PROBATE PROCEDURES MANUAL

PROBATE DIVISION

OF THE

CIRCUIT COURT

OF

JACKSON COUNTY, MISSOURI

PREFACE

The Probate Procedures Manual was developed by a committee of lawyers, trust officers, paralegals and the Probate Division legal staff. Members of the committee were: Dan C. D. Sturdevant, Edward A. Setzler, Buford L. Farrington, Kathleen A. Forsyth, Robert B. Langworthy, B. John Readey III, Shirley M. Smith, Jacquelin S. Wrede, Kathryn F. Pietarila, Clerk and Counsel Margaret L. Sauer, Commissioner Valarie S. Zeeck and Judge John A. Borron, Jr.

In the middle 1970's, the Probate Court published a set of local rules. These rules became obsolete as a result of The Court Reform and Revision Act of 1979 and the subsequent revisions of the Probate Code and the Guardianship Code. Since 1979, there has been a steady movement to expand the jurisdiction of the probate division. Many innovations have recently been introduced into the general area of probate and trust law, most notably in 1989, with comprehensive revisions of the Transfers to Minors Law, Personal Custodian Law, Durable Power of Attorney Law and the adoption of a Non Probate Transfers Law. The Manual is a response to numerous requests from the Probate Bar for procedural guidelines for practice in the Probate Division.

The Manual was designed and is intended to provide practical information and practice tips for practice in the Probate Division. It is intended as a compliment to and not a substitute for other publications dealing with Missouri probate and trust law. The Manual does not attempt to codify substantive law and should not be relied upon in that connection.

As and when it becomes necessary to revise sections of the Manual, a notice to that effect will be published in the Daily Record and posted in the Probate Division offices in Kansas City and Independence. Revisions may be obtained from the Probate Division offices by applying, in person, therefor. In the interim, notice of critical developments in probate law will be posted in the Probate Division offices.

John A. Borron, Jr.
Judge
January 1, 1990

NUMERICAL INDEX OF PROBATE FORMS

Form 10163	Order Allowing Compensation to Attorney (Secs. 473.153 and 475.265, RSMo)
Form 10179	Note to Petitioners and Attorneys
Form 10185	Petition to Admit Ward to Facility (Sec. 475.121, RSMo)
Form 10186x	Order Admitting Ward to Facility (Sec. 475.121, RSMo)
Form 10186ax	Order Admitting Ward to Facility (Sec. 475.121, RSMo)
Form 10188	Petition for Temporary Detention (Sec. 475.355, RSMo)
Form 10190	Suggestion of Death of Protectee and Petition that No Letters of Administration be Granted and to Close the Estate
Form 10190a	Exhibit A
Form 10191	Order to Proceed in Conservatorship Estate without Administration
Form 10192	Petition for Appointment of Successor Fiduciary (Sec. 475.115, RSMo)
Form 10193	Petition for Appointment of Guardian and Conservator (Secs. 475.060 and 475.061, RSMo)
Form 10193a	Exhibit A
Form 10193b	Exhibit B
Form 10193d	Exhibit D: Designation of Resident Agent; Acceptance of Appointment as Resident Agent
Form 10193e	Exhibit E: List of Witnesses
Form 10193f	Nomination of Guardian/Conservator (Sec. 475.050, RSMo)
Form 10194	Exhibit C: Consent to Appointment
Form 10194a	Information for Guardians and Conservators
Form 10195	Petition for Appointment of Conservator (Sec. 475.050, RSMo)
Form 10197	Notice of Filing of Final Settlement and Petition for Distribution (Sec. 475.320, RSMo)

Form 10197a	Proof of Mailing of Copy of Notice of Filing of Final Settlement and Petition for Distribution (Sec. 475.320, RSMo)
Form 10198	Annual Report of Guardian (Sec. 475.082, RSMo)
Form 10198a	Notice to Guardians Appointed Prior to September 28, l983
Form 10199	Annual Report of Guardian - Conservator (Sec. 475.082, RSMo)
Form 10210	Petition for Restoration (Sec. 475.083.4, RSMo)
Form 10212	Petition for Approval of Settlement and Order for No Further Process
Form 10213	Order Approving Settlement and Order of No Further Process
Form 10214	Final Settlement Approved Finding and Decree of Heirship and Distribution
Form 10222	Petition to Increase Authority of Fiduciary (Sec. 475.083.7, RSMo)
Form 10223	Petition to Decrease Authority of Fiduciary (Sec. 475.083.4, RSMo)
Form 10227	Petition for Approval of Settlement and for No Further Process
Form 10228	Order of No Further Process
Form 10260	Inventory of Property
Form 10264	Application and Order to Extend Time for Filing Inventory (Secs. 473.233 - 475.145)
Form 10268	Order Terminating Administration on Return of Inventory and Appraisement (Sec. 473.093, RSMo)
Form 10319	Note to Petitioners and Attorneys
Form 10320	Petition for Appointment of Guardian and Conservator
Form 10320a	Information re Proposed Ward/Protectee
Form 10320b	Affidavit
Form 10323	Consent to Appointment of Fiduciary
Form 10324	Petition to Dispense with Conservatorship (Sec. 473.330, RSMo)

Form 10325	Order to Dispense with Conservatorship (Sec. 475.330, RSMo)
Form 10330	Waiver of Notice of Settlement
Form 10331	Order Approving Final Settlement and for Distribution
Form 10332	Receipt of Protectee (Sec. 475.315, RSMo)
Form 10333	Order of Discharge
Form 10334	Petition for Approval of Settlement and for No Further Process
Form 10335	Order Approving Settlement and of No Further Process
Form 10335a	Order of No Further process (Sec. 208.180, RSMo)
Form 10337	Petition to Dispense with Conservatorship
Form 10338	Order Dispensing with Conservatorship
Form 10339	Petition for Approval of Final Settlement and for Order to Deliver Assets
Form 10340	Decree to Deliver Assets (Sec. 475.330)
Form 10361	Request for Correct Address
Form 10362	Notice to Unknown Heirs (Sec. 473.040)
Form 10368	Waiver of Notice (Sec. 472.130, RSMo)
Form 10369	Request of Interested Person for Notice by Mail (Sec. 473.030, RSMo)
Form 10370	Request to Clerk for Service of Notice by Publication or Mail (Sec. 472.100.7, RSMo)
Form 10371	Request of Judgment Creditor for Notice by Mail
Form 10407	Request for Final Court Costs Estimate (obtain from cost clerk)
Form 10444	Correction Slip
Form 10449	Request for Copies
Form 10451	Request for Commission
Form 10460	Petition for Sale of Personal Property (Secs. 473.487, 475.200, RSMo)

Form 10461	Order to Sell Personal Property (Secs. 473.460, 473.487, 475.200, RSMo)
Form 10470	Petition for an Order to Sell Real Property (Sec. 473.460, 473.463, 473.493, RSMo)
Form 10472	Order for Hearing on Petition to Sell Real Property (Sec. 473.493, RSMo)
Form 10474	Notice of Hearing on Sale of Real Property (Sec. 473.493, RSMo)
Form 10475	Order to Sell Real Property (Secs. 473.493, 473.500, RSMo)
Form 10476	Notice of Public Sale of Real Property (Sec. 473.493)
Form 10477	Report of Private Sale of Real Property (Secs. 473.513, 475.240, RSMo)
Form 10482	Order Approving and Confirming Sale of Real Property (Sec. 473.513, RSMo)
Form 10500	Application of Creditor for Refusal of Letters (Sec. 473.090); Appendix A
Form 10501	Creditor's Bond (Sec. 473.090, RSMo)
Form 10505	Application to Amend Order Refusing Letters (Sec. 473.090, RSMo)
Form 10517	Application of Spouse for Refusal of Letters (Sec. 473.090, RSMo); Appendix A
Form 10530	Petition to Invest Funds in Restricted Account
Form 10531	Order to Invest Funds in Restricted Account
Form 10532	Verification of Restricted Assets
Form 10533	Verification of Restricted Deposit of Securities
Form 10534	Verification of Unrestricted Assets
Form 10535	Verification of Conservator's Possession of Securities
Form 10553	Application and Order to Extend Time for Filing Settlement
Form 10558	Notice of Filing of Final Settlement and Petition for Distribution (Sec. 473.587, RSMo); Proof of Mailing of Copy of Notice of Filing of Final Settlement and Petition for Distribution (Sec. 473.587, RSMo)

Form 10559	Annual/Final Settlement (pages 1 and 2)
Form 10572	Application and Order to Extend Time for Filing Final Receipts
Form 10573	Petition for Approval of Final Settlement and Order of Distribution (Sec. 473.583, RSMo)
Form 10574	Order Approving Final Settlement of Deceased Representative (Sec. 473.603)
Form 10575	Receipt of Distributee (Sec. 473.660, RSMo)
Form 10581	Final Settlement Approved: Finding and Decree of Distribution (Testate Estate, Personal Property Only) (Secs. 473.583 and 473.517, RSMo)
Form 10582	Final Settlement Approved: Finding and Decree of Succession; Order of Discharge (Testate Estate, Real Property Only) (Secs. 473.583 and 473.617, RSMo)
Form 10583	Final Settlement Approved; Finding and Decree of Succession and Distribution (Testate Estate, Real and Personal Property) (Secs. 473.583 and 473.617, RSMo)
Form 10584	Final Settlement Approved; Finding and Decree of Heirship and Distribution (Intestate Estate, Personal property Only) (Secs. 473.583 and 473.617, RSMo); Appendix A
Form 10585	Final Settlement Approved; Finding and Decree of Heirship and Succession, and Discharge (Intestate Estate, Real Property Only) (Secs. 473.583 and 473.617, RSMo)
Form 10586	Final Settlement Approved; Finding and Decree of Heirship, Succession and Distribution (Intestate Estate, Real Property Only) (Secs. 473.583 and 473.617, RSMo)
Form 10593	Final Settlement Approved - Order of Distribution
Form 10594	Order Discharging Fiduciary (Sec. 473.660, RSMo)
Form 10602	Notice to File Annual Conservator's Report (No Further Process)
Form 10605	Notice of Filing of Statement of Account and Schedule of Proposed Distribution/Proof of Mailing of Copy of Notice of Filing of Statement of Account and Schedule of Proposed Disposition (Sec. 473.840)

Form 10606a	Statement of Account (Sec. 473.840)
Form 10606b	Schedule of Proposed Distribution
Form 10607	Petition for Order of Complete Settlement of Estate (Sec. 473.837)
Form 10608	Notice of Filing of Petition for Complete Settlement of the Estate and Proposed Order of Distribution (Sec. 473.837) Proof of Mailing of Copy of Notice of Filing of Petition for Complete Settlement of the Estate and Proposed Order of Distribution (Sec. 473.837)
Form 10620	Affidavit to Establish Title of Distributee to Property in Estate of Less than $15,000.00; Appendix A; Appendix B
Form 10621	Bond of Distributees with Corporate Surety (Sec. 473.097, RSMo)
Form 10640	Application of Surviving Spouse for Exempt Property Allowance (Sec. 474.250, RSMo)
Form 10641	Order for Exempt Property Allowance to Surviving Spouse (Sec. 474.250, RSMo)
Form 10642	Application of Surviving Spouse for Family Allowance (Sec. 474.260, RSMo)
Form 10643	Order for Family Allowance to Surviving Spouse (Sec. 474.260, RSMo)
Form 10644	Application of Surviving Spouse for Homestead Allowance (Sec. 474.290), RSMo)
Form 10645	Order for Homestead Allowance for Surviving Spouse (Sec. 474.290, RSMo)

TABLE OF CONTENTS

12.90 Reduction of Bond

12.100 Effect of Restricted Deposits on Bonds

12.100.1 Verification of Restriction Required

12.100.2 Amount of Bond

12.100.3 Release of Restricted Property

12.100.4 Method for Distribution of Assets Without Increasing Bond

12.100.5 Distribution of Bearer Securities or Stocks

Section 13 - Bonds in Decedent's Estates - Independent Administration
[No Text]

Section 14 - Inventory - Supervised Administration

14.10 Time for Filing

14.20 Citation - Failure to File Inventory

14.30 Contents

14.40 Jointly Held Property

14.50 Description of Property

14.50.1 Real Property

14.50.2 Furniture, Household Goods & Wearing Apparel

14.50.3 Corporation Stocks

14.50.4 Mortgages, Deeds of Trust, Bonds, Notes and Other Written Evidence of Debt

14.50.5 Bank Accounts, Money, Insurance Policies Payable to the Personal Representative, Administrator or Estate and Life Insurance Policies Owned by the Decedent on the Life of Another Person

14.50.6 Contracts for Deed Relating to Sale of Decedent's Property

22.40.4 Debits - Credits

22.50 Closing Costs of a Real Property Sale

22.60 Foreclosure, Abandonment or Surrender of Estate Property

22.60.1 Real Property

22.60.2 Personal Property

22.70 Original Vouchers (Receipts)

22.80 Corrections - Auditor's Exception Letter – Extensions

22.80.1 In General

22.80.2 Exception Letter - Errors in Settlement

22.80.3 Show Cause Orders

22.80.4 Effect of Exception Letter on Fees

22.80.5 Rescission of Exceptions

22.90 Additional Bond

22.100 Orders Ratifying Expenditures

22.110 Funds Advanced from Source Outside the Estate

22.110.1 To Prevent Sale of Assets or Where Estate is Not Liquid

22.110.2 To Pay Debts of Decedent Prior to Opening of Estate

22.120 Sale or Redemption of Personal Property

22.130 Verification of Restricted Accounts

22.140 Will Contest

22.150 Waiver of Legal Requirements

22.160 Beginning and Ending Balances

22.170 Debit-Credit Entries

23.40 Other Applicable Sections

Section 24 - Distribution and Discharge - Supervised Administration

24.10 Partial Distribution to Beneficiaries

24.10.1 When Allowed: Bond Required, When

24.10.2 Unequal Distributions

24.10.3 Real Property

24.20 Payment of Tax on Specific or General Devises

24.30 Final Distribution

24.30.1 Order

24.30.2 To Whom Distributed

24.30.3 Description of Property

24.30.4 Equal Distribution Required

24.30.5 Rents or Income on Specifically Devised Property

24.30.6 Sale of Personal Property to Effect Distribution

24.30.7 Balance as Shown on Distribution

24.30.8 Real Property Sold by Heirs or Devisees Without Court Order

24.30.9 Minor Distributees

24.30.10 Nonresident Corporate Fiduciaries – Reciprocity

24.30.11 IRS Closing Letter - Marital/Non Marital Trusts

24.30.12 Marital/Non-Marital Distribution

24.30.13 Assignment

24.30.14 Renunciation or Disclaimer

24.30.15 Escheats - Missing Heirs

29.60 Temporary Emergency Detention Procedures

29.70 Prehearing Procedures

29.70.1 Adults

29.70.1(a) Appointment of Attorney for Respondent

29.70.1(b) Appointment of Examining Physician

29.70.1(c) Jury Trial Request or Waiver

29.70.2 Minors

29.80 Hearing

29.80.1 In General

29.80.2 Expert Medical Evidence

29.80.3 Adults – Evidence

29.80.4 Minors - Evidence

29.90 Guardian or Conservator Ad Litem – Emergencies

29.90.1 Adults - Prior to Adjudication

29.90.2 Adults or Minors - Where Existing Guardian/Conservator

29.100 Issuance of Letters Granted

29.100.1 Adults

29.100.2 Minors

29.110 Annual Report of Guardian

29.110.1 In General

29.110.2 Citation

29.110.3 Contents

30.80 Effect of Restricted Assets on Bonds

30.80.1 Verification of Restriction Required

30.80.2 Amount of Bond

30.80.3 Release of Restricted Property

Section 31 - Inventory - Conservatorship Estates

31.10 Time for Filing

31.20 Citation - Failure to File Inventory

31.30 Contents

31.40 Multiple Party Accounts - Jointly Held Property

31.50 Description of Property

31.50.1 Real Property

31.50.2 Furniture, Household Goods & Wearing Apparel

31.50.3 Corporation Stocks

31.50.4 Mortgages, Deeds of Trust, Bonds, Notes and Other Written Evidence of Debt

31.50.5 Bank Accounts, Money, Burial Plans and Insurance Policies

31.50.6 Contracts for Deed Relating to Sale of Protectee's Property

31.50.7 Contracts for Deed Relating to Purchase by Protectee

31.50.8 Real Property, Unperformed, Enforceable Contract

31.50.9 Oil and Gas Leases, Royalty and Mineral Interests

31.50.10 Trust Assets of Which Protectee Is Beneficiary

31.50.11 Periodic Income

31.50.12 All Other Personal Property

34.40 Personal Property

34.40.1 Values of Property

34.40.2 Possession

34.40.3 Multiple Party Accounts and Joint Property

34.40.4 Investment of Funds

34.40.5 Sales

34.40.6 Abandonment of Personal Property

34.40.7 Secured Property

34.40.8 Storage Fees and Moving Expenses

Section 35 - Settlement - Conservatorship Estates

35.10 In General

35.10.1 Notice to File

35.10.2 Notice/Waiver - Veterans Administration

35.20 Extensions

35.30 Failure to File Settlement

35.30.1 Citation

35.30.2 Continuance by Court on Its Own Motion

35.40 Settlement – Contents

35.40.1 Income - Disbursement, Additional Property

35.40.2 Disbursement Supported by Court Order

35.40.3 Debits - Credits

35.50 Closing Costs of a Real Property Sale

35.60 Foreclosure, Abandonment or Surrender of Estate Property

35.60.1 Real Property

35.60.2 Personal Property

35.70 Original Vouchers (Receipts)

35.80 Verification of Assets

35.90 Corrections - Auditor's Exception Letter – Extensions

35.90.1 In General

35.90.2 Exception Letter - Errors in Settlement

35.90.3 Show Cause Orders

35.90.4 Effect of Exception Letter

35.90.5 Rescission of Exceptions

35.100 Additional Bond or Reduction in Bond

35.110 Support and Maintenance

35.110.1 Adults

35.110.2 Minors

35.120 Investments

35.130 Orders Ratifying Expenditures

35.140 Funds Advanced from Source Outside the Estate

35.150 Sale or Redemption of Personal Property

35.160 Beginning and Ending Balances

35.170 Debit-Credit Entries

35.170.1 Chronological Order

35.170.2 Debits Segregated From Credits

35.170.3 Support and Maintenance - Lump Sum

35.170.4 Support and Maintenance - To Custodian

35.170.5 Periodic Income

35.170.6 Rental Income

35.180 Waiver of Settlement - No Further Process (NFP)

35.180.1 In General

35.180.2 Requirements

35.180.3 Adult Protectee

35.180.3(a) Meets Indigency Standards of Chapter 208, RSMo, Eligible for Welfare

35.180.3(b) Meets Indigency Standards of Chapter 208, RSMo, Ineligible for Welfare

35.180.3(c) All Assets of Protectee Restricted or in Trust With Corporate Trustee

35.180.3(d) Accumulation of Assets - Purchase of Burial Plan

35.180.4 Minors

35.180.4(a) Meets Indigency Standards of Chapter 208, RSMo, Eligible or Ineligible for Welfare

35.180.4(b) All Assets of Minor Restricted

35.180.4(b)(1) Immediately After Opening

35.180.4(b)(2) At the Time of Filing Settlement

35.180.4(c) Effect of Court Order

35.180.4(d) Exception – Taxes

35.180.5 Termination of NFP

35.180.5(a) Receipt of Property

35.180.5(b) Restoration of the Protectee

35.180.5(c) Minor Reaching Majority

35.180.5(d) Death of the Protectee

35.190 Accounting for Trust Assets

35.200 Accounting for Multiple Party Accounts and Tenancy by the Entirety Property

35.210 Payment of Costs

35.220 Final Settlement

35.220.1 Resignation or Removal of Conservator

41.30 Trust Registration

41.40 Adversary Proceeding

41.50 Testamentary Trusts

41.50.1 Terms of a Will

41.50.2 "Pour-Over" Provisions

41.60 Trustees

41.60.1 Identity of Trustee and Beneficiaries

41.60.2 Personal Representative as Trustee

41.60.3 Nonresident Corporate Fiduciaries - Reciprocity

41.60.4 Resignation, Death, Inability or Refusal to Act – Successor Trustee

41.60.5 Accounting

41.70 Modification, Revocation and Termination

Section 42 - Durable Power of Attorney

42.10 In General

42.20 Jurisdiction of Probate Division

42.30 Court Appointment of Guardian/Conservator for Principal

42.40 Court Appointment of Personal Representative for Principal

42.50 Accounting

42.50.1 Who May Petition

42.50.2 Waiver or Ex Parte Approval

42.60 Declaration of Incapacity or Disability

42.60.1 Petition for Court Action

42.60.2 Accounting to Successor

42.60.3 Duties and Powers Specified by Court Order

42.70 Appointment of Guardian Ad Litem or Conservator Ad Litem

Section I - References and Definitions

1.10 References

The purpose of this manual is to provide practical information and practice tips to the Jackson County probate practitioner. Statutory information is contained in the text only where needed for clarity or in areas where difficulties often arise. Each subsection does, however, conclude with appropriate statutory citations.

The practitioner is generally referred to chapters of the Missouri Revised Statutes as follows: Chapter 404 related to transfers to minors, personal custodians, durable powers of attorney for property management and health care; Chapter 456 related to trusts; Chapters 472, 473, 474, related to probate administration, Chapter 475 related to guardianships and conservatorships, Chapters 631 and 632 related to involuntary treatment for substance abuse and mental illness, and

Also see Missouri Practice, vols. 3, 4, 4A, 4B, 5, 5A, 5B and 5C; the following MoBar CLE vols: Estate Planning, Estate Administration and Guardianship and Trust Law; and the Probate Division's forms.

The Court prefers, but does not require, the use of its forms. These forms are now available on-line on the Court BBS and may be downloaded from the database. They are referenced, as appropriate, at the end of each subsection of this manual and a list of the forms is included at the end of this manual as Appendix 1. See Section 6.10.2 on the use of approved forms.

Because of the expense of printing, hard copies of probate forms will no longer be available in the Probate Division.

All statutory references are to the current official Revised Statutes of Missouri unless otherwise specified.

1.20 Definitions

1.20.1 Administrator ad litem is a person appointed on a temporary basis and usually with specific (rather than general) authority to act where a permanent personal representative has not yet been appointed, e.g., where waste is occurring to estate assets, where an appointed personal representative is not functioning or where a conflict of interest exists as to the permanent personal representative, e.g., where the personal representative files a claim against the estate.

1.20.2 Administrator pendente lite (APL) is one appointed by the Court to preserve the assets of the estate while a will contest is pending. See Section 9.70 on will contests.

1.20.3 Chapter 208 estate is an estate of a person who is eligible to receive public benefits, such as welfare, pursuant to Chapter 208, RSMo.

1.20.4 Consent is a written statement whereby interested in a estate agree to a particular action or actions taken or to be taken by the fiduciary. The consent must be specific and evidence full disclosure of applicable facts. Compare with waiver.

1.20.5 Disbursement is any payment out of estate assets, including distributions.

1.20.6 Distribution is the payment or transfer of estate assets to the persons, such as heirs or devisees, ultimately entitled to receive them. Distribution does not include claims, taxes and expenses of administration.

1.20.7 Doctrine of Virtual Representation is the rule of law that permits a party to institute or defend an action on behalf of others where there are numerous potential parties and there is a common interest among all the parties. Notwithstanding the provisions of § 472.300, RSMo, extreme caution should be exercised before proceeding without the joinder of necessary parties whose joinder is possible.

1.20.8 Expenses of administration are those expenses associated with administering the property of the estate and include, but are not limited to, attorneys' and fiduciaries' fees, out-of-town mileage and long distance telephone charges of the attorney or fiduciary, bond premiums, safe deposit box drilling fees, appraiser and tax return preparation fees, and the following expenses of real property (if the personal representative has taken charge of the real property or in a conservatorship estate): lawn care, winterization, changing locks or otherwise securing the real property and real property taxes and insurance.

1.20.9 Minor means a person who is under the age of legal competence as defined by various statutes. For purposes of guardianship/conservatorship proceedings, a minor is a person less than 18 years of age. For purposes of statutory allowances under Chapter 474 RSMo, a minor is a person under 21 years of age.

1.20.10 Private sale means any sale of estate property whether by auction or other means. However, it does not include the sale of real property by public auction pursuant to § 473.510, RSMo.

1.20.11 Restricted account means an account at a Missouri financial institution which is restricted so that withdrawals may be made only on order of the Probate Division.

1.20.12 Tax specialists include tax attorneys and accountants.

1.20.13 Vouchers mean written instruments (either original receipts or canceled checks) which evidence payment or discharge of debt.

