

2023 Kansas Statutes

- 58-9a-201. Fiduciary duties; general principles.** (a) In making an allocation or determination or exercising discretion under this act, a fiduciary shall:
- (1) Act in good faith, based on what is fair and reasonable to all beneficiaries;
 - (2) administer a trust or estate impartially, except to the extent the terms of the trust manifest an intent that the fiduciary shall or may favor one or more beneficiaries;
 - (3) administer the trust or estate in accordance with the terms of the trust, even if there is a different provision in this act; and
 - (4) administer the trust or estate in accordance with this act, except to the extent the terms of the trust provide otherwise or authorize the fiduciary to determine otherwise.
- (b) A fiduciary's allocation, determination or exercise of discretion under this act is presumed to be fair and reasonable to all beneficiaries. A fiduciary may exercise a discretionary power of administration given to the fiduciary by the terms of the trust, and an exercise of the power that produces a result different from a result required or permitted by this act does not create an inference that the fiduciary abused the fiduciary's discretion.
- (c) A fiduciary shall:
- (1) Add a receipt to principal, to the extent neither the terms of the trust nor this act allocates the receipt between income and principal; and
 - (2) charge a disbursement to principal, to the extent neither the terms of the trust nor this act allocates the disbursement between income and principal.
- (d) A fiduciary may exercise the power to adjust under K.S.A. 2023 Supp. 58-9a-203, and amendments thereto, convert an income trust to a unitrust under K.S.A. 2023 Supp. 58-9a-303(a)(1), and amendments thereto, change the percentage or method used to calculate a unitrust amount under K.S.A. 2023 Supp. 58-9a-303(a)(2), and amendments thereto, or convert a unitrust to an income trust under K.S.A. 2023 Supp. 58-9a-303(a)(3), and amendments thereto, if the fiduciary determines the exercise of the power will assist the fiduciary to administer the trust or estate impartially.
- (e) Factors the fiduciary must consider in making the determination under subsection (d) include:
- (1) The terms of the trust;
 - (2) the nature, distribution standards and expected duration of the trust;
 - (3) the effect of the allocation rules, including specific adjustments between income and principal, under K.S.A. 2023 Supp. 58-9a-401 through 58-9a-703, and amendments thereto;
 - (4) the desirability of liquidity and regularity of income;
 - (5) the desirability of the preservation and appreciation of principal;
 - (6) the extent to which an asset is used or may be used by a beneficiary;
 - (7) the increase or decrease in the value of principal assets, reasonably determined by the fiduciary;
 - (8) whether and to what extent the terms of the trust give the fiduciary power to accumulate income or invade principal or prohibit the fiduciary from accumulating income or invading principal;
 - (9) the extent to which the fiduciary has accumulated income or invaded principal in preceding accounting periods;
 - (10) the effect of current and reasonably expected economic conditions; and
 - (11) the reasonably expected tax consequences of the exercise of the power.
- History:** L. 2021, ch. 63, § 5; July 1.