

2019 Kansas Statutes

58-662. Accounting; determination of disability; modification, termination or removal of attorney in fact; limitations for principal to bring actions.

(a) The principal may petition the court for an accounting by the principal's attorney in fact or the legal representative of the attorney in fact. If the principal is disabled or deceased, a petition for accounting may be filed by the principal's legal representative, an adult member of the principal's family or any person interested in the welfare of the principal.

(b) Any requirement for an accounting may be waived or an accounting may be approved by the court without hearing, if the accounting is waived or approved by a principal who is not disabled, or by a principal whose legal capacity has been restored, or by all creditors and distributees of a deceased principal's estate whose claims or distributions theretofore have not been satisfied in full. The approval or waiver shall be in writing, signed by the affected persons and filed with the court.

(c) For the purposes of subsection (b), a legal representative or a person providing services to the principal's estate shall not be considered a creditor of the principal's estate. No express approval or waiver shall be required from the legal representative of a disabled principal if the principal's legal capacity has been restored, or from the personal representative of a deceased principal's estate, or from any other person entitled to compensation or expense for services rendered to a disabled or deceased principal's estate, unless the principal or the principal's estate is unable to pay in full the compensation and expense to which the person rendering the services may be entitled.

(d) The principal, the principal's attorney in fact, an adult member of the principal's family or any person interested in the welfare of the principal may petition the district court in the county where the principal is then residing to determine and declare whether a principal, who has executed a power of attorney, is a disabled person.

(e) If the principal is a disabled person, on petition of the principal's legal representative, an adult member of the principal's family or any interested person, including a person interested in the welfare of the principal, for good cause shown, the court may:

- (1) Order the attorney in fact to exercise or refrain from exercising authority in a durable power of attorney in a particular manner or for a particular purpose;
- (2) modify the authority of an attorney in fact under a durable power of attorney;
- (3) declare suspended a power of attorney that is nondurable;
- (4) terminate a durable power of attorney;
- (5) remove the attorney in fact under a durable power of attorney;
- (6) confirm the authority of an attorney in fact or a successor attorney in fact to act under a durable power of attorney; and
- (7) issue such other orders as the court finds will be in the best interest of the disabled principal, including appointment of a conservator for the principal pursuant to K.S.A. 59-3050, *et seq.*, and amendments thereto.

(f) In addition to any other remedies available under law, if after notice and hearing, the court determines that there has been a showing that the principal is a disabled person and that the attorney in fact has breached such

attorney in fact's fiduciary duty to the principal or that there is a reasonable likelihood that such attorney in fact may do so in the immediate future, the court, in its discretion, may issue an order that some or all of the authority granted by the durable power of attorney be suspended or modified, and that a different attorney in fact be authorized to exercise some or all of the powers granted by the durable power of attorney. Such attorney in fact may be designated by the court. The court may require any person petitioning for any such order to file a bond in such amount and with such sureties as required by the court to indemnify either the attorney in fact who has been acting on behalf of the principal or the principal and the principal's successors in interest for the expenses, including attorney fees, incurred by any such persons with respect to such proceeding. The court, after hearing, may allow payment or enter judgment. None of the actions described in this subsection shall be taken by the court until after hearing upon reasonable notice to all persons identified in a verified statement supplied by the petitioner who is requesting such action identifying the immediate relatives of the principal and any other persons known to the petitioner to be interested in the welfare of the principal. Except that in the event of an emergency as determined by the court, the court, without notice, may enter such temporary order as seems proper to the court, but no such temporary order shall be effective for more than 30 days unless extended by the court after hearing on reasonable notice to the persons identified as herein provided.

(g) If a power of attorney is suspended or terminated by the court or the attorney in fact is removed by the court, the court may require an accounting from the attorney in fact and order delivery of any property belonging to the principal and copies of any necessary records of the attorney in fact concerning the principal's property and affairs to a successor attorney in fact or the principal's legal representative.

(h) In a proceeding under this act or in any other proceeding, or upon petition of an attorney in fact or successor, the court may:

(1) Require or permit an attorney in fact under a power of attorney to account;

(2) authorize the attorney in fact under a power of attorney to enter into any transaction, or approve, ratify, confirm and validate any transaction entered into by the attorney in fact that the court finds is, was or will be beneficial to the principal and which the court has power to authorize for a conservator pursuant to K.S.A. 59-3050 *et seq.*, and amendments thereto; and

(3) relieve the attorney in fact of any obligation to exercise authority for a disabled principal under a durable power of attorney.

(i) Unless previously barred by adjudication, consent or limitation, any cause of action against an attorney in fact or successor for breach of duty to the principal shall be barred as to any principal who has received an account or other statement fully disclosing the matter unless a proceeding to assert the cause of action is commenced within two years after receipt of the account or statement by the principal or, if the principal is a disabled person, by a guardian or conservator of the disabled person's estate. If a disabled person has no guardian or conservator of the disabled person's estate at the time an account or statement is presented, then the cause of action shall not be barred until one year after the removal of the principal's disability or incapacity, one year after the appointment of a conservator for the principal or one year after the death of the principal. The cause of action thus barred does not include any action to recover from an attorney in fact or successor

for fraud, misrepresentation or concealment related to the settlement of any transaction involving the agency relationship of the attorney in fact with the principal.

History: L. 2003, ch. 58, § 13; L. 2004, ch. 50, § 4; July 1.