1.20.14 Waiver is a written statement evidencing a person's intent to relinquish a known legal right or permit a requirement to be avoided. The waiver must evidence full disclosure of applicable facts and state with clarity the right or requirement waived. See "Consent," supra.

[END OF SECTION]

Section 2 - Court Administration

2.10 Hours

The Probate Division at Kansas City and Independence is open from 8:00 A. M. to 4:30 P. M., Monday through Friday.

2.20 Conferences with Judge, Commissioner or Deputy Commissioner

Conferences without an appointment with the Judge, Commissioner or Deputy Commissioner, at Kansas City, should be between 8:30 A. M. and 12:00 P. M. Afternoon conferences, at Kansas City, are normally by appointment unless the conference involves an emergency.

In Independence, conferences without appointment with the Judge, Commissioner, or Deputy Commissioner will follow the conclusion of the Monday hearing docket. If time permits, the Judge, Commissioner or Deputy Commissioner will see attorneys before commencement of the hearing docket, but the hearing docket will not be delayed as a result thereof.

Prior to a conference, the attorney should secure the court file(s), if any, which will be involved in the conference and present the same to the Judge, Commissioner or Deputy Commissioner. Attorneys wishing to discuss an Independence file at the Kansas City office, or vice versa, should request that the file be sent to the other office at least 24 hours in advance of the time for the conference. Files transferred from one office to the other at the request of an attorney will be retained by the receiving office for five days from the date the receiving office receives the file. After the expiration of the five day period, the file will be automatically returned to the sending office unless counsel is advised to the contrary, in writing, by the court.

2.30 Telephone Conferences

Telephone calls to the Judge, Commissioner or Deputy Commissioner are encouraged. The Court will participate in conference calls involving two or more attorneys when that capability is available. When seeking a telephone conference with the Judge, Commissioner or Deputy Commissioner, the attorney should request that the secretary answering the phone present the file subject to the conference to the Judge, the Commissioner or the Deputy Commissioner.

2.40 Telephone Numbers

Judge,
Kansas City 881-3761
Independence 881-4549

Commissioner,
Kansas City 881-3759
Independence 881-4549

Deputy Commissioner,
Kansas City 881-3753
Independence 881-4549

Chief Deputy Division Clerk,
Kansas City 881-3772

Chief Deputy Division Clerk,
Independence 881-4553

Docket Clerk/Audio Reporter 881-3517

Division 19, Court Reporter 881-3804

2.50 Docket Clerk/Audio Reporter

The Docket Clerk/Audio Reporter offices in Kansas City and attends court in Kansas City and records testimony in non-jury cases by tape recorder. Requests for information concerning tape recorded hearings and the processing of appeals should be addressed to the Docket Clerk/Audio Reporter at the Kansas City office if the hearing was held in Kansas City and the Chief Deputy Division Clerk in Independence if the hearing was held in Independence.

The Division 19, Court Reporter attends and transcribes testimony in jury trials conducted by the Probate Division and also serves as swing reporter within the circuit. Because the Official Reporter for Division 19 may not be the reporter who transcribes a jury trial, requests for information regarding transcripts should be directed to the Docket Clerk/Audio Reporter who will refer the inquiry to the appropriate reporter.

2.60 Inquiries - File Status

Court personnel are prohibited from giving information concerning the status of court files in response to telephone inquiries. Persons interested in the status of a file which is available for public inspection may visit the office where the file is located and examine its contents. All court files except files involving proceedings in mental health and substance abuse are available for public inspection.

Inquiries concerning the status of a Probate Division file may be made by attorneys through the Circuit Court's computer system. The following equipment is necessary to secure access:

(1) A modem with a speed of 9600 baud or less,

(2) A personal computer or terminal with communications capabilities, and

(3) A communications software package.

In order to implement this capability, contact the Circuit Court **Computer Services Department at 471-8246.**

[END OF SECTION]

Section 3 - Attorneys

3.10 Attorney of Record - Pleadings

The first petition or application filed on behalf of a party in connection with any proceeding in the Probate Division, *except an application for refusal of letters*, must be signed by at least one attorney of record in the attorney's individual name and shall also state:

(a) Complete current address of the attorney,

(b) The telephone number of the attorney, and

(c) The attorney's Missouri Bar number.

Said pleading must also contain the complete current address of the fiduciary to be appointed personal representative, guardian or conservator.

References: Civil Rules 41.01(b) and 55.03.

3.20 Change of Address

Whenever the attorney of record or the fiduciary's address is changed, it is the attorney's duty to advise the Court of the complete new address (and new telephone number of attorney) by letter or by a pleading titled "Change of Address" in every matter in which the attorney is serving as Attorney of Record.

The Court cannot guarantee that it will be able to update names, addresses and telephone numbers solely from information contained in a routinely filed pleading.

3.30 Withdrawal of Attorney

Withdrawal of attorneys as attorney of record in a probate proceeding shall be in accordance with Rule 21.4, Rules of the Circuit Court of Jackson County, Missouri.

The Court will not recognize a withdrawal or change of attorney merely by the filing of a pleading containing the name and address of another attorney.

Reference: Circuit Court Rule 21.4

3.40 Local Counsel

Appearances by non-resident attorneys are governed by Missouri Supreme Court Rule 9.

References: Supreme Court Rule 9;
Circuit Court Rules 3.1-2, 21.2 and 21.4

[END OF SECTION]

Section 4 - Court Docket

4.10 Kansas City

The court sitting in Kansas City will, as a usual matter, follow the docket schedule set out below:

Monday	9:00 a.m.	Mental Health Hearings
Tuesday	9:00 a.m.	Guardianship Adjudications
Wednesday	9:00 a.m.	Guardianship Adjudications
Thursday	9:30 a.m.	All Other Matters
Friday	9:30 a.m.	All Other Matters

Other than those set on Monday, mental health hearings will be docketed Tuesday through Friday mornings beginning at 9:00 a.m.

4.20 Independence

The court sitting in Independence will, as a usual matter, follow the docket schedule set out below:

Monday	9:30 a.m.	Guardianship Adjudications and **All** Other Matters

As of the date of issuance of this Manual, the Probate Division does not have courtroom facilities available in Independence to permit cases to be set for hearing in that venue which will involve more than an hour's time. Such cases will be specially set in Kansas City.

As a rule, mental health matters are set in Kansas City.

4.30 Jury Trials

Jury trials will be specially set by the Judge/Commissioner.

Section 5 - Court Costs - Determination and Payment

5.10 In General

Costs for probate courts in Missouri are fully described in § 483.580, RSMo. Effective July 1, 1997, probate costs will be governed by § 514.015.4 RSMo. Cost deposits required and copy charges are as follows:

5.10.1 Cost Deposits

Cost deposits may include miscellaneous charges, e.g. for copies, in addition to the base cost set forth in the statute. The required cost deposit must accompany the initial application or petition. In addition, a check for publication costs must accompany applications for letters in decedents' estates filed in Kansas City and publication will be in *The Daily Record.*

NOTE: The attorney is responsible for updating the following table of costs when § 483.580, RSMo is amended.

5.10.1(a) Decedents Estates, where letters testamentary or of administration are applied for:

TOTAL ASSETS		
(Personal and Real Property)	**(Intestate)**	**(Testate)**
Not over $10,000	$ 75.00	$100.00
Over $10,000 but not over $25,000	115.00	140.00
Over $25,000 but not over $50,000	155.00	180.00
Over $50,000 but not over $100,000	245.00	270.00
Over $100,000 but not over $500,000	305.00	330.00
Over $500,000	365.00	390.00

5.10.1(b) Guardianships and Conservatorships

(1)	Minors - Person Only	$ 50.00
(2)	Minors - Person and Estate	60.00
(3)	Incapacitated - Person Only	72.00
(4)	Incapacitated and Disabled-Person and Estate	97.00
(5)	Close Conservatorship under § 475.320, RSMo	40.00

5.10.1 (c) Miscellaneous Matters

(1)	Refusal of Letters	
	a. Spouse and Unmarried Minor Child	$ 15.00
	b. Creditor	30.00
	*Includes one attested copy of order. Additional orders	2.50
(2)	Small Estates	39.50
	*Includes one attested copy of order. Additional attested copies each	4.50
(3)	Dispense with Conservatorship (§ 475.330, RSMo)	20.00
(4)	Admit Will to Probate	25.00
(5)	Sale of Real Property by Nonresident Conservator (Sec. 475.340)	50.00
(6)	Determination of Heirship (§ 473.663, RSMO)	55.00
(7)	Petition to Require Administration	40.00
(8)	Grant of letters in decedent estate where sole purpose of estate is for personal representative to file final settlement of deceased fiduciary	25.00
(9)	Petition to recover money from eschea. fund	25.00
(10)	Trusts -	
a.	Each new filing, appointment of (successor trustee or petition to set aside irrevocable trust)	$ 25.00
b.	Annual Accounting	$ 25.00
c.	Registration	$ 25.00
(11)	Initial proceeding for letters for one person absent for five or more years.	$ 35.00

(12)	Grant letters d/b/n when estate opened after discharge	$ 25.00
(13)	Each commission to prove a will (if letters have been applied for and the cost deposit paid, commission may be charged to estate)	$ 15.00
(14)	Transmitting original will to another court	$ 15.00
(15)	Setting up for tape cassette copies - per request (Add $4.00 for each tape furnished by the Court.)	$ 10.00
(16)	Deposit of Will - for safekeeping	$ 3.00

5.10.2 Copies

The above deposits do not cover the cost of copies or certificates, which are additional. Copies furnished by the Court are .50 per page. The cost for certification is $1.50 and the cost for attestation is $1.50. There will be no charge for copies to any party who has been allowed to proceed in forma pauperis or to any agency of the State of Missouri. The charge for authentication is $3.50.

References: Supreme Court Rule 77.03
§ 483.580(12)

5.10.3 When Copies Charged to Estate

Copies may be charged to the estate if the fiduciary or the fiduciary's attorney is requesting the copies.

5.10.4 Estates Opened Solely for Litigation

An estate opened solely for the purpose of prosecuting or defending a lawsuit and in which there are no assets is not exempt from the requirement to pay costs. The minimum cost set out in Section 5.10.1(a) will be charged. See Section 14.80 on lawsuits.

Reference: § 537.021

5.20 Citations/Show Cause Orders

For each citation or show cause order for failure to file bonds, inventories, settlements or final receipts, or for failure to satisfy auditors requirements, there will be a charge of $10.00. If personal service is used, the sheriffs fee of $1 1.00 will be added. Additional charges of $3.00

will be made for each continuance of a hearing and $3.00 for each order dismissing a citation or show cause order. For each order revoking letters based on a citation or show cause order, an additional $10.00 charge will be made. If an order is issued setting aside a revocation, an additional $5.00 will be charged. There are also certified mail charges, $5.00 for each notice, and copy costs. Applicable charges will be collected from the offending party.

5.30 Costs Billed, When

The cost clerk will compute the annual costs due and notice of same will be included in the notice to file annual settlement which is mailed at least 40 days before the settlement is due. When any final settlement is filed, the court auditor will examine the file to determine if costs have been requested and paid. It not, an exception requesting payment of costs will issue.

5.40 How to Request an Estimate of Final Costs

5.40.1 Completion of Form and to Whom Submitted

At least two weeks before final settlement is filed, a "Request for Final Cost" form must be obtained from the cost clerk. Final costs are calculated upon the most recently filed inventory. If the inventory is inaccurate the cost calculation will not be accurate. It is imperative that the request form be filled out completely, accurately and timely. Upon completion of the form, both copies are to be submitted to the cost clerk, who will calculate the estimated final costs upon the basis of the information provided and a copy will be mailed to the attorney. Proper completion of the request form will help avoid the possibility of additional costs after filing final settlement. Any additional costs will require an amendment to the settlement and proposed distribution.

Reference: Form 10407

5.40.2 Type of Closing

There are several possible types of closings of estates listed on the form under "CHECK ONE BELOW." The type of closing planned should be checked by placing an "X" on the appropriate line.

5.40.3 Copies Necessary at Closing

The number of copies desired of each document should be designated under "COPIES ORDERED AT THIS TIME" indicating the number of pages in each document. The cost clerk will then send the attorney the completed calculation of costs, and this amount must be paid on or before the date of filing the final settlement

[END OF SECTION]

Section 6 - Form, Contents. Execution and Filing of Pleadings and Other Documents

6.10 Form, Contents, Execution

6.10.1 Form

All pleadings, other than those enumerated in Section 6.10.4, may be executed by the attorney of record and shall comply with Section 3.10, supra. Each shall also contain a statement that it is made under oath or affirmation and that its representations are true and correct to the best knowledge and belief of the person signing same, subject to the penalties of making a false affidavit or declaration. Inventories must be verified.

All pleadings, except exhibits, shall be on 8 ½ x 11 inch paper.

Pleadings bound on the left margin are unacceptable and will not be received for filing.

References: Supreme Court Rule 41.07
Circuit Court Rule 3.1

6.10.2 Approved Forms

Upon request, the Court furnishes approved forms for various proceedings at no cost. Local attorneys may pick up the forms at the Probate Division. An index of forms is available in the forms area and is also included in this manual as Appendix 1. Whenever possible, the approved forms should be employed since they contain pre-coded computer minute entries. The Court's forms may be placed on word processors or otherwise reproduced. When the form contains language identical to the Court's form, the Court's form number and appropriate underlining for blank spaces should be included. All other pleadings must be prepared in manuscript form.

6.10.3 Contents

The petitioner shall be responsible for furnishing the complete name and complete address, including the zip code, of all interested persons to whom notice must be given.

6.10.4 Execution

The personal representative or conservator (all if more than one) must execute the following pleadings:

(1) Inventories

(2) Settlements

(3) Attorney and fiduciary fee applications

(4) Applications for partial distributions

(5) Petitions for distribution

(6) Other pleadings as the Court may require on a case-by-case basis.

Said pleadings must also comply with Section 3.10, supra.

Reference: § 472.080

6.20 Proof of Filing and Copies

When filing pleadings, parties desiring proof that pleadings have been filed may present a copy to the filing clerk who will stamp the copy with a received stamp showing that the original document was filed in the Probate Division on that date. This procedure will apply when the copy is personally presented to the proper clerk at the time the original is filed. *Requests by mail will be honored if a stamped, self-addressed envelope is provided.*

Certified or attested copies of pleadings or orders may be secured upon request to the copy clerk upon payment of the cost therefor. When an order is personally presented to be signed, the attorney may obtain an attested copy by giving a copy to the Judge's or Commissioner's secretary or either clerk in the file department. Costs may be charged to the estate if the copies are requested by the estate's fiduciary or attorney.

6.30 Messenger Pick-Up Box

The Court provides a messenger pick-up box in the Kansas City file area. The attorney may request, by phone or letter, that a copy (conformed, photocopied, attested or certified) of a pleading or proposed order be placed in the messenger pick-up box. Whenever an extra copy of a pleading or proposed order is received without a specific request, and without a stamped, self-addressed envelope, the copy of the pleading will be stamped received and the copy of the order will be conformed after the original is signed and placed in

the messenger pick-up box. There is no charge for conformed copies if the attorney has provided the copy. There will be a charge for any photocopy and/or attested or certified copy. See Section 5.10.2 for charges. *Copies will be held up to 30 days and destroyed if not picked up within that time.* Any copy charges will still be charged to the estate. The pick-up box will be used only for currently filed pleadings and orders.

Copies of previously entered orders or other documents must be requested and picked up from the copy clerk. These copies may also be requested in writing with a stamped, self-addressed envelope and a check to cover payment of copy costs, if requested by someone other than the fiduciary or his attorney.

6.40 Venue

The office of the probate division in which applications are filed for the purpose of commencing the administration of the estate of a decedent, adult ward/protectee or a minor is complicated by the fact that Jackson County, for venue purposes, is divided into two portions, an eastern portion and a western portion. For probate purposes, venue is determined by the residence of the decedent, adult ward/protectee or minor as of the date of death of the decedent or at the time of the filing of a petition for an adjudication of incapacity or disability or a petition for appointment of a guardian or conservator for a minor. There are other statutory provisions relating to the situs of real property owned by a non-county resident. The venue statute is § 478.473, RSMo.

Generally, estates originating east of the range line are initiated and processed in Independence with the exception of indigent guardianships (Chapter 208, RSMo) and mental health proceedings which are processed in Kansas City. Estates originating west of the range line are processed in Kansas City.

Any matter not specifically mentioned in the venue statute may be filed in either Independence or Kansas City. When in doubt about proper venue, contact the new estates clerk in Kansas City or Independence.

Effective August 28, 1989, § 476.410, RSMo provides that the division of a circuit court in which a case is filed laying venue in the wrong division or wrong circuit shall transfer the case to any division or circuit in which it could have been brought.

References: §§ 476.410, 478.461, 478.473

6.50 Filing Pleadings

In Kansas City, all pleadings relating to the commencement of decedent and guardianship estates, refusals of letters or mental health proceedings shall be filed with or mailed to the new estates clerk. All other filings, submitted by mail, should be directed to Management Services. Filings in person are accepted in the File Department or Management Services. For filing will contest actions, see Section 9.70.1.

All pleadings and documents may be filed in Kansas City or Independence and will be delivered to the appropriate courthouse by courier. Files and documents are transported twice daily.

All pleadings or documents submitted in compliance with an auditor's exception letter shall be directed to the attention of the auditor issuing the exception letter. Failure to comply with the foregoing directions may cause delay or issuance of a show cause order.

Court personnel will not respond to telephone inquiries regarding the status of pleadings and proposed orders. It is the responsibility of the attorney to ascertain the status of any documents by reviewing the file.

6.60 Fax Filing of Pleadings

The facsimile filing of pleadings is governed by Circuit Court Rule 72.3.

In addition to the pleadings listed in the Circuit Court Rule, counsel may submit proposed orders and/or judgment entries by facsimile transmission provided that the document does not exceed six pages in length.

The practice of sending the original document via mail is emphatically discouraged. Civil Rule 43.01(I) provides that the person filing a pleading by facsimile transmission shall retain the original and make it available upon order of the court.

6.70 Routing Files Between Kansas City and Independence

Files may be requested from either probate office (Kansas City or Independence) to be delivered by courier to Kansas City or Independence to enable review of the file, or to present to the Judge, Commissioner, or Deputy Commissioner for purposes of submitting petitions and proposed orders or other applications. Any request to transfer a file can be made by the attorney to the secretaries for the Judge, Commissioner or Deputy Commissioner or to the file clerks in Kansas City or to any member of the Court’s staff in Independence and can be made at the originating or receiving office. Any court file transferred should be dealt with promptly and returned to the originating courthouse. As a general rule, files will not be held for more than

five business days unless authorized by the Judge, Commissioner or Deputy Commissioner.

Section 7 - Adversary Proceedings

7.10 Jurisdiction of Probate Division

The Probate Division possesses legal and equitable jurisdiction to hear and determine a broad variety of adversary probate proceedings relating to the estates of decedents, incapacitated and disabled persons and minors. An adversary probate proceeding is defined in § 472.140.2, RSMo.

The Probate Division also possesses exclusive original jurisdiction in connection with the civil commitment of substance abusers, § 631.115, RSMo, and mentally ill persons, § 632.305, RSMo.

References: §§ 472.140.2, 631.115, 632.305,

7.20 Concurrent Jurisdiction of Probate Division

The Probate Division possesses concurrent jurisdiction to hear and determine adversary civil proceedings which do not fall within the definition of an adversary probate proceeding. These cases are specified by various statutes. Among the cases which may be determined in the Probate Division are:

(1) Proceedings relating to the administration of testamentary and inter vivos trusts, including registered trusts, §§ 456.400, 456.450 and 472.020, RSMo;

(2) Proceedings involving durable powers of attorney, except the Probate Division has exclusive jurisdiction over proceedings regarding accounting by the attorney in fact to the fiduciary appointed by the Probate Division, §§ 404.703 through 404.872 RSMo;

(3) Proceedings involving transfers to minors, §§ 404.005 through 404.094, RSMo; and

(4) Proceedings involving personal custodianship, except the Probate Division has exclusive jurisdiction over matters in which the Probate Division has appointed a guardian or conservator for a beneficiary of a personal custodianship, §§ 404.400 to 404.650, RSMo.

References: §§ 404.005 - 404.094, 404.400 - 404.650, 456.400, 456.450, 472.020, 404.703 et seq.

7.30 Authority to Assign Cases to Probate Division

The judge of the Probate Division may be assigned cases or classes of cases by order of the presiding judge, § 478.240, RSMo, or by local court rule, § 478.245, RSMo,

except as may be limited by the Constitution or by specific statute. See Section 9.70 on will contests.

A civil action may be transferred from a regular division to the Probate Division of the circuit court by agreement of the judges of the respective divisions.

References: §§ 478.240, 478.245
Circuit Court Rule 6.8.2.

7.40 Adversary Probate Proceedings - Rules of Procedure

Adversary probate proceedings are automatically governed by the following Rules of Civil Procedure: Rules 41, 54.18, 55.03, 56, 57, 58, 59, 60, 61 and 62. Civil Rule 41.01(b).

On its own motion or on motion of any party to any adversary probate proceeding, the Court may enter an order directing the applicability of all or parts of the remaining Civil Rules to a particular case. The Court routinely enters an order designating a proceeding as an adversary probate proceeding and specifies, inter alia, the applicability of all of the other Civil Rules, except Civil Rule 55 and the provisions of the Circuit Court Rules which will also apply to the proceeding.

In general, the pleading specifications of Civil Rule 55 will be invoked when the respondent intends to plead an affirmative defense or to assert a counter-claim, cross-claim or third-party claim. The Court will normally designate the applicability of Civil Rule 55 when service of process is by summons or when service of process must be affected by publication.

References: §§ 472.141.1, 472.141.2
Chapter 509, RSMo
Civil Rule 55

7.50 Adversary Civil Proceedings - Rules of Procedure

Adversary civil proceedings are simply civil cases over which the Probate Division has concurrent or original jurisdiction or which are assigned or transferred to the Probate Division for hearing and determination. All Civil Rules, the Code of Civil Procedure and all Circuit Court Rules apply to every such adversary case.

7.60 Special Statutory Proceedings - Rules of Procedure

Proceedings for an adjudication of incapacity or disability and proceedings for the civil commitment of substance abusers and mentally ill persons are special statutory procedures. The statutes authorizing these proceedings specify the procedures to be employed in connection therewith. For example, the process to be served upon a person alleged to be incapacitated or disabled is by a statutory form of notice rather than

summons. The same is true with respect to all civil commitment proceedings. In none of those proceedings is the respondent required to file an answer. Pre-trial discovery is available, but not from the respondent since the respondent has the right to remain silent. When the Court orders a medical or psychological examination, the court appointed physician, licensed psychologist or other professional must, prior to examination, advise the respondent in simple language of his rights as defined in section § 475.075, RSMo. See 5 Missouri Practice - Probate Law and Practice (2d Ed. 1988) §§ 512, 516.

Reference: 475.075.4

7.70 Rules of the Circuit Court of Jackson County

The Rules of the Circuit Court apply with respect to all pre-trial motions in adversary civil and adversary probate proceedings.

7.80 Nature of Process to be Employed

Specific statutes require that certain adversary probate proceedings be commenced by summons, e.g., discovery of assets proceedings, § 473.340, RSMo, and petitions for appointment of guardians of minors where the parents are living and do not consent to the appointment, § 452.455.2, RSMo.

In general, other adversary probate proceedings may be instituted by the issuance of notice of hearing by certified mail, return receipt requested. If one or more respondents must be served by publication, it is the practice of the Court to direct that all other respondents be served by summons. In this manner, a definite default date for filing a responsive pleading by respondents served by publication may be ascertained.

All adversary civil proceedings, as distinguished from adversary probate proceedings, must be commenced by service of summons.

No proceeding which has been commenced by service of summons will be set for hearing without the consent of the Judge or Commissioner.

References: §§ 472.100, 473.340

7.90 Demand for July Trial

Special arrangements must be made for jury trials. In cases where a jury trial is appropriate, the attorneys for the parties should confer with the Judge or Commissioner to set a definite trial date so that a jury panel, courtroom and court reporter may be reserved for the trial.

Practice Tip: Standard jury instructions for a guardianship or conservatorship are available for review and use by the attorneys, if desired. See Section 29.70.1 regarding

the jury waiver and requesting a jury trial in a guardianship or conservatorship proceeding.

