

2023 Kansas Statutes

58-5109. Court involvement; limitations. (a) On application of an authorized fiduciary, a person entitled to notice under K.S.A. 2023 Supp. 58-5107(c), and amendments thereto, a beneficiary, or with respect to a charitable interest, the attorney general or other person that has standing to enforce the charitable interest, the court may:

- (1) Provide instructions to the authorized fiduciary regarding whether a proposed exercise of the decanting power is permitted under the uniform trust decanting act and consistent with the fiduciary duties of the authorized fiduciary;
- (2) appoint a special fiduciary and authorize the special fiduciary to determine whether the decanting power should be exercised under the uniform trust decanting act and to exercise the decanting power;
- (3) approve an exercise of the decanting power;
- (4) subject to the limitation set forth in subsection (c), determine that a proposed or attempted exercise of the decanting power is ineffective because:
 - (A) After applying K.S.A. 2023 Supp. 58-5122, and amendments thereto, the proposed or attempted exercise does not or did not comply with the uniform trust decanting act; or
 - (B) the proposed or attempted exercise would be or was an abuse of the fiduciary's discretion or a breach of fiduciary duty;
- (5) determine the extent to which K.S.A. 2023 Supp. 58-5122, and amendments thereto, applies to a prior exercise of the decanting power;
- (6) provide instructions to the trustee regarding the application of K.S.A. 2023 Supp. 58-5122, and amendments thereto, to a prior exercise of the decanting power; or
- (7) order other relief to carry out the purposes of the uniform trust decanting act.

(b) On application of an authorized fiduciary, the court may approve:

- (1) An increase in the fiduciary's compensation under K.S.A. 2023 Supp. 58-5116, and amendments thereto; or
- (2) a modification under K.S.A. 2023 Supp. 58-5118, and amendments thereto, of a provision granting a person the right to remove or replace the fiduciary.

(c) A proceeding under subsection (a)(4) shall not be commenced by a person entitled to notice under K.S.A. 2023 Supp. 58-5107(c), and amendments thereto, or by a beneficiary unless such proceeding is commenced within six months from the day notice is given under K.S.A. 2023 Supp. 58-5107(a), and amendments thereto. Failure to receive notice shall not extend the time by which such proceeding must be commenced if the authorized fiduciary acted with reasonable diligence to comply with the requirements of K.S.A. 2023 Supp. 58-5107(c), and amendments thereto.

(d) In a judicial proceeding involving the decanting of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

History: L. 2023, ch. 48, § 9; July 1.