WEST VIRGINIA CODE CHAPTER 44D ARTICLE 3

WV Legislature

§44D-3-301. Representation; basic effect.

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

(b) The consent of a person who may represent and bind another person under this chapter is binding on the person represented unless the person represented objects to the representation by notifying the trustee or the representative before the consent would otherwise have become effective.

(c) Except as otherwise provided in section four hundred eleven, article four of this chapter, and section six hundred two, article six of this chapter, a person who under this article may represent a grantor who lacks capacity may receive notice and give a binding consent on the grantor's behalf.

(d) A grantor may not represent and bind a beneficiary under this article with respect to the termination or modification of a trust under subsection (a), section four hundred eleven, article four of this chapter.

WV Legislature

§44D-3-302. Representation by holder of general testamentary power of appointment.

To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

WV Legislature

§44D-3-303. Representation by fiduciaries and parents.

To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

(1) A conservator or guardian of the protected person may represent and bind the estate that the fiduciary controls;

(2) An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

(3) A trustee may represent and bind the beneficiaries of the trust;

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

(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; and

(6) If a minor or unborn person is not otherwise represented under this section, a grandparent or more remote ancestor may represent and bind that minor or unborn person.

WV Legislature

§44D-3-304. Representation by person having substantially identical interest.

Unless otherwise represented, a minor, incapacitated or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another 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 with respect to the particular question or dispute between the representative and the person represented.

WV Legislature

§44D-3-305. Appointment of representative.

(a) If the court determines in a judicial proceeding that an interest is not represented under this chapter, or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated or unborn individual, or a person whose identity or location is unknown. A representative may be appointed to represent several persons or interests.

(b) A representative may act on behalf of the individual represented with respect to any matter arising under this chapter, whether or not a judicial proceeding concerning the trust is pending.

(c) In making decisions, a representative may consider general benefit accruing to the living members of the individual's family.

WV Legislature