7.100 Hearings Required -When

In general, hearings must be held and notice thereof given to interested persons in the following situations:

(1) Applications to require administration;

(2) Applications for letters where the applicant is not the sole person entitled to letters and all persons entitled to letters have not renounced or consented to the appointment of the applicant;

(3) Determination of which of two or more wills should be admitted probate;

(4) Application for letters of guardianship and conservatorship for incapacitated and disabled persons;

(5) Application for letters of guardianship and conservatorship of minor if parents are deceased. Application for letters of guardianship of minor regardless of whether or not parents have consented to or contest the petition. A hearing is not necessary in connection with an application for appointment of conservator of estate of minor where each parent has either petitioned or consented;

(6) Claims contested by the fiduciary;

(7) Discovery of assets proceedings pursuant to §§ 473.340 and 475.160, RSMo;

(8) Removal of fiduciary for failure to comply with a requirement of, the probate code or a court order;

(9) Determination of liability of fiduciary and surety on bond;

(10) Any matter for which a hearing is required by statute and not waived by all interested persons;

(11) Any application in an estate, except for requests to extend the filing time for settlements and other similar matters, where the personal representative desires to obtain a final, appealable judgment; and

(12) Any application in an independently administered estate, except for requests to extend the filing time for settlements and other similar matters, where the independent personal representative desires a court order.

The foregoing enumeration is not intended to be all inclusive. There may be exceptions to the requirement of a hearing in the discretion of the Court in a particular case.

7.110 Notice of Hearing Requested - How

Notice of hearing or summons is automatically issued by the new estates clerk in connection with petitions for the appointment of guardians and commitment proceedings involving mental illness or substance abuse and petitions for appointment of a guardian or conservator for a minor (when a hearing is required).

In Kansas City, request for notice of hearing in connection with proceedings to be conducted before letters are issued must be submitted to the new estates clerk. In Independence, the request for notice of hearing is processed by the notice clerk.

Except where personal service is appropriate, request for notice of hearing on the Court's form 10370 must be filed the with the docket clerk or, if not hand delivered, marked to the Docket Clerk's attention. The request (Form 10370) is to be signed by the attorney for the party requesting the hearing. The attorney shall identify the party represented. The request shall clearly describe the matter to be heard and shall list the full name and address, including zip code, of each person to be notified. The request must be legible. If not, the clerk may not be able to act upon the request.

The request should be accompanied by sufficient copies of the petition or application to serve upon each person to be given notice.

Upon submission of the request, the clerk shall assign a separate adversary docket number to each matter to be heard and shall issue a notice of hearing and an adversary proceeding order (AP order). The notice of hearing, AP order and petition will be mailed to each person to be notified. The original request for service and the "Notice of Hearing" shall be filed as a part of the record of the case.

Unless otherwise directed by the Court, notice shall be served by certified mail, return receipt requested. Where notice of hearing is by certified mail, the hearing will not be set earlier than three weeks after mailing the notice in order to secure return receipts proving service prior to the date of hearing. Insofar as is feasible, the clerk shall fix the date of hearing on a date selected by the attorney requesting the hearing.

Practice Tip: Where no signed receipt is returned, the attorney may request that the person be personally served. On written application and for good cause shown, the Court will approve the appointment of a special process server named by the party if service is to be made outside of the state. No order is necessary if service is to be made within the state.

Hearing dates may be set by agreement of the attorneys with the concurrence of the Court either with or without the issuance of a notice of hearing.

A request for service of notice by publication must be accompanied by an affidavit complying with Civil Rule 54.17. In this connection, the affidavit should factually demonstrate why service by certified mail cannot be obtained.

The docket clerk will direct the appropriate legal newspaper to make the publication.

The attorney should furnish the text of the published notice for matters that are not routine. The affidavit averring completion of published service will be mailed by the publisher to the attorney. It is the practice of most publishers to require payment prior to mailing. The Court may not ear the matter an , in any event, will not enter a judgment in the matter until the affidavit of completed service has been filed.

References: Form 10370
§ 472.100
Civil Rule 54.17

7.120 Personal or Mail Service by Summons - Requirements

In all cases in which personal service by summons is required by statute or court order, sufficient service copies of the petition or application shall be provided by the petitioner's attorney.

The docket clerk will initiate service on parties in Jackson County by directing process to the Civil Process Department of the Circuit Court. For service in other counties, the docket clerk will prepare a service packet, consisting of the summons and pleading, which must be picked up by the attorney who is responsible for obtaining service through the sheriff of the county in which the party resides. The service packet(s) will be mailed to the attorney if a stamped, self addressed envelope is provided.

Where service is by summons, the hearing date will not be set until the case is at issue and, in any event, not until the expiration of 30 days from the date of service. The hearing date will be selected by agreement of the attorneys if possible. If the attorneys cannot agree, the party seeking the hearing may file a motion for a trial setting.

7.130 Pre-Trial Conferences

Pre-trial conferences may be requested pursuant to Civil Rule 62.01 or initiated by the Court on its own motion. Because of the problems inherent in scheduling hearings and the necessity for either the Judge or Commissioner to be available for mental health and emergency guardianship hearings, the Court may request an informal conference to determine the length of the trial, the scheduling of witnesses and the resolution of potential evidentiary disputes.

7.140 Motions

Where either party files a motion in any adversary proceeding, Civil Rule 55.25 applies. The movant should monitor filings to insure the Court considers the motion when applicable time periods run.

7.150 Appeals

Appeals are taken pursuant to Civil Rule 81. All requests for preparation of the legal file and transcript shall be made to the Probate Division docket clerk regardless of whether the case was heard in Kansas City or Independence and regardless of whether the testimony was transcribed by a sound recording device or court reporter.

7.160 Recording of Hearings

Jury waived hearings in the Probate Division are tape recorded.

When the docket clerk receives a request by an attorney for a copy of the tape recording, the attorney must provide a portable tape recorder and blank tapes to make the copy. The attorney or a member of his staff will make the recording under the supervision of the docket clerk. This service is provided by appointment only when the courtroom is available.

Jury trials in the Probate Division are transcribed by a court reporter. Requests for transcripts, other than for the purpose of appeal, should be made directly to the court reporter who transcribed the proceedings.

7.170 Requests for Findings of Fact and Conclusions of Law

If findings of fact and conclusions of law are requested, counsel should submit the request in writing and should also supply the court with a computer disk in WordPerfect, preferably WordPerfect 5.1.

[END OF SECTION]

Section 8 - Refusals, Small Estates and Other Short Form Proceedings

8.10 Refusal of Letters to Spouse and Minor Children

8.10.1 Filing

Applications for refusal of letters to spouse and/or minor children made pursuant to § 473.090, RSMo, should be filed with the New Estates Clerk. The application must be verified. Generally, no bond will be required.

The application for refusal may be filed at any time after the date of death of the decedent notwithstanding that more than one year from the date of decedent's death has expired.

If the applicant is represented by an attorney, the attorney must prepare the Order Refusing Letters on the court's form or a reproduction.

References: Form 10517, Form 10518
§§ 473.070, 473.090, 474.250, 474.260

8.10.2 Circumstances Under Which Issued

As a general rule, without requiring evidence as to standard of living, the Court will issue a refusal to a spouse if the value of assets does not exceed $12,000 (plus the value of exempt property) and a refusal for each unmarried minor child if the value does not exceed $6,000 per child. If the application describes assets of a value in excess of $12,000 for spouse or $6,000 for each unmarried minor child, evidence of standard of living will be required. Acceptable proof of income is decedents income tax return for the last full calendar year immediately preceding death. Proof of necessary living expenses to show standard of living should be supplied by affidavit setting out monthly expenditures of the surviving spouse and/or minor child.

8.10.3 Application

Each application shall include:

(1) For each party: (a) the full name, including all aliases, street address and date of death of decedent; (b) the full name, date of birth and address of each surviving unmarried minor child together with the name and address of the child's surviving parent, his legal guardian and conservator, if any, and the name and address of the person(s) with whom he resides; and the full name and address of the surviving spouse, if any.

(2) A specific description of each asset, including the fair market value as of the date of death. For real property, give legal description and street address. For automobiles, give a full description of the car, including

make, model, year, engine or manufacturer's number and the certificate of title number. For stock certificates, give the full name of the company, certificate number and number of shares. For bonds, give the full name of the issuer, date of issue, maturity date, accrued interest and serial number, if any.

(3) The equity value of the asset, if encumbered. The equity value shall be used to determine the total value of assets to be set over on the order of refusal. Unsecured debts are not encumbrances.

8.10.4 Real Property

Real property must be appraised. The value of real property may be established by a letter appraisal of a licensed realtor familiar with property values in the area of the subject property. For recording title to real property, see section § 473.090.4, RSMo.

Reference: § 473.090.4

8.10.5 Multiple Applications

If the decedent is survived by a spouse and a minor child who is the child of the surviving spouse and residing with the surviving spouse, no separate refusal will be allowed for the minor.

Multiple applications will be consolidated for consideration. Where the surviving spouse is not the parent of a surviving minor child, an adversary hearing on the applications may be required.

Reference: § 473.095

8.10.6 Amended Applications

If, after the granting of the application, additional assets are discovered and the value of total assets are not greater than that which would have been originally allowed, an amended application may be filed by the same parties who filed the original application and an amended order of the Court will be issued, vesting title to the additional assets in the applicant. If additional assets are discovered which would be greater in amount than that which would have been allowed, the previous order will be set aside and all property of the decedent will become subject to administration if one year from the date of the death of the decedent has not expired. If one year from the date of death has expired, an amended order of the Court may be issued, vesting title to the additional assets in the applicant.

Practice Tip: Title of one motor vehicle may be transferred without court order to the surviving spouse on a form provided by the Missouri Department of Revenue, Director of Motor Vehicles. (Form name - "Surviving Spouse")

References: Form 10505, Form 10517 (Pages I and 2)
§§ 473.070, 473.090, 473.095, 474.250, 474.260

8.20 Application for Refusal of Letters to Creditors

An application for refusal of letters to creditors made pursuant to § 473.090.1(2), RSMo, should be filed with the New Estates Clerk. It must be filed within one year from the date of death of the decedent. Any person, including decedent's heirs, may be a creditor. If the creditor is a person other than the funeral director, the application must be accompanied by evidence that the funeral bill has been paid. If the value of the assets to be set over is greater than the amount of the creditors claim, a bond in an amount equal to the difference between the creditors claim and the value of the property will be required. The new estates clerk should be consulted with respect to bond requirements. Effective May 23, 1996, a creditor may secure a refusal of letters for assets up to $15,000.00 in value.

References: Form 10500 (Pages 1 and 2), Form 10501, Form 10505
§§ 473.070, 473.090.1(2), 473.444

8.30 Collection of Small Estates on Affidavit

8.30.1 Affidavit - When Filed

Affidavits based upon the testator's last will and testament may be filed at any time after the last will and testament has been presented to the probate division for admission. The last will and testament must be presented for admission within one year of the date of death of the testator.

Affidavits involving an intestate decedent may be filed at any time after the date of death even if more than one year since the date of death has expired. However, affidavits are limited to a maximum of $40,000.00.

8.30.2 Value of Estate

Affidavits to establish title of distributees to property of the decedent with a value equal to or less than $40,000.00 are filed with the new estates clerk.

The value of the estate's assets are determined by subtracting encumbrances on the property from its gross value. Funeral expenses and other unsecured debts of the decedent are not encumbrances. They may not be used to decrease the value of the assets. Real property passing pursuant to the small estate affidavit must be valued by a letter from a realtor.

References: Form 10620, Form 10623
§§ 473.070, 473.097

8.30.3 Published Notice - When

When the value of the property exceeds $15,000.00 and one year from the date of death of the decedent has not expired, a notice to creditors must be published. § 473.097.5 RSMo. The form of notice is contained in the statute.

8.30.4 Bond

A bond may be required in the amount of the value of the assets. Where evidence of the paid funeral bill is presented, bond will be waived if all heirs/devisees sign the affidavit or if the applicant is the sole heir/devisee. Where the heirs or devisees are minors and/or incapacitated persons, as a matter of general policy the Court will look at the practical costs of alternatives to requiring a bond. When a bond is required , the amount of the bond will be reduced by the amount of a paid funeral bill evidenced by a paid receipt. No bond is required where real property only is being distributed unless the funeral bill has not been paid or specific bequests, in a will admitted to probate, have not been satisfied.

Reference: Form 10621
§ 473.097.1(3)

8.30.5 Presentation of Will

If a decedent's will is presented for probate with the affidavit, all devisees must be listed on the affidavit. State the names and relationships to the decedent of the surviving spouse, devisees and lineal descendants of devisees. Any devisee not living on the date the affidavit is filed shall be listed with the devisee's date of death.

References: Form 10620, Form 10621

8.40 Determination of Heirship

8.40.1 Within a Decedent's Estate

When an estate administration is commenced and no heirs are known, the personal representative must make a diligent effort to locate heirs. This effort includes publishing for unknown heirs. The personal representative must prepare the publication in compliance with § 473.040, RSMo. The prepared notice of publication must be signed by a deputy clerk of the Probate Division prior to the personal representative submitting it to the appropriate legal publication. If purported heirs are located, the personal representative may file a petition to determine heirship.

Reference: § 473.040

8.40.2 Where No Administration Commenced Within One Year

Where no administration has been commenced within a year of decedent's death, any interested person may petition to determine the decedent's heirs as to particular property. The Court will determine the interest of the heirs as of the date of decedent's death, including a person claiming through an heir who died subsequently to decedent's death.

The petition should show the heirs' proportionate interest in the property. Upon filing of the petition, the Docket Clerk will request the publication required by 473.663.3 and 473.633.4, RSMo from the appropriate legal publication.

If publication for known heirs whose whereabouts are unknown is required by § 472.100, RSMo, the notice of publication must be prepared by the petitioner. The prepared notice must be signed by the docket clerk of the Probate Division before the petitioner submits it to the appropriate legal publication.

At the hearing on the petition, proof of the allegations in the petition must be presented. Where complex, multi-generation family relationships are involved, attorneys should be particularly thorough in presenting proof of the lines of descent. The order submitted to the Court for approval should show the quantum of interest in t he property of the alleged heirs, rather than the character thereof, i.e., "100 %" rather than "fee simple" or, if less, a fractional interest, "one-third."

References: §§ 472.010, 473.633.3, 473.633.4

8.50 Termination of Administration

When terminating the estate pursuant to § 473.092, RSMo, the personal representative must complete and file a final cost calculation form. After costs, if any, are paid, pending applications will be considered by the court. See Section 5.40.1 on requesting final costs.

Reference: Form 10268
§ 473.092

[END OF SECTION]

Section 9 - Wills

9.10 Delivery to Court and Admitting Wills to Probate

9.10.1 Will Filed

Wills are handled by the New Estates Clerk. When a will is brought to the Court for filing only, it must be submitted with a "Statement as to Filing of Instrument in Writing," Form 10051, if no probate is currently requested. No filing fee is required if the will is merely filed.

9.10.2 Will Presented

If the will is presented for admission to probate, it must be filed and accompanied by a "Statement as to Death and Presentment of Instrument in Writing for Probate," Form 10050. Neither the filing nor the presentment of the will for probate commences the administration of the estate. Administration is commenced by the filing of an application for letters.

References: Form 10050, Form 10051
§§ 473.013, 473.043, 473.050, 473.087

9.20 Proof of Instrument

9.20.1 Self-Proving Instruments

When a will is self-proving, it will be admitted upon the filing of the will and the "Statement as to Death and Presentment of Instrument in Writing for Probate".

A self-proving codicil which republishes prior wills and codicils proves the prior wills and codicils.

Once the last codicil is proved, all prior wills and codicils which are republished by the last codicil are also proved.

Reference: §§ 473.065, 474.337

9.20.2 When Will is Not Self-Proving

When a will is not self-proving, it is the duty of the attorney to request two of the witnesses to appear before the new estates clerk to testify as to the facts showing that the will was executed in accordance with § 474.320, RSMo. See Section 9.20.4, infra, regarding commissions.

References: §§ 473.053, 474.320, 474.337

9.20.3 Witness Deceased, Incapacitated or Whereabouts Unknown

If a witness is deceased, incapacitated or his whereabouts unknown, follow the procedures in § 473.053.2, RSMo, unless there are two other witnesses available. If the whereabouts of a witness is unknown, the attorney must also file an affidavit of diligent search for the witness whose whereabouts is unknown.

Reference: § 473.053

9.20.4 Commissions

A commission to a notary or other officer authorized to take oaths to certify the attestation of a witness to a will or codicil will be issue upon request. The commission will be given to the attorney whose responsibility it becomes to have the return of the commission properly executed and filed with the Court.

References: Form 10451
§§ 473.057, 473.060 (But see also §§ 473.053, 474.310 - 474.360)

9.20.5 Lost Will, Alleged Revocation

The Court will require proof of will in solemn form where a will or any portion thereof is lost, where there is an issue of dependent relative revocation, where there may be partial revocation by a physical act or any other similar circumstances. Admission in solemn form involves giving notice of hearing to all interested persons, including surviving spouse, unmarried minor children, heirs, devisees and lineal descendants of devisees who were relatives of and predeceased the testator.

9.30 Foreign Wills

In order to admit a foreign will, it is necessary to file copies of the foreign will, the order admitting the instrument to probate and the testimony of the witnesses, if available, all authenticated according to the Act of Congress, and the Court's form, "Statement as to Death and Presentment of Instrument for Probate," or a similar pleading.

NOTE: The copies of the foreign will, the order admitting it to probate and the testimony of the witnesses must be authenticated and not certified copies.

References: §§ 474.370, 474.380
28 U.S.C.A. § 1738

9.40 Disposition of Personal Property by List

9.40.1 Filing

A list which purports to dispose of tangible personal property through a will is a document of independent significance and is not admitted to probate, but should be filed with the will. However, time limits and grounds for challenging a list are the same as for challenging a will. The Court will construe ambiguous lists in the same manner as provided for will constructions.

9.40.2 Limitations on Disposition by List

Money and intangible personal property may not be devised by list.

9.40.3 Application for Letters

Where a list is involved, applications for letters must include all persons mentioned on the list.

Reference: § 474.333

9.50 Pour-Over Wills, Copy of Trust Agreement@

The Court will not require the filing of the trust instrument unless it is necessary to determine the identity of the beneficiaries, trustee or res or for some other purpose.

9.60 Will Construction

The personal representative or any person interested in the will may file a petition to construe a will. The petition shall set forth the provisions of the will to be construed and shall allege any other facts as may be required to frame the issues. The petition shall be set for hearing and all heirs and devisees who could be affected by any possible reasonable construction shall be given notice thereof. If any heir or devisee is a minor or incapacitated person, the appointment of a guardian ad litem may be required. Since the persons to be notified in each case may vary according to the facts and circumstances of the case, d any doubt exists as to the identity of interested persons, it is suggested that the petitioner confer with the Judge or Commissioner with respect to identification of interested persons for purposes of hearing.

References: §§ 472.020, 473.084, 474.430, 474.520

9.70 Will Contests

9.70.1 Where Filed

Will contest actions will be filed at the case initiation counter in the Office of Civil Records and will be assigned to the Probate Division. Each case file will continue to bear the civil case file number assigned to it by the Office of Civil Records.

9.70.2 Designation

A will contest is an adversary civil proceeding. See Section 7.50.

9.70.3 Effect of Filing

The timely filing of a will contest action vacates the order admitting the will to probate so that the personal representative has no power or authority pursuant to the provisions of the will. Thus, a testamentary power to sell property is rendered inoperative. Independent administration is converted to supervised. Upon receipt of notice that a will contest action has been filed, the Court is required to appoint an administrator pendente lite and to fix a bond. State ex rel. Frick v. Frick, 777 S. W. 2d 653 (Mo. App.1989). In order to implement this requirement, the Court will issue an order addressed to the devisees of the will and to any other persons named as parties in the will contest action to show cause why the named executor of the will should not be appointed administrator pendente lite under bond. The issue to be determined at the hearing on the order to show cause is whether or not the interest of the named executor is sufficiently adverse to the will contest plaintiff(s) to warrant the appointment of a disinterested third person as administrator pendente lite.

Reference: §§ 473.083, 473.137

9.70.4 Authority of Fiduciary

9.70.4(a) Personal Representative's Authority

Frick v. Frick makes it clear that the personal representative's authority is suspended between the time the will contest action is filed an the time the administrator pendente lite is appointed. If an emergency arises pending a hearing on the show cause order referred to in § 9.70.3, supra, the personal representative could petition the court to be appointed administrator ad litem with authority to perform specified acts in the interest of the estate. Since the case mandates that an administrator pendente Iite serve with bond, the Court will require the administrator ad litem to file a bond.

9.70.4(b) Administrator Pendente Lite's Authority

Irrespective of whether or not the Court appoints the personal representative as administrator pendente lite or appoints a disinterested person, the authority of the administrator pendente lite is that of a supervised personal representative of an intestate estate.

If a disinterested third person is appointed administrator pendente lite, it will be the duty of the former personal representative to file final settlement of his administration. If the personal representative has not filed an inventory or taken charge of any assets a final settlement may not be necessary. It is the duty of the administrator pendente lite to assure that the former personal representative administered the estate

properly and he should file objections to any transaction perceived by him to be improper.

Upon the conclusion of the will contest action, if the persons then interested in the administration of the estate do not object, the administrator pendente lite may complete the administration of the estate in accordance with the judgment entered in the will contest action; or upon motion of an interested person and the filing of an application for letters, letters may issue to some other suitable person.

Reference: § 473.137

[END OF SECTION]

Section 10 - Applications for Letters - Supervised Administration

10.10 Applications, Where Filed

All applications for letters of administration or letters testamentary in estates to be administered in Kansas City should be filed with the new estates clerk in Kansas City. All applications for letters of administration or letters testamentary in estates to be administered in Independence should be filed with the Probate Division staff in Independence. (See § 478.473, RSMo) Applications may be left in either Kansas City or Independence for transport to and filing in the other location. All applications must be accompanied by the appropriate filing fee (See § 483.580, RSMo) and, in Kansas City, a check payable to *The Daily Record* for the cost of publication if publication is to be in *The Daily Record.*

References: §§ 473.010, 478.473, 483.580

10.20 Form and Contents

10.20.1 Court Form, Relationship to Decedent

The Court prefers the use of its own forms for application for letters of administration or testamentary, forms 10030 and 10070 respectively.

The relationship to the decedent of the persons listed on the application must be accurately and adequately shown since the application is the foundation upon which the order of distribution is predicated. The relationship of an heir or devisee to a deceased ancestor must be shown. For example, if the heirs of the decedent are two brothers and a niece and nephew who are the children of a deceased brother, they should be listed as follows:

John Doe	Brother
Richard Doe	Brother
Harold Doe (Date of Death)	Brother, survived by:
James Doe	Nephew
Alice Brown	Niece

References: Form 10030, Form 10070
§ 473.017

10.20.2 Letters Testamentary

In an application for letters testamentary, state the names, relationships to the decedent and residence addresses of the surviving spouse, heirs, devisees (including trustees) and lineal descendants of devisees who were relatives of and predeceased the testator. Indicate those believed by the applicant to be mentally incapacitated and the birth dates of those who are minors. Also state, so far as is known to the applicant, the

names and addresses of the custodians named in the will for a minor or adult and the conservators of any minor or mentally incapacitated devisees or heirs, including the surviving spouse, and their relationship to the decedent. Any devisee or heir not living on the date the application Is filed shall be listed with date of death.

Reference: Form 10070

10.20.3 Letters, of Administration

In an application for letters of administration, state the names, relationships to the decedent and residence addresses of the surviving spouse and heirs. Indicate those believed by the applicant to be mentally incapacitated and the birth dates of those who are minors. Also state, so far as is known to applicant, the names and addresses of the conservators of those who are minors or disabled. For any heir who died subsequently to the decedent, list that deceased heir's personal representative, location of estate and, if in Jackson County, number of estate. Any heir not living on the date the application Is filed shall be listed with date of death.

Reference: Form 10030

10.20.4 Current Addresses

Names and addresses of all heirs or devisees in the court file should be kept current by form 10444 or its equivalent. Failure to do so may cause delay in the administration of the estate due to inadequate notice. The Court does not assume the responsibility for making name or address changes from collateral documents or other pleadings filed. When other information on the application needs to be corrected or supplemented, a new application with the word "amended" must be filed.

References: Form 10030, Form 10070, Form 10444
§§ 473.017, 473.020

10.30 Hearing on Applications for Letters

10.30.1 Intestate Estate.

In intestate estates, an application for letters of administration must be set for hearing at the request of applicant unless all entitled to serve pursuant to § 473.1 10, RSMo, renounce that right and consent to the appointment of the applicant.

A person entitled to letters pursuant to § 473.110.2(l) or (2) may, if eighteen years of age or older and not incapacitated, nominate a qualified person to act as personal representative. If persons entitled to letters do not consent to the nomination of another, the application for letters must be set for hearing.

References: §§ 473.110, 473.113

10.30.2 Testate Estates

In testate estates, a named personal representative who applies will be appointed without a hearing. Where a named personal representative (or co-personal representative) has not filed an application or a refusal to serve, any other applicant (including the other co-personal representative), whether named or not, must request a hearing on his application. Where a named personal representative (or any co-personal representatives) has filed a refusal to serve, renunciations from all others entitled to serve must be obtained to avoid a hearing.

