

Article 3.

Representation.

§ 36C-3-301. Representation: basic effect.

(a) Notice to a person who may represent and bind another person under this Article has the same effect as if notice were given directly to the other person.

(b) The consent of a person who may represent and bind another person under this Article is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

(c) Except as otherwise provided in G.S. 36C-4-411 and G.S. 36C-6-602, a person who under this Article may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

(d) A settlor may not represent and bind a beneficiary under this Article with respect to the termination or modification of trust under G.S. 36C-4-411(a). (2005-192, s. 2.)

§ 36C-3-302. Representation by holder of power of revocation or general power of appointment.

The sole holder or all coholders of a power of revocation or a presently exercisable or testamentary general power of appointment, including one in the form of a power of amendment, shall represent and bind other persons to the extent that their interests, as takers in default, are subject to the power. (2005-192, s. 2; 2009-222, s. 2; 2010-96, s. 8.)

§ 36C-3-303. Representation by fiduciaries, parents, and other persons.

To the extent that there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute involving a trust:

- (1) A general guardian or a guardian of the estate may represent and bind the estate that the guardian controls.
- (2) Repealed by Session Laws 2007-106, s. 11, effective October 1, 2007.
- (3) An agent under a power of attorney having authority to act with respect to the particular question or dispute may represent and bind the principal.
- (4) A trustee may represent and bind the beneficiaries of the trust unless the question or dispute involves the internal affairs of the trust.
- (5) A personal representative of a decedent's estate may represent and bind persons interested in the estate.
- (6) A parent may represent and bind the parent's minor child if a general guardian or guardian of the estate for the child has not been appointed. If a disagreement arises between parents seeking to represent the same minor child, the parent who is a beneficiary of the trust that is the subject of the representation is entitled to represent the minor child or, if no parent is a beneficiary of the trust that is the subject of the representation, a parent who is a lineal descendant of the settlor is entitled to represent the minor child, or if no parent is a lineal descendant of the settlor, a guardian ad litem shall be appointed to represent the minor child.
- (7) A person may represent and bind that person's unborn issue. (2005-192, s. 2; 2007-106, s. 11.)

§ 36C-3-304. Representation by person having substantially identical interest.

Unless otherwise represented under this Article, a minor, an incompetent or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent that there is no conflict of interest between the representative and the person represented with respect to the particular question or dispute. (2005-192, s. 2; 2007-106, s. 12.)

§ 36C-3-305. Appointment of representative; scope of representation.

(a) If the court determines that an interest is not represented under this Article, or that the otherwise available representation might be inadequate, the court may appoint a guardian ad litem to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, an incompetent or unborn individual, or a person whose identity or location is unknown. A guardian ad litem may be appointed to represent several persons or interests.

(b) Any representative under this Article may act on behalf of the individual represented with respect to any matter arising under this Chapter, whether or not a judicial proceeding concerning the trust is pending.

(c) In making decisions, a representative, including a guardian ad litem, may base a decision to consent to an action upon a finding that living members of the individual's family would generally benefit from that action. (2005-192, s. 2; 2007-106, s. 13.)