

REPRESENTATION

15-5-301. Representation - basic effect. (a) NOTICE TO A PERSON WHO MAY REPRESENT AND BIND ANOTHER PERSON UNDER THIS PART 3 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~~ PART 3 IS BINDING ON THE PERSON REPRESENTED UNLESS THE PERSON REPRESENTED OBJECTS TO THE REPRESENTATION BEFORE THE CONSENT WOULD OTHERWISE HAVE BECOME EFFECTIVE.

(c) A PERSON WHO UNDER THIS ~~ARTICLE~~ PART 3 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 PART 3 WITH RESPECT TO THE TERMINATION OR MODIFICATION OF A TRUST UNDER SECTION 15-5-411(a).

15-5-301.5 Scope of Representative's Authority and Duty of Certain

Representatives. (a) AS USED IN THIS SUBSECTION, "REPRESENTATIVE" MEANS A REPRESENTATIVE ACTING UNDER SECTION 15-5-302, 303, 304, OR 305, UNLESS THE CONTEXT REQUIRES OTHERWISE.

(b) A REPRESENTATIVE MAY RECEIVE NOTICE, GIVE CONSENT, AND OTHERWISE REPRESENT, BIND, AND ACT ON BEHALF OF THE INDIVIDUAL REPRESENTED WITH RESPECT TO ANY MATTER ARISING UNDER THIS ARTICLE, WHETHER OR NOT A JUDICIAL PROCEEDING CONCERNING THE TRUST IS PENDING.

(c) IN MAKING DECISIONS, A REPRESENTATIVE MAY CONSIDER GENERAL BENEFITS ACCRUING TO THE LIVING MEMBERS OF THE REPRESENTED INDIVIDUAL'S FAMILY.

(d) A REPRESENTATIVE ACTING UNDER SECTION 15-5-303(a)(6) OR 305 SHALL ACT IN GOOD FAITH ON BEHALF OF THE PERSON REPRESENTED. AS USED IN THIS SECTION, "GOOD FAITH" MEANS HONESTY IN FACT.

15-5-302. Representation by holder of general testamentary power of appointment. TO THE EXTENT THAT THERE IS NO CONFLICT OF INTEREST BETWEEN THE HOLDER OF A GENERAL TESTAMENTARY POWER OF APPOINTMENT AND THE PERSONS REPRESENTED WITH RESPECT TO THE PARTICULAR QUESTION OR DISPUTE, THE HOLDER MAY REPRESENT AND BIND PERSONS WHOSE INTERESTS, AS PERMISSIBLE APPOINTEES, TAKERS IN DEFAULT, OR OTHERWISE, ARE SUBJECT TO THE POWER. FOR PERSONS BOUND BY ORDERS BINDING HOLDERS OF A PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT, SEE SECTION 15-10-403(3)(a).

15-5-303. Representation by fiduciaries and parents. (a) TO THE EXTENT 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:

(1) A CONSERVATOR MAY REPRESENT AND BIND THE PROTECTED PERSON WHOSE ESTATE THE CONSERVATOR CONTROLS;

(2) A GUARDIAN MAY REPRESENT AND BIND THE WARD IF A CONSERVATOR OF THE WARD'S ESTATE HAS NOT BEEN APPOINTED;

(3) AN AGENT 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;

(5) A PERSONAL REPRESENTATIVE OF A DECEDENT'S ESTATE MAY REPRESENT AND BIND PERSONS INTERESTED IN THE ESTATE; AND

(6) A PARENT MAY REPRESENT AND BIND, OR APPOINT ANOTHER PERSON TO REPRESENT AND BIND, THE PARENT'S MINOR OR UNBORN CHILD IF A CONSERVATOR OR GUARDIAN FOR THE CHILD HAS NOT BEEN APPOINTED; PROVIDED THAT A PERSON APPOINTED BY A SETTLOR TO REPRESENT THE SETTLOR'S MINOR OR UNBORN CHILD MAY NOT BE RELATED OR SUBORDINATE TO THE SETTLOR WITHIN THE MEANING OF IRC §672(c).

15-5-304. Representation by person having substantially identical interest. UNLESS OTHERWISE REPRESENTED, A MINOR, AN INCAPACITATED PERSON, OR AN 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 THERE IS NO CONFLICT OF INTEREST BETWEEN THE REPRESENTATIVE AND THE PERSON REPRESENTED.

15-5-305. Appointment of representative. (a) IF THE COURT DETERMINES THAT AN INTEREST IS NOT REPRESENTED UNDER THIS PART 3 ARTICLE, OR THAT THE OTHERWISE AVAILABLE REPRESENTATION MIGHT BE INADEQUATE, THE COURT MAY APPOINT A REPRESENTATIVE TO RECEIVE NOTICE, GIVE CONSENT, AND OTHERWISE REPRESENT, BIND, AND ACT ON BEHALF OF A MINOR, AN INCAPACITATED PERSON, A PROTECTED PERSON, OR AN UNBORN INDIVIDUAL, OR A PERSON WHOSE IDENTITY OR LOCATION IS UNKNOWN. A REPRESENTATIVE MAY BE APPOINTED TO REPRESENT SEVERAL PERSONS OR INTERESTS.

~~(b) A REPRESENTATIVE MAY ACT ON BEHALF OF THE INDIVIDUAL REPRESENTED WITH RESPECT TO ANY MATTER ARISING UNDER THIS ARTICLE, WHETHER OR NOT A JUDICIAL PROCEEDING CONCERNING THE TRUST IS PENDING.~~

~~———(c) IN MAKING DECISIONS, A REPRESENTATIVE MAY CONSIDER GENERAL BENEFITS ACCRUING TO THE LIVING MEMBERS OF THE INDIVIDUAL'S FAMILY.~~