References: §§ 473.110, 473.113

10.30.3 Notice

All persons entitled to serve as personal representative must be notified by certified mail when a hearing is required. The Court will send the notice upon request.

Reference: § 473.110

10.40 Administrator Ad Litem

Pending the hearing date, an administrator ad litem may be appointed upon a showing of need and the existence of no adequate remedy at law (e.g., wasting assets or the need for immediate attention to estate assets). The Court will normally require that the administrator ad litem file a corporate surety bond as a condition precedent to the appointment.

10.50 Filing Bond

Prior to the issuance of letters, the person to be appointed personal representative shall file, if required, a corporate surety bond in a sum set by the Court. See Section 11 on requirements relating to surety bonds.

Reference: Form 10032 or corporate surety's bond form

10.60 Publication of Notice of Letters Granted

Once the required bond is filed and letters are granted, the Probate Division will order the initial publication. The attorney may designate the newspaper. If no designation is made, the Court will use *The Daily Record* in Kansas City and *The Examiner in* Independence. The attorney is responsible for the accuracy of the publication.

The cost of publication must be paid by the personal representative with estate assets. With respect to publication in *The Daily Record*, the personal representative must present a check to the Court payable to *The* Daily Record at the time of filing the application for letters.

References: §§ 473.033, 473.037
[END OF SECTION]

Section 11 - Application for Letters - Independent Administration

11.10 Applications, Where Filed

Same As Section 10.10

Additional reference: § 473.780

11.20 Form and Contents

Same as Section 10.20; however, note that in both testate estates (Section 10.20.2) and intestate estates (Section 10.20.3), interested minors need not consent to independent administration d all other competent adult beneficiaries consent.

Additional reference: Form 10021

11.30 Hearing on Applications for Letters

Same as for Section 10.30

11.40 Administrator Ad Litem

Same as for Section 10.40

11.50 Filing Bond

Same as Section 10.50 (For requirements relating to surety bonds, see Sections 12 and 13.

11.60 Publication of Notice of Letters Granted

Same as Section 10.60, except that the language set out at § 473.783,RSMo, shall be included in the publication.

Additional reference: § 473.783

[END OF SECTION]

Section 12 - Bonds In Decedents Estates – Supervised Administration

12.10 Bond, When Filed

12.10.1 When Required

A bond is required in all intestate estates. In testate estates, a bond will be required when the will does not waive bond for the person to be appointed personal representative.

Section 473.160.1, RSMo, provides that the Court may at any time require bond. Delinquency in compliance with any court order or statutory requirement may result in a court order directing the filing of a bond.

References: §§ 473.157, 473.160

12.10.2 Type of Bond

Because of the requirements necessary to qualify the principal and sureties on a personal surety bond, a corporate surety bond is usually more cost effective.

References: Form 10032 or corporate surety's bond form
§§ 473-157, 473.160

12.20 Bond Form, Requirements

The condition of the bond as set out at § 473.157.2, RSMo, must be stated on the bond. Each bond shall be signed by the principal (personal representative) and his surety, and their signatures must be acknowledged,. Where an attorney-in-fact signs for the surety, a copy of the power-of-attorney must be attached to the bond.

References: §§ 473.157, 473.167, 473.173

12.30 Uniformity of Sureties

All additional bonds which may be required must be executed by the same surety as the original bond. If this is not possible or desirable, then a new bond in the full amount required must be filed accompanied by an application and order to terminate the original surety's future liability as of the date of the Court's approval of the new bond. The surety company's bond number must be included on the original bond. On any subsequent bonds, the number must be consistent with the original bond and must be stated on the bond. All additional bonds or riders shall be designated "Additional" or "Rider". All additional bonds or riders must contain or refer to the condition of the bond set forth in 473.157.2, RSMo, and must be executed and acknowledged in compliance

with § 473.167 RSMo; and where an attorney-in-fact signs for the surety, a copy of the power-of-attorney must be attached to the additional bond or rider.

References: §§ 473.157.2, 473.167, 473.203

12.40 Amount of Bond

The initial amount of the bond, when required, shall be set by the Court at the hearing, if any, based on the actual value of the personal property to be administered. Later adjustments in the amount of the bond will be based on the actual value of the property as reflected in the more recent of the inventory or latest annual settlement, as more particularly set out in Sections 12.70 and 12.80, infra. Note that this rule is different from the rule related to the amount of bond in a conservatorship which requires that a conservator also be bonded for one year's income.

12.50 Minimum Bond

Except in cases covered by §§ 473.090, 473.097, 473.160.1 or 473.160.3, RSMo, a minimum bond of $1,000 shall be required in all cases.

References: §§ 473.090, 473.097, 473.160.1, 473.160.3

12.60 Waiver of Bond

All distributees then interested in a decedent's estate may waive the requirement of a bond, but not sooner than upon the expiration of the non-claim period.

References: §§ 473.160.1, 473.160.4, 473.360

12.70 Increase of Bond

Upon the filing of the original inventory or any supplemental, corrected or amended inventory or an annual settlement, the Court shall determine whether the bond is sufficient and, if not, shall notify the personal representative to file additional bond. Within two weeks, the additional bond must be filed or the personal representative or attorney must show why an additional bond is not necessary. See Section 12.80, infra.

An order confirming the sale of real property will not be entered until the personal representative files an additional bond sufficient to cover the proceeds of the sale receivable by the estate unless the current bond is already adequate. - Proceeds receivable by the personal representative, if less than the full sale price, must be evidenced by a closing statement prepared by a title company, financial institution or licensed real estate broker.

References: §§ 473.160, 473.190, 473.193, 473.197

12.80 Citation - Failure to File Additional Bond

Failure to timely file the additional bond within two weeks of the Courts request will result in the issuance of an order to file additional bond stating that unless the additional bond is filed within two weeks, an order for -citation will issue to show cause why the personal representative should not be removed. If a citation issues, the personal representative and his attorney must appear at the hearing unless it is continued. The citation will be dismissed upon:

(1) the filing of the additional bond,

(2) the payment of the citation costs and

(3) obtaining the dismissal from the Judge, Commissioner or Deputy Commissioner.

The costs of the citation may not be paid from the assets of the estate.

Reference: § 473.200

12.90 Reduction of Bond

The amount of a bond may be reduced provided that the personal representative upon application and order places the funds or securities in a restricted account or restricted safe deposit box at a Missouri financial institution to be withdrawn only upon order of the Court. In no case shall a bond be reduced below the amount of $1,000 except as stated in Section 12.50. Bond will not be reduced between settlement dates except when money or securities are placed in an appropriate restricted account or box and verifications are filed, or upon filing receipts for partial distributions.

References: Forms 10113, 10114, 10530, 10531, 10532, 10533
§§ 473-160.2, 473.163, 473.197

12.100 Effect of Restricted Deposits on Bonds

12.100.1 Verification of Restriction Required

The deposit of cash or securities in an account at a Missouri financial institution or in a Missouri safe deposit box which is restricted so that withdraws may be made only on order of the Probate Division may be employed to reduce the amount of the personal representative s bond. Before the bond is actually reduced, a verification of restricted deposit or box executed by the depository describing the securities or stating the amount of cash must be filed with the Court. Thereafter, so long as the restricted account is in existence, a dated verification of the restriction and the amount of the restricted asset

must be filed with each settlement. The date of the verification must be the same date as the ending date of the settlement.

Reference: Forms 10532, 10533
§ 473.160.2

12.100.2 Amount of Bond

Notwithstanding the fact that all personal property has been placed in restricted custody, the Court shall require the personal representative to maintain a bond of not less than $1,000 and may require a bond greater than that amount if the restriction covers securities subject to market fluctuations which could result in a loss to the estate.

12.100.3 Release of Restricted Property

As a practical matter, assets in a decedent's estate are seldom restricted. However, where assets are restricted, the personal representative's bond shall be increased as a condition precedent to the release of property from a restricted account. The amount of the increase in bond shall be equal to the current value of the property released. The fact that the property is to be immediately disbursed, distributed or moved to a different financial institution by the personal representative does not operate to waive this requirement.

If the funds do not go through the personal representative's hands, they will not have to be bonded. If transfer of funds is necessary, authority for a direct transfer may be sought wherein the transferring bank transfers funds to the receiving bank to a restricted account for the benefit of the estate. The bank may also make a direct payment of expenditures from a restricted account if the Court's order contains language authorizing the bank to pay a specific amount to a named payee.

Practice Tip: When restricting all assets of an estate, the personal representative must weigh the cost of attorney time in preparation of applications to withdraw funds from restriction versus the cost of the bond premium if assets remain unrestricted. Generally, if several applications are filed annually to withdraw funds from restriction, it is more cost effective to leave sufficient funds for annual expenses unrestricted and file a bond to cover the unrestricted assets.

Reference: § 473.160.2

12.100.4 Method for Distribution of Assets Without Increasing Bond

Expenditures and distributions may be made without increasing the bond if an order is obtained, on proper application, authorizing the depository to issue bank drafts, bank checks or cashier's checks to the payees and in the amounts set forth in the order.

The depository may deliver such checks to the personal representative whose duty it is to deliver them to the named payees and secure a receipt from each such payee to provide voucher proof for the disbursement entry to be made on the ensuing settlement. If this procedure is employed in connection with distribution on final settlement, the persons named and amounts stated in the order must conform to the decree of distribution.

12.100.5 Distribution of Bearer Securities or Stocks

On order of the Court, bearer securities may be distributed directly to the distributees from restricted custody. If the distributes is unable or unwilling to receipt for the securities from the custodial depository, the securities may be forwarded to a correspondent depository who shall secure the distributee's receipt.

Stock registered in the name of the personal representative or in street name may be delivered by the custodial depository to a broker or transfer agent for transfer to the distributee's name. The Court may authorize other similar methods of distribution of securities without requiring increased bond.

References: Forms 10032, 10113, 10114, 10530, 10531, 10532 & 10533.

[END OF SECTION]

Section 13 - Bonds in Decedents' Estates - Independent Administration

Section 12 applies in its entirety except that the amount of the bond must include the value of the real property as well as personal property, because of the unrestricted authority of an independent personal representative to sell real property without court order.

[END OF SECTION]

Section 14 - Inventory - Supervised Administration

14.10 Time for Filing

The inventory must be filed within 30 days after the issuance of letters. Good cause must be shown for any extension of time to file an inventory. One extension of time, of not more than 30 days, for the filing of the inventory may be granted by the inventory clerk upon the filing of a written application. The Chief Auditor may grant the first or second continuance of 30 days each. Requests for further extension of time will be considered by the Judge, Commissioner or Deputy Commissioner.

If there is an asset (e.g., stock in a closely-held corporation) whose value may not be readily ascertained, an inventory shall be promptly filed listing the asset as "value undetermined" but listing all other assets with their values. An amended inventory shall be filed as soon as the value is determined and, in any event, on or before the due date of the first annual settlement.

References: Form 10260, Form 10264
§§ 473.233, 473.237, 473.240

14.20 Citation - Failure to File Inventory

Failure to timely file an inventory will result in the issuance of a continuance stating that unless the inventory is filed within two weeks, an order for citation will issue to show cause by a date certain why the personal representative should not be removed. If a citation issues, the personal representative and his attorney must appear at the hearing unless it is continued. The citation will be dismissed upon:

(1) the filing of the inventory,

(2) the payment of the citation costs and

(3) obtaining the dismissal from the Judge, Commissioner or Deputy Commissioner.

The costs of the citation may not be paid from the assets of the estate.

14.30 Contents

The inventory must contain a list of all decedent's property, including exempt property, valued as of the date of decedents death. Changes in the nature of assets occurring subsequent to death but prior to preparation of the inventory should be reflected in the first settlement, not in the inventory. For example, an uncashed social security check must be listed under personal property (category 6) on the inventory. When cashed, it must be shown as a wash entry on the settlement debiting the cash amount and crediting the appropriate inventory number and amount.

All original, supplemental and amended inventory values must be date of death values. However, when real property is acquired during the administration of the estate, such as when property is inherited or where the personal representative specifically executes a contract of the decedent, the inventory value is the value on the date of acquisition.

References: Form 10260
§ 473.233

14.40 Jointly Held Property

An inventory is a list of property owned solely by decedent or as tenant in common with others but does not include joint property with right of survivorship or entirety property unless the other joint owner predeceased the decedent.

14.50 Description of Property

Categories of property should be grouped together in the inventory, i.e., all real property together, all common stock together and so forth.

14.50.1 Real Property

Set forth legal description and street address including the city and county. If encumbered, show balance due, subtract from appraised value as shown and state only "equity" in value column. The legal description and ownership of record should be verified. **Do not include real property located in other states.**

In some states, **mineral interests** are treated as real property and thus should not be included in the inventory. [See 4 Summers, Oil & Gas Law, Chapter 26, 'Taxation"; Hemingway, Law of Oil & Gas (2d Ed., 1983, West Publishing Co.); Anno: Oil and Gas Royalty As Real or Personal Property, 56 A.L.R. 4th 539 (1987).]

The inventory must show the fractional interest of the decedent, if any. The name(s) of any individual who also has an interest in the property must be reflected on the inventory.

14.50.2 Furniture, Household Goods And Wearing Apparel

No detailed appraisal or listing of the items is required, unless items are specifically devised. Any item contained on a separate list referenced in the will according to § 474.333, RSMo, must be treated as a specific devise for purposes of the inventory.

If specifically devised items are not listed in the inventory, it is presumed they were not an asset of decedent's estate at the date of death.

Reference: § 474.333

14.50.3 Corporation Stocks

State number of shares, class of stock, full name of company and date of death value. List accrued dividends to date of death as a separate but related inventory item.

14.50.4 Mortgages Deeds Of Trust. Bonds. Notes And Other Written Evidence of Debt

For mortgages and deeds of trust state: name or other identifying data; issue date; face value; maturity date; outstanding principal at date of death; rate and due date of interest; date of death value; amount of interest accrued to date of death; maker, payee and endorser; and security, if any. List accrued interest to date of death as a separate but related inventory item.

For notes state: name or other identifying data; issue date; face value; maturity date; rate and due date of interest; date of death value; principal balance due at date of death; amount of interest accrued to date of death; maker, payee and endorser; name of pledgor or mortgagor, if any; and security for note, ff any. List accrued interest to date of death as a separate but related inventory item.

For bonds state: name or other identifying data; face value; issue date; maturity date; rate and due date of interest; serial number; date of death value; and amount of interest accrued to date of death. List accrued dividends to date of death as a separate but related inventory item.

14.50.5 Bank Accounts, Money, Insurance Policies Payable To The Personal Representative, Administrator Or Estate And Life Insurance Policies Owned By The Decedent On The Life Of Another Person

State specific names and locations of banks, type of account, account number, deposit balances and accrued interest to date of death.

For life insurance policies, list the company name, specific name of the insured, policy number, proceeds payable and accrued dividends to date of death. Any anticipated refund of premiums must also be included as an inventory Item. The post-death interest should not be included in the inventory, but must be included on the settlement.

Practice Tip: The Court prefers bank accounts to be grouped together.

14.50.10 All Other Personal Property

Include any other personal property which does not fit one of the preceding categories on the inventory. For example, list automobiles, mobile homes, collections

(stamp, coin, etc.), tools, equipment and sole proprietorship business or partnership interest. Do include the detailed business or partnership inventory. For sole proprietorship and partnership interest, list only the net value of the decedent's interest.

References: §§ 473.220, 473.230

14.50.11 Property Possessed By Decedent, But Owned Or Claimed To Be Owned By Another

List separately from other property, together with a statement as to the knowledge of the personal representative as to its ownership. Do NOT place appraised value in the value column.

14.60 Supplemental Inventory

Additional assets, other than real property, discovered subsequent to the filing of the original inventory shall be included in a supplemental inventory, provided, however, if the additional assets consist only of cash, then these assets may be shown on the next settlement without the necessity of a supplemental inventory. Other items, such as stocks and bonds, if sufficiently described, can be brought in on a settlement without filing a supplemental inventory. The asset must be described in the settlement in the same manner as required on the inventory. Any supplemental inventory should carry a balance forward of the total value of all personal property previously inventoried. All supplemental inventories must be executed by the personal representative.

Real property may only be brought into the estate by a supplemental inventory.

Reference: § 473.240

14.70 Amended Inventory

Amended inventories to correct errors and make changes may be filed at any time. All amended inventories must be executed by the personal representative. Amended inventories may be filed to state a value that was originally listed as "undetermined value," but are not to be filed to reflect accounting transactions, which must instead be included in the settlement. An amended inventory may be used to delete an item incorrectly listed on the original or a prior amended inventory.

If items remain unchanged from the original inventory, the amended inventory may read, for example, "Items 1-39 remain unchanged" followed by the total value of those items. Then the items which are to be corrected or changed should be specifically itemized.

Reference: Form 10260

14.80 Orders Pending Inventory

Generally, no order in an estate, except in emergency situations or involving perishable property, will be granted until the original inventory has been filed.

14.90 Lawsuits

14.90.1 Lawsuits Filed By Decedent Prior to Death

Where there is a pending lawsuit in which decedent was plaintiff which survives the death of decedent, the inventory must state "Litigation-Value Undetermined" and list the style of the case, case number and identify the court in which it is pending. Instead of filing an amended inventory, a copy of the settlement agreement or judgment entry shall be filed with the next settlement and the proceeds thereof, ff any, shall be brought in on that settlement. If the judgment entry does not reflect the amount and terms of a settlement agreement, a copy of the settlement agreement must also be filed.

14.90.2 Lawsuits Against Decedent

Section 537.021.1(2), RSMo, provides the best method for pursuing a lawsuit against the insurance company of a deceased wrongdoer. The attorney must request the civil division in which the suit is pending to appoint a "defendant ad litem. Where § 537.021, RSMo is not applicable and a decedent's estate -is opened for the sole purpose of defending a lawsuit, the inventory must state "Litigation Only-No Value" and list the style of the case, case number and identify the court in which it is pending.

Reference: § 537.021.1(2)

[END OF SECTION]

Section 15 - Inventory - Independent Administration

Section 14 applies in its entirety, except that the independent personal representative is required by §§ 473.793 and 473.800, RSMo, to send copies of the inventory and any supplemental inventories to interested persons who request it.

Additional References: §§ 473.793, 473.800

[END OF SECTION]

Section 16 - Exempt Property, Family Allowance and Homestead Allowance - Supervised Administration

16.10 Exempt Property

Application for exempt property shall be made by the surviving spouse, if any, or if none, by the conservator or custodian of an unmarried minor child, or personally by an unmarried minor child who is at least 18 but under 21 years of age, by verified petition within a reasonable time, but before the property is distributed or sold. The surviving spouse's right to the exempt property is superior to that of any unmarried minor child and there is no statutory authority for the apportionment of the property between them. The right to the allowance is available to both residents and non-residents.

The personal representative must consent in writing to the application or the application must be set for hearing with notice to the personal representative.

References: Forms 10640, 10641
§§ 473.093, 473.095, 473.360, 473.397(3), 473.430, 474.250, 474.270, 474.280

16.20 Family Allowance

16.20.1 In General

The right to the allowance is available to both residents and non-residents. The personal representative of a deceased surviving spouse or a deceased surviving unmarried minor child may secure the allowance subject to the restrictions contained in § 474.300 RSMo. For particular problems which may arise when a minor child reaches majority, marries or dies within the one year period after the date of death, see § 474.300, RSMo.

References: Form 10642, Form 10643
§§ 473.093, 473.095, 473.360, 473.397(3), 473.675(3), 474.163, 474.260, 474.300

16.20.2 Application, How Made and By Whom

Application for the family allowance shall be made by the surviving spouse or by the conservator or custodian of an unmarried minor child, or personally by an unmarried minor child who is at least 18 but under 21 years of age, if not in the custody of the surviving spouse, or by a dependent adult child. Application must be made by verified petition within a reasonable time but, in any event, before distribution of the estate is ordered. It may not be

possible to grant the allowance in full until the time for filing claims has expired. Where it is not possible to grant the full allowance until the time
for filing claims has expired, the Court may entertain an application for a partial allowance under circumstances involving immediate economic necessity.

If the applicant is other than the personal representative, the personal representative must consent in writing to the application or the application must be set for hearing with notice to the personal representative.

16.20.3 Evidence of Standard of Living

If the application requests an allowance in excess of $12,000 for spouse, or spouse and unmarried minor children, evidence of standard of living may be required. Evidence of standard of living may also be required for requests in excess of $6,000 per unmarried minor child when there is no surviving spouse or for an adult dependent child. Usually, acceptable proof of income is decedent's income tax return for the last full calendar year immediately preceding the date of death. Proof of necessary living expenses should be supplied by affidavit setting out monthly expenditures of the surviving spouse and/or minor child.

16.20.4 Apportionment Between Spouse and Unmarried Minor Children, Ad Litem

If separate applications of the surviving spouse and the unmarried minor child are pending and an examination of the applications and court file evidences that the granting of the application could adversely affect the unmarried minor child, the Court will not enter an order granting an allowance until provision has been made for the representation of the child's interest. The Court may also require representation of an unmarried minor child who is not in the custody of the surviving spouse and has not filed an application separate from that filed by the surviving spouse. The Court may apportion the allowance between the surviving spouse and the child if it finds that it would be just and equitable to do so. If the amount allowable to any unmarried minor child is in excess of $10,000, a conservator of the child's estate may be required to receive distribution of the allowance., unless a transfer is made pursuant to § 404.031 RSMo (Missouri Transfers to Minors Law). See Section 38 re methods of distribution to a minor.

16.20.5 Insolvent Estate

If the amount of the allowance sought would render the estate insolvent, the Court may direct that the application be set for hearing with notice to creditors and other interested persons. Pending the hearing, the Court may permit a partial allowance upon a showing of immediate economic necessity.

References: §§ 473.397, 473.430

Practice Tip: The distribution of the exempt property and the payment of the family allowance may exhaust the estate. If this is the case, the expense of final publication can be avoided. If a homestead allowance is granted, it is impossible to exhaust an

estate. See Section 22.210 for the filing of a settlement where the estate is exhausted.

16.30 Homestead Allowance

16.30.1 In General

The right to the allowance is available to both residents and non-residents. Where the surviving spouse dies before payment of the homestead allowance, whether or not previously allowed, the allowance shall be paid, or allowed and paid, to the unmarried minor child, if any. -But see § 474.290.1, RSMo. If there is no unmarried minor child the homestead allowance will not be allowed or paid to the estate of the deceased surviving spouse. Schubel v. Bonacker, 331 S.W. 2d 552 (Mo. 1960). For particular problems which may arise when a minor child reaches majority, marries or dies after the date of death, but before payment of the homestead allowance, see § 474.300, RSMo.

16.30.2 Application, How Made and By Whom

Application for the homestead allowance may be made by the surviving spouse, if any, or if none, by the conservator or custodian of the unmarried minor child, or personally by an unmarried minor child who is at least 18 but under 21 years of age, by verified petition filed within 10 days after expiration of the time allowed for filing claims. No allowance will be made until the inventory has been filed, nor until the exempt property has been set over and the family allowance granted, if application therefor has been made. It may not be possible to grant the allowance in full until the time for filing claims has expired.

If the applicant is other than the personal representative, the personal representative must consent in writing to the application or the application must be set for hearing with notice to the personal representative.

16.30.3 Minor Child, Ad Litem or Conservator

If, upon examination of the spouse's application and court file, it is determined that the granting of the application would adversely affect the unmarried minor child of decedent, the Court will not enter an order granting an allowance until provision has been made for the representation of the child's interest. If an amount is allowed to any unmarried minor child, the Court may require the appointment of a conservator of the child's estate to receive distribution of the allowance, unless § 404.031 RSMo is applicable.

16,30.4 Insolvent Estates

If the amount of the allowance sought would render the estate insolvent, the

Court may direct that the application be set for hearing with notice to creditors and other interested persons. In such cases, the Court may entertain an application for a partial allowance.

References: §§ 473.397, 473.430

16.40 Allocation of Assets When Multiple Allowances are Involved

16.40.1 Calculation of Homestead Allowance and Effect on Distributive Share

The homestead allowance is the lesser of $15,000 or ½ the estate after deduction of the exempt property and family allowance. Section 474.290, RSMo, requires that the homestead allowance be offset against the distributive share of the surviving spouse or minor who receives it. However, the allowance is not reduced when it is an amount larger than the distributive share.

Thus even though the homestead allowance may have already been paid to the surviving spouse or unmarried minor child, prior to calculating the distributive share, the amount of the allowance must be added to the rest of the assets available for distribution to calculate the final distributive shares.

