

Comparison of the Principal and Income Act and Kansas Uniform Principal and Income Act

Kansas enacted the original Uniform Principal and Income Act in 1951 and adopted a revised Uniform Act in 1965.¹ The most recent version of the Kansas Uniform Principal and Income Act (“KSUPIA”) was adopted in 2000 and updated the current version of the Act by specifying requirements for allocations, transfers, and the principal and interest provisions of trust assets and estates.

Differences between the sections of UPIA and the KSUPIA:

- UPIA Section 105- Judicial Control of Discretionary Power- UPIA, NOT KSUPIA
- KSUPIA 58-9-105 Conversion of Trust into unitrust; exceptions (not in UPIA)
- KS 58-9-106 - Income standard, no presumption concerning fiduciary duty
- 409- Deferred compensation, annuities and similar payments
- 411- Minerals, Water, and other Natural Resources
- 505- Income Taxes
- UPIA 604 Effective date vs. KS 606 Transitional matters about date effectives in different situations.
- UPIA 605 and KSPIA 601-Application of Act—essentially the same, but different section numbers (and Kansas statute presumably has a typo of decendent)

¹ <http://www.kansas.gov/government/legislative/supplemental/2000/SN2501.HTM>

| UPIA | KSUPIA |
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| <p>101 Short Title This [Act] may be cited as the Uniform Principal and Income Act.</p> | <p>58-9-101 Short Title This act <i>shall be known</i> and may be cited as the uniform principal and income act</p> |
| <p>105 Judicial Control of Discretionary Power (a) The court may not order a fiduciary to change a decision to exercise or not to exercise a discretionary power conferred by this [Act] unless it determines that the decision was an abuse of the fiduciary's discretion. A fiduciary's decision is not an abuse of discretion merely because the court would have exercised the power in a different manner or would not have exercised the power. (b) The decisions to which subsection (a) applies include: (1) a decision under Section 104(a) as to whether and to what extent an amount should be transferred from principal to income or from income to principal. (2) a decision regarding the factors that are relevant to the trust and its beneficiaries, the extent to which the factors are relevant, and the weight, if any, to be given to those factors, in deciding whether and to what extent to exercise the discretionary power conferred by Section 104(a). (c) If the court determines that a fiduciary has abused the fiduciary's discretion, the court may place the income and remainder beneficiaries in the positions they would have occupied if the discretion had not been abused, according to the following rules: (1) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or in a distribution that is too small, the court shall order the fiduciary to distribute from the</p> | <p>58-9-105 Conversion of Trust into unitrust; exceptions (a) Unless expressly prohibited by the governing instrument, a trustee may release the power under K.S.A. 58-9-104, and amendments thereto, and convert a trust into a unitrust as described in this section if all of the following apply: (1) The trustee determines that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust; (2) the trustee gives to each qualified beneficiary of the trust, as defined by K.S.A. 58a-103, and amendments thereto, written notice of (A) the trustee's intention to release the power to adjust and to convert the trust into a unitrust and (B) how the unitrust will operate, including what initial decisions the trustee will make under this section and the initial payout percentage to be utilized in determining a unitrust distribution; and (3) no qualified beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days of the mailing of the notice under subsection (a)(2). (b) (1) If a qualified beneficiary timely objects to the conversion to a unitrust, the trustee may petition the appropriate district court to approve the conversion to a unitrust. (2) A qualified beneficiary may request a trustee to convert to a unitrust. If the trustee does not convert, the qualified beneficiary may petition the appropriate district court to order the conversion. (3) The district court shall approve the conversion or direct the requested conversion if the court concludes that the conversion will enable the trustee to better carry out the intent of the settlor or</p> |

