

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998

PART 3
REPRESENTATION

700.7301 Representation; effect.

Sec. 7301. (1) Notice to a person who may represent and bind another person under this part has the same effect as if notice were given directly to the other person.

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

(3) Except as otherwise provided in section 7602, a person who under this part may represent a settlor who lacks capacity may receive notice and for purposes of section 7602 may give a binding consent on the settlor's behalf.

(4) A settlor may not represent or bind a trust beneficiary under this part with respect to the termination or modification of a trust under section 7411(1).

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7302 Representation; conflict of interest; holder of power of revocation or amendment or power of appointment.

Sec. 7302. (1) To the extent there is no conflict of interest between the holder of a power of appointment and the person represented with respect to a particular question or dispute, the holder of a power of appointment, including a power of appointment in the form of a power of amendment or revocation, may represent and bind a person to the extent the person's interest, as a permissible appointee, taker in default, or otherwise, is subject to the power. For the purpose, however, of granting consent or approval to modification or termination of a trust or to deviation from its terms, including consent or approval to a settlement agreement described in section 7111, only the holder of a presently exercisable or testamentary general power of appointment may represent and bind such a person.

(2) For purposes of subsection (1), both of the following apply:

(a) There is no conflict of interest between the holder of a nonfiduciary power of appointment and a person whose interest is subject to the power to the extent the subject interest is liable to be extinguished by an exercise of the power.

(b) If a power of appointment is subject to a condition precedent other than the death of the holder in the case of a testamentary power, no interest is subject to the power until the condition precedent is satisfied.

(3) As used in this section, "nonfiduciary" means, with respect to a power of appointment, that the power is not held in a fiduciary capacity.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2024, Act 1, Imd. Eff. Feb. 21, 2024.

Popular name: EPIC

700.7303 Representation by fiduciaries and parents.

Sec. 7303. 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, all of the following apply:

(a) A conservator, plenary guardian, or partial guardian having authority to act with respect to the trust may represent and bind the estate that the conservator, plenary guardian, or partial guardian controls.

(b) An agent under a durable power of attorney having authority to act with respect to the trust may represent and bind the principal if a conservator, plenary guardian, or partial guardian has not been appointed.

(c) A guardian having authority to act with respect to the trust may represent and bind the ward if a conservator of the ward's estate has not been appointed and no agent under a durable power has authority to act.

(d) A trustee may represent and bind the beneficiaries of the trust.

(e) A personal representative of a decedent's estate may represent and bind persons interested in the estate.

(f) A parent may represent and bind the parent's minor or unborn child if a conservator, plenary guardian, or partial guardian has not been appointed.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7304 Representation by person having substantially identical interest.

Sec. 7304. Unless otherwise represented, a minor, incapacitated, 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 there is no conflict of interest between the representative and the person represented.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7305 Appointment of representative.

Sec. 7305. (1) If the court determines that an interest is not represented under this part, 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, incapacitated, 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.

(2) A guardian ad litem 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.

(3) In making decisions, a guardian ad litem may consider the general benefit accruing to the living members of the individual's family.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.7306-700.7308 Repealed. 2009, Act 46, Eff. Apr. 1, 2010.

Compiler's note: The repealed section pertained to personal liability of trustees, limitations on proceedings against trustees, and duties and liabilities of successor trustees.

Popular name: EPIC