References: Form 10644, Form 10645
§§ 473.360, 473.397(3), 473.675(3), 474.290, 474.300

16.40.2 Example One

Assume, for example, an intestate gross estate of $20,000, decedent being survived by a spouse and two adult children, who are not issue of the surviving spouse. Under various situations, the allocations are as follows:

	Situation A	Situation B	Situation C
Gross Estate	$20,000	$20,000	$20,000
Exempt Property	-500	-500	-500
	19,500	19,500	19,500
Family Allowance	-3,500	-0	-3,500
	16,000	19,500	16,000
Homestead Allowance	-0	-7,500	-7,500
	16,000	12,000	8,500
Exp. Adm./Claims	-3,000	-3,000	-3,000
Balance to Distribute	$13,000	$9,000	$5,500
Add Amount of	+0	+7,500	+7,500

	Situation A	Situation B	Situation C
Homestead Allowance to Calculate Distribution			
Total for Calculation of Distribution	$13,000	$16,500	$13,000*

Payable Upon Final Distribution			
	Situation A	**Situation B**	**Situation C**
Spouse* (½ Share)	$13,000/2 $6,500	($16,500/2)- $750	($13,000/2 - $7,500) -$0
Child 1 (1/4 Share)	13,000/4 = 3,250	16,500/4 = 4,125	($13,000-$7,500)/2=2,750
Child 2 (1/4 Share)	13,000/4 + 3,250	16,500/4 + 4,125	($13,000-7,500)/2 = +2,750
Total Distribution	$13,000	$9,000	$5,500

Total Received From Estate			
	Situation A	**Situation B**	**Situation C**
Spouse*	$6,500+500+3,500	$750+500+7,500	$0+500+3,500+7,500
	= $10,500	= $8,750	= $11,500*
Child 1	$3,250	$4,125	$2,750
Child 2	$3,250	$4,125	$2,750

* Spouse's homestead allowance is not diminished if it is greater than the distributive share.

16.40.3 Example Two

Assume, for example, an intestate gross estate of $43,000, decedent being survived by a spouse and four adult children of the surviving spouse, under various situations, the allocations are as follows:

	Situation A	Situation B	Situation C
Gross Estate	$43,000	$43,000	$43,000
Exempt Property	-2,000	-2,000	-2,000
	41,000	41,000	41,000
Family Allowance	-8,000	-0	-8,000
	33,000	41,000	33,000
Homestead Allowance	-0	-7,500	-7,500
	33,000	33,500	25,500
Exp. Adm./Claims	-5,000	5,000	-5,000
Balance to Distribute	$28,000	$28,500	$20,500

	Situation A	Situation B	Situation C
Add Homestead Allowance	+0	+7,500	+7,500
Total for Calculation of Distribution	$28,000	$36,000	$28,000*

Payable Upon Final Distribution			
	Situation A	**Situation B**	**Situation C**
Spouse*	First $20,000 + ½ of 8,000 = $24,000 - $7,500	First $20,000 + ½ of $16,000 = $20,500 - $7,500	First $20,000 + ½ of 8,000 = $16,500
Child 1	($28,000-24,000)/4=1,000	($28,500-20,500)/4=2,000	($20,500-16,500)/4=1,000
Child 2	($28,000-24,000)/4=1,000	($28,500-20,500)/4=2,000	($20,500-16,500)/4=1,000
Child 3	($28,000-24,000)/4=1,000	($28,500-20,500)/4=2,000	($20,500-16,500)/4=1,000
Child 4	($28,000-24,000)/4=1,000	($28,500-20,500)/4=2,000	($20,500-16,500)/4=1,000
Total Distribu-ion	$28,000	$28,500	$20,500

Total Received From Estate			
	Situation A	**Situation B**	**Situation C**
Spouse*	$24,000+2,000+8,000	$20,500+2,000+7,500	$16,500+2,000+8,000+7,500
	= $34,000	= $30,000	= $34,000
Child 1	$1,000	$2,000	$1,000
Child 2	$1,000	$2,000	$1,000
Child 3	$1,000	$2,000	$1,000
Child 4	$1,000	$2,000	$1,000

* Spouse's homestead allowance is not diminished if it is greater than the distributive share.

Section 17 - Exempt Property, Family Allowance and Homestead Allowance - Independent Administration

The independent personal representative may without court order, make allowances under §§ 474.250, and 474.280, RSMo, (exempt property), 474.260, RSMo, (support allowance), and 474.290, RSMo, (homestead allowance). The independent personal representative may make any conveyances or transfer title to any property to satisfy these allowances.

The independent personal representative may not, without court authorization or waivers of interested persons, pay a family allowance of more than a lump sum of $6,000 or periodic installments in excess of $500 per month for one year.

Where a court order is required, an application pursuant to §§ 474.250, 474.260, 474.280, 474.290 or 474.293, RSMo, must be set for hearing with notice to interested persons or all interested persons must consent to the application or waive notice of hearing.

To effect a transfer of an automobile as exempt property, see Section 25.10.2(a).

References: Form 10640, Form 10641, Form 10642, Form 10643, Form 10644, Form 1045
§§ 473.844(1), 474.250, 474.260, 474.280, 474.290, 474.293

[END OF SECTION]

Section 18 - Compensation - Supervised Administration

18.10 In General

18.10.1 Standard

The criteria for determining hourly compensation to attorneys, personal representatives and paralegals is a "reasonable fee standard." Attorney fee applications will be considered in light of Rule 4-1.5 of the Code of Professional Responsibility. A "reasonable fee standard" for attorneys' compensation only applies to legal services. Attorneys cannot be compensated at normal hourly professional rates for administrative services.

Reference: §§ 473.153, 473.155

18.10.2 Signatures

Each application for compensation shall be in writing and shall be signed by all personal representatives. If the personal representative refuses to sign the application, the application must be set for hearing with notice to the personal representative. The attorney shall also sign applications for the attorney's compensation.

18.10.3 Effect of Citation, Show Cause or Exception Letter

The Court may decline to consider an application for compensation while a citation, show cause order or auditor's exception letter is unresolved.

18.10.4 Co-Personal Representatives

Where co-personal representatives are seeking compensation, the application shall state the requested division of compensation among them in dollar amounts. If no agreement can be reached by the personal representatives, the matter will be set for hearing.

18.10.5 Hourly Compensation

When hourly compensation in excess of the statutory fee is sought in a decedent's estate, the application must be prepared in manuscript form and contain a reasonably detailed description of the nature of all services performed, the date performed, the amount of time expended in connection with the service, the total hours expended and the hourly rate charged. Where attorney services and paralegal services are shown in the same application, it is necessary to distinguish which services and time were spent by the attorney and which by the paralegal, differentiating total hours and hourly rates charged. Where several attorneys render services at different hourly rates, the attorneys and the hourly rates charged must be stated. The court does not have a form for hourly compensation applications.

Reference: § 473.153

18.10.6 Statutory Compensation

If statutory compensation is sought, the application shall be made in accordance with form 10160.

References: Form 10160, Form 10161, Form 10162, Form 10163
§ 473.153

18.10.7 How Reflected on Settlement

Final fees will be allowed prior to the filing of the final settlement and must be shown on the final settlement as credit entries (resulting in their deduction from the amount to be distributed) even though not payable until approval of the settlement and decree of distribution. The Court may allow a partial fee on application and order prior to approval of the settlement and decree of distribution.

References: Form 10160, Form 10161, Form 10162, Form 10163
§ 473.153.4

18.10.8 Payment for Specialized Services in Addition to Statutory Fee

So-called mixed fee applications, that is, applications for a statutory fee, plus an hourly fee for the attorney or for the personal representative for "additional services" will not be considered in any case. However, in estates in which statutory compensation is sought by the attorney or by the personal representative, the Court will consider, and will allow in appropriate cases, applications for reasonable compensation (to be paid out of the estate in addition to statutory compensation) for:

18.10.8(a) Specialized services rendered by an attorney with experience in tax matters, whether or not that attorney is associated with the same law firm with which the attorney for the personal representative is associated;

18.10.8(b) Services rendered by accountants or tax specialists (or tax return preparers) where the services are rendered to assist the attorney or the personal representative in the preparation of any estate tax return, inheritance tax return, or any federal or state income tax return;

18.10.8(c) Specialized services to represent or assist the personal representative in connection with any audit or other administrative or judicial proceedings relating to tax returns; or

18.10.8(d) Services rendered by an accountant to assist the attorney or the personal representative in establishing records of account and reporting on final results in-those estates requiring this service.

Reasonable compensation may also be allowed out of the estate for services rendered by any of the persons of the categories hereinbefore mentioned in which compensation is sought by the attorney or personal representative on an hourly basis.

18.10.9 Expenses of Attorney, Corporate Personal Representative

Ordinarily the Court will not allow attorneys or corporate personal representatives to be reimbursed for items of expense which are usual and customary costs of doing business, e.g., routine photocopies, in-town mileage and postage. The expenses are contemplated in the hourly rate. If, however, extraordinary costs are generated because of litigation or other circumstances unique to the estate, the application should so state.

18.10.10 Attorney as Personal Representative

Where the personal representative is an attorney and claims the statutory fee, no compensation will be allowed to an attorney employed by him unless authorized by the will, consented to by all heirs or devisees whose rights may be adversely affected by the allowance, authorized by court order in connection with litigation instituted by or against the estate or as provided in Section 18.10.8. The Court will allow hourly compensation to an attorney-personal representative, and attorneys and paralegals employed by him, based on the "reasonable fee standard."

Reference: §§ 473.153.3, 473.155.2

18.20 Determination of Corporate Personal Representatives' Fees in Excess of Statutory Fee

All applications by corporate personal representatives for compensation in excess of the schedule set forth in § 473.153, RSMo, shall be based upon the amount of time devoted by the trust administrators, officers or the administrative assistants employed by the personal representative using a reasonable fee standard. Where administrator/officer's services and administrative assistant's services are shown in the same application, it is necessary to distinguish which services and time were spent by each respectively, differentiating total hours and hourly rates charged.

18.30 Co-Personal Representatives' Statutory Fees

The equivalent of one statutory fee will be allowed for co-personal representatives absent extraordinary circumstances. This policy is not to be construed to preclude co-personal representatives from seeking hourly compensation in excess of the statutory fee. If the co-personal representatives cannot agree in writing to the division of the fee, the matter will be set for hearing.

References: Form 10160, Form 10161

18.40 Hourly Compensation of Lay Personal Representatives

In determining whether the lay personal representatives request for compensation in excess of the statutory fee is reasonable, the Court will consider the amount of supervision and participation necessary by the attorney. A personal representative's earning capacity in his normal business or occupation shall not alone constitute grounds for determining the rate of compensation, but may be considered along with any special skills or expertise in determining reasonableness, only to the extent the estate directly benefits there from.

18.50 Computation of Statutory Fee

18.50.1 In General

The statutory fee shall be computed pursuant to § 473.153.1, RSMo, based on:

(1) The value on the date of distribution of all personal property administered,

(2) The funds disbursed for payment of claims, expenses of administration, taxes and

(3) The value of all personal property assets on hand including the proceeds of all real property sold under order of the Probate Division. **Compensation may not be claimed as to the proceeds of the sale of real property sold pursuant to a power of sale in the will or pursuant to an independent personal representative's statutory authority unless a court order authorizing the sale has been entered.** Matter of Stroh, 899 S.W. 2d 534 (Mo. App. E.D. 1995). See also Section 18.50.3 on including proceeds from the sale in the calculation of the statutory fee.

References: Form 10160, Form 10161, Form 10162, Form 10163

18.50.2 Advancements to Estates

Where the estate would otherwise be insolvent, funds advanced to the estate may not be included as part of the estate for the purpose of calculating the statutory fees. If the estate contains real property which would have to be sold for the purposes set forth in § 473.460.1, RSMo, the advancements made to the estate in order to avoid the sale of the real property may be considered in computing the statutory fee, provided that the advancements do not exceed the inventory value of the real property.

References: Form 10160, Form 10161, Form 10162, Form 10163
§§ 473.153, 473.460.1

18.50.3 Proceeds of Sale

Where real property is sold by the personal representative pursuant to court order, the sale proceeds are included when calculating the statutory fee subject to the following limitations. The amount of the sale proceeds included in the computation of the statutory fee shall be the sum of money or any other personal property received as a result of the sale and administered by the personal representative. If the sale is handled by someone other than the personal representative, only the net proceeds remitted to the personal representative are included. For example, real property is sold for $20,000 and there is a $10,000 encumbrance. The personal representative is paid the full purchase price from which he disburses $10,000 for the purpose of satisfying the lien of the deed of trust, as well as the disbursement of other expenses of sale. The personal representative is entitled to utilize the full $20,000 in calculating his statutory fee. On the other hand, if the contract for sale provides first for escrowed funds to satisfy the lien and expenses of sale and then for the net proceeds to be paid to the personal representative, the personal representative may utilize only the net sum realized to the estate in calculating his fee. The same is applicable to a pledge of stock or other securities.

Reference: Form 10160, Form 10161, Form 10162, Form 10163
§ 473.153.1

18.60 Allowance, Partial Fee, Decedents' Estates

Partial fees for the personal representative and his attorney may be allowed at any time when it appears that the fees have been earned or it is otherwise appropriate.

Reference: § 473.153.4

[END OF SECTION]

Section 19 - Compensation – Independent Administration

19. 10 Statutory Compensation

The independent personal representative and his attorney are entitled to reasonable compensation. The statutory fee prescribed by § 473.153, RSMo, is prima facie evidence of a reasonable fee. Generally, no orders will be entered for statutory fees or for a lesser amount. The statutory fees of the independent personal representative and his attorney shall be shown on the final accounting as credit entries. See Section 19.30 on partial fees.

References: §§ 473.153, 473.787.3, 473.823

19.20 Compensation in Excess of the Statutory Fee

19.20.1 Court Order or Consents

The independent personal representative and his attorney may not take compensation in excess of the statutory fee prescribed by § 473.153, RSMO, without a court order or consents of all interested persons.

19.20.2 Procedure for Obtaining Order

To obtain an order for fees in excess of the statutory fee, the independent person al representative and his attorney may do one of the following:

(a) File an application and order for fees prior to filing the final settlement or statement of account. The application will be acted on by the Court only if the consents of the interested persons are obtained or the application is set for hearing with notice to interested persons; or

(b) File the application and order for fees with the final settlement or statement of account. If no objections are filed within 20 days and after the settlement or statement of account has been reviewed by the auditor and exceptions cleared, if any, the application will be acted on by the Court ex parte.

Exception: Where the independent personal representative is the sole distributes and has signed his and the attorney's application, the Court will act upon the applications.

References: Form 10161, Form 10163
§§ 473.153, 473.823, 473.827

19.30 Partial Fees

Partial fees that do not exceed the statutory fee may be taken and reflected on the next annual settlement. Partial fees that exceed the statutory fee must be supported by a court order or consents of interested persons. The application will be acted on by the Court if consents of the interested persons are obtained or the application is set for hearing with notice to interested persons. See Section 19.20.2 where the personal representative is the sole distributes.

19.40 Other Applicable Sections

With respect to applications for hourly compensation in independently administered estates, the following sections apply:

Sections 18.10.1 - 18.10.5	general information
Section 18.10.	reflecting fees on the settlement (See Section 19.20.2 as to when allowed by court order.)
Sections 18.10.8 - 18.10.10	payment for specialized services, customary expenses and attorneys' fees when the personal representative is an attorney.
Section 18.20	corporate personal representatives' fees in excess of the statutory fee.
Section 18.30	statutory fees for co-personal representatives.
Section 18.40	hourly compensation for lay personal representatives.

In calculating the statutory fee, Section 18.50 applies.

References: §§ 473.810(14), 473.823, 473.827

[END OF SECTION]

Section 20 - Real and Personal Property-Supervised – Administration

20.10 Real Property

20.10.1 Taking Charge

20.10.1(a) Pursuant to Order

The personal representative may secure an order to take charge upon the grounds set forth in § 473.263, RSMo. The order submitted to the Court must specify the precise authority which is being requested, i.e., to pay taxes, to maintain the premises, to purchase insurance. At the conclusion of the administration, any rents collected less any expenses incurred with respect to the real property must be distributed to the distributees entitled to the real property.

20.10.1(b) Pursuant to Terms of Will

If a decedent's will contains an express power or direction to take charge of real property, no order will be required. Note the distinction between a power and direction: A power is a discretionary right and a direction is mandatory absent consents to the contrary. The authority to take charge will not be implied from a power of sale.

References: §§ 473.260, 473.263

20.10.2 Discovery of Assets

This procedure is available to any person who claims an interest in property which is claimed to be an asset of an estate or which is claimed should be an asset of the estate. A petition for discovery of assets is a procedural vehicle for alleging a substantive cause of action. See Barrett v. Flynn, 728 S.W.2d 288 (Mo. App.1987).

The petition must be in compliance with § 473.340, RSMo, and the proceeding will be designated as an adversary probate proceeding. See Section 7, supra.

Reference: § 473.340

20.10.3 Grounds for or Consents to Sale

20.10.3(a) Consents to Sale

The grounds of sale are set forth in § 473.460, RSMo. Additionally, the personal representative may sell real property if all heirs or devisees who would be affected by the sale are over the age of 18 not incapacitated and consent in writing to the sale. A conservator may consent for his protectee. A natural parent may consent on behalf of a minor child.

References: §§ 472.130, 472.135, 473.460, 473.467

20.10.3(b) Sale By Heirs or Devisees

If it is apparent that the real property need not be sold for the payment of claims, expenses of administration or taxes or for the payment of specific or general devises, the real property may be sold outside of the estate, without court order, by the heirs or devisees (and their spouses) entitled to the real property. In this case the final decree of distribution must still distribute the real property to the heirs or devisees entitled thereto.

20.10.4 Procedure for Private Sale

20.10.4(a) Hearing

If consents of interested persons are not obtained, the petition to sell real property shall be filed with the docket clerk together with a proposed order and request for notice of hearing, listing the names and addresses of all heirs or devisees to be given notice of the hearing. The notice of hearing will be sent by ordinary mail. A minimum of ten (10) days for ordinary mail notice is required. Notice of sale may not be waived by a minor or incapacitated person except by his conservator or, if none, by the natural parent of a minor. If the whereabouts of an heir is unknown, notice of hearing must be published. Where there is a power of sale in the will, see Section 20.10.5.

References: Form 10368, Form 10470, Form 10472, Form 10475
§§ 473.493, 473.500

20.10.4(b) Consents to Sale

Notice and hearing are not required if consents of interested persons are obtained and filed with the petition and order.

20.10.4(c) Report of Sale and Order Confirming

After the order of sale is entered, the report of sale may be filed. Section 473.513.1, RSMo, states that a full report shall be made within 10 days after making a sale (the date the contract is signed). Failure to file within that period of time may create title problems. The real property contract should not be attached to the report of sale or otherwise filed with the Court. On the eleventh day after the filing of the report of sale as calculated by Civil Rule 44.01, the Court, if satisfied that the sale is at the price and terms most advantageous to the estate, shall enter the order approving and confirming the sale. Interested persons may waive in writing the 10 day objection period to the report of sale. Upon entry of the order confirming the sale, the parties may effect the closing of the sale by delivery of deed and receipt of the sale price. However, if the personal representative is bonded, additional bond in an amount sufficient to cover the sale price must be filed

before the Court will enter the order confirming sale. See Section 11, supra, for other bond requirements.

References: Form 10032, Form 10475, Form 10477, Form 10482
§§ 473.473, 473.493, 473.500, 473.513, 473.517, 473.520

20.10.4(d) By Public Auction

A public sale under § 473.507, RSMo, is infrequently used. Any other auction must follow the same procedures as a private sale. See Section 20.10.4.

20.10.5 Authority in Will to Sell Real Property

If a power of sale is clearly vested in the personal representative of a testate estate, no court order for sale will be required. Where the will contains a power to sell, if the personal representative still wants an Order to Sell Real Property and has not complied with the statutory requirements for sale, the order will issue pursuant to the power in the will. However, the filing of a report of sale is not appropriate and an order confirming sale will not be entered unless the statutory requirements are met.

Reference: § 473.457

20.10.6 Purchase Price - Private Sale

The purchase price must not be less than three-fourths of the inventory value of the real property unless interested persons consent to a lower price. If, in the judgment of the personal representative, due to change in conditions, the original value of the real property is excessive, he may file an inventory amending the value of the real property. In this event the purchase price shall not be less than three-fourths of the amended inventory value.

References: § 473.500

20.10.7 Terms of Private Sale

While cash sales are preferable, the Probate Code does not preclude the payment of the purchase price of the sale of real property in installments, nor does the Code preclude a sale which is contingent upon the happening of an ascertainable event, e.g., approval of an application to rezone. However, the Court is required to find that the proposed sale is at a price and on terms most advantageous to the estate, so that when the sale terms and/or consideration are unusual, the attorney should consult with the Judge, Commissioner or Deputy Commissioner prior to the signing of the contract.

Notes: If the personal representative becomes aware of a bona fide, more advantageous offer, the personal representative should advise the Court of the better offer.

It is recommended that the real property contract provide that it is subject to approval by the Probate Division.

References: §§ 473.473, 473.513

20.10.8 Suggested Practice Aids

In preparation for the sale of real property:

(1) The attorney should consult the title company or examiner for exceptions to marketable title;

(2) The legal description contained in the inventory and the ownership should be reverified;

(3) The personal representative should determine, if possible, whether an amended inventory will be needed; and

(4) The report of sale should list the terms of sale including any incidental closing costs such as title insurance, real estate commission, loan discount, proration of taxes, insurance and/or loan escrow account which will reduce sale proceeds.

References: § 473.473, 473.513, 473.530

20.10.9 Reporting Real Property Sales on Settlement

20.10.9(a) Time for Reporting

The proceeds of the sale of all real property sold by the personal representative must be accounted for on the settlement next following the date the sale is completed. See Section 22.50 regarding the reporting of closing costs.

20.10.9(b) Disbursement of Proceeds by Personal Representative or His Attorney

If disbursement of the sale proceeds is handled by the personal representative or his attorney, vouchers for each item of expense must be filed in support thereof. The gross purchase price should be shown in the debit column and the expenses of sale in the credit column.

20.10.9(c) Disbursement of Proceeds by Title

If disbursement of the sale proceeds is handled by a title company or real estate broker, a copy of the closing statement reflecting the disbursements shall be a sufficient

voucher to support the expenses of sale. The net sale proceeds should be shown in the debit column.

Reference: § 473.543

20.10.10 Abandonment of Real Property

Generally, the Court wants to ensure that all distributees of the estate are agreeable to relinquishing their interest in the property proposed to be abandoned before a court order for abandonment will issue.

Property may be abandoned, upon court order, when it is so encumbered as to be a burden to the estate or when R is of no value and distribution would be burdensome.

The Court may require a hearing on the application for abandonment 6 consents to the abandonment are not filed by the distributees. See Section 22.60 for the manner in which to reflect an abandonment of property on the settlement.

Reference: § 473.293

20.10.11 Foreclosure

Depending upon the assets of the estate, it may be desirable to obtain a court order allowing foreclosure, in advance of the foreclosure. See § 443.300, RSMo, regarding stay of foreclosure on death. See also Section 22.60 regarding providing proof of the foreclosure on the settlement.

Reference: § 443.300

20.20 Personal Property

20.20.1 Values of Property

Personal property shall be valued as of the date of death. See Section 14.50, supra.

Property may be valued by the personal representative or by an appraiser. Generally, the services of an appraiser will not be necessary unless the estate contains (1) tangible personal property of potentially significant value or of a value that cannot be determined by general knowledge of the personal representative or (2) stock in a closely held corporation or a business interest of the decedent.

If the original value listed on the inventory is incorrect, an amended inventory should be filed reflecting the correct value. Changes to assets as a result of loss or destruction must be reflected on the next filed settlement. See Section 22.60.2, infra.

Reference: § 473.233

20.20.2 Possession

The personal representative shall take possession of all the personal property of the decedent except exempt property of the surviving spouse and unmarried minor child. Intangible personal property located in another state may be collected by the personal representative if the property is voluntarily relinquished to the jurisdiction of this state and to the personal representative. But see § 473.223, RSMo, regarding possession of partnership property.

References: §§ 473.223, 473.260, 473.671

20.20.3 Discovery of Assets

This procedure is available to any person who claims an interest in property which is claimed to be an asset of an estate or which is claimed should be an asset of the estate. A petition for discovery of assets is a procedural vehicle for alleging a substantive cause of action. See Barrett v. Flynn, 728 S.W.2d 288 (Mo. App.1987).

The petition must comply with § 473.340, RSMo, and the proceeding will be designated as an adversary probate proceeding. See Section 7, supra.

Reference: § 473.340

20.20.4 Sales

The personal representative may sell personal property of the estate upon court order or by power of sale in the will.

