

2023 Kansas Statutes

58-5107. Notice; exercise of decanting power. (a) In this section, a notice period begins on the day notice is given under subsection (c) and ends 59 days after the day notice is given.

(b) Except as otherwise provided in the uniform trust decanting act, an authorized fiduciary may exercise the decanting power without the consent of any person and without court approval.

(c) Except as otherwise provided in subsection (f), an authorized fiduciary shall give notice in a record of the intended exercise of the decanting power not later than 60 days before the exercise to:

- (1) Each settlor of the first trust, if living or then in existence;
- (2) each qualified beneficiary of the first trust;
- (3) each holder of a presently exercisable power of appointment over any part or all of the first trust;
- (4) each person that currently has the right to remove or replace the authorized fiduciary;
- (5) each other fiduciary of the first trust;
- (6) each fiduciary of the second trust;
- (7) each person acting as an advisor or protector of the first trust; and
- (8) the attorney general, if K.S.A. 2023 Supp. 58-5114(b), and amendments thereto, applies.

(d) An authorized fiduciary is not required to give notice under subsection (c) to a person that is not known to the fiduciary or is known to the fiduciary but cannot be located by the fiduciary after reasonable diligence.

(e) A notice under subsection (c) shall:

- (1) Specify the manner in which the authorized fiduciary intends to exercise the decanting power, which shall include a statement as to the authorized fiduciary's reason for the proposed decanting and an explanation as to the differences between the first trust and the second trust or trusts;
- (2) specify the proposed effective date for exercise of the power;
- (3) include a copy of the first-trust instrument;
- (4) include a copy of all second-trust instruments;
- (5) include a statement indicating the capacity in which the intended recipient is being given notice; and
- (6) include a statement that any application under K.S.A. 2023 Supp. 58-5109, and amendments thereto, shall be filed within six months from the day notice is given.

(f) The decanting power may be exercised before expiration of the notice period under subsection (a) if all persons entitled to receive notice waive the period in a signed record.

(g) The receipt of notice, waiver of the notice period or expiration of the notice period does not affect the right of a person to file an application under K.S.A. 2023 Supp. 58-5109, and amendments thereto, except as provided in that section.

(h) An exercise of the decanting power is not ineffective because of the failure to give notice to one or more persons under subsection (c) if the authorized fiduciary acted with reasonable care to comply with subsection (c).

History: L. 2023, ch. 48, § 7; July 1.