

# Virtual Representation Statutes Chart

Revised May 8, 2021

Any comments on the chart or new developments that should be reflected on the chart may be sent to [susan.bart@afslaw.com](mailto:susan.bart@afslaw.com).

# Virtual Representation Statutes Chart

Revised May 8, 2021

	Alabama	Alaska	Arizona	Arkansas
A. Has the state adopted a "virtual representation" statute?	Yes 2006	Yes 2013	Yes 2009	Yes 2005
1. Is the statute based on the UTC?	Yes	No	Yes	Yes
2. What is the statutory citation?	ALA. CODE § 19-3B-304	ALASKA STAT. § 13.06.120	ARIZ. REV. STAT. ANN. § 14-1407	ARK. CODE ANN. § 28-73-304
B. Does virtual representation allow a parent to represent a minor or unborn child?	Yes <sup>1</sup>	Yes <sup>1</sup>	Yes; but a parent cannot represent the child to terminate or modify the trust if the parent is the settlor <sup>1</sup>	Yes <sup>1</sup>
C. Does an agent under the power of attorney have the authority to represent the principal?	Yes <sup>2</sup>	Yes <sup>2</sup>	Yes <sup>2</sup>	Yes <sup>2</sup>
D. Does virtual representation allow a court appointed guardian to represent his or her ward?	Yes <sup>3</sup>	Yes <sup>3</sup>	Yes <sup>3</sup>	Yes <sup>3</sup>
1. ward is a minor	Yes	Yes	Yes <sup>3</sup>	Yes <sup>3</sup>
2. ward is an incapacitated adult	Yes	Yes	Yes <sup>3</sup>	Yes <sup>4</sup>
3. Does this apply to conservators of the estate and to guardians of the person?	Estate and Person <sup>4</sup>	Estate and Person <sup>3</sup>	Estate and Person <sup>3</sup>	Estate and Person <sup>4</sup>
E. Does virtual representation allow the holder of the power of appointment to represent all potential appointees?	Yes <sup>5</sup>	Yes <sup>4</sup>	Yes <sup>4</sup>	Yes <sup>5</sup>
1. a testamentary general power of appointment	Yes <sup>5</sup>	Yes <sup>4</sup>	Yes <sup>4</sup>	Yes <sup>5</sup>
2. a non-testamentary general power of appointment	Yes <sup>6</sup>	Yes <sup>4</sup>	Yes <sup>4</sup>	No
3. a broad special power of appointment	Yes <sup>5</sup>	Yes <sup>4</sup>	No	No
4. a limited special power of appointment	Yes <sup>5</sup>	Yes <sup>4</sup>	No	No
F. Under virtual representation, what individuals can be represented?				
1. minors	Yes	Yes	Yes	Yes
2. incapacitated adults	Yes	Yes	Yes	Yes
3. unborn	Yes	Yes	Yes	Yes
4. unidentified/unlocatable	Yes	Yes	Yes	Yes
5. other	No	No	No	No
G. Does virtual representation include representation by someone with a "substantially identical interest"?	Yes	Yes <sup>5</sup>	Yes	Yes
1. Is there a conflict of interest exception?	Yes	No	Yes	Yes
2. Is there an adequacy of representation test?	No	Yes	No	No
H. Does virtual representation include vertical representation?	Expressly included <sup>7</sup>	No Provision	Implicit (UTC approach) <sup>5</sup>	Implicit (UTC approach) <sup>6</sup>
I. Does the statute permit a designated representative?				

	Alabama	Alaska	Arizona	Arkansas
J. Does the state statute allow nonjudicial settlement agreements?	Yes ALA. CODE § 19-3B-111	No	Yes ARIZ. REV. STAT. § 14-10111 <sup>6</sup>	Yes ARK. CODE ANN. § 28-73-111
K. If yes, what matters can be resolved by nonjudicial settlement agreements?	Any matter involving a trust		Any matter involving a trust	Any matter involving a trust
1. interpretation or construction	Yes		Yes	Yes
2. approval of a trustee's report or accounting	Yes		Yes	Yes
3. grant of power or direction to refrain to a trustee	Yes		Yes	Yes
4. trustee resignation/appointment	Yes		Yes	Yes
5. trustee compensation	Yes		Yes	Yes
6. transfer of a trust's place of administration	Yes		Yes	Yes
7. trustee's liability	Yes		Yes	Yes
8. other additions/exclusions	Yes <sup>8</sup>		Yes <sup>7</sup>	No
9. Is there a material purpose test?	Yes		Yes	Yes
10. Is a spendthrift provision expressly presumed to not be a material purpose?	Yes <sup>9</sup>		Not specified	Not specified
11. Must the agreement be one a court could enter?	Yes		Yes	Yes
12. Does the statute expressly address whether the trustee may be removed by agreement of the beneficiaries?	No		No	No
L. In a nonjudicial settlement agreement, who are the necessary parties who must sign the agreement?	Interested persons <sup>10</sup>		Interested persons	Interested persons <sup>7</sup>
1. Is it the same or different than UTC section 111(a)?	Same		Different definition of "interested persons" <sup>8</sup>	Same
2. Is the trustee a necessary party?	No		Dependent on the particular proceeding <sup>8</sup>	No
M. Does the nonjudicial settlement agreement provision apply to all trusts?	No limitation specified		No limitation specified <sup>9</sup>	No limitation specified

	California	Colorado	Connecticut	Delaware
A. Has the state adopted a "virtual representation" statute?	No	Yes (formal proceedings) 2009	Yes 2001	Yes
1. Is the statute based on the UTC?		No	No	No
2. What is the statutory citation?		COLO. REV. STAT. § 15-10-403	CONN. GEN. STAT. § 45a-487a	DEL. CODE ANN. tit. 12 § 3547 Amended 2019
B. Does virtual representation allow a parent to represent a minor or unborn child?		Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>
C. Does an agent under the power of attorney have the authority to represent the principal?		Not specified	Yes <sup>2</sup>	Not specified
D. Does virtual representation allow a court appointed guardian to represent his or her ward?		Yes <sup>2</sup>	Yes <sup>3</sup>	Yes <sup>2</sup>
1. ward is a minor		Yes <sup>3</sup>	Yes <sup>4</sup>	Yes
2. ward is an incapacitated adult		Yes <sup>3</sup>	No <sup>4</sup>	Yes
3. Does this apply to conservators of the estate and to guardians of the person?		Estate and Person	Estate and Person <sup>5</sup>	Estate
E. Does virtual representation allow the holder of the power of appointment to represent all potential appointees?		Yes <sup>4</sup>	Yes <sup>6</sup>	Not specified
1. a testamentary general power of appointment		No <sup>4</sup>	Yes	Not specified
2. a non-testamentary general power of appointment		Yes <sup>4</sup>	Yes	Not specified
3. a broad special power of appointment		No	Potential appointees	Not specified
4. a limited special power of appointment		No	Potential appointees	Not specified
F. Under virtual representation, what individuals can be represented?		Yes		
1. minors		Yes	Yes	Yes
2. incapacitated adults		Yes	Yes	Yes
3. unborn		Yes	Yes	Yes
4. unidentifiable/unlocatable		No	Yes	Yes
5. other		Yes <sup>5</sup>	No	No
G. Does virtual representation include representation by someone with a "substantially identical interest"?		No	Yes <sup>7</sup>	Yes <sup>3</sup>
1. Is there a conflict of interest exception?		Yes	Yes	Yes <sup>4</sup>
2. Is there an adequacy of representation test?		No Provision	No	No
H. Does virtual representation include vertical representation?		No	No Provision	Expressly Included <sup>5</sup>
I. Does the statute permit a designated representative?				

	California	Colorado	Connecticut	Delaware
J. Does the state statute allow nonjudicial settlement agreements?		No	Yes CONN. GEN. STAT. HB07104	Yes DEL. CODE ANN. tit. 12 § 3338
K. If yes, what matters can be resolved by nonjudicial settlement agreements?				
1. interpretation or construction			Yes	Yes
2. approval of a trustee's report or accounting			Yes	Yes
3. grant of power or direction to refrain to a trustee			Yes	Yes
4. trustee resignation/appointment			Yes	Yes
5. trustee compensation			Yes	Yes
6. transfer of a trust's place of administration			Yes	Yes
7. trustee's liability			Yes	Yes
8. other additions/exclusions			Yes	
9. Is there a material purpose test?				Yes
10. Is a spendthrift provision expressly presumed to not be a material purpose?				No
11. Must the agreement be one a court could enter?				Yes
12. Does the statute expressly address whether the trustee may be removed by agreement of the beneficiaries?				No
L. In a nonjudicial settlement agreement, who are the necessary parties who must sign the agreement?				
1. Is it the same or different than UTC section 111(a)?				Different <sup>6</sup>
2. Is the trustee a necessary party?				Yes
M. Does the nonjudicial settlement agreement provision apply to all trusts?				No <sup>7</sup>

	D.C.	Florida	Georgia	Hawaii
A. Has the state adopted a "virtual representation" statute?	Yes 2004	Yes 2007	Yes 2018	Yes 1996
1. Is the statute based on the UTC?	Yes	Yes	Yes	No
2. What is the statutory citation?	D.C. CODE ANN. § 19-1303.04	FLA. STAT. ANN. § 736.0304	GA. CODE ANN. § 53-12-8	HAW. REV. STAT. § 560-1-403
B. Does virtual representation allow a parent to represent a minor or unborn child?	Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>
C. Does an agent under the power of attorney have the authority to represent the principal?	Yes <sup>2</sup>	Yes <sup>2</sup>	Yes <sup>2</sup>	Not specified
D. Does virtual representation allow a court appointed guardian to represent his or her ward?	Yes <sup>3</sup>	No <sup>3</sup>	Yes <sup>3</sup>	Yes <sup>2</sup>
1. ward is a minor	Yes <sup>3</sup>	n/a	Yes <sup>3</sup>	Yes <sup>3</sup>
2. ward is an incapacitated adult	Yes <sup>3</sup>	n/a	Yes <sup>3</sup>	Yes <sup>3</sup>
3. Does this apply to conservators of the estate and to guardians of the person?	Estate and Person <sup>3</sup>	n/a	Estate and Person <sup>3</sup>	Estate and Person
E. Does virtual representation allow the holder of the power of appointment to represent all potential appointees?	Yes <sup>4</sup>	Yes (exceptions exist with respect to certain matters) <sup>4</sup>	Yes <sup>4</sup>	Yes <sup>4</sup>
1. a testamentary general power of appointment	Yes <sup>4</sup>	Yes <sup>4</sup>	Yes <sup>4</sup>	No <sup>4</sup>
2. a non-testamentary general power of appointment	No	Yes <sup>4</sup>	Yes <sup>4</sup>	Yes <sup>4</sup>
3. a broad special power of appointment	Yes <sup>4</sup>	Yes <sup>4</sup>	Yes <sup>4</sup>	No <sup>4</sup>
4. a limited special power of appointment	Yes <sup>4</sup>	Yes <sup>4</sup>	Yes <sup>4</sup>	No <sup>4</sup>
F. Under virtual representation, what individuals can be represented?				
1. minors	Yes	Yes	Yes	No
2. incapacitated adults	Yes	Yes	Yes	No
3. unborn	Yes	Yes	Yes	Yes
4. unidentifiable/unlocatable	Yes	Yes	Yes	Yes
5. other	No	No	Yes <sup>5</sup>	No
G. Does virtual representation include representation by someone with a "substantially identical interest"?	Yes	Yes	Yes	Yes <sup>5</sup>
1. Is there a conflict of interest exception?	Yes	Yes	Yes	No
2. Is there an adequacy of representation test?	No	No	No	Yes
H. Does virtual representation include vertical representation?	Implicit (UTC approach) <sup>5</sup>	Implicit (UTC approach) <sup>5</sup>	Yes	No Provision

	D.C.	Florida	Georgia	Hawaii
I. Does the statute permit a designated representative?		Yes		
J. Does the state statute allow nonjudicial settlement agreements?	Yes D.C. CODE ANN. § 19-1301.11	Yes FLA. STAT. ANN. § 736.011 (West)	Yes GA. CODE ANN. § 53-12-9	No
K. If yes, what matters can be resolved by nonjudicial settlement agreements?	Any matter involving a trust	Any matter involving a trust with a few restrictions <sup>6</sup>	Any matter involving a trust <sup>6</sup>	
1. interpretation or construction	Yes	Yes	–	
2. approval of a trustee’s report or accounting	Yes	Yes	–	
3. grant of power or direction to refrain to a trustee	Yes	Yes	–	
4. trustee resignation/appointment	Yes	Yes	–	
5. trustee compensation	Yes	Yes	–	
6. transfer of a trust’s place of administration	Yes	Yes	–	
7. trustee’s liability	Yes	Yes	–	
8. other additions/exclusions	No	Yes <sup>6</sup>	–	
9. Is there a material purpose test?	Yes	Yes	Yes	
10. Is a spendthrift provision expressly presumed to not be a material purpose?	Not specified	Not specified		
11. Must the agreement be one a court could enter?	Yes	Yes	Yes	
12. Does the statute expressly address whether the trustee may be removed by agreement of the beneficiaries?	No	No	No	
L. In a nonjudicial settlement agreement, who are the necessary parties who must sign the agreement?	Interested persons <sup>6</sup>	Interested persons <sup>7</sup>	Interested persons	
1. Is it the same or different than UTC section 111(a)?	Same	Different definition of “interested persons” <sup>7</sup>	Same	
2. Is the trustee a necessary party?	No	No	Yes	
M. Does the nonjudicial settlement agreement provision apply to all trusts?	No limitation specified	No limitation specified	No <sup>7</sup>	

	Idaho	Illinois	Indiana – Probate Code	Indiana – Trust Code	Iowa
A. Has the state adopted a "virtual representation" statute?	Yes 2005, 1971	Yes 2010, 2020	Yes 2019	Yes 2019	Yes 2005
1. Is the statute based on the UTC?	No	Yes	No	Yes	Yes
2. What is the statutory citation?	IDAHO CODE §§ 15-8-205 and 15-1- 403	760 ILL. COMP. STAT. 3/101 (effective 1/1/2020)	IND. CODE § 29-1-1-20 <sup>1</sup>	IND. CODE § 30-4-6- 10.5 <sup>1</sup>	IOWA CODE § 633A.6304 <sup>1</sup>
B. Does virtual representation allow a parent to represent a minor or unborn child?	Yes <sup>1</sup>	Yes <sup>2</sup>	Yes <sup>2</sup>	Yes <sup>2</sup>	Yes <sup>2</sup>
C. Does an agent under the power of attorney have the authority to represent the principal?	Not specified	Yes <sup>3</sup>	Yes <sup>3</sup>	Yes <sup>3</sup>	Not specified
D. Does virtual representation allow a court appointed guardian to represent his or her ward?	Yes <sup>2</sup>	Yes <sup>4</sup>	Not specified <sup>4</sup>	Yes <sup>4</sup>	Yes (guardian of property) <sup>3</sup>
1. ward is a minor	Yes <sup>3</sup>	Yes <sup>4</sup>	Not specified	Not excluded	Yes <sup>3</sup>
2. ward is an incapacitated adult	Yes <sup>3</sup>	Yes <sup>4</sup>	Not specified	Not excluded	Yes <sup>3</sup>
3. Does this apply to conservators of the estate and to guardians of the person?	Estate and Person	Estate and Person <sup>4</sup>	Not specified	Not excluded	Estate <sup>3</sup>
E. Does virtual representation allow the holder of the power of appointment to represent all potential appointees?	Yes <sup>4</sup>	Yes <sup>5</sup>	Yes <sup>5</sup>	Yes <sup>5</sup>	Yes <sup>4</sup>
1. a testamentary general power of appointment	No <sup>4</sup>	Yes <sup>5</sup>	No	Yes	Yes <sup>5</sup>
2. a non-testamentary general power of appointment	Yes <sup>4</sup>	Yes <sup>5</sup>	Yes	Yes	Yes <sup>6</sup>
3. a broad special power of appointment	No <sup>4</sup>	Yes <sup>5</sup>	No	No	No
4. a limited special power of appointment	No <sup>4</sup>	Yes <sup>6</sup>	No	No	No
F. Under virtual representation, what individuals can be represented?					
1. minors	No	Yes	Yes <sup>6</sup>	Yes	Yes
2. incapacitated adults	No	Yes	Yes <sup>6</sup>	Yes	Yes <sup>7</sup>
3. unborn	Yes	Yes	Yes <sup>6</sup>	Yes	Yes
4. unidentifiable/unlocatable	Yes	Yes	Yes <sup>6</sup>	Yes	Yes
5. other	No	Yes <sup>7</sup>	Yes <sup>6</sup>	No <sup>6</sup>	No
G. Does virtual representation include representation by someone with a "substantially identical interest"?	Yes <sup>5</sup>	Yes <sup>8</sup>	Yes <sup>7</sup>	Yes <sup>7</sup>	Yes <sup>8</sup>
1. Is there a conflict of interest exception?	No	Yes	No	Yes	No <sup>9</sup>
2. Is there an adequacy of representation test?	Yes	No	Yes	No	Yes
H. Does virtual representation include vertical representation?	No Provision	Implicit (UTC approach) <sup>9</sup>	No	Implicit (UTC approach) <sup>8</sup>	Implicit (UTC approach) <sup>10</sup>
I. Does the statute permit a designated representative?		Yes	No	Yes <sup>9</sup>	

	Idaho	Illinois	Indiana – Probate Code	Indiana – Trust Code	Iowa
J. Does the state statute allow nonjudicial settlement agreements?	Yes <sup>6</sup>  IDAHO CODE § 15-8-302	Yes  760 ILL. COMP. STAT. 3/111	No	Yes	Yes  IOWA CODE § 633A.6308
K. If yes, what matters can be resolved by nonjudicial settlement agreements?	Any matter, except certain trusts for minors/incapacitated	Any matter listed in statute.		Any matter.	Any matter involving a trust except a modification or termination of a trust under Iowa Code § 633A.2203
1. interpretation or construction	Yes	Yes		Yes	Yes
2. approval of a trustee’s report or accounting	Yes	Yes		Yes	Yes
3. grant of power or direction to refrain to a trustee	Yes	Yes (only grant; not direction to refrain)		Yes	Yes
4. trustee resignation/appointment	Yes	Yes		Yes	Yes
5. trustee compensation	Yes	Yes		Yes	Yes
6. transfer of a trust’s place of administration	Yes	Yes		Yes	Yes
7. trustee’s liability	Yes	Yes (or indemnification)		Yes	Yes
8. other additions/exclusions	Yes <sup>7</sup>	Yes <sup>10</sup>		Yes <sup>10</sup>	No
9. Is there a material purpose test?	No	No (except for termination)		Yes	Yes
10. Is a spendthrift provision expressly presumed to not be a material purpose?	Not specified	No <sup>11</sup>		Not specified	Not specified
11. Must the agreement be one a court could enter?	Not specified	Yes		Yes	Yes
12. Does the statute expressly address whether the trustee may be removed by agreement of the beneficiaries?	No	No		No	No
L. In a nonjudicial settlement agreement, who are the necessary parties who must sign the agreement?	All persons interested in the estate or trust <sup>8</sup>	Interested persons		Interested persons	Interested Persons <sup>11</sup>
1. Is it the same or different than UTC section 111(a)?	Different	Different definition of “interested persons” <sup>12</sup>		Different	Same
2. Is the trustee a necessary party?	Yes <sup>8</sup>	Yes <sup>12</sup>		Presumably	No
M. Does the nonjudicial settlement agreement provision apply to all trusts?	Yes	Yes		Yes	Yes

