

## 2021 Kansas Statutes

**58-9a-203. Fiduciary's power to adjust.** (a) Except as otherwise provided in the terms of a trust or this section, a fiduciary, in a record, without court approval, may adjust between income and principal if the fiduciary determines the exercise of the power to adjust will assist the fiduciary to administer the trust or estate impartially.

(b) This section does not create a duty to exercise or consider the power to adjust under subsection (a) or to inform a beneficiary about the applicability of this section.

(c) A fiduciary that in good faith exercises or fails to exercise the power to adjust under subsection (a) is not liable to a person affected by the exercise or failure to exercise.

(d) In deciding whether and to what extent to exercise the power to adjust under subsection (a), a fiduciary shall consider all factors the fiduciary considers relevant, including relevant factors in K.S.A. 2021 Supp. 58-9a-201(e), and amendments thereto, and the application of K.S.A. 2021 Supp. 58-9a-401(i), 58-9a-408 and 58-9a-413, and amendments thereto.

(e) A fiduciary may not exercise the power under subsection (a) to make an adjustment or under K.S.A. 2021 Supp. 58-9a-408, and amendments thereto, to make a determination that an allocation is insubstantial if:

(1) The adjustment or determination would reduce the amount payable to a current income beneficiary from a trust that qualifies for a special tax benefit, except to the extent the adjustment is made to provide for a reasonable apportionment of the total return of the trust between the current income beneficiary and successor beneficiaries;

(2) the adjustment or determination would change the amount payable to a beneficiary, as a fixed annuity or a fixed fraction of the value of the trust assets, under the terms of the trust;

(3) the adjustment or determination would reduce an amount that is permanently set aside for a charitable purpose under the terms of the trust, unless both income and principal are set aside for the charitable purpose;

(4) possessing or exercising the power would cause a person to be treated as the owner of all or part of the trust for federal income tax purposes;

(5) possessing or exercising the power would cause all or part of the value of the trust assets to be included in the gross estate of an individual for federal estate tax purposes;

(6) possessing or exercising the power would cause an individual to be treated as making a gift for federal gift tax purposes;

(7) the fiduciary is not an independent person;

(8) the trust is irrevocable and provides for income to be paid to the settlor and possessing or exercising the power would cause the adjusted principal or income to be considered an available resource or available income under a public-benefit program; or

(9) the trust is a unitrust under K.S.A. 2021 Supp. 58-9a-301 through 58-9a-309, and amendments thereto.

(f) If subsection (e)(4), (5), (6) or (7) applies to a fiduciary:

(1) A co-fiduciary to which subsections (e)(4) through (7) do not apply may exercise the power to adjust, unless the exercise of the power by the remaining co-fiduciary or co-fiduciaries is not permitted by the terms of the trust or law other than this act; or

(2) if there is no co-fiduciary to which subsections (e)(4) through (7) do not apply, the fiduciary may appoint a co-fiduciary to which subsections (e)(4) through (7) do not apply, which may be a special fiduciary with limited powers, and the appointed co-fiduciary may exercise the power to adjust under subsection (a), unless the appointment of a co-fiduciary or the exercise of the power by a co-fiduciary is not permitted by the terms of the trust or

law other than this act.

(g) A fiduciary may release or delegate to a co-fiduciary the power to adjust under subsection (a) if the fiduciary determines that the fiduciary's possession or exercise of the power will or may:

- (1) Cause a result described in subsection (e)(1) through (6) or (8); or
- (2) deprive the trust of a tax benefit or impose a tax burden not described in subsection (e) (1) through (6).

(h) A fiduciary's release or delegation to a co-fiduciary under subsection (g) of the power to adjust under subsection (a):

- (1) Must be in a record;
- (2) applies to the entire power, unless the release or delegation provides a limitation, which may be a limitation to the power to adjust:

- (A) From income to principal;
- (B) from principal to income;
- (C) for specified property; or
- (D) in specified circumstances;

(3) for a delegation, may be modified by a re-delegation under this subsection by the co-fiduciary to which the delegation is made; and

(4) subject to paragraph (3), is permanent, unless the release or delegation provides a specified period, including a period measured by the life of an individual or the lives of more than one individual.

(i) Terms of a trust which deny or limit the power to adjust between income and principal do not affect the application of this section, unless the terms of the trust expressly deny or limit the power to adjust under subsection (a).

(j) The exercise of the power to adjust under subsection (a) in any accounting period may apply to the current period, the immediately preceding period, and one or more subsequent periods.

(k) A description of the exercise of the power to adjust under subsection (a) must be:

(1) Included in a report, if any, sent to beneficiaries under K.S.A. 58a-813, and amendments thereto; or

(2) communicated at least annually to the qualified beneficiaries determined under K.S.A. 58a-103(12), and amendments thereto, other than the attorney general.

**History:** L. 2021, ch. 63, § 7; July 1.