If the property to be sold is specifically devised, the order of sale will only be entered with the consent of the specific devisee, or if needed for the payment of taxes, expenses of administration or claims and all other property of the estate has been or will be liquidated. See Section 22.120 for the manner in which to reflect a sale on the settlement.

References: Form 10460, Form 10461
§§ 473.457, 473.460, 473.467, 473.483, 473.487

20.20.5 Abandonment of Personal Property

Generally, the Court wants to ensure that all distributees of the estate are not interested in receiving the property proposed to be abandoned before a court order for abandonment will issue.

Property may be abandoned, upon court order, when it is so encumbered as to be a burden to the estate or when it is of no value and distribution to the distributees would be burdensome.

The Court may require a hearing on the application for abandonment if consents to the abandonment are not filed by the distributees. See Section 22.60 for the manner in which to reflect an abandonment of property on the settlement.

Reference: § 473.293

20.20.6 Secured Property

The personal representative may want to obtain a court order before allowing personal property to be taken in satisfaction of a pledge or other lien. See § 443.300 RSMo. The Court may determine instead that assets of the estate will be used to preserve the property depending upon the type of property, the condition of the estate and the distributees entitled thereto. The Court may request consent of the distributees to the proposed surrender of the property. See Section 22.60 for the manner in which to reflect a surrender of property on the settlement.

Reference: § 473.287

20.20.7 Expense Associated with Delivery of Specifically Devised Property

The reasonable expense of delivery or transport of specifically devised property is considered an expense of administration and may be paid out of estate assets without court order.

20.20.8 Continuation of Decedent's Business

20.20.8(a) In General

The personal representative should seek authority to continue decedent's business at the earliest possible date. Section 473.300, RSMo, authorizes the Court to act on the personal representative's petition ex parte with notice of hearing issuing subsequently to interested persons to appear and show cause why the order authorizing the continuation of the business should not be set aside or modified.

Reference: § 473.300

20.20.8(b) Financial Information Required

Because the Court will be interested in the financial impact of continued operations on existing assets and creditors, it is important to present as complete a financial picture as is possible. If decedent maintained conventional business records,

copies of a current balance sheet and profit and loss statement should be presented with the petition. The Court should be advised of the amount of working capital which will be required to continue the business and the anticipated income and expense which will be generated.

The personal representative should be in position to explain to the Court why he believes that the business should be continued rather than liquidated. He should also be prepared to advise whether the business is to be sold or is to be distributed to the heirs or devisees. The Court will probably not sanction the continuance of the business if it cannot be demonstrated that it can be operated at a profit or, at least, on a break-even basis.

20.20.8(c) Use of Estate Assets

If the business consists of the manufacturing of a product or the sale of goods on hand, some arrangement should be made for the "business" to "buy" any goods or materials from the estate at the estate's cost so as to minimize the danger of depleting existing estate assets to the prejudice of existing creditors.

20.20.8(d) Confidential Financial Information

If disclosure of the financial details of the business would give competitors or potential purchasers an unfair advantage, the Court should be requested to hold the information *in camera,* permitting access only to those persons having a right to such information.

20.20.8(e) Solvency of Estate

Section 473.300, RSMo, specifically deals with the power of the personal representative to continue a business ff the estate is solvent subject to the provisions of the will. The converse of this provision is, of course, that if the estate is not solvent, the personal representative has no authority to continue the business except on court order and then it must be shown that the continuation is of advantage to the estate. Presumably such an advantage might be to reduce the degree of insolvency or possibly render the estate solvent.

Reference: § 473.300

20.20.8(f) Testamentary Authority

The statute relating to testamentary authority speaks in terms of the solvency of the estate. The statute does not expressly deal with the issue of the solvency of the business operation itself although the phrase advantage to the estate" might imply that the business operation must be sound. Thus, even though the estate may be solvent, a personal representative who continues an insolvent business and incurs further losses may render himself personally liable to the creditors with whom he incurs business liabilities. In re Estate of Torreyson, 442 S.W.2d 110, 114 (Mo. App.1969).

20.20.8(g) Contents Show Cause Order

The ex parte order authorizing the continuation of the business should contain at least in broad outline the terms, conditions and limitations under which the business is to be operated. This is necessary since the order will be the vehicle for informing interested persons of the actions taken and the actions proposed.

20.20.8(h) Bond of Personal Representative

In granting an ex parte order authorizing the continuation of decedent's business, the Court may require that the personal representative file a bond even though a bond may be excused by the will.

20.20.8(I) Segregation of Business Assets

If the personal representative is not required to incorporate the businessassuming it is a sole proprietorship, the Court may require that the personal representative segregate all financial transactions and maintain separate records and bank accounts.

20.20.8(j) Limitations on Operations

The Court may impose various limitations or requirements on the business operation designed to protect the assets of the estate. These limitations might consist of a limit upon the extent of new operations which the business will be permitted to undertake. The Court might impose outside limits on operational discretion beyond which the personal representative may not go without further court order. These restraints might limit the number of employees retained or the amount of salary payable to management or executive personnel. The Court might also limit the personal representative's authority to borrow money without further court order; might sanction operations on month-to-month basis and may impose a duty upon the personal representative to report any circumstance to the Court which might prevent the business from being operated on a break-even basis.

20.20.8(k) Confirmation Order

Section 473.300, RSMo, does not specifically require the entry of an order confirming the order authorizing the continuation of decedent's business after the show cause hearing. If the original order is modified, it would appear necessary to issue a subsequent order. If the original order is terminated, then not only should a subsequent order issue, but a copy should be served on every person then known to be interested in the estate since it is conceivable that interested persons did not appear at the show cause hearing because they did not oppose the terms of the initial order. But even if the initial order is merely ratified in all of its particulars, good practice dictates that an order of confirmation be entered and the Court customarily does so. In this way, doubt as to the actions taken and the duties of the personal representative is eliminated.

Reference: § 473.300

[END OF SECTION]

Section 21 - Real and Personal Property -Independent Administration

21.10 Real Property

21.10.1 Taking Charge

21.10.1(a) Duty of Personal Representative

Unless the will provides otherwise, the independent personal representative shall take possession or control of the decedent's property. However, any real (or tangible personal) property may be surrendered to persons entitled thereto unless or until the independent personal representative finds it necessary to take possession for purposes of administration.

21.10.1(b) Management, Protection, Preservation

The independent personal representative shall pay taxes on the property in his possession and take all steps reasonably necessary for its management, protection and preservation.

References: §§ 473.803, 473.810

21.10.1(c) Specific Devise

Expenditures on specifically devised property must be deducted from the property or share of the distributes entitled to the property.

21.10.2 Sale of Real Property

21.10.2(a) Sale by Personal Representative

The independent personal representative may sell any real property of the estate. The independent personal representative may not include the proceeds of the sale of real estate as part of his statutory compensation unless the real estate is sold pursuant to court order. If a court order to sell is desired, the independent personal representative may obtain an order by obtaining consents of interested persons. If statutory grounds exist for the sale, then a court order may be obtained by setting the application for hearing with notice to interested persons. Section 20.10.3 is applicable if a statutory sale is sought.

References: Form 10368, Form 10470, Form 10472, Form 10475, Form 10477, Form 10482
§ 473.810(16)

21.10.2(b) Sale by Heirs or Devisees

If real property is sold by the heirs or devisees, the schedule of distribution or final decree of distribution must still distribute the real property to the heirs or devisees entitled thereto. See Section 20.10.3(b) in regard to a sale by heirs or devisees in a supervised administration.

Practice Tip: Merely recording the statement of account is insufficient to pass a marketable title. The independent personal representative needs to record an independent personal representative's deed or a decree of distribution, if one is entered, plus a certified copy of the will, if any. It is not the Probate Division's responsibility to record any instrument.

Reference: § 473.844

21.10.3 Other Applicable Sections

Generally the following sections also apply to the sale of real property in an independent administration:

20.10.2	Discovery of Assets
20.10.3	Grounds for or Consents to Sale
20.10.6	Purchase Price - Private Sale
20.10.7	Terms of Private Sale
20.10.8	Suggested Practice Aids
20.10.9	Reporting Real Property Sales on Settlement
20.10.10	Abandonment of Real Property
20.10.11	Foreclosure

21.20 Personal Property

21.20.1 Values of Property

Section 20.20.1 applies in its entirety.

21.20.2 Possession

Unless the will provides otherwise, the independent personal representative shall take possession or control of all of the decedent's property. However, any tangible personal property may be surrendered to persons entitled thereto unless or until the

independent personal representative finds it necessary to take possession r purposes of administration.

Reference: § 473.803

21.20.3 Management, Protection, Preservation

The independent personal representative shall take all steps reasonably necessary for its management, protection and preservation.

References: §§ 473.803, 473.81 0

21.20.4 Discovery of Assets

Section 20.20.3 applies in its entirety.

Reference: § 473.340

21.20.5 Sales

The independent personal representative may sell any personal property of the estate without court order.

See Section 22.120 for the manner in which to reflect a sale on the settlement or statement of account.

Reference: § 473.810(16)

21.20.6 Abandonment

Generally, the Court wants to ensure that all distributees of the estate are not interested in receiving the property proposed to be abandoned before a court order for abandonment will issue.

Property may be abandoned, upon court order, when it is so encumbered as to be a burden to the estate, or when it is of no value and distribution would be burdensome.

The petition for abandonment must be set for hearing with notice of hearing to interested persons or be accompanied by consents of all interested persons.

21.20.7 Secured Property

The personal representative may want to obtain a court order before allowing personal property to be taken in satisfaction of a pledge or other lien. See also § 443.300 RSMo. The Court may determine instead that assets of the estate will be used to preserve the property depending upon the type of property, the condition of the estate and the distributees entitled thereto. The independent personal representative must obtain the consent of interested persons to the application or it must be set for hearing with notice to interested persons.

21.10.8 Expenses Associated With Delivery of Specifically Devised Property

Section 20.20.7 applies in its entirety.

21.20.9 Continuation of Decedent's Business

Section 473.810(17), RSMo, provides the circumstances under and time in which the independent personal representative may continue the decedent's business. If a court order is necessary to continue the business for an additional period of time the independent personal representative must obtain the consent of interested persons or set the matter for hearing with notice to interested persons.

In determining whether or not an order to continue the business will issue, the Court will consider the factors set forth in the following sections:

20.20.3	Discovery of Assets
20.20.8(b)	Financial Information Required
20.20.8(d)	Confidential Financial Information
20.20.8(e)	Solvency of Estate
20.20.8(I)	Segregation of Business Assets
20.20.8(j)	Limitations on Operations

Reference: § 473.810(17)

[END OF SECTION]

Section 22 Settlement - Supervised Administration

22.10 In General

Section 473.557, RSMo, requires that the Court notify each personal representative that a settlement is due at least 40 days before the due date. Failure to receive notice does not excuse the filing of a settlement when due. Settlements are due on the anniversary date of issuance of letters.

References: Form 10559 (two pages)
§§ 473.540, 473.543, 473.557

22.20 Extensions

Extensions of time to file settlement will only be granted on a showing of good cause. The Settlement Clerk has authority to grant one extension not to exceed 30 days upon written application of the personal representative or his attorney. The Chief Auditor may grant the first or second extension of 30 days each. Applications for further extensions or for more than 30 days will be presented to the Judge, Commissioner or Deputy Commissioner.

Extensions requested after notice of filing final settlement is published will be closely scrutinized. While a continuance is necessary to preserve publication, an extension will not be granted solely for that purpose. The estate should be in a condition to be closed prior to publication.

References: Form 10553
§ 473.540

22.30 Failure to File Settlement

22.30.1 Citation

Failure to timely file a settlement will result in the issuance of a continuance stating that unless the settlement is filed within two weeks, an order for citation will issue to show cause why the personal representative should not be removed. If a citation issues, the personal representative and his attorney must appear at the hearing unless it is continued. The citation will be dismissed upon:

(1) the filing of the settlement,

(2) the payment of the citation costs and

(3) obtaining the dismissal from the Judge, Commissioner or Deputy Commissioner.

The costs of the citation may not be paid from the assets of the estate.

22.30.2 Continuance by Court on Its Own Motion

The Court in its discretion generally grants one continuance and notifies the personal representative and attorney prior to issuance of a citation. Failure to receive this warning is not a basis for setting aside the citation. Disregard of settlement dates may result in disallowance, in whole or in part, of applications for compensation by those responsible.

References: §§ 473.560, 473.563

22.40 Settlement - Contents

22.40.1 Income - Disbursement, Additional Property

Each settlement must record the date and description of each item of income or disbursement. Property, other than real property, discovered subsequent to the filing of the original inventory must be brought into the estate on the next settlement or by filing a supplemental inventory and bringing it into the estate on the next settlement. See Section 14.60, supra.

22.40.2 Disbursement Supported by Court Order

Each disbursement shown on any settlement must be supported by an order of the Court, except (1) expenses of administration (other than compensation of personal representative and his attorney, and, other than compensation of appraisers or tax return preparers whose fees exceed $350.00); (2) taxes; and (3) claims allowable pursuant to §§ 473.360 through 473.443, RSMo. See Section 28, infra, regarding Claims.

22.40.3 Estates Open More than Two Years

In addition to showing receipts and disbursements, each settlement shall include, if applicable, a definitive statement as to the necessity for keeping the estate open for more than two years.

22.40.4 Debits - Credits

Receipts will be shown as debits and disbursements will be shown as credits. See Section 22.170, infra.

References: Form 10559 (Two Pages)
§§ 473.543, 473.550

22.50 Closing Costs of a Real Property Sale

A closing statement from any third party handling the closing will be accepted as a voucher for real property closing costs and only the net proceeds of sale need be reported on the settlement. If the personal representative or his attorney handle the closing, the full purchase price as well as the closing costs must be reported on the settlement and the closing costs must be supported by vouchers. See also Sections 20.10.2, 20.10.4 and 20.10.7, supra, regarding Sales and Reporting Sales of Real Property.

22.60 Foreclosure, Abandonment or Surrender of Estate Property

22.60.1 Real Property

Proof of foreclosure on property of the estate must be made on the settlement next following the foreclosure. The personal representative must file a copy of the trustee's deed showing the date of conveyance, the consideration and the name of the grantee. See § 443.300, RSMo, regarding stay of foreclosure on death. See Section 20.10.10, Abandonment and Section 20.10.11, Foreclosure.

22.60.2 Personal Property

The abandonment, loss or surrender of property of the estate must be reported on the settlement next following the abandonment, loss or surrender.

The inventory value of the abandoned property must be reflected as a credit. See Section 22.170, Debit-Credit Entries on the settlement. See also Section 20.20.5, Abandonment.

If secured property is taken or surrendered in satisfaction of a security agreement, lien or pledge, any written evidence of an accounting to the personal representative must be filed with the settlement. The settlement must reflect a credit entry equal to the inventory value. Any surplus due the estate, whether paid or due, must be reflected as a debit entry. If a deficiency exists, the payment of the deficiency must be reflected as a debit entry. But see Section 28 regarding the estate's obligation for paying any deficiency which must be handled as a claim against the estate. See § 443.300, RSMo, regarding stay of foreclosure on personal property subject to a security interest with power of sale after the death of the debtor. See Section 20.20.6, supra.

References: §§400.9-502, 400.9-504, 473.360, 473.387, 473.440, 473.444

22.70 Original Vouchers (Receipts)

The original voucher (receipt or canceled check) supporting each disbursement on any settlement must be filed with the settlement, provided, however, that corporate personal representatives may file photocopies. The original vouchers may be returned to the personal representative upon approval of the settlement, provided that legible copies, front and back, are substituted. The copies should be made prior to submitting the

originals to the Court as the original, once submitted, may not be removed for the purpose of making copies. Substitution may not be effected by mail. Original vouchers will not be returned to the personal representative by mail.

Reference: § 473.543

22.80 Corrections - Auditor's Exception Letter – Extensions

22.80.1 In General

Each settlement filed is audited by the Court and will not be approved until the audit proves the settlement. Incomplete, inaccurate or otherwise defective settlements may delay the commencement of the audit. Additionally, action on applications for compensation may be delayed or compensation may be disallowed in whole or in part.

22.80.2 Exception Letter - Errors in Settlement

The auditor assigned to audit the settlement will issue an exception letter enumerating any errors in the settlement which must be corrected before the settlement can be approved. The exception letter grants 30 days within which to satisfy the requirements. The auditor is authorized to grant an extension of time up to an additional 30 days. The chief auditor may grant additional extensions, but may also require the attorney to see the Judge, Commissioner or Deputy Commissioner.

The attorney, paralegal or personal representative should meet with the auditor to clear the exceptions unless a court order is necessary to clear exceptions. Required documents or information necessary to clear an audit may be mailed to the auditor. It is the attorney's responsibility to determine whether documents filed have cleared the exceptions by reviewing the file or meeting with the auditor.

22.80.3 Show Cause Orders

Failure to comply with the exception letter within the time prescribed will result in the issuance of a warning letter stating that unless the requirements are met within **15** days an order will issue to show cause why the personal representative should not be removed. If a show cause order issues, both the personal representative and his attorney must appear at the hearing unless the hearing is continued or the show cause is dismissed prior to the hearing. The order will be dismissed when the exception letter is cleared and the costs of the show cause order are paid. The exception letter will not be cleared from the bench. The filing of documents and/or pleadings in response to the exception letter does not automatically result in dismissal of the show cause order. The attorney must meet with the auditor to clear exceptions before requesting dismissal from the Judge, Commissioner or Deputy Commissioner. The attorney must allow sufficient time prior to the hearing to meet with the auditor for this purpose and not wait until the morning of the hearing date. The costs of the show cause order may not be paid with estate assets.

22.80.4 Effect of Exception Letter on Fees

When an exception letter has been issued, no orders for the allowance of any fees will be routinely granted unless the allowance is necessary to satisfy the exception letter.

22.80.5 Rescission of Exceptions

If any requirement listed in any exception letter appears inappropriate, it is the responsibility of the personal representative's attorney to confer with the auditor, Deputy Commissioner, Commissioner or Judge to determine if the requirement should be rescinded.

22.90 Additional Bond

If, upon the audit of any settlement it appears that additional bond is necessary, the auditor will issue an exception requiring the filing of the additional bond.

22.100 Orders ratifying Expenditures

When the personal representative has taken action or made an expenditure without court authority or power in the will, he may file an application and proposed order ratifying the action or expenditure. If the action or expenditure appears reasonable and necessary, the order will be entered.

22.110 Funds Advanced from Source Outside the Estate

22.110.1 To Prevent Sale of Assets or Where Estate is Not Liquid

If heirs or devisees desire to prevent the sale of any asset of the estate, they may advance sufficient cash to pay expenses of administration, taxes, claims and any cash bequests. The advancement should be reflected in the debit column of the settlement and disbursements reflected in the credit column in the usual manner. The disbursements must be supported by proper vouchers.

Funds may also be advanced to the estate because liquid assets are not available or assets are insufficient to pay filed and allowable claims, expenses of administration, taxes and cash bequests. The accounting procedures are the same as described above. Reimbursement of these amounts may be made without court order.

NOTE: A distinction must be made between advancements as set forth above and advancements for the payment of claims as set forth in Sections 22.110.2. See also Section 28, Claims.

Reference: § 473.470

22.110.2 To Pay Debts of Decedent Prior to Opening of Estate

Funds advanced at any time to pay debts of the decedent, including funeral and burial expenses, are claims against the estate and will be treated as such. The persons advancing the funds, including the later-appointed personal representative, may not be reimbursed from the estate unless there is compliance with §§ 473.360 and 473.403, RSMo, and, where the personal representative has advanced the funds, compliance with § 473.423, RSMo. See also Adams v. Braggs, 739 S.W. 2d 744 (Mo.App.1987) and Section 28, Claims.

References: §§ 473.360, 473.403, 473.423

22.120 Sale or Redemption of Personal Property

Upon the sale of personal property or redemption of certificates of deposit or other like instruments, the sale price shall be shown as a debit and the inventory value shall be shown as a credit thus deleting the property sold from the inventory. The ending settlement recapitulation must reflect the deletion of the property from its original category by subtracting the inventory value from that category and adding the proceeds derived there from to the cash category. An order to sell must be secured before any sale of personal property, unless a power of sale is contained in the will or the sale is affected in the final year of the estate and reflected on the final settlement.

Reference: § 473.487

22.130 Verification of Restricted Accounts

Where cash or securities are placed in restricted account by court order, a verification of restricted account must be file with each annual settlement.

References: Form 10532, Form 10533
§ 473.160

22.140 Will Contest

See Section 9.70, supra, regarding Will Contests and their effect on settlement.

22.150 Waiver of Legal Requirements

All persons who are sui Juris then interested in an estate may waive, in writing, the requirements imposed on a personal representative under the provisions of Chapters 472, 473 or 474, RSMo. All then interests persons may consent to any discrepancies on the part of the personal representative. If an interested person is under disability, his conservator, if appointed by this court, may not, absent court order, waive requirements

on his behalf, other than notice of filing final settlement. Where substantial rights of a protectee under the jurisdiction of another court may be affected by his conservator's waiver, this court may require a court order authorizing the conservator to so act. If the conservator is appointed by any court other than this court, a certified copy of the conservator's letters, certified within the last six months, must be filed with the court before the waiver will be given effect.

The Court will review each waiver to determine whether discrepancies are in fact waived.

A waiver which specifically describes the matters to be waived will eliminate an exception as to that matter, including vouchers. A waiver in which the party acknowledges receipt of a copy of the settlement and proposed order of distribution will waive any exception including the requirement for filing vouchers. **However, vouchers are still required to support payment of a filed claim.**

In no event may interested persons waive the requirement of filing settlements except when an administrator pendente lite is appointed (Section 9.70.4(b)) or when the personal representative dies or resigns (Section 22.190).

References: Form 10368
§ 472.135

22.160 Beginning and Ending Balances

The beginning balance on the first settlement must coincide exactly with the balance on the inventory. The beginning balance on each successive settlement must agree with the ending balance on the previous settlement. The ending debit column total includes the beginning balance of the assets total.

22.170 Debit-Credit Entries

Debit entries consist of increases in the estate. Credit entries consist of decreases in the estate. There are two acceptable methods of setting forth debits and credits on a settlement, as set out in Sections 22.170.1 and 22.170.2 below.

22.170.1 Chronological Order

Debit and credit entries may be set forth in chronological order. For example:

Date	Description	Debit (Pd.Out)	Credit (Rec'd.)

6-10	Court Costs Deposit	245.00	
6-15	Dividend - A.T.T. Stock		45.00
6-20	XYZ Funeral Home	3,000.00	
6-30	Proceeds A.B.C. Life Ins.	6,000.00	
	Credit Inventory Item 3		6,000.00
7-7	Bond Premium Ins. Agency		50.00
7-8	Refund Gas. Co.	20.00	
7-20	Proceeds sale of furniture, household goods and wearing apparel		400.00
	Credit Inventory Item 1		350.00

22.170.2 Debits Segregated from Credits

Debits may be segregated from credits, but must be set out in chronological order, except that credit entries for estate assets that have changed character should be shown immediately after the related debit entry. See entries on 6-30-88 and 7-20-88. For example:

Date 1988	Description	Debit (Pd.Out)	Credit (Rec'd.)
	Receipts (Debits)		
6-15	Dividend - A.T.T. Stock		45.00
6-30	Proceeds A.B.C. Life Insurance		6,000.00
6-30	Credit Inventory Item 3, ABC Life Insurance Co.		6,000.00
7-8	Refund Gas Co.	20.00	
7-20	Proceeds sale of furniture, household goods and wearing apparel.	400.00	
	Credit Inventory Item 1, furniture, household goods and wearing apparel	350.00	

	Disbursements (Credits)		
6-10	Court Cost Deposit		245.00
6-20	XYZ Funeral Home		3,000.00
7-7	Bond Premium Insurance Agency		50.00

Reference: Form 10559 (two pages)

22.170.3 Rental Income

If the personal representative has taken charge of rental properties and has employed an agency to manage and collect the rents, a summary entry of rents received may be entered as a debit on the settlement if there is also attached an itemized statement from the agency setting forth all rents collected, expenses incurred and to what property each transaction is attributable. Where the personal representative has managed the property and handled the rents, receipts and disbursements must be specifically itemized.

22.170.4 Payment of Costs

The personal representative is notified of annual court costs due in the notice to file annual settlement. Costs must be paid on the date of, or prior to, the filing of annual settlement and reflected as a credit entry on the settlement or they may be taken as a credit on the next annual settlement if paid after the settlement cutoff date.

22.180 Final Settlement

The final settlement should be filed only when the estate is in a proper condition to be closed. The attorney should always check the court file, as well as his own file before preparing final settlement.

For a check list of requirements for filing final settlements, see Section 22.260. For a check list of forms required before closing various supervised estate situations, see Section 26.