	Kansas	Kentucky	Louisiana	Maine
A. Has the state adopted a "virtual representation" statute?	Yes 2002	Yes 2014	No	Yes 2005
1. Is the statute based on the UTC?	Yes			Yes
2. What is the statutory citation?	KAN. STAT. ANN. § 58a-304	KY. ACTS §386B.3-010 to 040		ME. REV. STAT. ANN. tit. 18B § 304
B. Does virtual representation allow a parent to represent a minor or unborn child?	Yes <sup>1</sup>	Yes <sup>1</sup>		Yes <sup>1</sup>
C. Does an agent under the power of attorney have the authority to represent the principal?	Yes <sup>2</sup>	Yes <sup>2</sup>		Yes <sup>2</sup>
D. Does virtual representation allow a court appointed guardian to represent his or her ward?	Yes <sup>3</sup>	Yes <sup>3</sup>		Yes <sup>3</sup>
1. ward is a minor	Yes <sup>3</sup>	Yes <sup>3</sup>		Yes <sup>3</sup>
2. ward is an incapacitated adult	Yes <sup>3</sup>	Yes <sup>3</sup>		Yes <sup>3</sup>
3. Does this apply only to conservators of the estate and to guardians of the person?	Person <sup>3</sup>	Conservator and Guardian <sup>3</sup>		Estate and Person <sup>3</sup>
E. Does virtual representation allow the holder of the power of appointment to represent all potential appointees?	Yes <sup>4</sup>	Yes <sup>4</sup>		Yes <sup>4</sup>
1. a testamentary general power of appointment	Yes <sup>4</sup>	Yes <sup>4</sup>		Yes <sup>4</sup>
2. a non-testamentary general power of appointment	No	No		No
3. a broad special power of appointment	No	No		No
4. a limited special power of appointment	No	No		No
F. Under virtual representation, what individuals can be represented?				
1. minors	Yes	Yes		Yes
2. incapacitated adults	Yes	Yes		Yes
3. unborn	Yes	Yes		Yes
4. unidentifiable/unlocatable	Yes	Yes		Yes
5. other	No	No		No
G. Does virtual representation include representation by someone with a "substantially identical interest"?	Yes	Yes <sup>5</sup>		Yes
1. Is there a conflict of interest exception?	Yes	Yes <sup>5</sup>		Yes
2. Is there an adequacy of representation test?	No	No		No
H. Does virtual representation include vertical representation?	Implicit (UTC approach) <sup>5</sup>	Implicit (UTC approach) <sup>6</sup>		Implicit (UTC approach) <sup>5</sup>

	Kansas	Kentucky	Louisiana	Maine
I. Does the statute permit a designated representative?				
J. Does the state statute allow nonjudicial settlement agreements?	Yes KAN. STAT. ANN. § 58a-111	Yes KY. ACTS §386B.1-090		Yes ME. REV. STAT. ANN. tit.18B §§ 111, 411
K. If yes, what matters can be resolved by nonjudicial settlement agreements?	Certain enumerated matters <sup>6</sup>	Any matter involving a trust <sup>7</sup>		Any matter involving a trust
1. interpretation or construction	No	Yes		Yes
2. approval of a trustee's report or accounting	Yes	Yes		Yes
3. grant of power or direction to refrain to a trustee	No	Yes		Yes
4. trustee resignation/appointment	Yes	Yes		Yes
5. trustee compensation	Yes	Yes		Yes
6. transfer of a trust's place of administration	Yes	Yes		Yes
7. trustee's liability	Yes	Yes		Yes
8. other additions/exclusions	Yes <sup>6</sup>	No		No
9. Is there a material purpose test?	Yes	Yes		Yes
10. Is a spendthrift provision expressly presumed to not be a material purpose?	Not specified	Not specified		Yes
11. Must the agreement be one a court could enter?	Yes	No		Yes
12. Does the statute expressly address whether the trustee may be removed by agreement of the beneficiaries?	No	No		No
L. In a nonjudicial settlement agreement, who are the necessary parties who must sign the agreement?	Interested persons <sup>7</sup>	Interested persons		Interested persons <sup>6</sup>
1. Is it the same or different than UTC section 111(a)?	Same	Same		Same
2. Is the trustee a necessary party?	No			No
M. Does the nonjudicial settlement agreement provision apply to all trusts?	No limitation specified	No limitation specified		No limitation specified

	Maryland	Massachusetts	Michigan	Minnesota
A. Has the state adopted a "virtual representation" statute?	Yes	Yes 2012	Yes 2010	Yes 2016
1. Is the statute based on the UTC?	Yes	No <sup>1</sup>	Yes	Yes
2. What is the statutory citation?	Md. EST. & TRUSTS CODE § 14.S-304	MASS. GEN. LAWS ch. 190B, § 1-403	MCL § 700.7301 et seq.	MINN. STAT. 501c.0301 et seq.
B. Does virtual representation allow a parent to represent a minor or unborn child?	Yes <sup>1</sup>	Yes <sup>2</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>
C. Does an agent under the power of attorney have the authority to represent the principal?	Yes	Not specified	Yes <sup>2</sup>	Yes <sup>2</sup>
D. Does virtual representation allow a court appointed guardian to represent his or her ward?		Yes <sup>3</sup>	Yes <sup>3</sup>	Yes <sup>3</sup>
1. ward is a minor	Yes	Yes <sup>4</sup>	Yes <sup>3</sup>	Yes
2. ward is an incapacitated adult	Yes	Yes <sup>4</sup>	Yes <sup>3</sup>	Yes
3. Does this apply to conservators of the estate and to guardians of the person?	Estate and Person	Estate and Person	Estate and Person <sup>3</sup>	
E. Does virtual representation allow the holder of the power of appointment to represent all potential appointees?	No	Yes <sup>5</sup>	Yes <sup>4</sup>	Yes <sup>4</sup>
1. a testamentary general power of appointment		No <sup>5</sup>	Yes <sup>4</sup>	Yes <sup>4</sup>
2. a non-testamentary general power of appointment		Yes <sup>5</sup>	Yes <sup>4</sup>	Yes <sup>4</sup>
3. a broad special power of appointment		Yes <sup>5</sup>	Yes- for some things <sup>4</sup>	No <sup>4</sup>
4. a limited special power of appointment		No <sup>5</sup>	Yes- for some things <sup>4</sup>	No <sup>4</sup>
F. Under virtual representation, what individuals can be represented?				
1. minors	Yes	No	Yes	Yes
2. incapacitated adults	Yes	No	Yes	Yes
3. unborn	Yes	Yes	Yes	Yes
4. unidentifiable/unlocatable	Yes	Yes	Yes	Yes
5. other		No	No	Yes <sup>5</sup>
G. Does virtual representation include representation by someone with a "substantially identical interest"?	Yes	Yes <sup>6</sup>	Yes	Yes <sup>5</sup>
1. Is there a conflict of interest exception?	Yes	No	Yes	Yes <sup>5</sup>
2. Is there an adequacy of representation test?	No	Yes	No	No
H. Does virtual representation include vertical representation?	No Provision	No Provision	Implicit (UTC approach) <sup>5</sup>	Implicit (UTC approach)
I. Does the statute permit a designated representative?				
J. Does the state statute allow nonjudicial settlement agreements?		Yes 203E-1-111	Yes MCL § 700.7111	Yes MINN. STAT. § 501C.0111

	Maryland	Massachusetts	Michigan	Minnesota
K. If yes, what matters can be resolved by nonjudicial settlement agreements?			Any matter involving a trust with a few restrictions	The approval of a trustee's accounting, trustee resignation, determination of trustee compensation, transfer of trust situs and certain terminations of noncharitable trusts. See footnote 6.
1. interpretation or construction		Yes	Yes	No
2. approval of a trustee's report or accounting		Yes	Yes	Yes
3. grant of power or direction to refrain to a trustee		Yes	Yes	No
4. trustee resignation/appointment		Yes	Yes	Yes (resignation only)
5. trustee compensation		Yes	Yes	Yes
6. transfer of a trust's place of administration		Yes	Yes	Yes
7. trustee's liability		Yes	Yes	No
8. other additions/exclusions		No	Yes <sup>6</sup>	Yes <sup>6</sup>
9. Is there a material purpose test?		Yes	Yes	Yes
10. Is a spendthrift provision expressly presumed to not be a material purpose?			Not specified	No (except termination) <sup>6</sup>
11. Must the agreement be one a court could enter?		Yes	Yes	Yes
12. Does the statute expressly address whether the trustee may be removed by agreement of the beneficiaries?		No	No	No
L. In a nonjudicial settlement agreement, who are the necessary parties who must sign the agreement?		Interested Persons	Interested Persons <sup>7</sup>	Trustee and all beneficiaries of a trust not under court supervision
1. Is it the same or different than UTC section 111(a)?		Same	Same	Different (more limited)
2. Is the trustee a necessary party?			No	Yes
M. Does the nonjudicial settlement agreement provision apply to all trusts?			No limitation specified	No limitation specified

	Mississippi	Missouri	Montana	Nebraska
A. Has the state adopted a "virtual representation" statute?	Yes 2014	Yes 2016	Yes 2019	Yes 2003
1. Is the statute based on the UTC?	Yes	Yes	No	Yes
2. What is the statutory citation?	MS CODE § 91-8-303 TO 305	MO. REV. STAT. § 456.3-304	MONT. CODE ANN. § 72-1-303	NEB. REV. STAT. § 30-3825
B. Does virtual representation allow a parent to represent a minor or unborn child?	Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>
C. Does an agent under the power of attorney have the authority to represent the principal?	Yes <sup>2</sup>	Yes <sup>2</sup>	Not specified	Yes <sup>2</sup>
D. Does virtual representation allow a court appointed guardian to represent his or her ward?	Yes <sup>3</sup>	Yes <sup>3</sup>	Yes <sup>2</sup>	Yes <sup>3</sup>
1. ward is a minor	Yes	Yes <sup>3</sup>	Yes	Yes <sup>3</sup>
2. ward is an incapacitated adult	Yes	Yes <sup>3</sup>	Yes	Yes <sup>3</sup>
3. Does this apply to conservators of the estate and to guardians of the person?	Yes <sup>4</sup>	Estate and Person <sup>3</sup>	Estate and Person	Estate and Person <sup>3</sup>
E. Does virtual representation allow the holder of the power of appointment to represent all potential appointees?	No	Yes <sup>4</sup>	Yes <sup>3</sup>	Yes <sup>4</sup>
1. a testamentary general power of appointment		Yes <sup>4</sup>	Yes	Yes <sup>4</sup>
2. a non-testamentary general power of appointment		No	No	No
3. a broad special power of appointment		Yes (special testamentary) <sup>4</sup>	No	No
4. a limited special power of appointment		No	No	No
F. Under virtual representation, what individuals can be represented?				
1. minors	Yes	Yes	No	Yes
2. incapacitated adults	Yes	Yes	No	Yes
3. unborn	Yes	Yes	Yes	Yes
4. unidentifiable/unlocatable	Yes	Yes	Yes	Yes
5. other	Yes <sup>5</sup>	No	No	No
G. Does virtual representation include representation by someone with a "substantially identical interest"?	Yes <sup>6</sup>	Yes <sup>5</sup>	Yes <sup>4</sup>	Yes
1. Is there a conflict of interest exception?	Yes <sup>6</sup>	Yes	No	Yes
2. Is there an adequacy of representation test?	No	No	Yes	No
H. Does virtual representation include vertical representation?	Yes <sup>7</sup>	Implicit (UTC approach) <sup>5</sup>	No Provision	Implicit (UTC approach) <sup>5</sup>
I. Does the statute permit a designated representative?				

	Mississippi	Missouri	Montana	Nebraska
J. Does the state statute allow nonjudicial settlement agreements?		Yes MO. REV. STAT. § 456.1-111	Yes § 72-38-111	Yes NEB. REV. STAT. § 30-3811
K. If yes, what matters can be resolved by nonjudicial settlement agreements?		Any matter involving a trust with a few restrictions		Any matter involving a trust with a few restrictions
1. interpretation or construction		Yes	Yes	Yes
2. approval of a trustee's report or accounting		Yes	Yes	Yes
3. grant of power or direction to refrain to a trustee		Yes	Yes	Yes
4. trustee resignation/appointment		Yes	Yes	Yes
5. trustee compensation		Yes	Yes	Yes
6. transfer of a trust's place of administration		Yes	Yes	Yes
7. trustee's liability		Yes	Yes	Yes
8. other additions/exclusions		Yes <sup>6</sup>	No	Yes <sup>6</sup>
9. Is there a material purpose test?		Yes	Yes	Yes
10. Is a spendthrift provision expressly presumed to not be a material purpose?		Not specified	Not specified	Expressly a material purpose <sup>6</sup>
11. Must the agreement be one a court could enter?		Yes	Yes	Yes
12. Does the statute expressly address whether the trustee may be removed by agreement of the beneficiaries?		No	No	No
L. In a nonjudicial settlement agreement, who are the necessary parties who must sign the agreement?		Interested persons <sup>7</sup>	Interested persons	Interested persons <sup>7</sup>
1. Is it the same or different than UTC section 111(a)?		Same	Same	Same
2. Is the trustee a necessary party?		No		No
M. Does the nonjudicial settlement agreement provision apply to all trusts?		No limitation specified	No limitation specified	No limitation specified

	Nevada	New Hampshire	New Jersey	New Mexico
A. Has the state adopted a "virtual representation" statute?	Yes 2009, 2019	Yes 2005	Yes 2016	Yes 2013
1. Is the statute based on the UTC?	No	Yes	Yes	Yes
2. What is the statutory citation?	NEV. REV. STAT. ANN. §164.038	N.H. REV. STAT. ANN. § 564-B:3-301 through 305	N.J. Stat. § 3B:31-13 through 17	N.M. STAT. ANN. § 46A-3-304
B. Does virtual representation allow a parent to represent a minor or unborn child?	Yes <sup>2</sup>	Yes- and can also represent an incapacitated child <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>
C. Does an agent under the power of attorney have the authority to represent the principal?	Not specified	Yes <sup>2</sup>	Yes <sup>2</sup>	Yes <sup>2</sup>
D. Does virtual representation allow a court appointed guardian to represent his or her ward?	Yes <sup>3</sup>	Yes <sup>3</sup>	Yes <sup>3</sup>	Yes <sup>3</sup>
1. ward is a minor	Yes <sup>3</sup>	Yes <sup>3</sup>	Yes	Yes <sup>3</sup>
2. ward is an incapacitated adult	Yes <sup>3</sup>	Yes <sup>3</sup>	Yes	Yes <sup>3</sup>
3. Does this apply to conservators of the estate and to guardians of the person?	Estate <sup>3</sup>	Estate and Person <sup>3</sup>	Yes	Estate and Person <sup>3</sup>
E. Does virtual representation allow the holder of the power of appointment to represent all potential appointees?	Yes <sup>4</sup>	Yes <sup>4</sup>	Yes <sup>4</sup>	Yes <sup>4</sup>
1. a testamentary general power of appointment	Not specified	Yes <sup>4</sup>	Yes	Yes <sup>4</sup>
2. a non-testamentary general power of appointment	Not specified	No	No	No
3. a broad special power of appointment	Not specified	No	No	No
4. a limited special power of appointment	Not specified	No	No	No
F. Under virtual representation, what individuals can be represented?				
1. minors	Yes	Yes	Yes	Yes
2. incapacitated adults	Yes	Yes	Yes	Yes
3. unborn	Yes	Yes	Yes	Yes
4. unidentifiable/unlocatable	Yes	Yes	Yes	Yes
5. other	No	No	No	No
G. Does virtual representation include representation by someone with a "substantially identical interest"?	Yes <sup>5</sup>	Yes	Yes <sup>5</sup>	Yes
1. Is there a conflict of interest exception?	Yes <sup>5</sup>	Yes	Yes	Yes
2. Is there an adequacy of representation test?	No	No	No	No
H. Does virtual representation include vertical representation?	Expressly Included <sup>6</sup>	Implicit (UTC approach) <sup>5</sup>	Yes <sup>6</sup>	Implicit (UTC approach) <sup>5</sup>
I. Does the statute permit a designated representative?				

