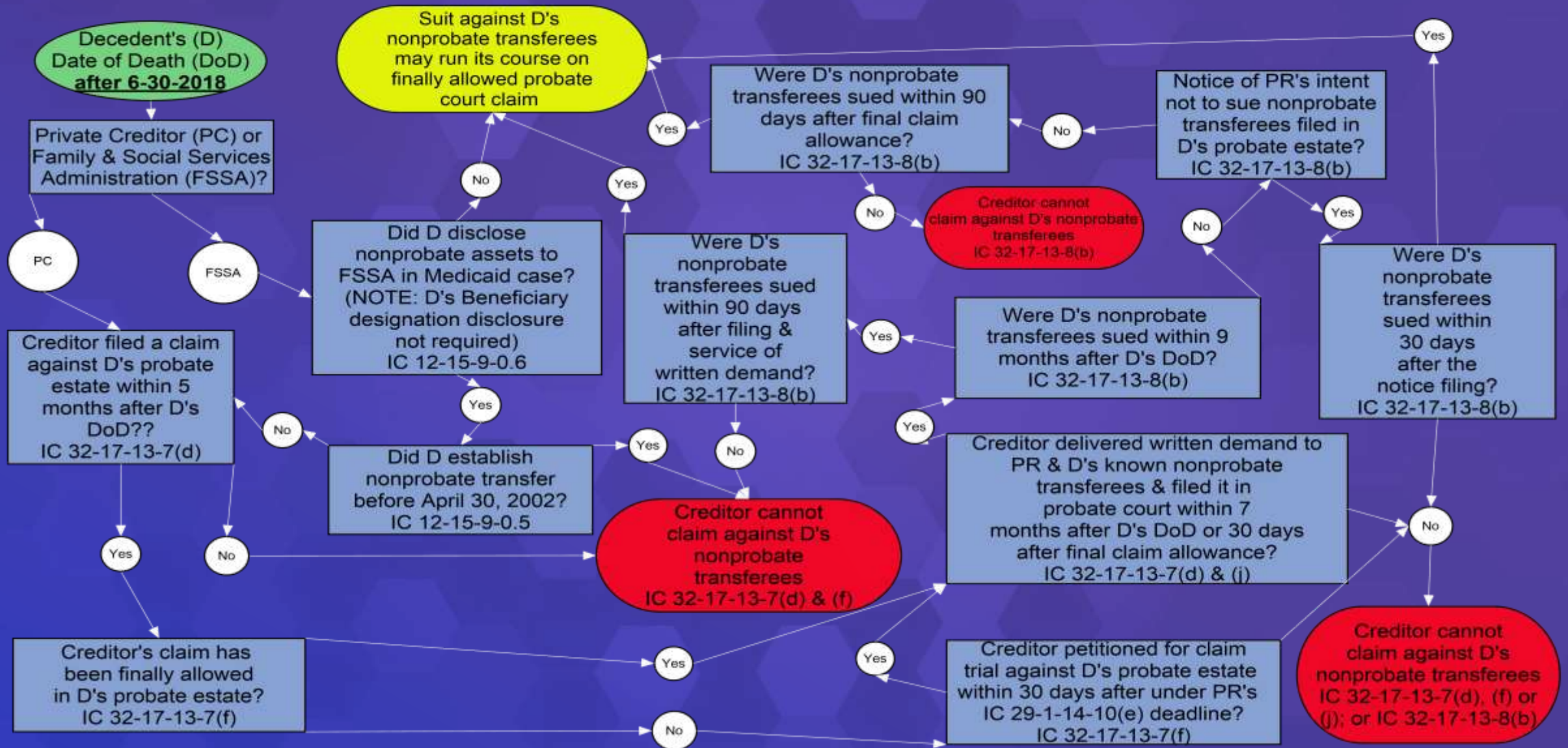
Distributees can claim personal property Indiana's Revised Unclaimed Property Act (IC Chapter 32-34-1.5).

Strategies to Protect Property for Distributees:

5. Seek PR appointment to scrutinize merits of an inevitable, timely-filed claim as mandated by IC 29-1-14-11:

Sec. 11. Before allowing or paying claims against the estate he represents, *it shall be the duty of every personal representative to inquire into the correctness of all claims against the estate and make all available defenses thereto, and if he fails so to do, he shall be liable on his bond*, at the suit of any person interested in the estate, for all damages sustained by the estate in consequence of such neglect.

FSSA & Other Creditors' Claims Against Nonprobate Transferees of Decedents Dying After June 30, 2018



Counter-Punching as an Asset Protection Strategy Against Nonprobate Claims

1. Avoid filing a petition for administration within 5 months after the deceased transferor's death because the claimant must file a claim against the decedent's probate estate Within 5 months after the deceased transferor's death before pursuing claims against nonprobate transferees.
 - A claimant cannot file a claim within 5 months if there is no estate administration in which to file the claim.
 - A claimant can file a petition for administration, but some creditors are unfamiliar with probate estate administration procedures.

Counter-Punching as an Asset Protection Strategy Against Nonprobate Claims

2. Seek appointment of a personal representative.
 - The personal representative sets the pace and can require the claimant to follow the rules.
 - The person representative can challenge the claim against the probate estate on the merits, whereas a nonprobate transferee has no control over those proceedings.
 - Even if the creditor satisfies procedural requirements with a claim that consumes all nonprobate property, the personal representative and personal representative's counsel are entitled to fees and reimbursement of expenses.

Counter-Punching as an Asset Protection Strategy Against Nonprobate Claims

3. Negotiate a Claim Settlement because the procedures for claims against nonprobate transferees are a daunting gauntlet that creditors may prefer to avoid with claim compromises.
4. Pursue asset values in claim enforcement sales.
 - Family members may be able to purchase assets at bargain prices.
 - Alternatively, asset sales may yield dividends after satisfying claims.

CONCLUSION

1. Prepare factual and statutory analysis thoroughly.
2. Remember, all details maybe essential!
3. Humility and empathy go a long way.

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