References: Form 10559
§ 473.583, 473.587

22.190 Settlement on Death, Resignation or Removal of Personal Representative

If a personal representative dies, resigns or his letters are revoked, he or his legal representative must file a final settlement unless waived by interested persons. Notice of

filing of the final settlement must be given to, or waived by, the successor personal representative.

Reference: § 473.603

22.200 Liability of Successor Personal Representative

It is the responsibility of a successor personal representative to see that a former personal representative files a final settlement. The successor personal representative must determine that the former personal representative has met all audit requirements and insure that the successor personal representative has received the estate in proper condition.

Where necessary, the successor personal representative must file and pursue a determination of liability action against the former personal representative. Failure to assure the propriety of the former personal representative's final settlement and to pursue liability, if any, of the former personal representative may result in the successor personal representative assuming the former personal representative's liability.

Reference: § 473.210

22.210 Settlement, Exhausted Estate

If a decedent's estate is or becomes insolvent so that no distribution to heirs or devisees can be made, the estate can be closed by filing a final settlement showing the disbursement of all assets for the payment of expenses of administration, taxes and for the pro rata payment of claims. In this case, it is not necessary to publish notice of filing final settlement nor to file petitions for approval or for order of distribution or order of discharge. However, after examination of the final settlement and the court file, the Court may require mailed notice of the filing of the final settlement to interested persons. An estate in which any partial distribution has been made cannot be closed as an exhausted estate notwithstanding the fact that no assets may be distributable to the heirs or devisees upon the final settlement.

Reference: § 473.430

22.220 Costs - Final Settlement

The final cost calculation form must be obtained from and returned to the Cost Clerk. If the final cost calculation form evidences costs due to the Court, the costs must be paid on the date of, or prior to, the filing of final settlement and reflected as a credit entry on the settlement before the settlement will be approved. If a refund is due, the final settlement must reflect the refund as a debit entry. See Section 5.40, specifying the procedure for requesting final costs. The attorney is mailed a copy of the cost calculation.

References: Form 10407
§ 483.580

22.230 Proof of Payment of Expenses of Administration and Taxes

Before any final settlement is approved, proof of payment or waiver of payment must be shown for each of the following:

(1) Court Costs

(2) Missouri Estate Tax and Federal Estate Tax, if applicable; and

(3) Fees of administrator ad litem, if any.

22.240 Final Compensation of Personal Representative and Attorney

Final compensation is not payable until approval of the final settlement and order of distribution. The attorney will be notified when the final settlement and order of distribution has been approved. The amount of compensation is shown as a credit entry on the final settlement.

References: Form 10160, Form 10161, Form 10162, Form 10163

22.250 Objections to Settlement

The filing of any objections by any interested persons to the final settlement suspends the audit of the settlement until the objections are resolved. The auditor will advise the attorney of this in an exception letter.

22.260 Check List of Requirements to be Satisfied Prior to Filing a Final Settlement

(1) Review the Court's file.

(2) Verify that all expenses of administration and taxes have been paid or otherwise provided for.

(3) Verify that all allowable claims have been paid, withdrawn by the creditor or otherwise disposed of.

(4) Check that the identity of all heirs or devisees has been ascertained and their location verified.

(5) See that a legal representative has been appointed or refusal of letters or affidavit of distributes filed, when applicable, for an heir or devisee who

died subsequent to the decedent or for an adult under disability. A certified copy of letters or evidence of other form of probate proceeding must be filed, if the appointment or proceeding did not occur in Jackson County. The certified copy must have been certified in the six months prior to filing the final settlement.

(6) See that a conservator or custodian has been appointed for any minor receiving personal property or, if appropriate, obtain an order dispensing with conservatorship (Forms 10324 and 10325). Certified copies of letters or of the order dispensing with conservatorship must be filed, if not issued by this court.

(7) Confirm that all property has been inventoried.

(8) Conclude all litigation involving the estate, including appeals. Copies of all judgments must be filed with the Court.

(9) Resolve all will construction issues.

(10) Request and complete final cost form and pay costs.

(11) Publish and mail notice of filing final settlement unless waivers have been obtained.

(12) See that any conservator of a Jackson County estate is adequately bonded to receive his protectee's distributive share. The conservator must file the bond, but the decree of distribution will not be approved until the required bond has been filed and approved.

(13) See Section 26 for a checklist of forms and documents required to close supervised estates.

[END OF SECTION]

Section 23 - Settlement or Statement of Account Independent Administration

23.10 In General

Chapter 473, RSMo, applies to independently administered estates except where the sections on independent administration §§ 473.780 through 473.843, RSMo, specify otherwise.

The independent personal representative may close out the estate in the manner provided by § 473.837, RSMo, (judicial closing) or in the manner provided by § 473.840, RSMo, (non-judicial closing).

The independent personal representative must choose between these two methods of closing and file all related documents that conform with § 473.837 or 473.840, RSMo.

Unless extended by the Court, as set forth at Section 22.20, the independent personal representative shall file a final settlement or statement of account within one year after the original appointment of the independent personal representative. The independent personal representative will receive annual notice of the filing requirement unless the independent personal representative has requested and been granted an extension of time for filing. If the final accounting cannot be filed within a reasonably short time, an annual accounting may be filed. All annual accountings must be filed on the settlement forms.

Reference: Form 10606 a & b, Form 10559 (pages 1 & 2)
§§ 473.787, 473.843

23.20 Settlement - Judicial Closing - Section 473.837, RSMo

23.20.1 Preparation and Notice

Closing pursuant to § 473.837, RSMo, is deemed a judicial closing because the Court will audit the settlement and enter a final decree of distribution. A settlement must be prepared and filed as set forth in Sections 22.40 (except 22.40.2) through 22.70. Notice of the filing of the settlement, unless waived, must conform with § 473.840, RSMo, even though closing under § 473.837, RSMo. See Section 27 for a checklist of forms to use in closing independently administered estates.

Reference: Form 10559 (pages 1 & 2)

23.20.2 Audit - Exceptions

The audit of the settlement is comparable to that in a supervised administration. Exceptions will issue regarding errors and discrepancies in the settlement and related documents and pleadings. Section 22.80 on corrections, exceptions and extensions applies.

23.30 Statement of Account - Non-Judicial Closing - Section 473.840 RSMo

23.30.1 Preparation

Section 473.840, RSMo, requires that a statement of account with a proposed schedule of distribution be filed. The statement o account an propose schedule of distribution must be prepared in a form similar to the Court's Form 10606 (a and b). The accounting transactions on the statement of account must be reflected in the same format as a settlement as set forth in Sections 22.40 (except 22.40.2) through 22.70. See Section 27 for a list of forms to use in closing.

Note: The independent personal representative does not need to file vouchers to support expenditures. If a discharge is sought, see Section 25.40.2 on non-judicial closing.

23.30.2 Notice

Notice of the statement of account must be given to interested persons, unless waived. For this purpose, interested persons include all distributees unless their receipts are filed with the statement of account. See also Sections 27.10 and 27.20 for a list of forms to use in closing.

References: Form 10605
§§ 473.840.2, 473.840.3

23.30.3 Audit - Exceptions

The Court does not audit the statement of account but does review it for significant discrepancies. These discrepancies will usually be brought to the attention of the independent personal representative through a "For Information Only" exception which does not require any action. If an exception does issue, other than "For Information Only", the discrepancy must be corrected. See Section 22.80.2, supra, Exception Letters.

23.40 Other Applicable Sections

Generally the following sections also apply:

22.10 In General

22.30 Failure to File Settlement

22.80 Corrections - Auditor's Exception Letters - Extensions

22.90 Additional Bond

22.110 Funds Advanced From Source Outside the Estate

22.120 Sale or Redemption of Personal Property (except order to sell is not necessary)

22.130 Verification of Restricted Accounts

22.140 Will Contest

22.150 Waiver of Legal Requirements

22.160 Beginning and Ending Balances

22.170 Debit-Credit Entries

22.190 Settlement on Death, Resignation or Removal of Personal Representative

22.200 Liability of Successor Personal Representative

22.210 Settlement, Exhausted Estate

22.220 Costs, Final Settlement

22.230 Proof of Payment of Expenses of Administration and Taxes

22.250 Objections to Settlement

22.260 Check List of Requirements to be Satisfied Prior to Filing Final Settlement [except subsection (m)].

[END OF SECTION]

Section 24 - Distribution and Discharge Supervised Administration

24.10 Partial Distribution to Beneficiaries

24.10.1 When Allowed: Bond Required, When

A partial distribution may be allowed at any time after the inventory is filed. The Court will consider the condition of the estate and the assets to be distributed in examining the applications. The personal representative may be required to file a surety bond to cover the value of the distribution. No partial distribution will be permitted when it appears that the estate is or may be insolvent, or when a will contest is pending.

Reference: § 473.613

24.10.2 Unequal Distributions

Partial distributions to less than all of an equally situated class of distributees, or unequal distributions, will not be permitted, absent consents or extenuating circumstances. For example, if a partial distribution is made where there are three equal residuary devisees, it shall be made to each of the three in equal amounts at the same time.

Reference: § 473.613

24.10.3 Real Property

Real property may be distributed by a partial distribution. However, if the personal representative has previously taken charge of real property under court order, for good cause an order may be entered terminating the order to take charge.

Reference: § 473.613

24.20 Payment of Tax on Specific or General Devises

If the will does not provide for the payment of estate taxes from the residuary estate and partial distribution of a specific or general devise is made to any person other than the residuary devisee, the amount of the tax must be deducted from the distributive portion. In the alternative, it must affirmatively appear from the application for partial distribution that the distributes has advanced funds for the payment of the tax on his distributive portion.

24.30 Final Distribution

24.30.1 Order

The order of final distribution must dispose of all personal property not previously distributed, as reflected on the final settlement. All real property shown on the inventory which

has not been sold by the personal representative must also be included on the order. Where the heirs or devisees sell the real property, see Section 24.30.8 regarding sale without court order.

24.30.2 To Whom Distributed

The order, in testate estates, shall follow the directions of the will. If any provision in the will is ambiguous, then, prior to distribution, the personal representative should file a petition for will construction, in which event the distribution shall follow the order construing the will. In intestate estates, the order shall follow § 474.010, RSMo. See Section 24.30.10 regarding the requirement for corporate fiduciaries to file certificate of reciprocity. With respect to a distribution to an heir or devisee who is a debtor in bankruptcy, see the United States Bankruptcy Code, 11 U.S.C. § 541.

References: Testate estates: Form 10581, Form 10582, Form 10583
Intestate estates: Form 10584, Form 10585, Form 10586
§§ 473.617, 474.010
11 U.S.C. § 541

24.30.3 Description of Property

The descriptions of the property to be distributed must coincide with the descriptions contained in the inventory. If the description in the inventory is inadequate, e.g., street address only of real property, the inventory must be amended prior to distribution. The order of distribution should not reflect the value of any asset except cash. The order shall fully set out the name of every person who is a distributes and, in case of distribution to a trust, the description should match the designation of the trust or trusts described in the will, e.g., "ABC Bank as Trustee of Trust A" or ". . . as Trustee of Marital Trust" or ". . - as Trustee of Non-Marital Trust." In intestate estates, the interest of the heir in the property must be shown, e.g., one-half interest.

24.30.4 Equal Distribution Required

Every item of property of the estate must be equally divided among the distributees entitled thereto. Failure to so divide the property is deemed an unequal distribution. A distribution of cash or property to offset an unequal distribution will not be permitted without the written consent of the distributees, except where there is one share or a fractional share difference. However, in testate estates, the will may specifically permit an unequal distribution.

24.30.5 Rents or Income on Specifically Devised Property

Rents or income earned on specifically devised real or personal property must be distributed to the specific devisee less any expenses related to the property, unless otherwise directed in the will.

24.30.6 Sale of Personal Property to Effect Distribution

Personal property, especially securities, may be sold in order to affect a distribution of the proceeds where the property cannot be divided in kind or where it would be burdensome upon the distributee to create a tenancy in common among them in a particular security. See Section 20.20.4, Sales.

24.30.7 Balance as Shown on Distribution

The order of final distribution must reflect the net distributable estate. Payment of statutory allowances shall be reflected in a settlement and not in the order of final distribution. No deductions will be made from the distributable cash as shown in the ending recapitulation of the final settlement. Any expense inadvertently overlooked may not be deducted from the distributable cash, but must be shown as a credit on the final settlement thereby reducing the distributable cash. The final settlement and order of distribution must be amended in such cases.

24.30.8 Real Property Sold by Heirs or Devisees Without Court Order

The heirs or devisees do not need a court order to sell real property, but any real property sold by the heirs or devisees must be included in the order of final distribution. Failure to do so may create a cloud upon the title and expose the personal representative to liability for the expenses incurred in correcting the title defect. The quantum of interest of the distributes in the real property must be shown rather than the character thereof, i.e., "All of' rather than "fee simple," or if less, a fractional interest. Legal descriptions should be checked carefully against a title report or deed and compared to the inventory for accuracy.

24.30.9 Minor Distributee

24.30.9(a) If a distributes is a minor, unless the will otherwise directs, his distributive share of personal property must be distributed:

(1) to a custodian for the minor (See Section 40);

(2) to a legally appointed conservator; or

(3) pursuant to an order to dispense with conservatorship, if less than $10,000 (See Section 38.30).

24.30.9(b) Any personal representative may designate a custodian for a minor distributes (under age 18 years) where no custodian has been designated by the decedent in his will. However, court approval must be obtained if the designated custodian is not a trust company and the value of the property at the time of transfer exceeds $10,000. Such designation by a personal representative is effective until the minor has attained 18 years of age, at which time the property is immediately transferable to the beneficiary. A custodial designation in a will is effective until the beneficiary has attained twenty-one years of age at which time the property is immediately transferable to the beneficiary. See §§ 404.005 - 404.094 generally and § 404.041 RSMo in particular.

24.30.9(c) If a conservator is appointed by any court other than this Court, a certified copy of the conservator's letters, certified within the last 6 months, must be in this court's file before the order of distribution will be signed.

24.30.9(d) The petition and order to dispense with conservatorship may be filed in the decedent's estate rather than in a separate file for the minor. Real property is always distributed in the name of the minor except where there is a custodial designation.

References: Form 10324, Form 10325
§§ 404.005 - 404.660, 475.330

24.30.10 Nonresident Corporate Fiduciaries - Reciprocity

Before distribution may be made to a nonresident corporate fiduciary, the corporate fiduciary must file a certificate of reciprocity in compliance with § 362.600, RSMo if the trust property will be administered in Missouri. See Section 41.60.3, Nonresident Corporate Fiduciaries.

Reference: § 362.600

24.30.11 IRS Closing Letter - Marital/Non-Marital Trusts

If the will requires distribution to marital/non-marital trusts, the personal representative may not close the estate without the IRS closing letter unless all beneficiaries who could be affected by the final approval of the federal estate tax return and who are not incapacitated or minors, consent in writing to closing the estate. The consent must state that they realize their interest could be affected by a final IRS determination.

24.30.12 Marital/Non-Marital Distribution

Unless all property involved is distributable to trustees who are required to make a marital/non-marital distribution, a formula-type marital deduction distribution, determined upon acceptance of the marital deduction provisions of the federal estate tax return, must be established by filing, with the final settlement and proposed order of distribution, the following:

(1) IRS closing letter,

(2) Schedule M of the estate tax return and

(3) Worksheets showing how the distributive share was calculated.

24.30.13 Assignment

The Probate Division lacks jurisdiction to determine the enforceability of an assignment by a distributes to a third person. Consequently, the Court will not recognize such an assignment. Distribution must be made to the distributes designated by the will or by § 474.010,

RSMo. Distribution to an assignee may be effected by appointing the assignee as attorney in fact to receipt for the distribution. § 473.657 RSMo. If the personal representative receives notice of an assignment, he should not, however, proceed with final distribution until the assignee's rights have been satisfied in a manner which will relieve the personal representative from personal liability. See Section 24.30.2 if the heir or devisee is a debtor in bankruptcy.

NOTE: Disclaimer (§ 474.490, RSMo) may not be made in favor of a particular person and should not be used as a substitute for assignment. See Section 24.30.14, Disclaimer.

Reference: § 473.657

24.30.14 Renunciation or Disclaimer

Where a devisee or heir renounces or disclaims all or a portion of his interest in the estate, the Court must be provided with all facts to determine who is entitled to the disclaimed share. (However, this rule does not apply to an interest in a testamentary trust or a trust which is the recipient of a pour-over distribution.) The disclaimant may not designate the recipient of disclaimed property. The disclaiming distributes is treated as having predeceased the decedent. Therefore, the personal representative must provide names and relationships of those who would take the disclaiming devisee's share as though he actually predeceased the decedent. Based on this information, the Court will determine whether § 474.460, RSMo, or 474.465, RSMo, applies.

Examples:

Residuary estate left to A, B and C, all children of the decedent. C disclaims his interest. Unless the will otherwise directs, § 474.460, RSMo, applies and C's lineals, if any, will take his share.

Residuary estate left to A, B and C, not related to the decedent. C disclaims his interest. Unless the will otherwise directs, § 474.465, RSMo, applies and A and B will take C's share.

Intestate estate to son A and eight grandchildren, the children of predeceased son B. A disclaims his interest. A is not survived by any lineals. The eight grandchildren take the entire estate.

References: §§ 474.490, 474.460, 474.465

24.30.15 Escheats - Missing Heirs

If any distributes cannot, after diligent search, be located, or being located, fails or refuses to accept or receipt for his distributive share, then the share shall, upon petition and order filed by the personal representative, be escheated. The petition must set forth the effort made to locate the missing distributes, or other facts constituting grounds for escheat, and the exact amount due from the estate. If the distributive share consists of any property other than cash, the

non-cash property must be sold. The distribution will reflect: State of Missouri Escheat Fund for (name of heir or devisee). The personal representative shall then issue a check payable to the State Collector of Revenue and, upon securing a receipt from the Collector, the same shall be filed in lieu of a receipt from the heir or devisee concerned. The costs attributable to the escheat proceeding (including attorney's fees if allowed by the Court) shall be charged against the escheated distributee's share.

Reference: § 474.010(4)

24.30.16 Abatement

Where the estate is insufficient to satisfy specific, general or residuary devises, the abatement statutes govern the distribution. It may be advisable to confer with the Judge, Commissioner or Deputy Commissioner before proceeding. An order authorizing the abatement is not required.

References: §§ 473.620, 473.623

24.40 Judgment Creditors

The request by a judgment creditor for notice of any partial or final distribution or both to a debtor-distributee that complies with § 473.618, RSMo, imposes responsibility on the personal representative, not the Court, to give the required notice.

A judgment creditor may attach or garnish a distributee's share of an estate by compliance with the Missouri Statutes, Civil Rules and the Jackson County Circuit Court Rules on attachments and garnishments. However, assets or funds in the hands of a personal representative may not be garnished or attached until after entry of an order of partial or final distribution has been entered distributing the same to a judgment debtor distributes.

Reference: Form 10371

24.50 Discharge

24.50.1 Time for Filing Receipts

Within 60 days after the date of notice of approval of final settlement and order of distribution, the personal representative shall make distribution of the assets of the estate and file with the Court receipts and a proposed order of discharge.

The Settlement Clerk has authority to grant one extension for good cause shown not to exceed 30 days upon written application of the personal representative or his attorney. The chief auditor may grant the first or second continuance of 30 days each. Applications for further continuances or for more than 30 days will be presented to the Judge, Commissioner or Deputy Commissioner and will be granted only upon good cause shown.

References: Form 10572, Form 10575

24.50.2 Receipts Must Conform to Order

The order of discharge will be entered upon the filing of the receipts of all distributee receiving personal property which correspond with the decree of distribution.

Exception: If the receipts are for more than the amount distributed, they will be accepted if it is apparent that the greater amount consists of interest earned and that it is distributed proportionately among the entitled distributee.

24.50.3 Acceptable Receipts

Valid receipts consist of original canceled checks with proper endorsement or receipts signed by the distributee. If any individual other than the distributes endorses the check or the receipt of distributes, evidence must be presented with the receipt of the individual's authority to receipt for the distributes, i.e., power of attorney or letters of conservatorship, if not filed previously.

Receipts signed by an assignee are not acceptable unless the assignor has complied with § 473.657, RSMo. See Section 24.30.12, Assignment.

24.50.4 Citation for Failure to File

Failure to timely file receipts will result in the issuance of an order for citation to show cause why the personal representative should not be removed. If a citation issues, the personal representative and his attorney must appear at the hearing unless it is continued. The citation will be dismissed upon:

(1) the filing of the receipts;

(2) the payment of the citation costs; and

(3) obtaining the dismissal from the Judge, Commissioner or Deputy Commissioner.

The costs of the citation may not be paid from the assets of the estate.

24.50.5 Effect of Discharge

No costs shall accrue for securing an extension of time to file final receipts, unless a citation for failure to file final receipts has issued. If a citation has issued, the personal representative shall be personally responsible for the costs of the citation. See Section 24.50.4, Citation.

The personal representative is not relieved of his duties nor is his surety, if any, relieved of liability until an order of discharge has been entered.

References: Form 10594
§ 473.660

[END OF SECTION]

Section 25 - Distribution and Discharge - Independent Administration

25.10 Partial Distribution to Beneficiaries

25.10.1 Order Not Required

The independent personal representative may make any partial distributions, without court order, that are consistent with the Probate Code.

References: §§ 473.613, 473.787.2, 473.810(20)

25.10.2 Procedure

The following procedures may be followed to effect a transfer without court order:

25.10.2(a) Title to an Automobile

(1) Prepare title assignment to beneficiary or purchaser with notarized signature of personal representative.

(2) If title assignment does not include an odometer reading, prepare a separate certificate signed by the personal representative verifying the mileage and describing the automobile.

(3) Prepare an affidavit of the personal representative to transfer the automobile, e.g., pursuant to a specified article of the will or pursuant to § 473.810(16), RSMo.

(4) Prepare Application for Missouri Title (available from the Department of Revenue).

(5) Present the above with a current certified copy of letters and the title application fee (currently $7.50) to the State Department of Motor Vehicles.

25.10.2(b) Stocks or Bonds

(1) Endorse stock or bond certificate or prepare stock or bond certificate assignment by personal representative with signature guaranteed. (A stock power form separate from the certificate may be used with signature guaranteed and can be obtained from most banks.)

(2) Prepare or obtain from broker an affidavit of decedent's domicile. If domicile of decedent was a state other than Missouri, inheritance tax waivers may be required.

(3) Present the above with a current certified copy of letters to the transfer agent.**

**The transfer agent may require a certified copy of the death certificate or other documents.

25.20 Final Distribution - Judicial Closing - Section 473.837, RSMo

Section 24.30 applies in its entirety.

References: Form 10559, Form 10581, Form 10582, Form 10583, Form 10584, Form 10585, Form 10586, Form 10607, Form 10608
§§ 473.617, 473.782.2, 473.810(20), 473.837

25.30 Schedule of Distribution - Non-Judicial Closing - Section 473.840, RSMo

Section 24.30 applies in its entirety substituting the words "schedule of distribution" for "order of final distribution."

Practice Tip: There is no final decree of distribution when closing the estate pursuant to § 473.840, RSMo. The independent personal representative should prepare, execute and acknowledge the independent personal representative's deed. To effectively transfer the title of real property of the estate, the independent personal representative should record, in the recorder's office of the county where the real property is located, a certified copy of the will, if any, and the independent personal representative's deed. The deed should then be delivered to the distributes.

References: Form 10605, Form 10606a, Form 10606b
§ 473.840, 473.844

25.40 Discharge

25.40.1 Judicial Closing - Section 473.837 RSMo

Section 24.40 applies in its entirety.

References: Form 10594
§§ 473.660, 473.837

25.40.2 Non-Judicial closing - Section 473.840 RSMo

If no proceeding involving the independent personal representative is filed in the Court within one year after the statement of account is filed, the independent personal representative is discharged by operation of law. The Court shall not make any order of discharge unless the interested persons request, in writing, an order of discharge of the independent personal representative and the final receipts and a proposed order of discharge are filed with the Court. These documents may be filed with the Court at any time during the one year period. However, an order of discharge will not be acted upon until the statement of account has been on file for 20 days, unless the 20 day period is waived by all interested persons. See Section 22.150, supra, for waiver of legal requirements.

References: Form 10594
§§ 473.660, 473.840.3, 473.840.6

25.50 Other Applicable Sections Generally the following sections also apply:

24.30	Final Distribution
24.40	Judgment Creditors
24.50	Discharge (but see § 474.840.6, RSMo, for discharge by operation of law in independent administration)

[END OF SECTION]

Section 26 - Forms - Closing Supervised Estates

Following is a checklist of forms and documents required for the closing of various types of supervised estates. Specific requirements are listed under the appropriate headings.

