

2021 Kansas Statutes

58-9a-102. Definitions. In this act:

- (1) "Accounting period" means a calendar year, unless a fiduciary selects another period of 12 calendar months or approximately 12 calendar months. "Accounting period" includes a part of a calendar year or another period of 12 calendar months or approximately 12 calendar months, which begins when an income interest begins or ends when an income interest ends.
- (2) "Asset-backed security" means a security that is serviced primarily by the cash flows of a discrete pool of fixed or revolving receivables or other financial assets that by their terms convert into cash within a finite time. "Asset-backed security" includes rights or other assets that ensure the servicing or timely distribution of proceeds to the holder of the asset-backed security, but does not include an asset to which K.S.A. 2021 Supp. 58-9a-401, 58-9a-409 or 58-9a-414, and amendments thereto, applies.
- (3) "Beneficiary" includes:
 - (A) For a trust:
 - (i) A current beneficiary, including a current income beneficiary and a beneficiary that may receive only principal;
 - (ii) a remainder beneficiary; and
 - (iii) any other successor beneficiary;
 - (B) for an estate, an heir, legatee and devisee; and
 - (C) for a life estate or term interest, a person that holds a life estate, term interest or remainder or other interest following a life estate or term interest.
- (4) "Court" means the district court.
- (5) "Current income beneficiary" means a beneficiary to which a fiduciary may distribute net income, whether or not the fiduciary also may distribute principal to the beneficiary.
- (6) "Distribution" means a payment or transfer by a fiduciary to a beneficiary in the beneficiary's capacity as a beneficiary, made under the terms of the trust, without consideration other than the beneficiary's right to receive the payment or transfer under the terms of the trust. "Distribute," "distributed" and "distributee" have corresponding meanings.
- (7) "Estate" means a decedent's estate. "Estate" includes the property of the decedent as the estate is originally constituted and the property of the estate as it exists at any time during administration.
- (8) "Fiduciary" includes a trustee, person holding a power to direct and presumptively serving as a fiduciary under K.S.A. 58a-808, and amendments thereto, personal representative, life tenant, holder of a term interest and person acting under a delegation from a fiduciary. "Fiduciary" includes a person that holds property for a successor beneficiary whose interest may be affected by an allocation of receipts and expenditures between income and principal. If there are two or more co-fiduciaries, "fiduciary" includes all co-fiduciaries acting under the terms of the trust and applicable law.
- (9) "Income" means moneys or other property a fiduciary receives as current return from principal. "Income" includes a part of receipts from a sale, exchange or liquidation of a principal asset, to the extent provided in K.S.A. 2021 Supp. 58-9a-401 through 58-9a-416, and amendments thereto.
- (10) "Income interest" means the right of a current income beneficiary to receive all or part of net income, whether the terms of the trust require the net income to be distributed or authorize the net income to be distributed in the fiduciary's discretion. "Income interest" includes the right of a current beneficiary to use property held by a fiduciary.

