

## 2021 Kansas Statutes

**9-2315. Excluded fiduciary; actions not liable for; relieved of certain duties; deemed administrative actions.** (a) An excluded fiduciary is not liable, either individually or as a fiduciary, for any of the following:

(1) Any loss that results from compliance with a direction of the trust advisor, including any loss from the trust advisor breaching fiduciary responsibilities or acting beyond the trust advisor's scope of authority; or

(2) any loss that results from a failure to take any action proposed by an excluded fiduciary that requires a prior authorization of the trust advisor if such excluded fiduciary timely sought but failed to obtain such authorization.

(b) Any excluded fiduciary is relieved from any obligation to review or evaluate any direction from a trust advisor to make distributions or to perform investment or suitability reviews, inquiries or investigations or to make recommendations or evaluations with respect to any investments to the extent the trust advisor had authority to direct the acquisition, disposition or retention of the investment. If the excluded fiduciary offers such recommendations or evaluations to the trust advisor or any investment person selected by the trust advisor, such action shall not constitute an undertaking by the excluded fiduciary to monitor or otherwise participate in actions within the scope of the advisor's authority or to constitute any duty to do so.

(c) Any excluded fiduciary is also relieved of any duty to communicate with or warn or apprise any beneficiary or third party concerning instances in which the excluded fiduciary would or might have exercised the excluded fiduciary's own discretion in a manner different from the manner directed by the trust advisor.

(d) Absent contrary provisions in the governing instrument, the actions of the excluded fiduciary, such as any communications with the trust advisor and others and carrying out, recording and reporting actions taken at the trust advisor's direction, pertaining to matters within the scope of authority of the trust advisor, shall be deemed to be administrative actions taken by the excluded fiduciary solely to allow the excluded fiduciary to perform those duties assigned to the excluded fiduciary under the governing instrument. Such administrative actions shall not constitute an undertaking by the excluded fiduciary to monitor, participate or otherwise take any fiduciary responsibility for actions within the scope of authority of the trust advisor.

(e) In any action against an excluded fiduciary pursuant to the provisions of this section, the burden to prove the matter by clear and convincing evidence is on the person seeking to hold the excluded fiduciary liable.

**History:** L. 2021, ch. 80, § 15; July 1.