	Nevada	New Hampshire	New Jersey	New Mexico
J. Does the state statute allow nonjudicial settlement agreements?	Yes SB 464, Sec. 61-62	Yes N.H. REV. STAT. ANN. § 564-B:1-111	Yes N.J. Stat. 3B:31-11	Yes N.M. STAT. ANN. § 46A-1-111
K. If yes, what matters can be resolved by nonjudicial settlement agreements?		Any matter involving a trust <sup>6</sup>	Any matter involving a trust <sup>7</sup>	Any matter involving a trust
1. interpretation or construction	Yes	Yes	Yes	Yes
2. approval of a trustee's report or accounting	Yes	Yes	Yes	Yes
3. grant of power or direction to refrain to a trustee	Yes	Yes	Yes	Yes
4. trustee resignation/appointment	Yes	Yes	Yes	Yes
5. trustee compensation	Yes	Yes	Yes	Yes
6. transfer of a trust's place of administration	Yes	Yes	Yes	Yes
7. trustee's liability	Yes	Yes	Yes	Yes
8. other additions/exclusions	Yes <sup>7</sup>	Yes <sup>7</sup>	Yes <sup>8</sup>	No
9. Is there a material purpose test?	Yes	Yes	Yes <sup>9</sup>	Yes
10. Is a spendthrift provision expressly presumed to not be a material purpose?	Not specified	Not specified <sup>8</sup>	No <sup>10</sup>	Not specified
11. Must the agreement be one a court could enter?	Yes	Yes	Maybe <sup>8</sup>	Yes
12. Does the statute expressly address whether the trustee may be removed by agreement of the beneficiaries?	No	No	No	No
L. In a nonjudicial settlement agreement, who are the necessary parties who must sign the agreement?	Indispensible parties <sup>8</sup>	Interested persons	Interested persons <sup>11</sup>	Interested persons <sup>6</sup>
1. Is it the same or different than UTC section 111(a)?	Different	Different definition of "interested persons" <sup>9</sup>	Same	Same
2. Is the trustee a necessary party?	Yes			No
M. Does the nonjudicial settlement agreement provision apply to all trusts?	No limitation specified	No limitation specified	No limitation specified	No limitation specified

	New York	North Carolina	North Dakota	Ohio
A. Has the state adopted a "virtual representation" provision?	Yes 1981	Yes 2007	Yes 2007	Yes 2007
1. Is the statute based on the UTC?	No	Yes	Yes	Yes
2. What is the statutory citation?	N.Y. SURR. CT. PROC. ACT § 315	N.C. GEN. STAT. § 36C-3-304	N.D. CENT. CODE § 59-11-04	OHIO REV. CODE ANN. § 5803.01 through 5803.05
B. Does virtual representation allow a parent to represent a minor or unborn child?	No	Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>
C. Does an agent under the power of attorney have the authority to represent the principal?	No	Yes <sup>2</sup>	Yes <sup>2</sup>	Yes <sup>2</sup>
D. Does virtual representation allow a court appointed guardian to represent his or her ward?	No	No <sup>3</sup>	Yes <sup>3</sup>	Yes <sup>3</sup>
1. ward is a minor	n/a	n/a	Yes <sup>3</sup>	Yes <sup>3</sup>
2. ward is an incapacitated adult	n/a	n/a	Yes <sup>3</sup>	Yes <sup>3</sup>
3. Does this apply to conservators of the estate and to guardians of the person?	n/a	n/a	Estate and Person <sup>3</sup>	Yes <sup>3</sup>
E. Does virtual representation allow the holder of the power of appointment to represent all potential appointees?	Yes <sup>1</sup>	Yes <sup>4</sup>	Yes <sup>4</sup>	Yes <sup>4</sup>
1. a testamentary general power of appointment	Yes <sup>1</sup>	Yes <sup>4</sup>	Yes <sup>4</sup>	Yes <sup>4</sup>
2. a non-testamentary general power of appointment	Yes <sup>1</sup>	Yes <sup>4</sup>	Yes <sup>4</sup>	No
3. a broad special power of appointment	Yes <sup>1</sup>	No	No	No
4. a limited special power of appointment	Yes <sup>1</sup>	No	No	No
F. Under virtual representation, what individuals can be represented?				
1. minors	Yes <sup>2</sup>	Yes	Yes	Yes
2. incapacitated adults	Yes <sup>2</sup>	Yes (incompetent)	Yes	Yes
3. unborn	Yes <sup>3</sup>	Yes	Yes	Yes
4. unidentifiable/unlocatable	Yes (unascertained) <sup>2,3</sup>	Yes	Yes	Yes
5. other	Persons under disability if the trust instrument provides <sup>2</sup>	No	No	No
G. Does virtual representation include representation by someone with a "substantially identical interest"?	No ("the same") <sup>4</sup>	Yes	Yes	Yes
1. Is there a conflict of interest exception?	No	Yes	Yes	Yes
2. Is there an adequacy of representation test?	No	No	No	No
H. Does virtual representation include vertical representation?	Expressly included <sup>5</sup>	Implicit (UTC approach) <sup>5</sup>	Implicit (UTC approach) <sup>5</sup>	Implicit (UTC approach) <sup>5</sup>

	New York	North Carolina	North Dakota	Ohio
I. Does the statute permit a designated representative?				
J. Does the state statute allow nonjudicial settlement agreements?	Yes N.Y. SURR. CT. PROC. ACT § 315(8)	Yes N.C. GEN. STAT. § 36C-1-111	Yes N.D. CENT. CODE § 59-09-11	Yes OHIO REV. CODE ANN. § 5801.10
K. If yes, what matters can be resolved by nonjudicial settlement agreements?	Settling the accounts of fiduciaries	Certain enumerated matters involving a trust	Any matter involving a trust	Any matter involving a trust with a few restrictions <sup>6</sup>
1. interpretation or construction	No	No	Yes	Yes
2. approval of a trustee's report or accounting	Yes	Yes	Yes	Yes
3. grant of power or direction to refrain to a trustee	No	Yes	Yes	Yes
4. trustee resignation/appointment	No	Yes	Yes	Yes
5. trustee compensation	No	Yes	Yes	Yes
6. transfer of a trust's place of administration	No	Yes	Yes	Yes
7. trustee's liability	No	Yes (only applies to actions taken under above categories)	Yes	Yes
8. other additions/exclusions	No	Yes <sup>6</sup>	Yes <sup>6</sup>	Yes <sup>6</sup>
9. Is there a material purpose test?	No	Yes	Yes	Yes
10. Is a spendthrift provision expressly presumed to not be a material purpose?	Not specified	Not specified	Expressly a material purpose <sup>7</sup>	No
11. Must the agreement be one a court could enter?	No	Yes	Yes	Yes
12. Does the statute expressly address whether the trustee may be removed by agreement of the beneficiaries?	No	No	No	Yes
L. In a nonjudicial settlement agreement, who are the necessary parties who must sign the agreement?	All persons whom service of process would be required in a judicial proceeding <sup>6</sup>	Interested persons <sup>7</sup>	Interested persons	The settlor; all beneficiaries; all currently serving trustees; creditors if their interests are affected <sup>7</sup>
1. Is it the same or different than UTC section 111(a)?	Different language <sup>6</sup>	Same	Different definition of "interested persons" <sup>8</sup>	Different- specifies the particular parties <sup>7</sup>
2. Is the trustee a necessary party?	No	No	Yes <sup>8</sup>	Yes <sup>7</sup>
M. Does the nonjudicial settlement agreement provision apply to all trusts?	Yes <sup>7</sup>	No limitation specified	No limitation specified	No <sup>8</sup>

	Oklahoma	Oregon	Pennsylvania	Rhode Island
A. Has the state adopted a "virtual representation" statute?	No	Yes 2005	Yes 2017	Yes 2004
1. Is the statute based on the UTC?		Yes	No	No
2. What is the statutory citation?		OR. REV. STAT. § 130.115	20 PA. CONS. STAT. §§ 7721-7726	R.I. GEN. LAWS § 33-22-17
B. Does virtual representation allow a parent to represent a minor or unborn child?		Yes <sup>1</sup>	Yes <sup>1</sup>	Not specified
C. Does an agent under the power of attorney have the authority to represent the principal?		Yes <sup>2</sup>	Yes <sup>2</sup>	Not specified
D. Does virtual representation allow a court appointed guardian to represent his or her ward?		No <sup>3</sup>	Yes <sup>3</sup>	Not specified
1. ward is a minor		Yes <sup>4</sup>	Unspecified <sup>3</sup>	Not specified
2. ward is an incapacitated adult		Yes <sup>4</sup>	Unspecified <sup>3</sup>	Not specified
3. Does this apply to conservators of the estate and to guardians of the person?		Conservators only <sup>4</sup>	Estate <sup>3</sup>	Not specified
E. Does virtual representation allow the holder of the power of appointment to represent all potential appointees?		Yes <sup>5</sup>	Yes <sup>4</sup>	Not specified
1. a testamentary general power of appointment		Yes <sup>5</sup>	Yes <sup>4</sup>	Not specified
2. a non-testamentary general power of appointment		No	Yes <sup>4</sup>	Not specified
3. a broad special power of appointment		No	Yes <sup>4</sup>	Not specified
4. a limited special power of appointment		No	Yes <sup>4</sup>	Not specified
F. Under virtual representation, what individuals can be represented?				
1. minors		Yes	Yes	Yes
2. incapacitated adults		Yes	No	Yes
3. unborn		Yes	Yes	Yes
4. unidentifiable/unlocatable		Yes	Yes	Yes
5. other		No <sup>6</sup>	No	No
G. Does virtual representation include representation by someone with a "substantially identical interest"?		Yes	Yes <sup>5</sup>	Yes <sup>1</sup>
1. Is there a conflict of interest exception?		Yes <sup>7</sup>	Yes <sup>6</sup>	Yes <sup>1</sup>
2. Is there an adequacy of representation test?		No	Yes <sup>7</sup>	Yes <sup>1</sup>
H. Does virtual representation include vertical representation?		Implicit (UTC approach) <sup>7</sup>	Expressly included <sup>8</sup>	No Provision
I. Does the statute permit a designated representative?				

	Oklahoma	Oregon	Pennsylvania	Rhode Island
J. Does the state statute allow nonjudicial settlement agreements?		Yes OR. REV. STAT. § 130.045	Yes 20 PA. CONS. STAT. § 7710.1	No
K. If yes, what matters can be resolved by nonjudicial settlement agreements?		Any matter involving a trust	Any matter involving a trust	
1. interpretation or construction		Yes	Yes	
2. approval of a trustee's report or accounting		Yes	Yes	
3. grant of power or direction to refrain to a trustee		Yes	Yes	
4. trustee resignation/appointment		Yes	Yes	
5. trustee compensation		Yes	Yes	
6. transfer of a trust's place of administration		Yes	Yes	
7. trustee's liability		Yes	Yes	
8. other additions/exclusions		Yes <sup>8</sup>	Yes <sup>9</sup>	
9. Is there a material purpose test?		Yes	Yes	
10. Is a spendthrift provision expressly presumed to not be a material purpose?		Presumed material	Not specified <sup>10</sup>	
11. Must the agreement be one a court could enter?		Yes	Yes	
12. Does the statute expressly address whether the trustee may be removed by agreement of the beneficiaries?		No	No	
L. In a nonjudicial settlement agreement, who are the necessary parties who must sign the agreement?		Interested persons	All beneficiaries and trustees of the trust <sup>11</sup>	
1. Is it the same or different than UTC section 111(a)?		Different definition of "interested persons" <sup>9</sup>	Different	
2. Is the trustee a necessary party?		Yes <sup>9</sup>	Yes <sup>11</sup>	
M. Does the nonjudicial settlement agreement provision apply to all trusts?		No limitation specified	No limitation specified	

	South Carolina	South Dakota	Tennessee	Texas
A. Has the state adopted a "virtual representation" statute?	Yes 2014	Yes 2019	Yes 2010	Yes (in formal proceedings) 2009
1. Is the statute based on the UTC?	Yes	No	Yes	No
2. What is the statutory citation?	S.C. CODE ANN. § 62-7-304	S.D. CODIFIED LAWS § 55-3-24 through 38	TENN. CODE ANN. § 35-15-304	TEX. PROP. CODE ANN. § 115.013
B. Does virtual representation allow a parent to represent a minor or unborn child?	Yes- but has the lowest priority <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>
C. Does an agent under the power of attorney have the authority to represent the principal?	Yes <sup>2</sup>	Yes <sup>2</sup>	Yes <sup>2</sup>	Yes <sup>2</sup>
D. Does virtual representation allow a court appointed guardian to represent his or her ward?	Yes <sup>3</sup>	Yes	Yes <sup>3</sup>	Yes <sup>3</sup>
1. ward is a minor	Yes <sup>3</sup>	Yes <sup>3</sup>	Yes <sup>3</sup>	Yes <sup>4</sup>
2. ward is an incapacitated adult	Yes <sup>3</sup>	Yes <sup>4</sup>	Unclear <sup>3</sup>	Yes <sup>4</sup>
3. Does this apply to conservators of the estate and to guardians of the person?	Estate and Person <sup>3</sup>	Estate and Person <sup>5</sup>	Estate (for disabled) and Person (for minors) <sup>3</sup>	Estate <sup>3</sup>
E. Does virtual representation allow the holder of the power of appointment to represent all potential appointees?	Yes <sup>4</sup>	Yes <sup>6</sup>	Yes <sup>4</sup>	Yes <sup>5</sup>
1. a testamentary general power of appointment	Yes <sup>4</sup>	Yes <sup>6</sup>	Yes <sup>4</sup>	No
2. a non-testamentary general power of appointment	Yes <sup>4</sup>	Yes <sup>6</sup>	No	Yes <sup>5</sup>
3. a broad special power of appointment	No	Yes <sup>6</sup>	No	No
4. a limited special power of appointment	No	Yes <sup>6</sup>	No	No
F. Under virtual representation, what individuals can be represented?				
1. minors	Yes	Not specified	Yes	Yes
2. incapacitated adults	Yes	Not specified	Yes	Yes
3. unborn	Yes	Yes	Yes	Yes
4. unidentified/unlocatable	Yes	Yes	Yes	Yes
5. other	No	No	No	No
G. Does virtual representation include representation by someone with a "substantially identical interest"?	Yes	No <sup>7</sup>	Yes	Yes <sup>6</sup>
1. Is there a conflict of interest exception?	Yes	n/a	Yes	No
2. Is there an adequacy of representation test?	Yes <sup>5</sup>	n/a	No	Yes
H. Does virtual representation include vertical representation?	Implicit (UTC approach) <sup>6</sup>	n/a	Implicit (UTC approach) <sup>5</sup>	Not specified

	South Carolina	South Dakota	Tennessee	Texas
I. Does the statute permit a designated representative?				
J. Does the state statute allow nonjudicial settlement agreements?	Yes S.C. CODE ANN. § 62-7-111	Yes S.D. CODIFIED LAWS § 55-3-24	Yes TENN. CODE ANN. § 35-15-111	Yes TX. PROP. CODE. § 114.032 (b)-(e)
K. If yes, what matters can be solved by nonjudicial settlement agreements?	Certain enumerated matters	Modification or termination	Any matter involving a trust	
1. interpretation or construction	No	Not specified	Yes	
2. approval of a trustee's report or accounting	Yes	Yes <sup>8</sup>	Yes	
3. grant of power or direction to refrain to a trustee	Yes	Not specified	Yes	
4. trustee resignation/appointment	Yes	Not specified	Yes	
5. trustee compensation	Yes	Not specified	Yes	
6. transfer of a trust's place of administration	Yes	Not specified	Yes	
7. trustee's liability	Yes	Not specified	Yes	
8. other additions/exclusions	Yes <sup>7</sup>	Not specified	Yes <sup>6</sup>	
9. Is there a material purpose test?	No	Yes <sup>9</sup>	Yes	
10. Is a spendthrift provision expressly presumed to not be a material purpose?	N/a (because no material purpose test)	N/a	Not specified	
11. Must the agreement be one a court could enter?	No	Not specified	Yes	
12. Does the statute expressly address whether the trustee may be removed by agreement of the beneficiaries?	No	Not specified	No	
L. In a nonjudicial settlement agreement, who are the necessary parties who must sign the agreement?	Interested persons <sup>8</sup>	Not specified	Trustee and qualified beneficiaries <sup>7</sup>	
1. Is it the same or different than UTC section 111(a)?	Same	Different	Different	
2. Is the trustee a necessary party?	No	Presumably	Yes <sup>7</sup>	
M. Does the nonjudicial settlement agreement provision apply to all trusts?	No limitation specified	Yes (those not under court supervision)	No limitation specified	

	Utah	Vermont	Virginia	Washington
A. Has the state adopted a "virtual representation" provision?	Yes 2004	Yes 2011	Yes 2012	Yes 2013
1. Is the statute based on the UTC?	Yes	Yes	Yes	No
2. What is the statutory citation?	UTAH CODE ANN. § 75-7-304	VT. STAT. ANN. tit. 14 V.S.A. § 202	VA. CODE ANN. § 64.2-717	WASH. REV. CODE ANN. § 11.96A.120 <sup>1</sup>
B. Does virtual representation allow a parent to represent a minor or unborn child?	Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>2</sup>
C. Does an agent under the power of attorney have the authority to represent the principal?	Yes <sup>2</sup>	Yes <sup>2</sup>	Yes <sup>2</sup>	Yes <sup>3</sup>
D. Does virtual representation allow a court appointed guardian to represent his or her ward?	Yes <sup>3</sup>	Yes <sup>3</sup>	Yes <sup>3</sup>	Yes <sup>4</sup>
1. ward is a minor	Yes <sup>3</sup>	Yes <sup>4</sup>	Yes <sup>3</sup>	Not specified
2. ward is an incapacitated adult	Yes <sup>3</sup>	Yes <sup>4</sup>	Yes <sup>3</sup>	Yes <sup>4</sup>
3. Does this apply to conservators of the estate and to guardians of the person?	Estate and Person <sup>3</sup>	Estate and Person	Estate and Person <sup>3</sup>	Estate and Person <sup>4</sup>
E. Does virtual representation allow the holder of the power of appointment to represent all potential appointees?	Yes <sup>4</sup>	Yes <sup>5</sup>	Yes <sup>4</sup>	Yes <sup>5</sup>
1. a testamentary general power of appointment	Yes <sup>4</sup>	Yes	Yes <sup>4</sup>	Yes
2. a non-testamentary general power of appointment	No	No	No	Yes
3. a broad special power of appointment	No	No	No	Yes
4. a limited special power of appointment	No	No	No	Yes <sup>5</sup>
F. Under virtual representation, what individuals can be represented?				
1. minors	Yes	Yes	Yes	Yes
2. incapacitated adults	Yes	Yes	Yes	Yes
3. unborn	Yes	Yes	Yes	Yes
4. unidentifiable/unlocatable	Yes	Yes	Yes	Yes
5. other	No	No	No	No
G. Does virtual representation include representation by someone with a "substantially identical interest"?	Yes	Yes <sup>6</sup>	Yes	Yes <sup>6</sup>
1. Is there a conflict of interest exception?	Yes	Yes	Yes	Yes
2. Is there an adequacy of representation test?	No	No	No	No
H. Does virtual representation include vertical representation?	Implicit (UTC approach) <sup>5</sup>	Implicit (UTC Approach) <sup>7</sup>	Implicit (UTC approach) <sup>5</sup>	Yes <sup>7</sup>
I. Does the statute permit a designated representative?				

