

2023 Kansas Statutes

58-5102. Definitions. As used in the uniform trust decanting act:

- (a) "Appointive property" means the property or property interest subject to a power of appointment.
- (b) "Ascertainable standard" means a standard relating to an individual's health, education, support or maintenance within the meaning of 26 U.S.C. § 2041(b)(1)(A) or 26 U.S.C. § 2514(c)(1) and any applicable regulations.
- (c) "Authorized fiduciary" means a:
 - (1) Trustee or other fiduciary, other than a settlor, that has discretion to distribute or direct a trustee to distribute part or all of the principal of the first trust to one or more current beneficiaries;
 - (2) special fiduciary appointed under K.S.A. 2023 Supp. 58-5109, and amendments thereto; or
 - (3) special-needs fiduciary under K.S.A. 2023 Supp. 58-5113, and amendments thereto.
- (d) "Beneficiary" means a person that:
 - (1) Has a present or future, vested or contingent, beneficial interest in a trust;
 - (2) holds a power of appointment over trust property; or
 - (3) is an identified charitable organization that will or may receive distributions under the terms of the trust.
- (e) "Charitable interest" means an interest in a trust that:
 - (1) Is held by an identified charitable organization and makes the organization a qualified beneficiary;
 - (2) benefits only charitable organizations and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary; or
 - (3) is held solely for charitable purposes and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary.
- (f) "Charitable organization" means a:
 - (1) Person, other than an individual, organized and operated exclusively for charitable purposes; or
 - (2) government or governmental subdivision, agency or instrumentality, to the extent it holds funds exclusively for a charitable purpose.
- (g) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, a municipal or other governmental purpose or another purpose the achievement of which is beneficial to the community.
- (h) "Court" means the district court.
- (i) "Current beneficiary" means a beneficiary that, on the date the beneficiary's qualification is determined, is a distributee or permissible distributee of trust income or principal. The term includes the holder of a presently exercisable general power of appointment but does not include a person that is a beneficiary only because the person holds any other power of appointment.
- (j) "Decanting power" or "the decanting power" means the power of an authorized fiduciary under the uniform trust decanting act to distribute property of a first trust to one or more second trusts or to modify the terms of the first trust.
- (k) "Expanded distributive discretion" means a discretionary power of distribution that is not limited to an ascertainable standard or a reasonably definite standard.
- (l) "First trust" means a trust over which an authorized fiduciary may exercise the decanting power.
- (m) "First-trust instrument" means the trust instrument for a first trust.
- (n) "General power of appointment" means a power of appointment exercisable in favor of a powerholder, the powerholder's estate, a creditor of the powerholder or a creditor of the powerholder's estate.
- (o) "Jurisdiction," with respect to a geographic area, includes a state or country.
- (p) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality or other legal entity.

- (q) "Power of appointment" means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.
- (r) "Powerholder" means a person in which a donor creates a power of appointment.
- (s) "Presently exercisable power of appointment" means a power of appointment exercisable by the powerholder at the relevant time. The term:
- (1) Includes a power of appointment exercisable only after the occurrence of a specified event, the satisfaction of an ascertainable standard or the passage of a specified time only after the:
- (A) Occurrence of the specified event;
- (B) satisfaction of the ascertainable standard; or
- (C) passage of the specified time; and
- (2) does not include a power exercisable only at the powerholder's death.
- (t) "Qualified beneficiary" means a beneficiary that, on the date the beneficiary's qualification is determined:
- (1) Is a distributee or permissible distributee of trust income or principal;
- (2) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in paragraph (1) terminated on that date without causing the trust to terminate; or
- (3) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.
- (u) "Reasonably definite standard" means a clearly measurable standard under which a holder of a power of distribution is legally accountable within the meaning of 26 U.S.C. § 674(b)(5)(A) and any applicable regulations.
- (v) "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.
- (w) "Second trust" means a:
- (1) First trust after modification under the uniform trust decanting act; or
- (2) trust to which a distribution of property from a first trust is or may be made under the uniform trust decanting act.
- (x) "Second-trust instrument" means the trust instrument for a second trust.
- (y) "Settlor," except as otherwise provided in K.S.A. 2023 Supp. 58-5125, and amendments thereto, 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, each person is a "settlor" of the portion of the trust property attributable to the person's contribution except to the extent another person has power to revoke or withdraw that portion.
- (z) "Sign" means, with present intent to authenticate or adopt a record:
- (1) To execute or adopt a tangible symbol; or
- (2) to attach to or logically associate with the record an electronic symbol, sound or process.
- (aa) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.
- (bb) "Terms of the trust" means:
- (1) Except as otherwise provided in paragraph (2), the manifestation of the settlor's intent regarding a trust's provisions as:
- (A) Expressed in the trust instrument; or
- (B) established by other evidence that would be admissible in a judicial proceeding;
- (2) the trust's provisions as established, determined or amended by a:
- (A) Trustee or other person in accordance with applicable law;
- (B) court order; or
- (C) nonjudicial settlement agreement under K.S.A. 58a-111, and amendments thereto.
- (cc) "Trust instrument" means a record executed by the settlor to create a trust or by any person to create a second trust that contains some or all of the terms of the trust, including any amendments.
- History:** L. 2023, ch. 48, § 2; July 1.