CHAPTER 59-11
REPRESENTATION

59-11-01. (301) Representation - Basic effect.

1. Notice to a person who may represent and bind another person under this chapter has the same effect as if notice were given directly to the other person. Notice of a hearing on any petition for a judicial hearing must be given as provided in the North Dakota Rules of Civil Procedure.
2. The consent of a person who may represent and bind another person under this chapter is binding on the person represented unless the person represented objects to the representation to the trustee or representative before the consent would otherwise have become effective.
3. Except as otherwise provided in sections 59-12-11 and 59-14-02, a person who under this chapter may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.
4. A settlor may not represent and bind a beneficiary under this chapter with respect to the termination or modification of a trust under subsection 1 of section 59-12-11.

59-11-02. (302) Representation by holder of general power of appointment.

The holder of a presently exercisable general power of appointment and the persons represented with respect to the particular question or dispute may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power. The term "presently exercisable general power of appointment" includes a testamentary general power of appointment having no conditions precedent to its exercise other than the death of the holder, the validity of the holder's last will and testament, and the inclusion of a provision in the will sufficient to exercise this power.

59-11-03. (303) Representation by fiduciaries and parents.

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 estate that the conservator controls to the extent of the powers and authority conferred upon conservators generally or by court order.
2. A guardian may represent and bind the ward if a conservator of the ward's estate has not been appointed to the extent of the powers and authority conferred upon guardians generally or by court order.
3. An agent under a power of attorney or having other written 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.
6. A parent may represent and bind the parent's minor or unborn child if a conservator or guardian for the child has not been appointed. If a disagreement arises between parents seeking to represent the same minor child:
    a. The parent who is a beneficiary of the trust that is the subject of the representation is entitled to represent the minor child;
    b. If both parents are beneficiaries of the trust that is the subject of the representation, the parent who is a lineal descendant of the settlor is entitled to represent the minor child;
    c. If neither parent is a beneficiary of the trust that is the subject of the representation, the parent who is a lineal descendant of the settlor is entitled to represent the minor child; and
    d. If neither parent is a beneficiary or a lineal descendant of the settlor of the trust that is the subject of the representation, a guardian ad litem must be appointed to represent the minor child.

7. A person may represent and bind that person's unborn issue.

59-11-04. (304) Representation by person having substantially identical interest.

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 with respect to the particular question or dispute.

59-11-05. (305) Appointment of representative.

1. If the court determines that an interest is not represented under this chapter, 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, incapacitated or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable. A representative may be appointed to represent several persons or interests.
2. A representative may act on behalf of the individual represented with respect to any matter arising under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19, whether or not a judicial proceeding concerning the trust is pending.
3. In making decisions, a representative may consider general benefit accruing to the living members of the individual's family.