	Utah	Vermont	Virginia	Washington
J. Does the state statute allow nonjudicial settlement agreements?	Yes UTAH CODE ANN. § 75-7-110	Yes VT. STAT. ANN. tit. 14A, § 111	Yes VA. CODE ANN. § 64.2-709	Yes <sup>8</sup> WASH. REV. CODE ANN. § 11.96A.220
K. If yes, what matters can be resolved by nonjudicial settlement agreements?	Any matter involving a trust	Any matter involving a trust	Any matter involving a trust	Any matter, except certain trusts for minors/incapacitated
1. interpretation or construction	Yes	Yes	Yes	Yes
2. approval of a trustee's report or accounting	Yes	Yes	Yes	Yes
3. grant of power or direction to refrain to a trustee	Yes	Yes	Yes	Yes
4. trustee resignation/appointment	Yes	Yes	Yes	Yes
5. trustee compensation	Yes	Yes	Yes	Yes
6. transfer of a trust's place of administration	Yes	Yes	Yes	Yes
7. trustee's liability	Yes	Yes	Yes	No
8. other additions/exclusions	No	No	No	Yes <sup>9</sup>
9. Is there a material purpose test?	Yes	Yes	Yes	No
10. Is a spendthrift provision expressly presumed to not be a material purpose?	Not specified	Not specified	Not specified	Not specified
11. Must the agreement be one a court could enter?	Yes	Yes	Yes	Not specified
12. Does the statute expressly address whether the trustee may be removed by agreement of the beneficiaries?	No	No	No	No
L. In a nonjudicial settlement agreement, who are the necessary parties who must sign the agreement?	Interested persons <sup>6</sup>	Interested persons <sup>8</sup>	Interested persons <sup>6</sup>	All persons interested in the estate or trust <sup>10</sup>
1. Is it the same or different than UTC section 111(a)?	Same	Same	Same	Different
2. Is the trustee a necessary party?	No	No	No	Yes
M. Does the nonjudicial settlement agreement provision apply to all trusts?	No limitation specified	No limitation specified	No limitation specified	Yes

	West Virginia	Wisconsin	Wyoming	UTC
A. Has the state adopted a "virtual representation" provision?	Yes 2011	Yes 2014	Yes 2003	Yes
1. Is the statute based on the UTC?	Yes	No	Yes	n/a
2. What is the statutory citation?	W. VA. CODE ANN. § 44D-3-304	WIS. STAT. § 701.0304 (circuit court) § 879.23(5) (probate court)	WYO. STAT. ANN. § 4-10-304	UNIF. TRUST CODE § 304
B. Does virtual representation allow a parent to represent a minor or unborn child?	Yes <sup>1</sup>	Not specified	Yes <sup>1</sup>	Yes <sup>1</sup>
C. Does an agent under the power of attorney have the authority to represent the principal?	Yes <sup>2</sup>	Not specified	Yes <sup>2</sup>	Yes <sup>2</sup>
D. Does virtual representation allow a court appointed guardian to represent his or her ward?	Yes <sup>3</sup>	Not specified	Yes <sup>3</sup>	Yes <sup>3</sup>
1. ward is a minor	Yes	Not specified	Yes <sup>3</sup>	Yes <sup>3</sup>
2. ward is an incapacitated adult	Yes	Not specified	Yes <sup>3</sup>	Yes <sup>3</sup>
3. Does this apply to conservators of the estate and to guardians of the person?	Estate and Person <sup>3</sup>	Not specified	Estate and Person <sup>3</sup>	Estate and Person <sup>3</sup>
E. Does virtual representation allow the holder of the power of appointment to represent all potential appointees?	Yes <sup>4</sup>	Yes (circuit court) <sub>1</sub>	Yes <sup>4</sup>	Yes <sup>4</sup>
1. a testamentary general power of appointment	Yes <sup>4</sup>	Yes <sup>1</sup>	Yes <sup>4</sup>	Yes <sup>4</sup>
2. a non-testamentary general power of appointment	No	Yes <sup>1</sup>	No	No
3. a broad special power of appointment	No	No	No	No
4. a limited special power of appointment	No	No	No	No
F. Under virtual representation, what individuals can be represented?				
1. minors	Yes	Yes (probate) <sup>2</sup>	Yes	Yes
2. incapacitated adults	Yes	Yes	Yes	Yes
3. unborn	Yes	Yes	Yes	Yes
4. unidentifiable/unlocatable	Yes	Yes	Yes	Yes
5. other	No	No	No	No
G. Does virtual representation include representation by someone with a "substantially identical interest"?	Yes	Yes <sup>3</sup>	Yes	Yes
1. Is there a conflict of interest exception?	Yes	No <sup>4</sup>	Yes	Yes
2. Is there an adequacy of representation test?	No	No	No	No
H. Does virtual representation include vertical representation?	Implicit(UTC Approach) <sup>5</sup>	Not specified	Implicit (UTC approach) <sup>5</sup>	Implicit <sup>5</sup>

	West Virginia	Wisconsin	Wyoming	UTC
I. Does the statute permit a designated representative?				
J. Does the state statute allow nonjudicial settlement agreements?	Yes W. VA. CODE ANN. §44D-1-111	Yes § 701.0111	Yes  WYO. STAT. ANN. § 4-10-111	Yes  UNIF. TRUST CODE § 111
K. If yes, what matters can be resolved by nonjudicial settlement agreements?	Any matter involving a trust		Any matter involving a trust	Any matter involving a trust
1. interpretation or construction	Yes	Yes	Yes	Yes
2. approval of a trustee's report or accounting	Yes	Yes	Yes	Yes
3. grant of power or direction to refrain to a trustee	Yes	Yes	Yes	Yes
4. trustee resignation/appointment	Yes	Yes	Yes	Yes
5. trustee compensation	Yes	Yes	Yes	Yes
6. transfer of a trust's place of administration	Yes	Yes	Yes	Yes
7. trustee's liability	Yes	Yes	Yes	Yes
8. other additions/exclusions	Yes <sup>6</sup>	Yes <sup>5</sup>	Yes <sup>6</sup>	No
9. Is there a material purpose test?	Yes	No	Yes	Yes
10. Is a spendthrift provision expressly presumed to not be a material purpose?	Not specified		Expressly not a material purpose <sup>6</sup>	Not specified
11. Must the agreement be one a court could enter?	Yes	Yes	Yes	Yes
12. Does the statute expressly address whether the trustee may be removed by agreement of the beneficiaries?	No <sup>7</sup>	No	No	No
L. In a nonjudicial settlement agreement, who are the necessary parties who must sign the agreement?	Interested persons <sup>8</sup>	Interested persons <sup>6</sup>	Interested persons <sup>7</sup>	Interested persons <sup>6</sup>
1. Is it the same or different than UTC section 111(a)?	Same	Same	Different definition of "interested persons" <sup>7</sup>	n/a
2. Is the trustee a necessary party?	No		Yes <sup>7</sup>	No
M. Does the nonjudicial settlement agreement provision apply to all trusts?	No limitation specified	No limitation specified	No limitation specified	No limitation specified

## DEFINITIONS

1. General Power of Appointment: a power exercisable in favor of the holder of the power, the power holder's creditors, the power holder's estate, or the creditors of the power holder's estate
2. Broad Special Power of Appointment: a power exercisable in favor of anyone other than the holder of the power, the power holder's creditors, the power holder's estate, or the creditors of the power holder's estate
3. Limited Special Power of Appointment: a power exercisable in favor of a limited class of persons, such as the descendants of a named person
4. Vertical Representation: the representative has a superior beneficial interest that binds other beneficiaries that have a future, contingent, or other lesser interest

## ALABAMA

<sup>1</sup> Along with allowing a parent to represent a child, a grandparent or other direct ancestor may represent a grandchild in those instances where a conflict of interest exists between the parent and the child. ALA. CODE § 19-3B-303(6).

<sup>2</sup> An agent with the authority to act with respect to a particular question may represent and bind the principal. *Id.* § 19-3B-303(3).

<sup>3</sup> A guardian may represent and bind the ward if a conservator of the ward's estate has not been appointed. *Id.* § 19-3B-303(2).

<sup>4</sup> A "guardian" is defined as a person who has qualified as a guardian of a minor or incapacitated person, and a "conservator" is defined in the same provision as a person who has been appointed by the court to administer the estate of a minor or adult. *Id.* § 19-3B-103.

<sup>5</sup> *Id.* § 19-3B-302(b) is substantially the same provision as § 302 of the UTC except that it allows the holder of any power of appointment other than a lifetime power to appoint to oneself to represent and bind persons whose interests, as permissible appointees, takers in default or otherwise, are subject to the power as long as there is no conflict of interest. *Id.* § 19-3B-302 Comment.

<sup>6</sup> *Id.* § 19-3B-302(a). The code adds a provision which creates "a class of holders of a power of appointment who can bind any person by virtue of the fact that this particular class of holders has immediate access to the property that is subject to the power of appointment. This class of holders has a broader power of representation in that the condition that there be no conflict is not applicable." *Id.* § 19-3B-302 cmt. While the power described in § 19-3B-302(a) is a non-testamentary general power of appointment, §19-3B-302(a) does not apply to all types of non-testamentary general powers of appointment, such as a power to appoint to one's creditors, etc.

<sup>7</sup> *Id.* § 19-3B-304. This section is based on the UTC. While UTC § 304 makes it clear in its comments to this provision that "substantially identical interests" include vertical representation, Alabama expressly codifies the vertical representation principle in § 19-3B-304(b) which states that "a presumptive remainder beneficiary may represent contingent successor remainder beneficiaries" as long as there is no conflict of interest.

<sup>8</sup> The Alabama Code adds § 19-3B-111(7) to its non-exclusive list of matters that may be resolved by a nonjudicial settlement agreement to make it expressly clear that partial and final settlements may be done with a nonjudicial settlement agreement even though many infer this from the UTC. *Id.* § 19-3B-111 cmt.

<sup>9</sup> For trusts created on or after January 1, 2007, a spendthrift provision is not presumed to constitute a material purpose of the trust. *Id.* § 19-3B-411(c).

<sup>10</sup> The persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court. *Id.* § 19-3B-111(a)-(b).

## ALASKA

<sup>1</sup> ALASKA STAT. § 13.06.120(2)(B). To the extent there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent the minor child.

<sup>2</sup> *Id.* § 13.06.120(2)(B). To the extent there is no conflict of interest, orders binding an agent having authority to act with respect to the particular questions or dispute bind the principal.

<sup>3</sup> *Id.* § 13.06.120(2)(B). Orders binding a guardian bind the ward if no conservator of the estate has been appointed. *Id.* A guardian is a person who has qualified as a guardian of a minor or incapacitated person in accordance with testamentary or court appointment, but excludes a person who is merely a guardian ad litem. *Id.* at § 13.06.050(20).

<sup>4</sup> *Id.* § 13.06.120(2)(A). Orders binding the holder of a general or non-general power of appointment bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

<sup>5</sup> *Id.* § 13.06.120(2)(C). An unborn, a minor, an incapacitated, or a person whose identity or location is unknown or not reasonably ascertainable who is not otherwise represented is bound by an order to the extent the interest is adequately represented by another party having a substantially identical interest in the proceeding.

## ARIZONA

<sup>1</sup> The parent may represent and bind a minor or unborn child if a guardian or conservator has not been appointed; however, in a departure from the UTC, if a parent is the settlor of the trust, the parent cannot represent the child to consent to a modification or termination of that trust. ARIZ. REV. STAT. § 14-1406(6).

<sup>2</sup> An agent with the authority to act with respect to a particular question may represent and bind the principal. *Id.* § 1406(3).

<sup>3</sup> A guardian may represent and bind the ward if a conservator of the ward's estate has not been appointed. *Id.* § 14-1406(2). In § 14-10103, a "guardian" is defined as a court appointed person to make decisions regarding the support, care, education, health and welfare of a minor or an adult, and "conservator" is the court appointed person charged with managing the estate of a protected person.

<sup>4</sup> The holder of a general power of appointment, including a general testamentary power of appointment, may represent and bind persons subject to the power. These persons include: permissible appointees, takers in default, and otherwise. *Id.* § 14-1405. Unlike the UTC, representation is not limited to instances where there is no conflict of interest.

<sup>5</sup> *Id.* § 14-1407. This section is based on the UTC. Because UTC § 304 makes it clear in its comments to this provision that "substantially identical interests" include vertical representation, it can be assumed that the same applies here as well even though it is not explicit in the statute.

<sup>6</sup> The statute was amended in 2013 to update Section E, which states, "Unless the interested person...asks the court to rule without regard to this subsection, the court may either approve the agreement or decline to approve the agreement, but may not disapprove or deny the effectiveness of the agreement. If the court does not approve the agreement pursuant to this subsection, the failure to approve is not any prejudice against the effectiveness of the agreement and is not a final judgment or judicial precedent with respect to the agreement or subsequent agreements pursuant to the section." *Id.* § 14-10111(E).

<sup>7</sup> Modification or termination of a trust as otherwise permitted pursuant to the trust instrument may not be resolved by a nonjudicial settlement agreement. *Id.* § 14-10111.

<sup>8</sup> The Arizona Trust Code uses a general definition for "interested person" as it relates to § 14-10111. The definition "includes any trustee, heir, devisee, child, spouse, creditor, beneficiary, person holding a power of appointment and other person who has a property right in or claim against a trust estate or the estate of a decedent, ward or protected person. 'Interested person' also includes a person who has priority for appointment as personal representative and other fiduciaries representing interested persons. 'Interested person,' as the term relates to particular persons, may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding." *Id.* § 14-1201.

<sup>9</sup> The statute was amended in 2013 to remove the language that previously restricted it to trusts that became irrevocable after January 1, 2009. In addition, the statute applies to all of Title 14 of the Arizona Code, including decedent's estates.

## ARKANSAS

<sup>1</sup> Under ARK. CODE ANN. § 28-73-303(6). A parent may bind and represent his or her unborn or minor child if a guardian has not been appointed.

<sup>2</sup> An agent with the authority to act with respect to a particular question may represent and bind the principal. *Id.* § 28-73-303(3).

<sup>3</sup> *Id.* § 28-73-303 (2).

<sup>4</sup> A guardian may represent and bind the ward if a conservator of the ward's estate has not been appointed. "Guardian" is defined in *Id.* § 28-73-103 as a person appointed by the court to have care and custody of the estate of an incapacitated person, and "conservator" is defined in the same provision as the person appointed to administer the estate of an individual who by reason of age or physical disability is unable to manage his or her property.

<sup>5</sup> The holder of a general testamentary power of appointment can represent all potential appointees, takers in default or others subject to the power to the extent that there is no conflict of interest. *Id.* § 28-73-302.

<sup>6</sup> *Id.* § 28-73-304. This section is based on the UTC. Because UTC § 304 makes it clear in its comments to this provision that “substantially identical interests” include vertical representation, it can be assumed that the same applies here as well even though it is not explicit in the statute.

<sup>7</sup> The persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court. *Id.* § 28-73-111.

## **COLORADO**

<sup>1</sup> COLO. REV. STAT. § 15-10-403(3)(c). If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent their minor child.

<sup>2</sup> The Colorado representation statute does not address representation by an agent under a power of attorney. *Id.* § 15-10-403. However, the Colorado power of attorney statute expressly allows the principal to give the agent authority as to “claims and litigation.” *Id.* §15-14-735.

<sup>3</sup> *Id.* § 15-10-403(3)(b). If there is no conflict of interest, orders binding a conservator bind the person whose estate he controls. Additionally, orders binding a guardian bind the ward if no conservator of his estate has been appointed.

<sup>4</sup> *Id.* § 15-10-403(3)(b). A guardian is defined as a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem. *Id.* § 15-10-201(23).

<sup>5</sup> *Id.* § 15-10-403(3)(a). Orders binding the holder of a presently exercisable general power of appointment bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

<sup>6</sup> *Id.* § 15-10-403(3)(d). An unborn, unascertained, minor, or incapacitated person who is not otherwise represented is bound by an order to the extent his or her interest is adequately represented by another party having a substantially identical interest in the proceeding. The term “unascertained” appears to include persons who are “unidentifiable,” but perhaps not those whose identity is known but who cannot be located.

<sup>7</sup> An unborn, unascertained, minor or incapacitated person who is not otherwise represented is bound by an order to the extent his or her interest is adequately represented by another party having a substantially identical interest in the proceeding.

## **CONNECTICUT**

<sup>1</sup> CONN. GEN. STAT. § 19. Absent a conflict of interest, and if a conservator or guardian has not been appointed, a parent may represent or bind the parent’s minor or unborn children.

<sup>2</sup> *Id.* § 19. Absent a conflict of interest, an agent having authority to do so may represent and bind the principal.

<sup>3</sup> *Id.* § 19. A court-appointed conservator or guardian may represent or bind the ward or conserved person if a conservator or guardian of the ward’s estate or conserved person’s estate has not been appointed.

<sup>4</sup> *Id.* § 19.

<sup>5</sup> *Id.* § 45a-487c(1)-(2). This statute expressly allows virtual representation by the conservator or guardian of the estate. It also expressly allows virtual representation by conservator or guardian of the person, with court approval, provided that a guardian or conservator of the ward’s estate has not been appointed.

<sup>6</sup> *Id.* § 18. Provided there is no conflict of interest between the holder and the persons represented, this section gives the holder of any power of appointment, whether or not presently exercisable, the ability to represent all potential appointees. Additionally, the holder of the power of revocation or a general power of appointment “shall represent the takers in default of the exercise thereof.” *Id.*

<sup>7</sup> *Id.* § 19(b). In connection with trust matters, unless otherwise represented, a minor, incapacitated, or unborn individual, or person whose identity of location is unknown and not reasonably ascertainable, may be represented by and bound by another person 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 being represented.

## DELAWARE

<sup>1</sup> DEL. CODE ANN. tit. 12, § 3547(c). A minor or incapacitated beneficiary, who cannot otherwise be represented, may be represented and bound by their custodial parent or parents, provided there is no material conflict of interest.

<sup>2</sup> *Id.* tit. 12, § 3547(c). A minor or incapacitated beneficiary, who cannot otherwise be represented, may be bound and represented by a guardian of the property.

<sup>3</sup> *Id.* tit. 12, § 3547(a). Unless otherwise represented, a minor, incapacitated, or unborn person, or a person whose identity or location is unknown and not reasonably ascertainable, may for all purposes be represented by and bound by another who has a substantially identical interest with respect to the particular question or dispute, but only to the extent that there is no material conflict of interest.

<sup>4</sup> Delaware presumes a conflict of interest if the representative would as a result of the matter be appointed to an office or role related to the trust, or if already serving in such role, would be granted greater authority, broader discretion or increased protection. *Id.* tit. 12 § 3547.

<sup>5</sup> *Id.* tit. 12, § 3547(b). A presumptive remainder beneficiary may represent and bind contingent successor remainder beneficiaries in certain circumstances.

<sup>6</sup> Section 3338(a) defines “interested person” as any person whose consent would be required for a binding settlement approved by the Court of Chancery. Rule 101 of the Court of Chancery requires consent from (1) trustees and other fiduciaries; (2) trust beneficiaries with a present interest and those whose interest would vest, without regard to the exercise of powers of appointment, if the present interest terminated; (3) the settlor, if living; (4) all other persons having an interest under the express terms of the trust, including holders of powers and persons having other rights in a nonfiduciary capacity.

<sup>7</sup> The nonjudicial settlement statute does not apply to trusts described in Title 12, Section 3541, which includes trusts for a particular charitable purpose or noncharitable purpose. A noncharitable purpose is a purpose described in Section 3555 (animal trusts) or 3556 (trusts without identifiable beneficiaries).

## D.C.

<sup>1</sup> Along with allowing parent representation, an individual may represent a grandchild or a more remote descendant if the parent does not represent that child, and a “qualified beneficiary may represent and bind any beneficiary who may succeed to the qualified beneficiary’s interest under the terms of the trust or pursuant to the exercise of a power of appointment.” D.C. CODE ANN. § 19-1303.03(7)-(8).

<sup>2</sup> An agent with the authority to act with respect to a particular question may represent and bind the principal. *Id.* § 19-1303.03(3).

<sup>3</sup> A guardian may represent and bind the ward if a conservator of the ward’s estate has not been appointed. *Id.* § 19-1303.03(2). Under § 19-1301.03, a “guardian” is a person appointed by the court, a parent, or a spouse to make decisions concerning the support, care, education, health and welfare of a minor or adult individual, and “conservator” is a person appointed by the court to administer the estate of a minor or adult individual.

