

58-9-105. Conversion of trust into unitrust; exceptions. (a) Unless expressly prohibited by the governing instrument, a trustee may release the power under K.S.A. 58-9-104, and amendments thereto, and convert a trust into a unitrust as described in this section if all of the following apply:

(1) The trustee determines that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust;

(2) the trustee gives to each qualified beneficiary of the trust, as defined by K.S.A. 58a-103, and amendments thereto, written notice of (A) the trustee's intention to release the power to adjust and to convert the trust into a unitrust and (B) how the unitrust will operate, including what initial decisions the trustee will make under this section and the initial payout percentage to be utilized in determining a unitrust distribution; and

(3) no qualified beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days of the mailing of the notice under subsection (a)(2).

(b) (1) If a qualified beneficiary timely objects to the conversion to a unitrust, the trustee may petition the appropriate district court to approve the conversion to a unitrust.

(2) A qualified beneficiary may request a trustee to convert to a unitrust. If the trustee does not convert, the qualified beneficiary may petition the appropriate district court to order the conversion.

(3) The district court shall approve the conversion or direct the requested conversion if the court concludes that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust, after considering the factors enumerated under subsection (c) deemed by the court to be relevant.

(c) In deciding whether to exercise the power conferred by subsection (a), the trustee shall consider all factors relevant to the trust and its beneficiaries, including the following to the extent they are relevant:

(1) The nature, purpose, and expected duration of the trust;

(2) the intent of the settlor;

(3) the identity and circumstances of the beneficiaries;

(4) the needs for liquidity, regularity of income and preservation and appreciation of capital;

(5) the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a qualified beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

(6) the net amount allocated to income under the other sections of this act and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

(8) the anticipated tax consequences of conversion.

(d) After a trust is converted to a unitrust, all of the following apply:

(1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived:

(A) From appreciation of capital;

(B) from earnings and distributions from capital; or

(C) from both.

(2) The trustee shall make regular distributions in accordance with the governing instrument construed in accordance with the provisions of this section.

(3) The term "income" in the governing instrument shall mean an annual distribution—the unitrust distribution—equal to between 3% and 5%—the payout percentage—of the net fair market value of the trust's assets, whether such assets would be considered income or principal under other provisions of this act, averaged over a period of up to the three preceding years.

(e) The trustee may, in the trustee's discretion from time to time, determine all of the following:

(1) The effective date of a conversion to a unitrust;

(2) the provisions for prorating a unitrust distribution for a short year in which a qualified beneficiary's right to payments commences or ceases;

(3) the frequency of unitrust distributions during the year;

(4) the effect of other payments from or contributions to the trust on the trust's valuation;

(5) whether to value the trust's assets annually or more frequently;

(6) what valuation dates to use;

(7) how frequently to value nonliquid assets and whether to estimate their value;

(8) whether to omit from the calculations trust property occupied or possessed by a qualified beneficiary;

(9) whether the payout percentage utilized in determining the unitrust distribution should be modified to a percentage the trustee could have initially chosen. The trustee may modify the payout percentage if:

(A) The trustee gives each qualified beneficiary of the trust three months written notice prior to modifying the payout percentage. Such notice shall include the proposed modified payout percentage, the reasons for such modification and the effective date of such modification; and

(B) (i) no qualified beneficiary objects to the modification of the payout percentage in writing to the trustee within 60 days of the mailing of such notice; or

(ii) the modification of the payout percentage is approved by the appropriate district court; and

(10) any other matters necessary for the proper functioning of the unitrust.

(f) (1) Expenses which would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution.

(2) Unless otherwise provided by the governing instrument, the unitrust distribution shall be paid from the following sources in the following order: Net income, net realized short-term capital gains, net realized long-term capital gains and the principal of the trust.

(g) A trustee may reconvert from a unitrust to restore the power to adjust the trust without judicial procedure if:

(1) The trustee determines that the intent of the settlor or testator and the purposes of the trust are no longer served by such conversion;

(2) the trustee gives each qualified beneficiary of the trust written notice of the trustee's intent to reconvert from a unitrust to the power to adjust the trust and the reasons for such reconversion; and

(3) no qualified beneficiary objects to such reconversion in writing to the trustee within 60 days of the mailing of such notice.

(h) The trustee or, if the trustee declines to do so, a qualified beneficiary may petition the appropriate district court to:

(1) Authorize a payout percentage of less than 3% or more than 5%;

(2) provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit;

(3) average the valuation of the trust's net assets over a period other than three years; and

(4) reconvert from a unitrust. Upon a reconversion, the power to adjust under K.S.A. 58-9-104, and amendments thereto, shall be revived.

(i) A conversion to a unitrust does not affect a provision in the governing instrument directing or authorizing the trustee to distribute principal or authorizing a qualified beneficiary to withdraw a portion or all of the principal.

(j) Except as provided in subsection (k), a trust may not be converted into a unitrust in any of the following circumstances:

(1) If payment of the unitrust distribution would change the amount payable to a qualified beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

(2) If the unitrust distribution would be made from any amount which is permanently set aside for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, unless both income and principal are so set aside.

(3) If:

(A) Possessing or exercising the power to convert would cause an individual to be treated as the owner of all or part of the trust for federal income tax purposes; and

(B) the individual would not be treated as the owner if the trustee did not possess the power to convert.

(4) If:

(A) Possessing or exercising the power to convert would cause all or part of the trust assets to be subject to federal estate or gift tax with respect to an individual; and

(B) the assets would not be subject to federal estate or gift tax with respect to the individual if the trustee did not possess the power to convert.

(5) If the conversion would result in the disallowance of a federal estate tax or gift tax marital deduction which would be allowed if the trustee did not have the power to convert.

(6) If the trustee is a qualified beneficiary of the trust.

(k) (1) If subsection (j)(3), (4) or (6) applies to a trustee and there is more than one trustee, a co-trustee to whom the provision does not apply may convert the trust, unless the exercise of the power by the remaining trustee or trustees is prohibited by the governing instrument.

(2) If subsection (j)(3), (4) or (6) applies to all the trustees, the trustees may petition the appropriate district court to direct a conversion.

(l) (1) A trustee may release the power conferred by subsection (a) to convert to a unitrust if any of the following apply:

(A) The trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (j)(3), (4) or (5).

(B) The trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (j).

(2) The release may be permanent or for a specified period, including a period measured by the life of an individual.

(m). This section shall be part of and supplemental to the uniform principal and income act (1997).

History: L. 2009, ch. 57, § 1; L. 2012, ch. 63, § 1; July 1.