- (11) "Independent person" means a person that is not:
- (A) For a trust:
 - (i) A qualified beneficiary determined under K.S.A. 58a-103(12), and amendments thereto;
 - (ii) a settlor of the trust; or
 - (iii) an individual whose legal obligation to support a beneficiary may be satisfied by a distribution from the trust;
 - (B) for an estate, a beneficiary;
 - (C) a spouse, parent, brother, sister or issue of an individual described in paragraph (A) or (B);
 - (D) a corporation, partnership, limited liability company or other entity in which persons described in paragraphs (A) through (C), in the aggregate, have voting control; or
 - (E) an employee of a person described in paragraph (A), (B), (C) or (D).
- (12) "Mandatory income interest" means the right of a current income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.
- (13) "Net income" means the total allocations during an accounting period to income under the terms of a trust and this act minus the disbursements during the period, other than distributions, allocated to income under the terms of the trust and this act. To the extent the trust is a unitrust under K.S.A. 2021 Supp. 58-9a-301 through 58-9a-309, and amendments thereto, "net income" means the unitrust amount determined under K.S.A. 2021 Supp. 58-9a-301 through 58-9a-309, and amendments thereto. "Net income" includes an adjustment from principal to income under K.S.A. 2021 Supp. 58-9a-203, and amendments thereto, but does not include an adjustment from income to principal under K.S.A. 2021 Supp. 58-9a-203, and amendments thereto.
- (14) "Person" means an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality thereof or other legal entity.
- (15) "Personal representative" means an executor, administrator, successor personal representative, special administrator or person that performs substantially the same function with respect to an estate under the law governing the person's status.
- (16) "Principal" means property held in trust for distribution to, production of income for or use by a current or successor beneficiary.
- (17) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (18) "Settlor" means a person, including a testator, that creates or contributes property to a trust. If more than one person creates or contributes property to a trust, "settlor" includes each person, to the extent of the trust property attributable to that person's contribution, except to the extent another person has the power to revoke or withdraw that portion.
- (19) "Special tax benefit" means:
- (A) Exclusion of a transfer to a trust from gifts described in section 2503(b) of the internal revenue code of 1986, 26 U.S.C. § 2503(b), because of the qualification of an income interest in the trust as a present interest in property;
 - (B) status as a qualified subchapter S trust described in section 1361(d)(3) of the internal revenue code of 1986, 26 U.S.C. § 1361(d)(3), at a time the trust holds stock of an S corporation described in section 1361(a)(1) of the internal revenue code of 1986, 26 U.S.C. § 1361(a)(1);
 - (C) an estate or gift tax marital deduction for a transfer to a trust under section 2056 or 2523 of the internal revenue code of 1986, 26 U.S.C. § 2056 or 2523, that depends or depended in whole or in part on the right of the settlor's spouse to receive the net income of the trust;
 - (D) exemption in whole or in part of a trust from the federal generation-skipping transfer

tax imposed by section 2601 of the internal revenue code of 1986, 26 U.S.C. § 2601, because the trust was irrevocable on September 25, 1985, if there is any possibility that:

(i) A taxable distribution, as defined in section 2612(b) of the internal revenue code of 1986, 26 U.S.C. § 2612(b), could be made from the trust; or

(ii) a taxable termination, as defined in section 2612(a) of the internal revenue code of 1986, 26 U.S.C. § 2612(a), could occur with respect to the trust; or

(E) an inclusion ratio, as defined in section 2642(a) of the internal revenue code of 1986, 26 U.S.C. § 2642(a), of the trust that is less than one, if there is any possibility that:

(i) A taxable distribution, as defined in section 2612(b) of the internal revenue code of 1986, 26 U.S.C. § 2612(b), could be made from the trust; or

(ii) a taxable termination, as defined in section 2612(a) of the internal revenue code of 1986, 26 U.S.C. § 2612(a), could occur with respect to the trust.

(20) "Successive interest" means the interest of a successor beneficiary.

(21) "Successor beneficiary" means a person entitled to receive income or principal or to use property when an income interest or other current interest ends.

(22) "Terms of a trust" means:

(A) Except as otherwise provided in paragraph (B), the manifestation of the settlor's intent regarding a trust's provisions as:

(i) Expressed in the trust instrument; or

(ii) established by other evidence that would be admissible in a judicial proceeding;

(B) the trust's provisions as established, determined or amended by:

(i) A trustee or person holding a power to direct under K.S.A. 58a-808, and amendments thereto, in accordance with applicable law;

(ii) court order; or

(iii) a nonjudicial settlement agreement under K.S.A. 58a-111, and amendments thereto;

(C) for an estate, a will; or

(D) for a life estate or term interest, the corresponding manifestation of the rights of the beneficiaries.

(23) "Trust":

(A) Includes:

(i) An express trust, private or charitable, with additions to the trust, wherever and however created; and

(ii) a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust; and

(B) does not include:

(i) A constructive trust;

(ii) a resulting trust, conservatorship, guardianship, multi-party account, custodial arrangement for a minor, business trust, voting trust, security arrangement, liquidation trust or trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, retirement benefits or employee benefits of any kind; or

(iii) an arrangement under which a person is a nominee, escrowee or agent for another.

(24) "Trustee" means a person, other than a personal representative, that owns or holds property for the benefit of a beneficiary. "Trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by a court.

(25) "Will" means any testamentary instrument recognized by applicable law that makes a legally effective disposition of an individual's property, effective at the individual's death.

"Will" includes a codicil or other amendment to a testamentary instrument.

History: L. 2021, ch. 63, § 2; July 1.