<sup>4</sup> This provision is different from the UTC. The relevant code provision, entitled “Representation by Holder of General Testamentary Power of Appointment” states that the holder of a power of appointment can represent and bind those persons whose interests as permissible appointees or takers in default are subject to the power. No other class of persons is included in this list. A qualified power under this provision is a power exercisable in favor of 1) the power holder, the power holder’s estate, the power holder’s creditors and the creditors of the power holder’s estate; or 2) all persons other than the power holder, the power holder’s estate, the power holder’s creditors, and the creditors of the power holder’s estate. *Id.* § 19-1303.02.

<sup>5</sup> *Id.* § 19-1303.04. This section is based on the UTC. Because UTC § 304 makes it clear in its comments to the provision that “substantially identical interests” include vertical representation, it can be assumed that the same applies here as well even though it is not explicit in the statute. Also, while this clause is substantively the same as the UTC, it adds the language “with respect to the particular question or dispute” to final sentence of the paragraph.

<sup>6</sup> The persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court. *Id.* § 19-1301.11.

## FLORIDA

<sup>1</sup> A parent may represent and bind his or her unborn or minor child if a guardian of the property for the minor child has not been appointed. FLA. STAT. ANN. § 736.0303(5) (West).

<sup>2</sup> An agent with the authority to act may represent and bind the principal. *Id.* § 736.0303(2).

<sup>3</sup> A guardian of the property may represent and bind the estate, but the section allowing a guardian to represent and bind the ward is omitted from the Florida statute. *Id.* § 736.0303.

<sup>4</sup> The holder of a power of appointment can represent and bind those who interests as permissible appointees, takers in default and others who are subject to the power. *Id.* § 736.0302. The statute contains exceptions, determining that the holder does not have the power of representation with respect to 1) a matter involving fraud or bad faith by the trustee; 2) the power of the trustee to distribute the trust property; or 3) a power of appointment held by a person while that person is the only trustee.

<sup>5</sup> *Id.* § 736.0304. This section is based on the UTC. Because UTC § 304 makes it clear in its comments to this provision that “substantially identical interests” include vertical representation, it can be assumed that the same applies here as well even though it is not explicit in the statute.

<sup>6</sup> A nonjudicial settlement may not be used to produce a result not authorized by other provisions of this code, including, but not limited to, terminating or modifying a trust in an impermissible manner. *Id.* § 736.0111(3).

<sup>7</sup> “Interested persons” is defined as persons whose interests would be affected by a settlement agreement. *Id.* § 736.0111(1).

## GEORGIA

<sup>1</sup> 53-12-8(f)(6) allows an ancestor to represent the ancestor’s minor or unborn descendant if no conservator or guardian has been appointed.

<sup>2</sup> An agent may represent the principal if the agent has authority to act with respect to the particular question or dispute. 53-12-8(f)(3).

<sup>3</sup> A conservator may represent and bind the estate that the conservator controls and a guardian may represent and bind his or her ward if a conservator of such ward’s estate has not been appointed. 53-12-8(f)(1),(2).

<sup>4</sup> The holder of a power of appointment may represent permissible appointees, takers in default or other persons whose interests are subject to the power. 53-12-8(e).

<sup>5</sup> A person who would be eligible to receive distributions of income or principal upon the termination of the interests of all persons currently eligible to receive distributions may represent all contingent successor and remainder beneficiaries. 53-12-8(h).

<sup>6</sup> 53-12-9(b). The statute does not include a list of matters that can be addressed.

<sup>7</sup> A nonjudicial settlement agreement is not valid with respect to a modification or termination of a noncharitable irrevocable trust when the settlor’s consent would be required in order to achieve a binding settlement if the settlement were approved by a court.

## HAWAII

<sup>1</sup> HAW. REV. STAT. § 560-1-403(2)(B). If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent the parent’s minor child.

<sup>2</sup> *Id.* § 560-1-403(2)(B). To the extent there is no conflict of interest, orders binding a guardian bind the ward if no conservator of the ward’s estate has been appointed.

<sup>3</sup> *Id.* § 560-1-403(2)(B). A guardian is defined as a person who has qualified as a guardian of a minor or incapacitated person pursuant to appointment by a parent, spouse, reciprocal beneficiary, or by the court but excludes a guardian ad litem. *Id.* at § 560-5-102.

<sup>4</sup> *Id.* § 560-1-403(2)(A). Orders binding the holder of a presently exercisable general power of appointment bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

<sup>5</sup> *Id.* § 560-1-403(2)(C). The statute allows an unborn or unascertained person, who is not otherwise represented, to be bound by another with a substantially identical interest, to the extent that they are adequately represented.

## IDAHO

<sup>1</sup> IDAHO CODE § 15-1-403(b)(2). If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent and bind his minor child.

<sup>2</sup> *Id.* § 15-1-403(b)(2). To the extent there is no conflict of interest, orders binding a guardian bind the ward if no conservator of his estate has been appointed.

<sup>3</sup> *Id.* § 15-1-403(b)(2). A guardian is defined as a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, excluding a person who is merely a guardian ad litem. *Id.* § 15-1-201(21).

<sup>4</sup> *Id.* § 15-1-403(b)(1). Orders binding the holder of a present exercisable general power of appointment bind other persons to the extent their future interests (as objects, takers in default, or otherwise) are subject to the power.

<sup>5</sup> *Id.* § 15-1-403(b)(3). An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding.

<sup>6</sup> This statute provides that §§ 15-8-301 through 305 shall be applicable to the resolution of any matter, with certain exceptions regarding trusts for minors and incapacitated adults. *Id.* §§ 15-8-301 through 305. If all parties agree to a resolution of any of applicable matter, they must put it into a signed written agreement, which will then be binding and conclusive on all persons interested in the estate or trust. "Matter" is defined in the statute. *Id.* § 15-8-103.

<sup>7</sup> *Id.* § 15-8-103. Nonjudicial settlement also pertains to questions, issues, or disputes regarding the determination of any class of persons interested in the estate and the resolution of matters that could affect a nonprobate asset.

<sup>8</sup> *Id.* § 15-8-103(4). Under the Probate Code, "persons interested in the estate or trust" includes the trustor, if living, all persons beneficially interested in the estate or trust, persons holding powers over the trust or estate assets, the attorney general in the case of any charitable trust where the attorney general would be a necessary party to judicial proceedings concerning the trust, and any personal representative or trustee of the estate or trust.

## ILLINOIS

<sup>1</sup> Senate Bill 188 ("SB 188"), effective on January 1, 2010, amended the Trusts and Trustees Act (760 ILL. COMP. STAT. 5/16.1), adding provisions from the UTC with some modifications. Effective January 1, 2020, Illinois adopted the Illinois Trust Code, also based on the UTC, which made further changes to the representation provisions.

<sup>2</sup> If a person is incapacitated (including because of minority) a parent may represent the person if there is no material conflict of interest. If the parents disagree, the parent who is a lineal descendant of the settlor controls. 760 ILCS 3/303(d)

<sup>3</sup> 760 ILCS 3/303(d). An agent is deemed to have the requisite authority if the power of attorney grants the agent the power to settle claims and to exercise powers with respect to trusts and estates, even if the powers do not include the ability to revoke or amend a trust.

<sup>4</sup> 760 ILCS 3/303(b).

<sup>5</sup> May represent permissible appointees and takers in default without regard to any conflict of interest. 760 ILCS 3/302(a).

<sup>6</sup> May represent permissible appointees and takers in default if there is no conflict of interest. 760 ILCS 3/302(b).

<sup>7</sup> A designated representative may represent a current beneficiary who is under age 30 or a presumptive remainder beneficiary of any age. 760 ILCS 3/307.

<sup>8</sup> 760 ILCS 3/304(a).

<sup>9</sup> *Id.* This section is based on the UTC. While UTC § 304 makes it clear in its comments to this provision that "substantially identical interests" include vertical representation, Illinois expressly codifies vertical representation in 3/304(a), allowing primary beneficiaries to bind all secondary beneficiaries and presumptive remainder beneficiaries to bind other beneficiaries who have a successor, contingent, or other future interest in the trust.

<sup>10</sup> Illinois adds to the nonexclusive list of matters that may be resolved by a nonjudicial settlement agreement. The additions are: "(1) exercise or nonexercise of any power by a trustee; (2) questions relating to property or an interest in property held by the trust; (3) resolution of disputes or issues related to administration, investment, distribution or other matters; (4) modification of the terms of the trust pertaining to administration of the trust; (5) termination of the trust, provided that court approval of such termination must be obtained, and the court must conclude continuance of the trust is not necessary to achieve any material purpose of the trust; upon such termination the court may order the trust properly distributed as agreed by the parties to the agreement or otherwise as the court determines equitable consistent with the purposes of the trust." 760 ILCS 3/111(b)(13). Interested persons may include trust advisors or protectors.

<sup>11</sup> The court shall consider a spendthrift provision, but it is not necessarily a material purpose. 760 ILCS 3/111(b)(13).

<sup>12</sup> “Interested persons” is defined as the trustee plus all persons who consent or joinder would be required to achieve a binding settlement were the settlement to be approved by a court. Interested persons may include trust advisors or protectors.

#### **INDIANA PROBATE CODE**

<sup>1</sup> IND. CODE § 29-1-1-20 falls under the Indiana Probate Code and governs proceedings involving estates of decedents or trusts and judicially supervised settlements. IND. CODE § 29-1-1-20(a).

<sup>2</sup> *Id.* § 29-1-1-20(a)(3). If there is no conflict of interest and no guardian of the estate or person has been appointed, a parent may represent the parent’s minor child.

<sup>3</sup> See § 30-5-5-8.

<sup>4</sup> Not specified, but presumably yes because IND. CODE § 29-1-1-20(c) provides for compensation of a guardian.

<sup>5</sup> *Id.* § 29-1-1-20(a)(1). Orders binding the holder of a presently exercisable general power of appointment bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

<sup>6</sup> In a proceeding involving estates of decedents or trusts, or in judicially supervised settlements, an interested person (A) who is incapacitated; (B) whose present name, existence, or residence upon diligent inquiry is unknown and cannot be ascertained; or (C) who is not otherwise represented is bound by an order to the extent the person’s interest is adequately represented by another party having a substantially identical interest in the proceeding. *Id.* § 29-1-1-20(a)(4). An adjudication is binding upon all interested persons, whether born or unborn, whether notified or not notified, and whether represented or not, if the interested persons are of the same class or have interests similar to the predominant interests of any person notified or represented. *Id.* § 29-1-1-20(d).

<sup>7</sup> *Id.* § 29-1-1-20(a)(4). An interested person who is incapacitated, whose present name, existence or residence upon diligent inquiry is unknown and cannot be ascertained, or who is not otherwise represented, is bound by an order to the extent the person’s interest is adequately represented by another party having a substantially identical interest in the proceeding.

#### **INDIANA TRUST CODE**

<sup>1</sup> IND. CODE § 30-4-6-10.5 falls under the Indiana Trust Code, which applies to trusts as defined under IND. CODE § 30-4-1-1.

<sup>2</sup> IND. CODE § 30-4-6-10.5(a)(6) states, “a parent may represent and bind the parent’s minor, unborn, or not yet adopted child if a guardian for the child has not been appointed . . . .”

<sup>3</sup> IND. CODE § 30-4-6-10.5(a)(2). This provision states, “an attorney in fact who has authority to act with respect to the particular question or dispute may represent and bind the principal . . . .”

<sup>4</sup> “[A] guardian may represent and bind the protected person who is subject to the guardianship . . . .” *Id.* § 30-4-6-10.5(a)(1). “Guardian” is defined in the § 29-3-1-6 of Indiana Trust Code.

<sup>5</sup> “The holder of a general power of appointment, including a general testamentary power of appointment, may represent and bind persons whose interests are subject to the power of appointment, including: (1) permissible appointees; and (2) takers in default.” *Id.* § 30-4-6-10.5(b).

<sup>6</sup> Indiana provides that a designated representative may represent a beneficiary. IND. CODE § 30-4-6-10.5(a)(5).

<sup>7</sup> Under IND. CODE § 30-4-6-10.5(c), unless otherwise represented, a minor, an incapacitated person, an unborn or a not yet adopted child, or a person whose identity or location is unknown and not reasonably ascertainable may be represented by and bound by another person who has a substantially identical interest with respect to the particular question or dispute, but only to the extent there is not a conflict of interest between the representative and the person represented.

<sup>8</sup> *Id.* § 30-4-6-10.5(c). This section is based on the UTC. UTC § 304 makes clear in its comments to the provision that “substantially identical interests” include vertical representation. Therefore, it can be assumed that the same applies to the Indiana statute as well, even though it is not explicitly stated.

<sup>9</sup> Effective July 1, 2019, Indiana permits a designated representative to represent a beneficiary. The designated representative must deliver a written acceptance to the trustee. The designated representative is a fiduciary and must act in good faith. IND. CODE § 30-4-1-2(8). During any period of time that the trust instrument restricts or eliminates the right of a beneficiary to be informed of the beneficiary’s interest in a trust the designated representative represents and binds the beneficiary for purposes of any “judicial proceeding or nonjudicial

matter.” IND. CODE § 30-4-3-6(d). “Nonjudicial matter” does not specifically include a nonjudicial settlement agreement, but it is not excluded and Ind. Code § 30-4-3-6 (d) states the designated representative shall represent the beneficiary and bind the beneficiary’s interest for purposes of any nonjudicial matter. IND. CODE § 30-4-1-2 (15). The designated representative may not act if there is a conflict of interest with the beneficiary that is asserted to the court by the beneficiary. IND. CODE § 30-4-3-6(d). But if the beneficiary is a competent adult and discovers information about the beneficiary’s interest in the trust, the beneficiary may demand information about the trust. *Id.*

<sup>10</sup> The other matters include (1) the criteria for discretionary distributions; (2) the resolution of a dispute; (3) an investment action; (4) the appointment of and powers of a directing party; and (5) directions to a directing party or trust protector. Ind. Code § 30-4-5-25 (d).

## IOWA

<sup>1</sup> The 2010 Iowa Legislature effective April 14, 2010 enacted legislation to delete subsection 4 of IOWA CODE § 633A.6301, which previously allowed a represented person to object to the representation prior to its taking effect.

<sup>2</sup> *Id.* § 633A.6303. Provided there is no conflict of interest and no conservator has been appointed, a parent may represent and bind a minor child.

<sup>3</sup> *Id.* § 633A.6303. This section does not use the term guardian. However, it does allow a conservator to represent and bind the person whose estate the conservator controls. A conservator is defined as a person appointed by a court to manage the estate of a minor or adult individual.

<sup>4</sup> *Id.* § 633A.6302. The holder of a presently exercisable general power of appointment may represent and bind the persons whose interests, as objects, takers in default, or otherwise, are subject to the power. Additionally, to the extent there is no conflict of interest, persons whose interests are subject to a general testamentary power of appointment may be represented and bound by the holder of the powers.

<sup>5</sup> *Id.* § 633A.6302(2). To the extent there is no conflict of interest, persons whose interests are subject to a general testamentary power of appointment may be represented and bound by the holder or holders of the power.

<sup>6</sup> *Id.* § 633A.6302(1). The holder of presently exercisable general power of appointment may represent and bind the persons whose interests, as objects, takers in default, or otherwise, are subject to the power.

<sup>7</sup> *Id.* § 633A.6304. The provision uses the term “incompetent” as opposed to “incapacitated.”

<sup>8</sup> *Id.* § 633A.6304. Unless otherwise represented, a minor or an incompetent, unborn, or unascertained person may be represented by and bound by another person having a substantially identical interest with respect to the fiduciary matter, but only to the extent that the person’s interest is adequately represented.

<sup>9</sup> Although no explicit conflict of interest exception appears in § 633A.6304, a potential representative who has a conflict of interest with a person whom the representative could otherwise virtually represent could not adequately represent such person. *Id.* § 633A.6304.

<sup>10</sup> *Id.* § 633A.6304. This section is based on the UTC. UTC § 304 makes clear in its comments to the provision that “substantially identical interests” include vertical representation. Therefore, it can be assumed that the same applies to the Iowa statute as well, even though it is not explicitly stated.

<sup>11</sup> *Id.* § 633A.6308. Interested persons means the persons whose consent would be required in order to achieve a binding settlement to be approved by the court.

## KANSAS

<sup>1</sup> KAN. STAT. ANN. § 58a-303(6). A parent may bind and represent his or her unborn or minor child if a conservator or guardian has not been appointed to the extent there is no conflict of interest.

<sup>2</sup> An agent with the authority to act with respect to a particular question may represent and bind the principal. *Id.* § 58a-303(3).

<sup>3</sup> The guardian may represent and bind the ward within the scope of the guardian’s powers and duties. *Id.* § 58a-303(2). A “guardian” is a person appointed by the court pursuant to § 59-3001 to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual. Unlike in the UTC, the guardian’s representation is not contingent on the failure to appoint the conservator of the ward’s estate. Therefore, while under § 58a-303(1), the conservator may represent and bind the estate of the ward, he or she cannot represent the ward under the statute. *Id.* § 58a-303(1).

<sup>4</sup> The holder of a general testamentary power of appointment can represent all the potential appointees the extent there is no conflict of interest. The persons subject to the power of representation under this provision are “permissible appointees, takers in default, or otherwise.” *Id.* § 58a-302.

<sup>5</sup> *Id.* § 58a-304. This section is based on the UTC. Because UTC § 304 makes it clear in its comments to this provision that “substantially identical interests” include vertical representation, it can be assumed that the same applies here as well even though it is not explicit in the statute.

<sup>6</sup> Interested persons may enter into binding nonjudicial settlement agreements only with respect to the enumerated matters listed in *id.* § 58a-111(d).

<sup>7</sup> The persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court. *Id.* § 58a-111(a).

## **KENTUCKY**

<sup>1</sup> Under KY. ACTS §386B.3-030(6), a parent may represent and bind the parent’s minor and unborn child if a conservator or guardian for the child has not been appointed.

<sup>2</sup> Under KY. ACTS §386B.3-030(3), an agent having authority to act with respect to the particular question or dispute may represent and bind the principal.

<sup>3</sup> Under KY. ACTS §386B.3-030(1) and (2) a conservator may represent and bind the estate that the conservator controls and a guardian may represent and bind the ward if a conservator of a ward’s estate has not been appointed.

<sup>4</sup> Under KY. ACTS §386B.3-020, a holder of a general power of appointment may represent potential appointees and takes in default absent any conflict of interest.

<sup>5</sup> KY. ACTS. §386B.3-040.

<sup>6</sup> *Id.* This section is based on the UTC. Because UTC § 304 makes it clear in its comments to this provision that “substantially identical interests” include vertical representation, it can be assumed that the same applies here as well even though it is not explicit in the statute.

<sup>7</sup> KY. ACTS. §386B.1-090 permits a nonjudicial settlement agreement with respect to any matter involving a trust, but lists specific matters included within this scope.

