

2023 Kansas Statutes

58-9a-202. Judicial review of exercise of discretionary power; request for instruction. (a) In this section, "fiduciary decision" means:

- (1) A fiduciary's allocation between income and principal or other determination regarding income and principal required or authorized by the terms of the trust or this act;
 - (2) the fiduciary's exercise or nonexercise of a discretionary power regarding income and principal granted by the terms of the trust or this act, including 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; or
 - (3) the fiduciary's implementation of a decision described in paragraph (1) or (2).
- (b) The court may not order a fiduciary to change a fiduciary decision unless the court determines that the fiduciary decision was an abuse of the fiduciary's discretion.

(c) If the court determines that a fiduciary decision was an abuse of the fiduciary's discretion, the court may order a remedy authorized by law, including K.S.A. 58a-1001, and amendments thereto. To place the beneficiaries in the positions the beneficiaries would have occupied if there had not been an abuse of the fiduciary's discretion, the court may order:

- (1) The fiduciary to exercise or refrain from exercising the power to adjust under K.S.A. 2023 Supp. 58-9a-203, and amendments thereto;
- (2) the fiduciary to exercise or refrain from exercising the power to 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;
- (3) the fiduciary to distribute an amount to a beneficiary;
- (4) a beneficiary to return some or all of a distribution; or
- (5) the fiduciary to withhold an amount from one or more future distributions to a beneficiary.

(d) On petition by a fiduciary for instruction, the court may determine whether a proposed fiduciary decision will result in an abuse of the fiduciary's discretion. If the petition describes the proposed decision, contains sufficient information to inform the beneficiary of the reasons for making the proposed decision and the facts on which the fiduciary relies, and explains how the beneficiary will be affected by the proposed decision, a beneficiary that opposes the proposed decision has the burden to establish that it will result in an abuse of the fiduciary's discretion. If a fiduciary chooses not to seek court instruction about a proposed decision under this subsection, that choice shall not constitute evidence that the fiduciary's decision was an abuse of discretion.

History: L. 2021, ch. 63, § 6; July 1.