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| <p>trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to the beneficiary's appropriate position.</p> <p>(2) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary which is too large, the court shall place the beneficiaries, the trust, or both, in whole or in part, in their appropriate positions by ordering the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or ordering that beneficiary to return some or all of the distribution to the trust.</p> <p>(3) To the extent that the court is unable, after applying paragraphs (1) and (2), to place the beneficiaries, the trust, or both, in the positions they would have occupied if the discretion had not been abused, the court may order the fiduciary to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust or both.</p> <p>(d) Upon [petition] by the fiduciary, the court having jurisdiction over a trust or estate shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this [Act] will result in an abuse of the fiduciary's discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries will be affected by the</p> | <p>testator and the purposes of the trust, after considering the factors enumerated under subsection (c) deemed by the court to be relevant.</p> <p>(c) In deciding whether to exercise the power conferred by subsection (a), the trustee shall consider all factors relevant to the trust and its beneficiaries, including the following to the extent they are relevant:</p> <ol style="list-style-type: none"> (1) The nature, purpose, and expected duration of the trust; (2) the intent of the settlor; (3) the identity and circumstances of the beneficiaries; (4) the needs for liquidity, regularity of income and preservation and appreciation of capital; (5) the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a qualified beneficiary; and whether an asset was purchased by the trustee or received from the settlor; (6) the net amount allocated to income under the other sections of this act and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available; (7) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and (8) the anticipated tax consequences of conversion. <p>(d) After a trust is converted to a unitrust, all of the following apply:</p> <ol style="list-style-type: none"> (1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived: <ol style="list-style-type: none"> (A) From appreciation of capital; (B) from earnings and distributions from capital; or <ol style="list-style-type: none"> (C) from both. (2) The trustee shall make regular distributions in accordance with the governing instrument |
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| <p>proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.</p> | <p>construed in accordance with the provisions of this section.</p> <p>(3) The term "income" in the governing instrument shall mean an annual distribution—the unitrust distribution—equal to between 3% and 5%—the payout percentage—of the net fair market value of the trust's assets, whether such assets would be considered income or principal under other provisions of this act, averaged over a period of up to the three preceding years.</p> <p>(e) The trustee may, in the trustee's discretion from time to time, determine all of the following:</p> <p>(1) The effective date of a conversion to a unitrust;</p> <p>(2) the provisions for prorating a unitrust distribution for a short year in which a qualified beneficiary's right to payments commences or ceases;</p> <p>(3) the frequency of unitrust distributions during the year;</p> <p>(4) the effect of other payments from or contributions to the trust on the trust's valuation;</p> <p>(5) whether to value the trust's assets annually or more frequently;</p> <p>(6) what valuation dates to use;</p> <p>(7) how frequently to value nonliquid assets and whether to estimate their value;</p> <p>(8) whether to omit from the calculations trust property occupied or possessed by a qualified beneficiary;</p> <p>(9) whether the payout percentage utilized in determining the unitrust distribution should be modified to a percentage the trustee could have initially chosen. The trustee may modify the payout percentage if:</p> <p>(A) The trustee gives each qualified beneficiary of the trust three months written notice prior to modifying the payout percentage. Such notice shall include the proposed modified payout percentage, the reasons for such modification and the effective date of such modification; and</p> <p>(B) (i) no qualified beneficiary objects to the modification of the payout percentage in writing to</p> |