## **MAINE**

<sup>1</sup> ME. REV. STAT. ANN. tit. 18B § 303(6). A parent may bind and represent his or her unborn or minor child if a conservator or guardian has not been appointed to the extent there is no conflict of interest.

<sup>2</sup> An agent with the authority to act with respect to a particular question may represent and bind the principal. *Id.* tit. 18B § 303(3).

<sup>3</sup> The guardian may represent and bind the ward if the conservator of the ward’s estate has not been appointed. *Id.* tit. 18B § 303. "Guardian" is defined in § 103 as a person who has authority granted by a court to make decisions regarding the support, care, education, health and welfare of a minor or adult individual. The same provision defines “conservator” as a person appointed by the court to administer an estate of a minor or adult individual.

<sup>4</sup> The holder of a general testamentary power of appointment can represent all those subject to this power to the extent there is no conflict of interest. The persons subject to the power of representation under this provision include “permissible appointees, takers in default, or otherwise.” *Id.* tit. 18B § 302.

<sup>5</sup> *Id.* tit. 18B § 304. This section is based on the UTC. Because UTC § 304 makes it clear in its comments to this provision that “substantially identical interests” include vertical representation, it can be assumed that the same applies here as well even though it is not explicit in the statute.

<sup>6</sup> The persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court. *Id.* tit. 18B § 111.

## **MARYLAND**

<sup>1</sup> A grandparent or more remote ancestor may represent a minor, incapacitated, unborn or unknown individual or an individual whose location is not reasonably ascertainable. MD. EST. & TRUSTS CODE §14.5-303(7).

## **MASSACHUSETTS**

<sup>1</sup> Legislation enacting the UTC is pending and is expected to be signed into law by the end of 2012.

<sup>2</sup> MASS. GEN. LAWS ch. 190B, § 1-403(2)(ii). To the extent there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent a minor child.

<sup>3</sup> *Id.* ch. 190B, § 1-403(2)(ii). To the extent there is no conflict of interest, orders binding a guardian bind the protected person or ward if no conservator has been appointed.

<sup>4</sup> *Id.* ch. 190B, § 1-403(2)(ii). A guardian is a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is a guardian ad litem. *Id.* at 1-201.

<sup>5</sup> *Id.* ch. 190B, § 1-403(2)(i). Orders binding the holder of a presently exercisable general power of appointment, or a presently exercisable power to appoint among a class of appointees which is broader than the class of those persons who would take in default of the exercise of such power, bind other persons to the extent their interests, as objects, takers in default, or otherwise, are subject to the power.

<sup>6</sup> *Id.* ch. 190B, § 1-403(2)(iii). A unborn or unascertained person who is not otherwise represented is bound by an order binding another to the extent the person's interest is adequately represented by another party having a substantially identical interest in the proceeding.

## **MICHIGAN**

<sup>1</sup> 2009 Mich. Pub. Acts 46 § 7303(f). A parent may bind and represent his or her unborn or minor child if a conservator, plenary guardian, or partial guardian has not been appointed.

<sup>2</sup> An agent under a durable power of attorney may represent and bind the principal if a conservator, plenary guardian, or partial guardian has not been appointed. *Id.* 46 § 7303(b).

<sup>3</sup> A guardian may represent and bind the ward if a conservator or guardian of the ward's estate has not been appointed and no agent has the authority to act. *Id.* 46 § 7303(c). "Guardian" is defined in § 1104 as the person qualified by the court as a guardian of a minor or legally incapacitated individual, and "conservator" is defined in the same provision as a person appointed by the court to manage a protected individual's estate.

<sup>4</sup> *Id.* 46 § 7302. The holder of a presently exercisable or testamentary general power of appointment may bind and represent those whose interests are subject to his or her power for purposes including granting consent or approval to modification or termination of a trust, or deviation from its terms, including consent or approval to a nonjudicial settlement agreement. Those subject to this power include: permissible appointees, takers in default or otherwise. Unlike the UTC, representation is not limited by conflict of interest. The holder of a power of revocation or amendment or special power of appointment may also bind and represent permissible appointees, takers in default or others subject to the power with respect to matters excluding those listed above.

<sup>5</sup> *Id.* 46 § 7304. This section is based on the UTC. Because UTC § 304 makes it clear in its comments to this provision that "substantially identical interests" include vertical representation, it can be assumed that the same applies here as well even though it is not explicit in the statute.

<sup>6</sup> Adding to the list of matters that can be solved by a nonjudicial agreement, Michigan adds "direction to withhold from a trustee any power." Michigan also excludes termination or modification of a trust from matters than can be resolved by nonjudicial settlement agreements. *Id.* 46 § 7111.

<sup>7</sup> The persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court. *Id.* § 7111(5).

## **MINNESOTA**

<sup>1</sup> MINN. STAT. § 501C.0303(a)(5). The statute contains detailed provisions if the parents disagree.

<sup>2</sup> *Id.* § 501C.0303(a)(2).

<sup>3</sup> *Id.* § 501C.0303(a)(1).

<sup>4</sup> *Id.* § 501C.0302.

<sup>5</sup> *Id.* § 501C.0304. An unborn or unascertained person, an incapacitated person, a person whose identity or location is unknown and not reasonably ascertainable, or a minor, who is not otherwise represented may be represented by another party having a substantially identical interest, but only to the extent there is no conflict of interest.

<sup>6</sup> *Id.* § 501B.154(c)(5). The termination of a non-charitable trust and distribution of trust property, if the fair market value of the trust is less than \$50,000 and continuance will defeat or substantially impair the accomplishment of its purposes, can be accomplished by nonjudicial settlement agreement. The presence of a spendthrift provision does not conclusively make clause 5 inapplicable.

## MISSISSIPPI

<sup>1</sup> MS CODE § 91-8-303(6).

<sup>2</sup> *Id.* § 91-8-303(3).

<sup>3</sup> *Id.* § 91-8-303(1).

<sup>4</sup> *Id.* § 91-8-303(2).

<sup>5</sup> A grandparent may represent a grandchild not represented by a parent. *Id.* § 91-8-303(7). A designated representative may represent a beneficiary. *Id.* § 91-8-303(8).

<sup>6</sup> *Id.* § 91-8-304. Material conflict of interest exception.

<sup>7</sup> *Id.* § 91-8-304(b).

## MISSOURI

<sup>1</sup> A parent may represent and bind his or her minor or unborn child, provided there is no conflict of interest and no conservator, conservator ad litem or guardian for the child has been appointed. MO. REV. STAT. § 456.3-303(6).

<sup>2</sup> *Id.* § 456.3-303(5). An agent with the authority to act with respect to a particular question may represent and bind the principal, provided there is no conflict of interest.

<sup>3</sup> *Id.* § 456.3-303(3). A guardian may represent and bind the ward with respect to a certain question or dispute, provided there is no conflict of interest and a conservator or a conservator ad litem is not authorized to do so. A “guardian” is someone appointed by the court to have care and custody of a minor or incapacitated person, a “conservator” is someone appointed by the court to have care and custody of the estate of a minor or disabled person, and a “conservator ad litem” is a person appointed by the court under § 475.097, who for a limited time is entitled to the care and custody of the property of the protectee who is a minor, disabled or incapacitated person. *Id.* § 456.3-303(3).

<sup>4</sup> In § 456.3-302, entitled “Representation by Holder of General Testamentary Power of Appointment,” a holder of a testamentary power of appointment can represent all those subject to this power including: permissible appointees, takers in default, or otherwise. *Id.* § 456.3-302. In this section, “testamentary power of appointment” is defined as testamentary power of appointment exercisable without the consent of the creator of the power or person holding an adverse interest in favor of either: 1) a class of appointees that includes the holder, the holder’s estate, the holder’s creditors, or the creditors of the holder’s estate; or 2) all persons other than the holder, the holder’s estate, the holder’s creditors, or the creditors of the holder’s estate.

<sup>5</sup> *Id.* § 456.3-304.1. This section is based on the UTC. Because UTC § 304 makes it clear in its comments to this provision that “substantially identical interests” include vertical representation, it can be assumed that the same applies here as well. Also, § 456.3-304.2 adds that a beneficiary who is not qualified may be represented and bound by a qualified beneficiary having a substantially identical interest to the extent there is no conflict of interest.

<sup>6</sup> There are limitations on use of a nonjudicial settlement agreement to terminate or modify a trust. For example, as to noncharitable trusts that became irrevocable after January 1, 2005, a nonjudicial settlement agreement may not be used to terminate or modify a trust “for the reasons that a court could terminate or modify a trust as set forth in § 456.4B-411” that authorizes the court, if all adult beneficiaries with capacity consent and the court finds that the interests of all nonconsenting beneficiaries will be adequately protected, to modify trust terms “to reduce or eliminate the interests of some beneficiaries and increase those of others, change the times or amounts of payments and distributions to beneficiaries, or provide for termination of the trust at a time earlier or later than that specified by its terms”; whereas for trusts that became irrevocable prior to January 1, 2005 the court may vary the trust terms “to reduce or eliminate the interests of some beneficiaries and increase those of others, to change the times or amounts of payments and distributions to beneficiaries, or to provide for termination of the trust at a time earlier or later than that specified” if all of the adult beneficiaries who are not disabled consent and the court finds “that such variation will benefit the disabled, minor, unborn and unascertained beneficiaries, vary the terms of a private trust so as to reduce or eliminate the interests of some beneficiaries and increase those of others, to change the times or amounts of payments and distributions to beneficiaries, or to provide for termination of the trust at a time earlier or later than that specified by the terms.” Therefore it appears this latter basis for trust modification and termination applies also to nonjudicial settlement agreements, because such agreements are valid to the extent they do not violate a material purpose of the trust and include terms and conditions that could properly be approved by the court. *Id.* § 456.1-111.3. Further, except for certain trusts established by court order, a noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries,

without court approval, even if the modification or termination is inconsistent with a material purpose of the trust. *Id.* § 456.4A -411.1.

<sup>7</sup>“Interested Persons” means the persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court. *Id.* § 456.1-111.1.

## **MONTANA**

<sup>1</sup> MONT. CODE ANN. § 72-1-303(2)(b)(ii). If there is no conflict of interest and no conservator of guardian has been appointed, a parent may represent his minor child.

<sup>2</sup> *Id.* § 72-1-303(2)(b)(i).

<sup>3</sup> *Id.* § 72-1-303(2)(b)(i)(E). Orders binding the holder of a presently exercisable general power of appointment bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

<sup>4</sup> *Id.* § 72-1-303(2)(c). An unborn or unascertained person who is not otherwise represented in bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding.

## **NEBRASKA**

<sup>1</sup> NEB. REV. STAT. § 30-3824(6). A parent may bind and represent his or her unborn or minor child if a conservator or guardian has not been appointed to the extent there is no conflict of interest.

<sup>2</sup> An agent with the authority to act with respect to a particular question may represent and bind the principal. *Id.* § 30-3824(3).

<sup>3</sup> *Id.* § 30-3824(2). To the extent there is no conflict of interest, a guardian may represent and bind the ward if a conservator has not been appointed. “Guardian” is defined in § 30-3803 as a person who has qualified as the guardian of a minor or incapacitated person and a “conservator” is defined in the same provision as a person appointed by the court to administer the estate of a minor or adult individual.

<sup>4</sup> The holder of a general testamentary power of appointment can represent permissible appointees, takers in default, or otherwise to the extent there is no conflict of interest. *Id.* § 30-3823.

<sup>5</sup> *Id.* § 30-3825. This section is based on the UTC. Because UTC § 304 makes it clear in its comments to this provision that “substantially identical interests” include vertical representation, it can be assumed that the same applies here as well even though it is not explicit in the statute.

<sup>6</sup> Unlike the UTC, a spendthrift provision is deemed to constitute a material purpose of the trust and therefore cannot be resolved in Nebraska by a nonjudicial settlement agreement. *Id.* § 30-3811(c).

<sup>7</sup> The persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court. *Id.* § 30-3811(a).

## **NEVADA**

<sup>1</sup> This statute, §164.038, relates to virtual representation in trust matters . As to virtual representation in probate matters, see NEV. REV. STAT. § 155.140.

<sup>2</sup> *Id.* §164.038(5). If a trust has a minor or incapacitated beneficiary who may not be represented by another person pursuant to this section, the custodial parent. . .may represent the minor. . .in any judicial proceeding or nonjudicial matter pertaining to the trust. There must be no conflict of interest.

<sup>3</sup> *Id.* §164.038(5). If a trust has a minor or incapacitated beneficiary who may not be represented by another person pursuant to this section, the. . .guardian of the estate of the minor or incapacitated beneficiary may represent the minor or incapacitated beneficiary in any judicial proceeding or nonjudicial matter pertaining to the trust. There must be no conflict of interest.

<sup>4</sup> Pursuant to an amendment in 2019, a powerholder may represent a person who is a permissible appointee or taker in default. § 164.038(4).

<sup>5</sup> *Id.* §164.038(1)-(2). Unless otherwise represented by counsel, a minor, incapacitated person, unborn or person whose identity or location is unknown and not reasonably ascertainable may be represented by another person who has a substantially similar interest with respect to the question or dispute. *Id.* There must be no material conflict of interest. *Id.* Additionally, The representation of a minor or incapacitated beneficiary pursuant to subsection 4 is binding on an unborn person or a person who cannot be ascertained if (1) the unborn or unascertainable person has an interest substantially similar to the minor or incapacitated person, and (2) there is

no material conflict of interest between the unborn or unascertainable person and the minor or incapacitated person. *Id.* §164.038(5).

<sup>6</sup> *Id.* §164.038(3). A presumptive remainder beneficiary may represent and bind a beneficiary with a contingent remainder for the same purpose, in the same circumstance, and to the same extent as an ascertainable beneficiary may bind a minor, incapacitated person, unborn person, or person who cannot be ascertained.

<sup>7</sup> Other matters that may be addressed by a nonjudicial settlement agreement include: (1) the investment or use of trust assets; (2) the lending or borrowing of money; (3) the addition, deletion or modification of a term or condition of the trust; (4) the choice of law governing the construction of the trust instrument or administration of the trust, or both; (5) the granting of approval or authority for a trustee to make charitable gifts from a noncharitable trust; (6) the termination of the trust.

<sup>8</sup> “Indispensible parties” refers to all interested parties as defined in NRS 132.185. Whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court. Section 132.185 was amended by SB484 (2015). “Interested person” now includes a settlor, if living, the trustee and a trustee remover. Note, however, that the necessary parties do not need to affirmatively consent to the settlement agreement. The trustee may give a notice of proposed action to the beneficiaries under Section 164.725, in which case the beneficiary will be deemed to have consented if the beneficiary fails to object.

### **NEW HAMPSHIRE**

<sup>1</sup> N.H. REV. STAT. ANN. § 564-B:3-303(7). A parent may represent and bind his or her minor, unborn or incapacitated child if no guardian of the estate or guardian of the person has been appointed, and a person may represent a grandchild or more remote direct descendant if no guardian of the estate or guardian of the person has been appointed for the descendant.

<sup>2</sup> *Id.* § 564-B:3-303(4). An agent with the authority to act with respect to a particular question may represent and bind the principal.

<sup>3</sup> Section 564-B:3-303(1) allows a conservator to bind the estate the conservator controls and Section 564-B:3-303(2) allows a guardian of the estate to bind the estate the guardian controls. A “guardian of the estate,” defined in § 564-B:1-103(6)(a), is a person appointed by the court to administer the estate of a minor or incapacitated person. A conservator is a person appointed to manage a competent individual’s financial affairs (because that individual requests the appointment based upon the belief that he or she is unable to manage his or her own affairs). *See* § 564-B:1-103(4). A guardian of the person may represent and bind the ward if a guardian of the estate has not been appointed. *Id.* § 564-B:3-303(3). A “guardian of the person,” defined in § 564-B:1-103(6)(b), is a person appointed by the court to make decisions regarding the support, care, and education of a minor or incapacitated person.

<sup>4</sup> The holder of a general testamentary power of appointment can represent all those subject to this power to the extent there is no conflict of interest. The persons subject to the power of representation under this provision include “permissible appointees, takers in default, or otherwise.” *Id.* § 564-B:3-302.

<sup>5</sup> *Id.* § 564-B:3-304. This section is based on the UTC. Because UTC § 304 makes it clear in its comments to this provision that “substantially identical interests” include vertical representation, it can be assumed that the same applies here as well even though it is not explicit in the statute.

<sup>6</sup> *Id.* § 564-B:1-111. The matters listed in this section may be resolved “without limitation.”

<sup>7</sup> The New Hampshire statutes adds matters involving termination or modification of a trust to the nonexclusive list of matters that may be resolved by a nonjudicial settlement agreement. *Id.* § 564-B:1-111(d)(7).

<sup>8</sup> As originally enacted in 2004, the New Hampshire UTC included UTC § 411(c), under which a spendthrift provision presumptively was not a material purpose of the trust. In 2005, the statutory presumption was repealed. Laws of 2005, ch. 270, § 10.

<sup>9</sup> The New Hampshire definition of “interested persons” differs from the UTC definition in that it encompasses persons, other than the settlor, whose consent would be required to achieve a binding settlement in court. *Id.* § 564-B:1-111(a).

### **NEW JERSEY**

<sup>1</sup> N.J. Stat. § 3B:31-15(f).

<sup>2</sup> *Id.* § 3B:31-15(c). An agent with authority to act with respect to the particular question or dispute may represent and bind the principal.

<sup>3</sup> *Id.* § 3B:31-15(a), (b). A guardian of the property may represent and bind the estate that the guardian controls and a guardian of the person may represent and bind the ward if no guardian of the property has been appointed.

<sup>4</sup> *Id.* § 3B:31-14. To the extent there is no conflict of interest with respect to the particular question or dispute, a holder of a general testamentary power of appointment may represent permissible appointees and takers in default. A holder of a general power of appointment in favor of the holder or the holder's estate shall be deemed to not have a conflict.

<sup>5</sup> *Id.* § 3B:31-16.

<sup>6</sup> *Id.* This section is based on the UTC. Because UTC § 304 makes it clear in its comments to this provision that "substantially identical interests" include vertical representation, it can be assumed that the same applies here as well even though it is not explicit in the statute.

<sup>7</sup> *Id.* § 3B:31-11(b).

<sup>8</sup> A nonjudicial settlement agreement may not be used to produce a result contrary to Title 3B, including terminating or modifying a trust in an impermissible manner.

<sup>9</sup> *Id.* § 3B:31-11(c).

<sup>10</sup> *Id.* § 3B:31-27(c).

<sup>11</sup> "Interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court. *Id.* § 3B:31-11(a).

## **NEW MEXICO**

<sup>1</sup> N.M. STAT. ANN. § 46A-3-303(F). A parent may bind and represent his or her unborn or minor child if a conservator or guardian has not been appointed to the extent there is no conflict of interest.

<sup>2</sup> An agent with the authority to act with respect to a particular question or dispute may represent and bind the principal. *Id.* § 46A-3-303(C).

