

**§ 36C-4-411. Modification or termination of noncharitable irrevocable trust by consent.**

(a) If the settlor and all beneficiaries of a noncharitable irrevocable trust consent, they may compel the modification or termination of the trust without the approval of the court even if the modification or termination is inconsistent with a material purpose of the trust. If any beneficiary (i) is a minor or incompetent or a person who is unborn or whose identity or location is unknown and (ii) is unable to be represented under Article 3 of this Chapter, the settlor or any competent adult beneficiary or the representative of any beneficiary properly represented under Article 3 of this Chapter may institute a proceeding before the court to appoint a guardian ad litem. The court shall allow the modification or termination if the court finds that, following the appointment of a guardian ad litem, all beneficiaries or their representatives have consented. A settlor's power to consent to a trust's modification or termination may be exercised by:

- (1) An agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust.
- (2) The settlor's general guardian or the guardian of the estate with the approval of the court supervising the guardianship.

(b) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries, if the court concludes that modification is consistent with a material purpose of the trust.

(c) Where the beneficiaries of an a noncharitable irrevocable trust seek to compel a termination of the trust and the continuance of the trust is necessary to carry out a material purpose of the trust, or where the beneficiaries seek to compel a modification of the trust in a manner that is inconsistent with its material purpose, the trust may be modified or terminated, in the discretion of the court, only if the court determines that the reason for modifying or terminating the trust under the circumstances substantially outweighs the interest in accomplishing a material purpose of the trust.

(d) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (a), (b), or (c) of this section, the modification or termination may be approved by the court if the court is satisfied that all of the following apply:

- (1) If all of the beneficiaries had consented, the trust could have been modified or terminated under this section.
- (2) The interests of a beneficiary who does not consent will be adequately protected.

(e) Repealed by Session Laws 2006-259, s. 13(d), effective October 1, 2006.

(f) In determining the class of beneficiaries whose consent is necessary to modify or terminate a trust under this section, the presumption of fertility is rebuttable.

(g) If a trust instrument provides for the disposition of property to a class of persons described only as "heirs" or "next of kin" of any person or uses other words that describe the class of all persons who would take under the rules of intestacy, the court may limit the class of beneficiaries whose consent is needed to compel the modification or termination of the trust to the beneficiaries who are reasonably likely to take under the circumstances.

(h) Except for the modification of a trust pursuant to subsection (a) of this section, nothing in this section shall be deemed to permit the modification of a trust to provide for the removal and replacement of a trustee of the trust, including the addition of trust terms providing for the removal and replacement of the trustee by one or more beneficiaries or other persons. (2005-192, s. 2; 2006-259, s. 13(d); 2007-106, s. 17; 2019-113, s. 6.)