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| | <p>the trustee within 60 days of the mailing of such notice; or</p> <p>(ii) the modification of the payout percentage is approved by the appropriate district court; and</p> <p>(10) any other matters necessary for the proper functioning of the unitrust.</p> <p>(f) (1) Expenses which would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution.</p> <p>(2) Unless otherwise provided by the governing instrument, the unitrust distribution shall be paid from the following sources in the following order: Net income, net realized short-term capital gains, net realized long-term capital gains and the principal of the trust.</p> <p>(g) A trustee may reconvert from a unitrust to restore the power to adjust the trust without judicial procedure if:</p> <p>(1) The trustee determines that the intent of the settlor or testator and the purposes of the trust are no longer served by such conversion;</p> <p>(2) the trustee gives each qualified beneficiary of the trust written notice of the trustee's intent to reconvert from a unitrust to the power to adjust the trust and the reasons for such reconversion; and</p> <p>(3) no qualified beneficiary objects to such reconversion in writing to the trustee within 60 days of the mailing of such notice.</p> <p>(h) The trustee or, if the trustee declines to do so, a qualified beneficiary may petition the appropriate district court to:</p> <p>(1) Authorize a payout percentage of less than 3% or more than 5%;</p> <p>(2) provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit;</p> <p>(3) average the valuation of the trust's net assets over a period other than three years; and</p> <p>(4) reconvert from a unitrust. Upon a reconversion, the power to adjust under K.S.A. 58-9-104, and amendments thereto, shall be revived.</p> |
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| | <p>(i) A conversion to a unitrust does not affect a provision in the governing instrument directing or authorizing the trustee to distribute principal or authorizing a qualified beneficiary to withdraw a portion or all of the principal.</p> <p>(j) Except as provided in subsection (k), a trust may not be converted into a unitrust in any of the following circumstances:</p> <p>(1) If payment of the unitrust distribution would change the amount payable to a qualified beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.</p> <p>(2) If the unitrust distribution would be made from any amount which is permanently set aside for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, unless both income and principal are so set aside.</p> <p>(3) If:</p> <p>(A) Possessing or exercising the power to convert would cause an individual to be treated as the owner of all or part of the trust for federal income tax purposes; and</p> <p>(B) the individual would not be treated as the owner if the trustee did not possess the power to convert.</p> <p>(4) If:</p> <p>(A) Possessing or exercising the power to convert would cause all or part of the trust assets to be subject to federal estate or gift tax with respect to an individual; and</p> <p>(B) the assets would not be subject to federal estate or gift tax with respect to the individual if the trustee did not possess the power to convert.</p> <p>(5) If the conversion would result in the disallowance of a federal estate tax or gift tax marital deduction which would be allowed if the trustee did not have the power to convert.</p> <p>(6) If the trustee is a qualified beneficiary of the trust.</p> <p>(k) (1) If subsection (j)(3), (4) or (6) applies to a trustee and there is more than one trustee, a co-trustee to whom the provision does not apply may</p> |
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| | <p>convert the trust, unless the exercise of the power by the remaining trustee or trustees is prohibited by the governing instrument.</p> <p>(2) If subsection (j)(3), (4) or (6) applies to all the trustees, the trustees may petition the appropriate district court to direct a conversion.</p> <p>(1) (1) A trustee may release the power conferred by subsection (a) to convert to a unitrust if any of the following apply:</p> <p>(A) The trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (j)(3), (4) or (5).</p> <p>(B) The trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (j).</p> <p>(2) The release may be permanent or for a specified period, including a period measured by the life of an individual.</p> <p>(m) This section shall be part of and supplemental to the uniform principal and income act (1997).</p> |
| None listed in UPIA | <p>58-9-106 Income standard, no presumption concerning fiduciary duty-(a) The income standard established in K.S.A. 2018 Supp. 58-9-105, and amendments thereto, does not create a presumption or implication that a trustee who distributes less than 3% or more than 5% is breaching a trustee's fiduciary duty to a beneficiary.</p> <p>(b) This section shall be part of and supplemental to the uniform principal and income act</p> |
| Deferred compensation, annuities and similar payments | |
| <p>409 Deferred compensation, annuities and similar payments</p> <p>(a) In this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services</p> | <p>58-9-409 Deferred compensation, annuities and similar payments</p> <p>(1) "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the</p> |