<sup>3</sup> A guardian may represent and bind the protected person if a conservator has not been appointed. *Id.* § 46A-3-303(B). "Guardian" is defined as a person appointed by the court to make decisions about the support, care, education, health and welfare of a minor or incapacitated person; a "conservator" is defined as a person appointed to administer the estate of a minor or adult individual. *Id.* § 46A-1-103.

<sup>4</sup> The holder of a general testamentary power of appointment can represent all those subject to this power to the extent there is no conflict of interest. The persons subject to the power of representation under this provision include "permissible appointees, takers in default, or otherwise." *Id.* § 46A-3-302.

<sup>5</sup> *Id.* § 46A-3-304. This section is based on the UTC. Because UTC § 304 makes it clear in its comments to this provision that "substantially identical interests" include vertical representation, it can be assumed that the same applies here as well even though it is not explicit in the statute.

<sup>6</sup> The persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court. *Id.* § 46A-1-111(A).

## **NEW YORK**

<sup>1</sup> N.Y. Surr. Ct. Proc. Act § 315. The holder of any power of appointment may represent all potential appointees and the holder of a general power of appointment may represent all potential appointees and takers in default.

<sup>2</sup> If the instrument provides, a party to the proceeding with the same interest as a person under disability can represent that person. SCPA § 315(5). "Person under disability" is defined as: "Any person who is (a) an infant, (b) an incompetent, (c) an incapacitated person, (d) unknown or whose whereabouts are unknown or (e) confined as a prisoner who fails to appear under circumstances which the court finds are due to confinement in a penal institution." SCPA § 103(40). "Infant" includes any person under the age of eighteen years, and in limited circumstances, under the age of 21 years. SCPA § 103(27). "Incompetent" means any person judicially declared incompetent to manage his affairs. SCPA § 103(26). "Incapacitated person" means any "person who for any cause is incapable adequately to protect his or her rights, including a person for whom a guardian has been appointed pursuant to article 81 of the mental hygiene law." SCPA § 103(25).

<sup>3</sup> SCPA § 315(a)(iii). Unborn or unascertained persons do not need to be made parties if there is someone with their same interests.

<sup>4</sup> It is not necessary to serve an unborn or unascertained individual, as long as there is someone to represent them who has the "same" interest. If there is no one with the same interest as the unborn or unascertained individuals, the statute provides for the appointment of a guardian ad litem. SCPA § 315(2)(a)(iii).

<sup>5</sup> Living members of a class may represent future members of the class when class membership is based on a future contingency. SCPA § 315(2)(a)(i). Also, under SCPA § 315(3), successive contingent interests may be represented by the first contingent interest holder.

<sup>6</sup> While the New York legislation does not refer to “interested persons” like the UTC, the persons identified as needing to participate in order to validate a nonjudicial settlement agreement are substantively similar. SCPA § 315(8).

<sup>7</sup> Section 315 (8) of the SCPA discusses the settlement of accounts of fiduciaries. Section 7703 of the Civil Practice Law and Rules provides:

The provisions as to joinder and representation of persons interested in estates as provided in the surrogate’s court procedure act shall govern joinder and representation of persons interested in express trusts. For these purposes, the term “will” used in the surrogate’s court procedure act shall be construed to mean the instrument creating the trust.

#### **NORTH CAROLINA**

<sup>1</sup> N.C. GEN. STAT. § 36C-3-303(7). A person may represent his or her unborn issue. Under § 36C-3-303(6), a parent may represent and bind the parent’s minor child if a general guardian or guardian of the child’s estate has not been appointed. If a disagreement arises between parents seeking to represent the same minor child, then the statute provides a method to determine who will represent the child. First, the parent who is the beneficiary of the trust that is the subject of the representation is entitled to represent the minor child. If no parent is a beneficiary then the parent who is a lineal descendant of the settlor is entitled to represent the child. If no parent is a lineal descendant then a guardian ad litem will be appointed to represent the child.

<sup>2</sup> An agent with the authority to act with respect to a particular question may represent and bind the principal. *Id.* § 36C-3-303(3).

<sup>3</sup> A guardian of the estate may represent and bind the estate, but the section allowing a guardian to represent and bind the ward was repealed. 2007 N.C. Sess. Laws 106, s. 11.

<sup>4</sup> The holder(s) of either the power of revocation or a presently exercisable general power of appointment represent other persons to the extent that their interests as either permissible appointees, takers in default or otherwise are subject to the power. Also, to the extent that there is no conflict of interest, the holder of a general testamentary power of appointment may represent and bind those persons whose interests as either permissible appointees, takers in default or otherwise are subject to the power. N.C. GEN. STAT. § 36C-3-302.

<sup>5</sup> *Id.* § 36C-3-304. This section is based on the UTC. Because UTC § 304 makes it clear in its comments to this provision that “substantially identical interests” include vertical representation, it can be assumed that the same applies here as well even though it is not explicit in the statute.

<sup>6</sup> Any matter not expressly listed in the statute is excluded from those matters that may be settled by a nonjudicial settlement agreement.

<sup>7</sup> The persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court. N.C. GEN. STAT. 36C-1-111(a).

#### **NORTH DAKOTA**

<sup>1</sup> N.D. CENT. CODE § 59-11-03(6). A parent may represent and bind the parent’s minor 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, then the statute provides a method to determine who will represent the child. First, the parent who is the beneficiary of the trust that is the subject of the representation is entitled to represent the minor child. If both parents are beneficiaries or neither parent is a beneficiary, then the parent who is a lineal descendant of the settlor is entitled to represent the child. If no parent is a lineal descendant, then a guardian ad litem will be appointed to represent the child. A parent may bind and represent his or her unborn child. *Id.* § 59-11-03(7).

<sup>2</sup> An agent with the authority to act with respect to a particular question may represent and bind the principal. *Id.* § 59-11-03(3).

<sup>3</sup> *Id.* § 59-11-03(2). A guardian may represent and bind the ward if a conservator has not been appointed, to the extent of the power conferred on the guardian by a court order. “Guardian” is defined as a person appointed by the court to be the guardian of a minor or incapacitated person pursuant to testamentary or court appointment, and a “conservator” is a person appointed by the court to administer the estate of a protected person. *Id.* § 30.1-01-06.

<sup>4</sup> The holder of a presently exercisable general power of appointment, which includes a testamentary general power of appointment having no conditions precedent to its exercise beyond the death of the holder, the validity of the holder's last will and testament, and the inclusion of a provision in the will granting the power, may represent and bind persons whose interests are subject to the power as permissible appointees, takers in default, or otherwise. *Id.* § 59-11-02.

<sup>5</sup> *Id.* § 59-11-04 is based on the UTC. Because UTC § 304 makes it clear in its comments to this provision that "substantially identical interests" include vertical representation, it can be assumed that the same applies here as well even though it is not explicit in the statute.

<sup>6</sup> Two matters are added to the list of those that may be solved by a nonjudicial settlement agreement: 1) the extent or waiver of bond of a trustee; and 2) the criteria for distribution to a beneficiary where the trustee is given discretion.

<sup>7</sup> A spendthrift provision is presumed to constitute a material purpose of the trust and therefore a dispute involving this provision cannot be resolved by a nonjudicial settlement agreement. N.D. CENT. CODE § 59-09-11(3)-(4).

<sup>8</sup> "Interested persons" refers both to the trustee and the persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court. *Id.* § 59-09-11(1).

## **OHIO**

<sup>1</sup> OHIO REV. CODE ANN. § 5803.03(F). A parent may bind and represent his or her unborn or minor child if a guardian of the estate or guardian of the person has not been appointed to the extent there is no conflict of interest. If a minor or unborn child is not represented by a parent, then he or she may be represented pursuant to § 5803.04.

<sup>2</sup> An agent with the authority to act with respect to a particular question may represent and bind the principal. *Id.* § 5803.03(C).

<sup>3</sup> *Id.* § 5803.03(A)-(B). A guardian of the estate may represent his ward, and if there is no guardian of the estate, a guardian of the person may represent the ward.

<sup>4</sup> The holder of a general testamentary power of appointment can represent all those subject to this power to the extent there is no conflict of interest. The persons subject to the power of representation include "permissible appointees, takers in default, or otherwise." *Id.* § 5803.02. The provision also distinguishes between those with a general testamentary power and a presently exercisable general power of appointment, noting that the holders of a presently exercisable general power are governed by a separate provision.

<sup>5</sup> *Id.* § 5803.04. This section is based on the UTC. Because UTC § 304 makes it clear in its comments to this provision that "substantially identical interests" include vertical representation, it can be assumed that the same applies here as well even though it is not explicit in the statute.

<sup>6</sup> *Id.* § 5801.10. This section is somewhat similar to the UTC section concerning nonjudicial settlement agreements but uses different language and is much more complex. Parties may enter into written agreements with respect to any matter concerning the construction, administration or distribution of the trust, the investment of income or principal held by the trustee, or other matters. Therefore, while many of the categories in this section are not explicitly named as they are in the UTC, they may still be covered by this provision. However, the agreement cannot effect a termination of a trust before the date specified in the trust, or change the interests of the beneficiaries in the trust except as specified in subsection (C).

Under § 5801.10 (C), listed matters that may be settled under this provision include but are not limited to: 1) determining classes of creditors, beneficiaries, heirs, next of kin, or other persons; 2) resolving disputes arising out of the administration or distribution under the terms of the trust, including disputes over the construction of the language of the trust instrument or other writings that affect the terms; 3) granting to the trustee necessary or desirable powers not granted in the terms of the trust or otherwise provided by law, to the extent that those powers either are not inconsistent with the provisions or purposes of the trust, or if inconsistent, then are necessary for the administration of the trust; 4) modifying the terms of the trust as long as it is not inconsistent with a dominant purpose of the trust; 5) modifying the terms of the trust to qualify it as a gift for the charitable estate or gift tax deduction, including the addition of IRS mandate governing instrument requirements for a charitable remainder trust; 6) modifying the terms of the trust required to qualify the gift for the estate tax marital deduction to noncitizen spouses, including the addition of IRS mandated governing instrument requirements for a qualified domestic trust where all interested parties have submitted written agreements to the proposed changes or written a disclaimer of interest; and 7) resolving any other matter that arises under Chapters 5801 – 5811.

<sup>7</sup> In a departure from the UTC, the Ohio Code delineates exactly which parties need to participate in a private settlement agreement. The following parties or their representatives must be present: 1) the settlor if living and if no adverse income or transfer tax results would arise from his or her participation; 2) all beneficiaries; 3) all currently serving trustees; and 4) creditors if their interests are affected by the agreement. The exception to the rule that all parties listed above must be present is that only the settlor and any trustee are required to be parties to an amendment of a revocable trust. *Id.* § 5801.10(B).

<sup>8</sup> The nonjudicial settlement provision does not apply to certain charitable trusts specified in *Id.* § 5801.10(M).

## OREGON

<sup>1</sup> A parent may represent and bind his or her minor or unborn child if a conservator for the child has not been appointed. OR. REV. STAT. § 130.110(5).

<sup>2</sup> An agent with the authority to act with respect to a particular question may represent and bind the principal. *Id.* § 130.110(2).

<sup>3</sup> A conservator may represent and bind the estate, but the section allowing a guardian to represent and bind the ward is omitted from the Oregon statute. *Id.* § 130.110(1).

<sup>4</sup> The holder of a testamentary power of appointment can represent all potential appointees to the extent there is no conflict of interest. The persons subject to the power of representation under this provision are permissible appointees, takers in default, or persons subject for any other reason. While Oregon deletes the word “general” in the section, no other language is changed and the phrase presumably has the same meaning as the UTC’s “general testamentary power of appointment.” *Id.* § 130.105.

<sup>5</sup> *Id.* § 130.115. This section is based on the UTC. Because UTC § 304 makes it clear in its comments to this provision that “substantially identical interests” include vertical representation, it can be assumed that the same applies here as well even though it is not explicit in the statute.

<sup>6</sup> Two matters are added to the nonexclusive list of matters that may be solved by a nonjudicial settlement agreement in Oregon: 1) determining classes of creditors, beneficiaries, heirs, next of kin or other persons, and 2) resolving disputes arising out of the administration or distribution of the trust.

<sup>7</sup> “Interested persons” is defined differently from the UTC as any settlor of a trust who is living, beneficiaries of the trust who have an interest in the subject of the agreement, any acting trustee, and the Attorney General if the trust is a charitable trust subject to the powers of the state or the Attorney General under §§ 128.610 - 128.750.

## PENNSYLVANIA

<sup>1</sup> An individual represents his or her minor and unborn descendants unless a guardian has been appointed to represent them. 20 PA. CONS. STAT. § 7723(9).

<sup>2</sup> An agent under general power of attorney represents the agent’s principal and an agent under a limited power of attorney represents the principal within the scope of the agent’s authority. *Id.* § 7723(2).

<sup>3</sup> A plenary guardian may represent persons whose estate the guardian supervises and a limited guardian may represent persons whose estate he or she supervises within the scope of his or her court granted authority. *Id.* § 7723(1). “Guardian” is defined in § 7703 as a person other than a guardian ad litem appointed by a court to make decisions regarding the property of an individual. Although not specified, that individual can be a minor or an incapacitated adult.

<sup>4</sup> Without regard to conflict of interest concerns, holder(s) of a presently exercisable or testamentary power of appointment may represent all potential appointees and all takers in default of exercise of the power of appointment if they can appoint to: 1) the holder’s estate, the holder’s creditors, or the creditors of the holder’s estate; or 2) anyone other than the holder’s estate, the holder’s creditors and the creditors of the holder’s estate. *Id.* § 7723(7). A sole holder or co-holder of a presently exercisable or testamentary power of appointment that does not fit into one of the categories above may, absent a conflict with respect to the matter at issue, represent all potential appointees and all takers in default of exercise of the power who are also potential appointees. *Id.* § 7723(8).

<sup>5</sup> *Id.* § 7723(6).

<sup>6</sup> *Id.* § 7723.

<sup>7</sup> *Id.* § 7724. This section provides “if . . . the court determines that the representation . . . is or might be inadequate, the court may appoint a guardian ad litem or trustee ad litem. . . .”

<sup>8</sup> *Id.* § 7723(4)-(5). This section codifies the vertical representation concept implicit in UTC § 304.

<sup>9</sup> Pennsylvania adds to the nonexclusive list of matters that may be resolved by a nonjudicial agreement as long as it does not violate a material purpose of the trust. The additions are: 1) the grant to a trustee of any necessary or desirable power; 2) the exercise or nonexercise of any power by a trustee; 3) questions relating to the property or an interest in property held as part of a trust; 4) an action or proposed action by or against a trust or trustee; 5) the modification or termination of a trust; 6) an investment decision, policy, plan or program of a trustee; and 7) any other matter concerning the administration of a trust. *Id.* § 7710.1(d).

<sup>10</sup> Note that the virtual representation statute does not address this issue, but § 7740.1 (Modification or termination of non-charitable irrevocable trust by consent) provides that a spendthrift provision is in fact presumed to be a material purpose of the trust. Section 7740.1 deals with both nonjudicial and judicial modifications and terminations.

<sup>11</sup> Rather than stating that “interested persons” may enter into a binding nonjudicial settlement agreement, the Pennsylvania Code states that all beneficiaries and trustees of a trust may do so. *Id.* § 7710.1(b).

## **RHODE ISLAND**

<sup>1</sup> R.I. GEN. LAWS § 33-22-17. In any action involving wills, estates, trusts, or fiduciaries in the probate court, a minor, an incapacitated person or an unborn or unascertained person whose identity and location is unknown and not reasonably ascertainable, unless otherwise represented, 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: (1) the person's interest is adequately represented, and (2) there is no conflict of interest between the representative and the person represented. R.I. GEN. LAWS § 18-4-30 Representation by person having substantially identical interest. In any action involving wills, estates, trusts or fiduciaries in the Probate Court or the Superior Court, a minor, an incapacitated person or an unborn or unascertained person whose identity and location is unknown and not reasonably ascertainable, unless otherwise represented, 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: (1) The person's interest is adequately represented; and (2) there is no conflict of interest between the representative and the person represented. See also R.I. GEN. LAWS § 33-22-17 Representation of unborn, unascertained, and incompetent persons.

## **SOUTH CAROLINA**

<sup>1</sup> S.C. CODE ANN. § 62-7-303(a)(6). A parent may represent and bind his or her minor or unborn child if a conservator or guardian has not been appointed. The provision which grants this power orders the beneficiary representatives in order of the priority each representative has relative to the others. The order is as follows: 1) conservator 2) guardian 3) agent 4) trustee 5) personal representative of a decedent's estate and 6) parent. § 62-7-303(b).

<sup>2</sup> An agent with the authority to act with respect to a particular question may represent and bind the principal. *Id.* § 62-7-303(a)(2).

<sup>3</sup> *Id.* § 62-7-303(2). A guardian may represent and bind the ward if a conservator of the ward's estate has not been appointed. A “guardian” is defined in § 62-7-103 as a person appointed to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual; a “conservator” is defined in the same provision as a court appointee to administer the estate of the protected person.

<sup>4</sup> The holder of a presently exercisable general power of appointment, which includes a testamentary general power of appointment may represent and bind persons whose interests are subject to the power. Those persons are: permissible appointees, takers in default and those otherwise subject to the power. *Id.* § 62-7-302.

<sup>5</sup> Providing that the person represented is adequately represented by the beneficiary representative, a representative may represent a minor, incapacitated, unborn individual or individual whose identity or location is unknown and not reasonably ascertainable. *Id.* § 62-7-304.

<sup>6</sup> *Id.* § 62-7-304. This section is based on the UTC. Because UTC § 304 makes it clear in its comments to this provision that “substantially identical interests” include vertical representation, it can be assumed that the same applies here as well even though it is not explicit in the statute.

<sup>7</sup> All matters not listed are excluded from being settled by nonjudicial settlement agreements. *Id.* § 62-7-111.

<sup>8</sup> “Interested persons” is defined as anyone whose consent would be required to achieve a binding settlement were the settlement to be approved by the court. *Id.* § 62-7-111(a).

## **SOUTH DAKOTA**

<sup>1</sup> S.D. CODIFIED LAWS § 55-3-35. This section relates to service of persons under disabilities. If the person under a disability is a minor, and no conservator or guardian has been appointed, then service can be upon the natural parents. If there are no natural parents alive, then service may be upon the adoptive parents.

<sup>2</sup> *Id.* § 55-3-35. This section relates to service of persons under disabilities. It states that if the person under a disability is an adult and no conservator has been appointed, notice can be served on an agent under durable power of attorney.

<sup>3</sup> *Id.* § 55-3-35. This section relates to service of persons under disabilities. If the person under a disability is a minor and no conservator has been appointed, notice shall be served on a guardian of the minor.

<sup>4</sup> *Id.* § 55-3-35. This section relates to service of persons under disabilities. If a person under a disability is an adult and no conservator has been appointed, notice can be served on a guardian of the adult person.

<sup>5</sup> *Id.* § 55-3-35. This section relates to service of persons under disabilities. For both minors and adults under disabilities, it allows for service on a conservator, and if no conservator has been appointed, then on a guardian of the individual.

<sup>6</sup> *Id.* § 55-3-32. If a party to the proceeding has a power of appointment, it is not necessary to serve the potential appointees and, if it is a general power of appointment, it is not necessary to serve the takers in default of the exercise thereof.

<sup>7</sup> *Id.* § 55-3-32(3). It is not necessary to serve an unborn or unascertained individual, as long as there is someone to represent them who has the "same interests." If there is no one with the same interests as the unborn or unascertained individual, the statutes provides for the appointment of a guardian ad litem.

<sup>8</sup> *Id.* § 55-3-45 allows for an accounting to be finalized despite the absence of approval by a beneficiary in certain circumstances. The trust must not be subject to court supervision and there must be no objection to the accounting within 180 days after a copy of the trustee's accounting was mailed, postage prepaid, to the last known address of the beneficiary.

<sup>9</sup> Trust may be modified or terminated upon the consent of all beneficiaries if continuance on existing terms is not necessary to carry out a material purpose. A trust may be modified or terminated without regard to material purpose if the settlor consents. *Id.* § 55-3-24.

## **TENNESSEE**

<sup>1</sup> TENN. CODE. ANN. § 35-15-303(6). A person may bind and represent his or her unborn or minor descendant if a guardian for the descendant has not been appointed.

<sup>2</sup> An agent with the authority to act with respect to a particular question may represent and bind the principal. *Id.* § 35-15-303(3).

<sup>3</sup> A guardian may represent and bind the ward if a conservator for the ward's estate has not been appointed. *Id.* § 35-15-303(2). "Guardian" is defined in § 34-1-101 as a person appointed by the court to provide partial or full supervision, protection and assistance to the person or property of a minor; "conservator" is defined in the same provision as a person appointed by the court to provide supervision, protection and assistance to the person or property of a disabled person. Because "conservator" only applies to disabled persons and "guardian" only applies to minors, this provision is unclear as to whether in this subchapter, "guardian" also applies to an incapacitated adult.

<sup>4</sup> *Id.* § 35-15-302. The holder of a general testamentary power of appointment may bind and represent those whose interests are subject to his or her power which include permissible appointees, takers in default or otherwise.

<sup>5</sup> *Id.* § 35-15-304. This section is based on the UTC. Because UTC § 304 makes it clear in its comments to this provision that "substantially identical interests" include vertical representation, it can be assumed that the same applies here as well even though it is not explicit in the statute.

<sup>6</sup> The Tennessee Code adds the following to the nonexclusive list of matters that may be resolved by a nonjudicial settlement agreement: 1) the extent or waiver of bond of a trustee; 2) the governing law of the trust; and 3) the criteria for distribution to a beneficiary where the trustee is given discretion.

<sup>7</sup> In a departure from the UTC, Tennessee specifies that qualified beneficiaries and trustees of a trust may enter into a binding nonjudicial settlement agreement. TENN. CODE. ANN. § 35-15-111(a).

## TEXAS

<sup>1</sup> TEX. PROP. CODE ANN. § 115.013(c)(3). If there is no conflict of interest and no guardian of the estate or guardian ad litem has been appointed, a parent may represent his minor child as guardian ad litem or as next friend. TEX. PROP. CODE ANN. § 114.032(c) parent can represent minor child if no conflict of interest.

<sup>2</sup> An agent under a power of attorney has the authority to represent the principal in litigation and in settlement agreements if they have signed the statutory form or another power of attorney that includes the necessary language. *Id.* § 500.

<sup>3</sup> *Id.* § 115.013(c)(2)(A). To the extent there is no conflict of interest, an order binding a guardian of the estate or a guardian ad litem binds the ward.

<sup>4</sup> *Id.* § 115.013(c)(2)(A). While the statute does not expressly state who a guardian can represent, it does use the terms guardian ad litem and guardian of the estate. There are no definitions of guardian included in the Property Code. Under the Probate Code, however, a guardian includes guardians of incapacitated persons. Tex. Prob. Code Ann. § 601(11). Minors are included in the definition of incapacitated persons. *Id.* at § 601(14). Therefore, it is probable that a guardian can represent both minors and an incapacitated adults.

<sup>5</sup> *Id.* § 115.013(c)(1). An order binding the holder of a presently exercisable general power of appointment binds other persons to the extent their interests, as objects, takers in default, or otherwise are subject to the power.

<sup>6</sup> *Id.* § 115.013(c)(4). An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding. See also *Id.* § 114.032(b).

## UTAH

<sup>1</sup> UTAH CODE ANN. § 75-7-303(6) a parent may bind and represent his or her unborn or minor child if a guardian for the child has not been appointed.

<sup>2</sup> An agent with the authority to act with respect to a particular question may represent and bind the principal. *Id.* § 75-7-303(3).

<sup>3</sup> A guardian may represent and bind the ward if a conservator for the ward's estate has not been appointed. *Id.* § 75-7-303(2). "Guardian" is defined in § 75-1-201 as a person qualified by either testamentary, court appointment or written instrument to be the guardian of a minor or incapacitated person, and "conservator" is defined in the same provision as a person appointed by the court to manage the estate of a protected person.

<sup>4</sup> *Id.* § 75-7-302. The holder of a general testamentary power of appointment may bind and represent those whose interests are subject to his or her power which include permissible appointees, takers in default or otherwise. This representation is limited to matters in which there are no conflicts of interest.

<sup>5</sup> *Id.* § 75-7-304. This section is based on the UTC. Because UTC § 304 makes it clear in its comments to this provision that "substantially identical interests" include vertical representation, it can be assumed that the same applies here as well even though it is not explicit in the statute.

<sup>6</sup> "Interested persons" is defined in the same way as under the UTC, as the persons whose consent would be required to achieve a binding settlement if the settlement were to be approved by a court. *Id.* § 75-7-110(2).

## VERMONT

<sup>1</sup> VT. STAT. ANN. tit. 14A, § 303(6). To the extent there is no conflict of interest with respect to a particular question or dispute, a parent may represent and bind the parent's minor or unborn child, if a guardian for the child has not been appointed.

<sup>2</sup> *Id.* tit. 14A, § 303(3). To the extent there is no conflict of interest with respect to a particular question or dispute, an agent having authority to act with respect to the particular question or dispute may represent and bind the principal.

<sup>3</sup> *Id.* tit. 14A, § 303(2). To the extent there is no conflict of interest with respect to a particular question or dispute, a guardian of the person may represent and bind the ward if a guardian of the ward's estate has not been appointed.

<sup>4</sup> *Id.* tit. 14A, § 303(1),(2). A guardian of the person means a person appointed by the probate court to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual. *Id.* at § 103.

<sup>5</sup> *Id.* tit. 14A, § 302. To the extent there is no conflict of interest, the holder of a general testamentary power of appointment may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

<sup>6</sup> *Id.* tit. 14A, § 304. 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 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 with respect to the particular question.

<sup>7</sup> *Id.* tit. 14A, § 111. This section is based on the UTC. UTC § 304 makes clear in its comments to the provision that “substantially identical interests” include vertical representation. Therefore, it can be assumed that the same applies to the Vermont statute as well, even though it is not explicitly stated.

<sup>8</sup> *Id.* tit. 14A, § 111(a). Interested persons means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the probate court.

## **VIRGINIA**

<sup>1</sup> VA. CODE ANN. § 64.2-716(6). A parent may bind and represent his or her unborn or minor child if a guardian for the child or guardian for the child’s estate has not been appointed. Also, under Va. Code § 64.2-716(7), if a minor or unborn child has no representative under subparts (1)-(6) of § 64.2-716, then a grandparent or other remote ancestor may represent and bind that minor or unborn child. *Id.* § 64.2-716(7).

<sup>2</sup> An agent with the authority to act with respect to a particular question may represent and bind the principal. *Id.* § 64.2-716(3).

<sup>3</sup> A guardian may represent and bind the ward if a conservator or guardian of the ward’s estate has not been appointed. *Id.* § 64.2-716(2). “Guardian” is defined in § 64.2-701 as the person appointed by the court to make decisions regarding the support, care, education, health and welfare of a minor or adult individual, and “conservator” is defined in the same provision as a person appointed to manage the estate of an adult individual, and “guardian of the estate” is defined as a court appointed person to administer the estate of a minor. *Id.* § 64.2-701.

<sup>4</sup> *Id.* § 64.2-715. The holder of a general testamentary power of appointment may bind and represent those whose interests are subject to his or her power to the extent there is no conflict of interest. *Id.* Those subject include: permissible appointees, takers in default or otherwise. *Id.*

<sup>5</sup> *Id.* § 64.2-717. This section is based on the UTC. Because UTC § 304 makes it clear in its comments to this provision that “substantially identical interests” include vertical representation, it can be assumed that the same applies here as well even though it is not explicit in the statute.

<sup>6</sup> “Interested persons” is defined in the same way as under the UTC, as the persons whose consent would be required to achieve a binding settlement if the settlement was approved by a court. *Id.* §64.2-709.

## **WASHINGTON**

<sup>1</sup> As amended by S.B. No. 5344, July 28, 2013.

<sup>2</sup> A parent may represent and bind the parent’s minor or unborn child or children if a guardian for the child or children has not been appointed. WASH. REV. CODE § 11.96A.120(4)(f).

<sup>3</sup> An agent having authority to act with respect to the particular question or dispute may represent and bind the principal. WASH. REV. CODE § 11.96A.120(4)(c).

<sup>4</sup> A guardian may represent and bind the estate that the guardian controls. *Id.* § 11.96A.120(4)(a). A guardian of the person may represent and bind the incapacitated person if a guardian of the incapacitated person’s estate has not been appointed. *Id.* § 11.96A.120(4)(b). A guardian is appointed for “the persons and/or estates of incapacitated persons.” *Id.* § 11.88.010(1).

<sup>5</sup> “To the extent there is no conflict of interest between the holder of the power of appointment and the person represented with respect to the particular question or dispute, the holder of a lifetime or testamentary power of appointment may virtually represent and bind persons who are permissible appointees or takers in default (but only to the extent that they are permissible appointees in the case of a limited power of appointment) under the power....” *Id.* § 11.96A.120(9).

<sup>6</sup> “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 that there is no conflict of interest between the representative and the person represented with regard to the particular question or dispute.” *Id.* § 11.96A.120(5).

<sup>7</sup> *Id.* § 11.96A.120(5). Subsection (5) is based on the UTC. Because UTC § 304 makes it clear in its comments to this provision that “substantially identical interests” include vertical representation, it can be assumed that the same applies here as well.

<sup>8</sup> *Id.* § 11.96A.220. This statute provides that § 11.96A.210-250 shall be applicable to the resolution of any matter, with certain exceptions. If all parties agree to a resolution of any of applicable matter, they must reduce it to a signed written agreement, which will then be binding and conclusive on all persons interested in the estate or trust. “Matter” is defined in § 11.96A.030 (as amended in 2009), which provides the matters that may be resolved by nonjudicial settlement.

<sup>9</sup> *Id.* § 11.96A.030 (amended 2009). The other matters that may be decided by nonjudicial agreement are (1) the determination of any class of creditors, devisees, legatees, heirs, next of kin, or other persons interested in an estate, trust, nonprobate asset, or with respect to any other asset or property interest passing at death, (2) certain issues relating to nonprobate trusts, and (3) the amendment, reformation, or conformation of a will or a trust instrument to comply with statutes and regulations of the United States internal revenue service.

<sup>10</sup> *Id.* § 11.96A.030 (amended 2009). “Persons interested in the estate or trust” means the trustor, if living, all persons beneficially interested in the estate or trust, persons holding powers over the trust or estate assets, the attorney general in the case of any charitable trust where the attorney general would be a necessary party to judicial proceedings concerning the trust, and any personal representative or trustee of the estate or trust.

## **WEST VIRGINIA**

<sup>1</sup> Under W. VA. CODE ANN. §44D-3-303(5), 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. Additionally, West Virginia goes beyond the UTC and adds §44D-3-303(6), which allows a “grandparent or more remote ancestor” to represent and bind a minor or unborn person if the person is not already represented under the Section.

<sup>2</sup> An agent having authority to act with respect to the particular question or dispute may represent and bind the principal. *Id.* §44D-3-303(2).

<sup>3</sup> A conservator or guardian of the protected person may represent and bind the estate that the fiduciary controls. *Id.* §44D-3-303(1). “Conservator” means a person appointed by the court to administer the estate and financial affairs of a protected person. *Id.* §44D-1-103(e). “Guardian” means a person appointed by the court who is responsible for the personal affairs of a protected person or a parent to make decisions regarding the support, care, education, health and welfare of a minor. *Id.* §44D-1-103(j).

<sup>4</sup> The holder of a general testamentary power of appointment may represent and bind permissible appointees, takers in default, or those otherwise subject to the power to the extent that there is no conflict of interest between the holder of the power and the persons represented. *Id.* §44D-3-302.

<sup>5</sup> *Id.* §44D-3-304. Because UTC § 304 makes it clear in its comments to this provision that “substantially identical interests” include vertical representation, it can be assumed that the same applies here as well, even though it is not explicit in the statute.

<sup>6</sup> The West Virginia Statute expressly includes seven additional matters that may be resolved by a non judicial settlement agreement. These are: An investment decision, policy, plan or program of the trustee; The grant to a trustee of any necessary or desirable power; The exercise or nonexercise of any power by a trustee; An action or proposed action by or against a trust or trustee; The modification or termination of a trust; and Any other matter concerning the administration of a trust. W. VA. CODE ANN. § 44D-1-111(b)(7)-(13).

<sup>7</sup> Although the Statute does not expressly address whether the trustee may be removed by agreement of the beneficiaries, § 44D-1-111(b)(11) states that an action “against a trustee” may be resolved by a nonjudicial settlement agreement. *Id.* §44D-1-111(b)(11) This likely contemplates an action for removal of a trustee.

<sup>8</sup> As in the UTC, this Statute defines “interested persons” as persons whose consent would be required to achieve a binding settlement were the settlement to be approved by the court. *Id.* §44D-1-111(a).

## **WISCONSIN**

<sup>1</sup> WIS. STAT. § 701.15(1). The statute governing probate court contains no language regarding power of appointment. The statute governing trust proceedings in circuit court, however, states that the holder of a general power of appointment may represent any or all persons whose interests are subject to such power.

<sup>2</sup> *Id.* §§ 701.15(2) & 879.23(5). While both the probate court and circuit court statutes include all of the other categories of individuals (incapacitated, unascertainable, and unborn) on this list, only the probate court expressly mentions minors as being able to be virtually represented by a person with a substantially identical interest.

<sup>3</sup> *Id.* §§ 701.15(2) & 879.23(5). The circuit court provision states that “the court may dispense with or terminate the appointment of a guardian ad litem for [any person who is legally incapacitated, unascertained, or unborn] if there is a legally competent person who is a party to the proceeding and has a substantially identical interest in it.” Likewise, the probate court provision states that “the court may dispense with or terminate the appointment of a guardian ad litem for an interested person who is a minor, an individual adjudicated incompetent, not in being, or presently unascertainable, if there is a living person, of full legal rights and capacity, who is a party to the proceeding and has a substantially identical interest in it.

<sup>4</sup> *Id.* §§ 701.15(2) & 879.23(5). Neither statute appears to have a conflict of interest provision relating to virtual representation.

<sup>5</sup> Section 701.0111 also includes the following matters:

(h) The criteria for distribution to a beneficiary where the trustee is given discretion.

(i) The resolution of disputes arising out of the administration or distribution of the trust.

(j) An investment action.

(k) The appointment of and powers granted to a directing party or a trust protector.

(l) Direction to a directing party or to a trust protector to perform or refrain from performing a particular act or the grant of a power to a directing party or trust protector.

<sup>6</sup> “Interested Person” means a person whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

## WYOMING

<sup>1</sup> WYO. STAT. ANN. § 4-10-303(a)(vi). A parent with primary legal custody may represent and bind his or her incapacitated or minor child if a legal representative has not been appointed to the extent there is no conflict of interest. This provision also provides that a parent may represent and bind his or her unborn children and the unborn descendants of each child.

<sup>2</sup> An agent with the authority to act with respect to a particular question may represent and bind the principal. *Id.* § 4-10-303(a)(iii).

<sup>3</sup> If a conservator of the ward’s estate has been appointed, the conservator may represent and bind the ward’s estate. *Id.* § 4-10-303(a)(i). A guardian may represent and bind the ward if a conservator of the ward’s estate has not been appointed. *Id.* § 4-10-303(a)(ii). “Guardian” is defined in § 3-1-101 as the person qualified by the court to exercise powers on behalf of a minor or incompetent person, and “conservator” is defined in the same provision as a person appointed by the court to have custody and control of the property of the ward.

<sup>4</sup> *Id.* § 4-10-302. The holder of a general testamentary power of appointment may bind and represent those whose interests are subject to his or her power. Those subject include: permissible appointees, takers in default or otherwise. Unlike the UTC, representation is not limited by instances where no conflict of interest exists.

<sup>5</sup> *Id.* § 4-10-304. This section is based on the UTC. Because UTC § 304 makes it clear in its comments to this provision that “substantially identical interests” include vertical representation, it can be assumed that the same applies here as well even though it is not explicit in the statute.

<sup>6</sup> Adding to the list of matters that can be solved by a nonjudicial agreement, Wyoming includes 1) an election to treat the trust as a qualified spendthrift under Article 5, and 2) modification of the trust in order to comply with § 4-10-510. *Id.* § 4-10-111.

<sup>7</sup> Unlike in the UTC, “interested persons” is defined as a qualified beneficiary, the settlor, if living, the trustee and the trust protector, if any. *Id.* § 4-10-111(a).

## UTC

<sup>1</sup> According to UNIF. TRUST CODE § 303(6), a parent may bind and represent his or her unborn or minor child if a guardian for the descendant has not been appointed.

<sup>2</sup> An agent with the authority to act with respect to a particular question may represent and bind the principal. *Id.* § 303(3).

<sup>3</sup> A guardian may represent and bind the ward if a conservator for the ward’s estate has not been appointed. *Id.* § 303(2). “Guardian” is defined in § 103 as a person appointed by the court to make decisions regarding the

support, care, education, health and welfare of a minor or adult, and “conservator” is defined in the same provision as a person appointed by the court to administer the estate of a minor or adult individual.

<sup>4</sup> *Id.* § 302. The holder of a general testamentary power of appointment may bind and represent those whose interests are subject to his or her power which include permissible appointees, takers in default or otherwise.

<sup>5</sup> *Id.* § 304. The comments to this section make clear that “substantially identical interests” include vertical representation.

<sup>6</sup> In the UTC, the term “interested persons” is defined as persons whose consent would be required to achieve a binding settlement were the settlement to be approved by the court.

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