rendered or property transferred to the payer in exchange for future payments. **The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, including a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.**

(b) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income 10 percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal.

For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(d) If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

(e) This section does not apply to payments to which Section 410 applies.

payer in exchange for future payments. **The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer. For the purposes of subsections (d), (e), (f) and (g), the term also includes any payment from any separate fund, regardless of the reason for the payment; and**

(2) "separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) To the extent that a payment is characterized as interest, a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income 10% of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(d) Except as otherwise provided in subsection (e), subsections (f) and (g) apply, and subsections (b) and (c) do not apply, in determining the allocation of a payment made from a separate fund to:

(1) A trust to which an election to qualify for a marital deduction under section 2056(b)(7) of the internal revenue code of 1986 has been made; or

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| | <p>(2) a trust that qualifies for the marital deduction under section 2056(b)(5) of the internal revenue code of 1986.</p> <p>(e) Subsections (d), (f) and (g) do not apply if and to the extent that the series of payments would, without the application of subsection (d), qualify for the marital deduction under section 2056(b)(7)(C) of the internal revenue code of 1986.</p> <p>(f) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to K.S.A. 58-9-101 et seq., and amendments thereto. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.</p> <p>(g) If a trustee cannot determine the internal income of a separate fund, but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal 4% of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under section 7520 of the internal revenue code of 1986, for the month preceding the accounting period for which the computation is made. This section does not apply to a payment to which K.S.A. 58-9-410, and amendments thereto, applies.</p> |
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| Minerals, Water, and other Natural Resources | |
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| <p>411 Minerals, Water, and other Natural Resources</p> <p>(a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:</p> <p>(1) If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.</p> <p>(2) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.</p> <p><u>(3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 90 percent must be allocated to principal and the balance to income.</u></p> <p>(4) If an amount is received from a working interest or any other interest not provided for in paragraph (1), (2), or (3), <u>90 percent of the net amount received must be allocated to principal and the balance to income.</u></p> <p>(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, 90 percent of the amount must be allocated to principal and the balance to income.</p> <p>(c) This [Act] applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.</p> <p>(d) If a trust owns an interest in minerals, water, or other natural resources on [the effective date of this [Act]], the trustee may allocate receipts from the interest as provided in this</p> | <p>58-9-411 Minerals, Water, and other Natural Resources</p> <p>(a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:</p> <p>(1) If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.</p> <p>(2) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.</p> <p><u>(3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 15 percent must be allocated to principal and the balance to income.</u></p> <p>(4) If an amount is received from a working interest or any other interest not provided for in subsection (1), (2), or (3), <u>15 percent of the net amount received must be allocated to principal and the balance to income.</u></p> <p>(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, 90 percent of the amount must be allocated to principal and the balance to income.</p> <p>(c) This act applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.</p> <p>(d) If a trust owns an interest in minerals, water, or other natural resources on the effective date of this act, the trustee may allocate receipts from the interest as provided in this act or in the manner used by the trustee before the effective date of this act. If the trust acquires an interest in minerals, water, or other natural resources after the effective</p> |

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| <p>[Act] or in the manner used by the trustee before [the effective date of this [Act]]. If the trust acquires an interest in minerals, water, or other natural resources after [the effective date of this [Act]], the trustee shall allocate receipts from the interest as provided in this [Act].</p> | <p>date of this act, the trustee shall allocate receipts from the interest as provided in this act.</p> |
| <p>Income Taxes</p> | |
| <p>505 Income Taxes</p> <p>(a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.</p> <p>(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.</p> <p><u>(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid proportionately:</u></p> <p>(1) from income to the extent that receipts from the entity are allocated to income; and</p> <p>(2) from principal to the extent that:</p> <p>(A) receipts from the entity are allocated to principal; and</p> <p>(B) the trust's share of the entity's taxable income exceeds the total receipts described in paragraphs (1) and (2)(A).</p> <p>(d) For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.</p> | <p>58-9-505 Income Taxes</p> <p>(a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.</p> <p>(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.</p> <p><u>(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid:</u></p> <p>(1) From income to the extent that receipts from the entity are allocated only to income;</p> <p>(2) from principal to the extent that receipts from the entity are allocated only to principal;</p> <p>(3) proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and</p> <p>(4) from principal to the extent that the tax exceeds the total receipts from the entity.</p> <p><u>(d) After applying subsections (a) through (c), the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.</u></p> |
| <p>Effective Date</p> | |
| <p>604 Effective Date This [Act] takes effect on</p> | <p>58-9-606. Transitional matters. (a) K.S.A. 58-9-409, and amendments thereto, applies to a trust described in subsection (d) of K.S.A. 58-9-409, and amendments thereto, on and after the following dates:</p> <p>(1) If the trust is not funded, as of the date of the decedent's death;</p> |

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| | <p>(2) if the trust is initially funded in the calendar year beginning January 1, 2010, the date of the decedent's death; or</p> <p>(3) if the trust is not described in paragraphs (1) or (2), January 1, 2010.</p> <p>(b) This section shall be a part of and supplemental to the uniform principal and income act.</p> |
| Application of Act | |
| <p>605 Application of Act to Existing Trusts and Estates This [Act] applies to every trust or decedent's estate existing on [the effective date of this [Act]] except as otherwise expressly provided in the will or terms of the trust or in this [Act].</p> | <p>58-9-601-Application of Act Except as expressly provided in a will or terms of the trust or this act, this act applies to every trust or *decedent's estate existing on the effective date of this act. (<i>*presumably this is a typo in the statute and should be decedent's estate</i>)</p> |