26.10 Decedents' Estates With Assets

(1) Request for Final Court Cost and Estimate (obtain from and submit to Cost Clerk at least two weeks prior to filing final settlement) (Form 10407).

(2) Final Settlement (Form 10559, pages 1 and 2)

(3) All original receipts or canceled checks (vouchers)

(4) Petition for Approval of Final Settlement (Form 10573)

(5) Mailed Notice and Proof of Mailed Notice (Form 10558, pages 1 and 2) or waiver of notice (Form 10368).

(6) Order of distribution

Form 10581	testate estate - personal property only
Form 10582	testate estate - real property only
Form 10583	testate estate - real and personal property
Form 10584	intestate estate - personal property
Form 10585	intestate estate - real property only
Form 10586	intestate estate - real and personal property

(7) Affidavit of publication (filed by publisher after payment)

(8) Receipt of Distributee (Form 10575)*

(9) Order of Discharge (Form 10594)*

*To be filed after the order of distribution has been entered.

26.20 All Exhausted Estates*

NOTE: An estate may not be closed as exhausted if partial distributions have been made.

(1) Request for Final Court Costs Estimate (obtain from and submit to Cost Clerk at least two weeks prior to filing final settlement) (Form 10407)

(2) Final Settlement (Form 10559, pages 1 and 2)

(3) All original receipts or canceled checks (vouchers)

Publication and mailed notice is not required. Discharge is entered on the settlement by the Court.

26.30 Personal Representative Resigned/Removed-
Successor Appointed

(1) Request for Final Court Costs Estimate (obtain from and submit to Cost Clerk at least two weeks prior to filing final settlement) (Form 10407)

(2) Final settlement (Form 10559, pages 1 and 2)

(3) All original receipts or canceled checks (vouchers)

(4) Acceptance or waiver of notice by successor (adapt Form 10330)

(5) Order of distribution to successor (Form 10593)

(6) Receipt of successor (Form 10575)**

(7) Order of Discharge (Form 10333)**

To be filed after the order of distribution has been entered

NOTE: Letters to the successor must issue prior to approval of settlement and order of distribution. The Court will not audit the final settlement of a removed/resigned personal representative until the successor personal representative has had an opportunity to object to the settlement or unless all interested persons have waived objections or the right to file objections.

The Court will notify the successor personal representative, in writing, of the right to file objections and the time in which to do so. If no objections are filed by the successor or all objections are waived, the Court will audit the settlement. If objections are filed, the objections must be resolved before the settlement can be audited.

26.40 Personal Representative - Deceased

(1) Request for Final Court Costs Estimate (obtain from and submit to Cost Clerk at least two weeks prior to filing settlement) (Form 10407)

(2) Final settlement (Form 10559, pages 1 and 2)

(3) All original receipts or canceled checks (vouchers)

(4) Acceptance or waiver of notice by successor (adapt Form 10330)

(5) Order of distribution to successor (Form 10574)

(6) Receipt of successor (Form 10575)*

(7) Order of Discharge (adapt Form 10594)*

To be filed after the order of distribution has been entered

26.50 Subsequently Discovered Assets (After Estate Closed)

(1) Application for Letters D.B.N. (Form 10030)

(2) Supplemental Inventory (Form 10260)

(3) Final Settlement (Form 10559)

(4) Order of Distribution

Form 10581	testate estate - personal property
Form 10582	testate estate - real property only
Form 10583	testate estate - real and personal property only
Form 10584	pages 1 & 2 - intestate estate - personal property only
Form 10585	intestate estate - real and personal property

(5) Receipt of Distributee (Form 10575)

(6) Order of Discharge (Form 10594)

References: § 473.147

[END OF SECTION]

Section 27 - Forms - Closing Independently Administered Estates

Following is a checklist of forms and documents required for the closing of independently-administered estates pursuant to §§ 473.837 and 473.840, RSMO. Specific requirements are listed under the appropriate headings.

27.10 Judicial Closing - Section 473.837, RSMO

(1) Request for Final Court Costs Estimate (obtain from cost clerk at least two weeks before final settlement) (Form 10407)

(2) Final settlement (Form 10559, pages 1 and 2)

(3) All original receipts or canceled checks (vouchers)

(4) Petition for order of complete settlement (required even if assets exhausted) (Form 10607)

(5) Notice of Filing Petition for Complete Settlement of Estate and Proposed Order of Distribution (Form 10608, front)

(6) Proof of mailed notice (Form 10608, back) or waiver of notice

(7) Order of distribution (Same forms as supervised)

Form 10581	testate estate - personal property only
Form 10582	testate estate - real property only
Form 10583	testate estate - real and personal property
Form 10584	intestate estate - personal property only (pages 1 & 2)
Form 10585	intestate estate - real property only
Form 10586	intestate estate - real and personal property

(8) Affidavit of publication (filed by publisher after payment)

(9) Receipt of Distributee (Form 10575)

(10) Order of Discharge (Form 10594)

27.20 Non-Judicial Closing - Section 473.840, RSMO

(1) Request for Final Court Costs Estimate (obtain from cost clerk at least two weeks prior to -filing final settlement) (Form 10407)

(2) Statement of Account (Form 10606a)

(3) Schedule of Proposed Distribution (Form 10606b)

(4) Notice of Filing of Statement of Account and Schedule of Proposed Distribution (Form 10605, front)

(5) Proof of mailed notice (Form 10605, back) or waiver of notice

(6) Affidavit of publication (filed by publisher after payment)

For discharge of personal representative, also add:

(7) Waiver from all beneficiaries

(8) Order of Discharge (Form 10594)

27.30 Personal Representative Resigned/Removed - Successor Appointed

(1) Final Settlement (Form 10559 - pages 1 & 2)

(2) All original receipts or canceled checks (vouchers)

(3) Acceptance or Waiver of Notice by Successor (adapt Form 10330)

(4) Order of Distribution (Form 10593)

(5) Receipt of Successor (Form 10575)**

(6) Order of Discharge Form 10333)***

NOTE: Letters to the successor must issue prior to approval of the settlement and order of distribution. The Court will not audit the final settlement of a removed/resigned personal representative until the successor personal representative has had an opportunity to object to the settlement or unless all interested persons have waived objections of the right to file objections.

The Court will notify the successor personal representative, in writing, of the right to file objections and the time in which to do so. If no objections are filed by the successor or all objections are waived, the Court will audit the settlement. If objections are filed, the objections

must be resolved before the settlement can be audited.

***To be filed after the order of distribution has been entered.

[END OF SECTION]

Section 28 - Claims - Decedents' Estates - Supervised and Independent Administration

28.10 In General

Claims are defined at § 472.010(3), RSMo, and include costs and expenses of administration. However, claims should not be filed for the payment of costs and expenses of administration (as defined in statutes and Section 1.20.10). In supervised estates, expenses of administration shall be paid upon application and order, except that no order is necessary for payment of surety bond premiums, publication expenses and court costs. In supervised estates, fees of personal representatives and attorneys shall only be paid upon application and order, and final compensation shall only be paid upon, approval of final settlement and order of distribution. See Sections 18 and 19 Compensation.

References: Form 10140
§ 472.010(3)

28.20 Time for Filing

In general, all claims, except as provided in § 473.370, RSMo, and other than those excepted by § 473.360, RSMo, which are not filed in the Probate Division, or are not paid by the personal representative, within six months after the first published notice of letters testamentary or of administration are forever barred. However, the United States Supreme Court held in Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. 478, 108 S. Ct. 1340, 99 L. Ed. 2d 565 (1988), that published notice alone is not sufficient to bar creditors of the decedent who are known or reasonably ascertainable by the personal representative. It is the responsibility of the personal representative to provide actual notice of the issuance of letters and the time within which to file claims to all known or reasonably ascertainable creditors. Once notified, the creditor has a duty to file his claim with the Court and serve a copy on the personal representative before the expiration of the non-claim period.

In 1996, §§ 473.033 and 473.360 RSMo were amended to extend the nonclaim period by two months from the date the notice described in § 473.033 RSMo was mailed or served upon the creditor provided, however, that the two month period does not extend the one year statute of limitations imposed by § 473.444 RSMo.

In response to the Pope decision, the legislature enacted § 473.444, RSMo. The statute provides that unless otherwise barred by law, all claims other than those excepted by § 473.444.1, RSMo, which are not filed in the Probate Division and served on the personal representative, or are not paid by the personal representative, shall become unenforceable and shall be forever barred one year following the date of the decedent's death.

Reference: Form 10140

28.30 Debts Due United States and Other Taxing Authorities

The failure to file claims of the United States and claims of any taxing authority within the six month non-claim period does not bar the claim. See Estate of Thomas, 743 S.W. 2d 74 (Mo. banc 1988).

References: §§ 473.360.1, 473.397, 473.444
31 U.S.C. § 3713(b)

28.40 Lawsuits Pending At or Commenced After Decedent's Death

Sections 473.363 and 473.367 RSMo provide the procedure for filing notice of suits pending at decedent's death and actions commenced after decedent's death. The notice must be filed within the time specified in § 473.360, RSMo.

28.50 Judgments as Claims

A person having a claim against an estate as a result of a judgment or decree must file his claim within the time specified in § 473.360, RSMo. This may be accomplished by filing a copy of the judgment or decree in the Probate Division within that time. See In re Estate of Wisely, 763 S.W. 2d 691 (Mo. App. 1988).

28.60 Form of Pleading and Hearing

28.60.1 Sufficiency of Pleading

The claim form provided by the Court may be used for filing a claim against an estate. The claim must state sufficient facts to give reasonable notice to the personal representative of the nature and amount of the claim. The claim must be specific enough that a judgment rendered would be res judicata on the underlying obligation. See Siegel v. Ellis, 288 S.W. 2d 932, 938 (Mo. 1956); Jensen v. Estate of McCall, 426 S.W. 2d 52, 55 (Mo. 1968); Jones v. McReynolds, 762 S.W. 2d 854 (Mo. App. 1989).

References: Form 10140
§ 473.380

28.60.2 Procedure

The Court will not set any claim for hearing unless requested to do so. The request for hearing may be made by the personal representative or the claimant, must be in writing and must provide the names and addresses of all persons who must be given notice of the hearing. If requested to set a claim for hearing, the Court will enter an order designating the claim as an adversary probate proceeding. A party may also request the

designation of the claim as an adversary proceeding. The Court may require the filing of an amended claim which conforms to Civil Rule 55 if the Court anticipates that the issues are complex or if it appears that a counterclaim or third party claim may be involved. The Court's order may also require the personal representative to file an answer to the claim.

If no answer to the claim is required, then at the hearing on the claim, the personal representative may present any defenses to the claim which the personal representative has and adduce proof in connection therewith. If the Court requires that the personal representative file an answer, then the personal representative must plead all defenses in the answer which the personal representative intends to raise. Notwithstanding the fact that the Court does not require an answer to be filed, the personal representative may elect to file an answer. If the personal representative voluntarily files an answer, he is bound by the allegations contained therein and will not later be permitted to assert a defense which has not been pleaded in an answer. See Section 7, Adversary Proceedings.

Reference: Form 10140

28.70 Secured Claims

The mere statement on a claim that it is a secured claim shall not constitute sufficient proof of the security. A judgment on a secured claim shall not be entered, even though the personal representative has consented thereto, unless and until it affirmatively appears that the claim is in fact secured so as to constitute a lien superior to actual or hypothetical creditors.

Classification of secured claims shall be upon the basis set forth in Section 28.80 regardless of the fact that the claim is secured.

If real property is foreclosed, the personal representative must file a copy of the trustee's deed with the Court.

If the security is personal property, the personal representative may, without a Court order, surrender possession of the collateral in satisfaction of the obligation provided that the value of the collateral does not exceed the amount of the claim against it. Proof satisfactory to the Court of any surplus realized on default must be filed.

No claim filed by a junior secured claimant shall be paid until the nature and extent of the claim of a claimant senior thereto has been determined.

Reference: Form 10140
§§ 473.387, 473.397

28.80 Classification

Claims and statutory allowances are to be paid according to the following order of priority:

(1) Costs;

(2) Expenses of administration;

(3) Exempt property, family and homestead allowances;

(4) Funeral expenses;

(5) Debts and taxes due the United States of America (see 31 U.S.C. § 3466 and Section 28.30, supra);

(6) Expenses of the last sickness, wages of servants, claims for medicine and medical attendance during last sickness, and the reasonable cost of a tombstone;

(7) Debts and taxes due the state of Missouri, any county or any political subdivision of the state of Missouri;

(8) Judgments rendered against the decedent in his lifetime and judgments rendered upon attachments levied upon property of decedent during his lifetime;

(9) All other claims not barred by § 473.360, RSMo.

References: §§ 430.330, 430.340, 473.360, 473.397, 473.430

28.90 Claims for Funeral Expenses and Tombstones

28.90.1 Funeral Expenses

The mere fact that the personal representative consents to a claim for funeral expenses does not assure its reasonableness. The allowance of all claims for funeral expenses shall be governed by the rule set forth in Calvin F. Feutz Funeral Home, Inc. v. Estate of Werner, 417 S.W. 2d 25 (Mo. App. 1967).

Reference: § 473.397(4)

28.90.2 Tombstones

The reasonable cost of a tombstone is allowed as a class 6 claim, as distinguished from funeral expenses which are class 4 claims. Generally, the cost of a double headstone may not be paid from an estate.

Practice Tip: The claim for a tombstone is subject to the six month non-claim period.

Reference: § 473.397 (6)

28.100 Allowance by Court

Except for the personal representative's own claim, any claim may be paid by him without allowance by the Court if the claim was paid within the six month non-claim period or if the claim was filed within the six month non-claim period (§ 473.360 RSMo) except that the bar of §473.444 RSMo, may shorten that 6 month period. See Section 28.140, infra.

References: Form 10140
§§ 473.360, 473.403, 473.423, 473.433

28.110 Payment of Claims

Prior to the expiration of six months after the date of the first publication of letters, no personal representative shall be compelled to pay any claim presented to him or filed with the Court. Subsequent to the expiration of six months after the date of the first publication of letters, no personal representative shall pay any claim except costs and expenses of administration, unless, within the time specified in §§ 473.360, 473.363 and 473.367, RSMo, the claim has been served upon the personal representative, and has either been filed with the Court or acknowledged by the personal representative in writing to be a just claim; or unless the claim is not barred because the personal representative failed to give actual notice to known or reasonably ascertainable creditors as required by Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. 478, 108 S. Ct. 1340, 99 L. Ed. 2d 565 (1988). However, in the latter situation, depending upon the facts, the personal representative may be personally liable for failing to bar claims by giving the notice required by Pope.

The Court will not ratify or approve without review, the payment of a claim which appears time-barred absent informed consents. When it appears that a claim was paid by the personal representative out of time in a supervised estate or an independent administration with a judicial closing, the personal representative will be asked to explain in writing the payment of the claim. Depending upon the facts, the personal representative may be required to file informed consents by interested persons to the payment or a petition seeking specific judicial approval of the payment. If a petition must be filed it must be set for hearing with notice to interested persons.

Practice Tip: As a result of the decision in Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. 478, 108 S. Ct. 1340, 99 L. Ed. 2d 565 (1988), the practitioner should be aware that a personal representative may be subject to liability from claimants and distributees:

(1) He may be liable to claimants whose identity was known or reasonably ascertainable for failure to give notice to those claimants of the pendency of the estate and the deadline for filing claims.

(2) He may be liable to distributees if he pays a claim after the expiration of the sixth month non-claim period if it is later determined that the paid claimant was not reasonably ascertainable during the non-claim period. For claims discovered and filed after the non-claim period expires, the personal representative may seek a court determination of whether the claimant was reasonably ascertainable.

References: §§ 473.360, 473.363, 473.367, 473.433

28.120 Compromise of a Claim

The personal representative and creditor may agree on a compromise of a claim without court authorization. The settlement following the payment of the compromised amount must contain a credit entry for the compromised amount supported by a receipt or separate statement signed by the creditor claimant acknowledging in some manner that the claim has been satisfied. This procedure is also applicable to insolvent estates where the payment of claims must be prorated.

Reference: Form 10143
§§ 473.397, 473.427, 473.430

28.130 Insolvent Estates

If it appears at any time that the estate is or may be insolvent, that there are insufficient funds on hand or that there is other good cause, the personal representative may report that fact to the Court and apply for any order that he deems necessary in connection therewith including but not limited to classification and pro rata payment of claims.

If the estate is insolvent, no claim or statutory allowance of one class shall be paid until all previous classes are satisfied or it appears that there are sufficient assets to satisfy all previous classes. If there are not sufficient assets to pay the whole of any one class, claims shall be paid in proportion to their amounts.

The personal representative may file an application establishing the order of payment of claims or he may simply pay them at his own risk according to §§ 473.397 and 473.430, RSMo. Before filing an application, the personal representative must liquidate all assets. The application may be combined with any application for abandonment of property. The application shall:

(1) Itemize the claims and expenses of administration for which the estate is liable, classifying them pursuant to 473.397;

(2) State the total amount of assets available for the payment thereof; and

(3) Set forth the proposed order of payment of any class of claims and the proportionate payment of each claim. At the time of filing the application, the personal representative shall also cause notice of the hearing on the application to be served upon all creditors and/or distributees of the estate, as the Court may direct.

References: §§ 473.397, 473.430, 473.433.3

28.140 Personal Representative as Claimant

The personal claim of a personal representative must timely be filed as a claim against the estate. This is distinguishable from claims of others which, even though not filed, the personal representative may pay within the time set out in §473.360, RSMo.

A personal representative may establish a claim against the estate by proceeding against his co-personal representative in the manner prescribed for other persons. If there is no co-personal representative and the personal representative cannot obtain consents to the claim by all interested persons, upon notice that consents are not available, the Court shall appoint an administrator ad litem. The administrator ad litem will investigate the propriety of the claim and will recommend, subject to Court approval, one of the following:

(1) Allowance of the claim as prayed,

(2) Compromise of the claim, or

(3) A hearing on the claim.

Further, the administrator ad litem will recommend to the Court, the amount and source of the ad litem's fee allowance. The fee will be assessed against either estate assets or the claimant individually.

Any personal representative, however, may reimburse himself at any time for the following expenses of administration advanced by him without the necessity of filing a claim or application for reimbursement: (a) filing fee, (b) bond premium, (c) expense of publication and (d) court costs. Any sums paid by the personal representative out of his own funds for a debt of the decedent, including the funeral bill, may not be reimbursed to the personal representative until the timely filing and allowance of the personal representative's claim against the estate as set forth above. See Adams v. Braags, 739 S.W. 2d 744 (Mo. App. 1987).

Practice Tip: The attorney representing a claimant must be paid by the claimant, not from estate funds, even if the claimant is the personal representative who has an individual claim against the estate.

Reference: Form 10140
§§ 473.423, 473.430.4

28.150 Disposition of Claims

Except in insolvent estates, before final settlement will be approved, the file must evidence disposition of all claims against the estate. If a claim has not been disposed of, the auditor will issue an exception requiring some final disposition. The auditor cannot determine whether a claim is barred by time, lack of service or by defects in form from the face of the claim. Claims must be disposed of before the final settlement will be approved.

28.160 Other Applicable Sections

Other relevant statutory sections include:

§ 473.383 RSMo ……...…… claims not due

§§ 473.390 & 473.393 RSMo ……..……contingent claims

§ 473.398 RSMo ……..recovery of public aid funds

§§ 473.407 & 473.410 RSMo ……defenses, offsets or counterclaims

§473.440 RSMo ……enforcement of judgment, attachment or execution liens which attached prior to decedent's death

[END OF SECTION]

Section 29 - Guardianship and Conservatorship Proceedings

29.10 In General

In addition to this Section of the Manual, see also Sections 30 through 37 on various matters affecting conservatorships and fees allowed in guardianships and conservatorships.

For information regarding minors' estates, including personal litigation and alternatives to guardianships and conservatorships, see Section 38.

29.20 Nature of Proceeding

29.20.1 Adults

An adjudication of incapacity and disability results in a deprivation of an individual's civil rights. Therefore, the appointment of guardian/conservator requires full due process for the person for whom the guardian/conservator is sought, the respondent. It is a special adversary proceeding and should be approached as such despite intentions of petitioners to act in the respondent's best interest. See In re Link, 713 S.W.2d 487 (Mo. banc 1986) and Chapter 475, RSMo, generally.

Reference: Form 10193

29.20.2 Minors

It may be necessary to appoint a guardian or conservator for a minor on the death of both parents or one parent, or upon their consent. When the estate of a minor is derived from a natural parent, that parent may manage the estate without court order. Otherwise, except as set out at § 475.330, RSMo, dispensing with conservatorship, it is necessary to appoint a conservator to handle the minor's estate.

Reference: Form 10320

29.30 Who May File - Who May Serve

29.30.1 In General

Any person may file a petition for the appointment of himself or another as guardian/conservator of a minor or incapacitated/disabled adult. Qualifications are set out at § 475.055, RSMo. Guardians and conservators may be non-residents, but a resident agent must be appointed for non-residents. The attorney for the guardian/conservator may be the resident agent, if a resident of Missouri.

References: Form 10020, Form 10020a, Form 10193, Form 10320
§§ 473.117, 473.689, 475.055, 475.338

29.30.2 Adults

The Court will give first consideration to the appointment of:

(1) A qualified person or, for conservatorship only, a qualified organization or corporation, designated by the respondent, if the respondent is able to make a reasonable choice;

(2) A nominee designated in a written instrument pursuant to § 475.050(2), RSMo, or in a durable power of attorney; or

(3) Qualified blood relatives of the respondent.

References: § 475.050

29.30.3 Minors

The Court will appoint qualified persons in the order stated in § 475.045, RSMo.

Reference: § 475.045

29.30.4 The Jackson County Public Administrator

If there is no qualified person to serve as guardian/conservator of a minor or incapacitated/disabled adult, the Jackson County Public Administrator may be nominated to so serve even where he has not signed the consent to the petition, Exhibit C to Form 10194.

References: §§ 473.743, 475.055.2

29.40 Petition - Contents

29.40.1 In General

The Court prefers the use of its own forms when petitioning for appointment of a guardian or conservator of an adult or minor, forms 10179 and 10320 (and attachments) respectively. These are available from the New Estates Clerk. All forms in the packet should be filled out completely and accurately. In addition to the contents required by 475.060, RSMo, the petition should include the following:

29.40.2 Adults

(1) The respondent's social security number;

(2) The nominated guardian's and conservator's social security numbers;

(3) A list of social service benefits to which respondent may be entitled, including VA benefits; and

(4) The names and addresses of respondent's spouse, children and other close adult relatives. See Form 10319 for additional definition of "close relatives."

Reference: Form 10179, Form 10193
§ 475.060

29.40.3 Minors

(1) The minor's social security number;

(2) The nominated guardian's and conservator's social security numbers;

(3) The sources and amount of public support and all other income and property to which the minor may be entitled;

(4) The status of both of the minor's parents;

(5) The minor's marital status; and

(6) The names and addresses of the minor's close adult relatives. This information is necessary for the Court to give notice to the minor's parents and any other relatives involved in the minor's care or with an interest in the minor.

References: Form 10193, Form 10320
§ 475.060, 475.061

29.40.4 Successor Guardian/Conservator

(1) A completed form 10192 in addition to the information listed in Section 29.40.2 or 29.40.3.

Reference: Form 10192

29.50 Personal Service and Notice of Hearing

29.50.1 Adults

Notice of hearing on the petition shall be personally served on the respondent. All other relatives listed on the petition will be notified by ordinary mail.

When criminal charges are pending against an adult respondent, the Court will require that notice of hearing be given to the appropriate prosecuting official.

Reference: § 475.075

29.50.2 Minors

(a) Contested Hearings.

The *Uniform Child Custody Jurisdiction Act* governs service of process in minor guardianships. §§ 452.445(2) and 452.455.2 RSMo.

Thus, if a parent does not consent to the appointment of the guardian, that parent must be served with a summons and the petition in the manner provided by the Rules of Civil Procedure

If the custodian of the minor is not the petitioner and the custodian does not consent to the appointment of the guardian, the custodian must also be serve with a summons and the petition in the manner provided by the Rules of Civil Procedure.

Notice to both parents is mandatory, regardless of the provisions of any custody order or of the fact that the minor is illegitimate. Where the identity of the natural parent is unknown, the petitioner must so allege. Where the identity of the natural parent is known, but the parent's whereabouts is unknown, a request for service by publication should be made consistent with Civil Rule 54.17b.

Any party served by summons has thirty days from the date of service within which to file an answer or other responsive pleading. If service is by publication, the party so served has forty-five days within which to file an answer. Consequently, no hearing will be set on a guardianship petition until after the time for filing an answer to the petition has expired.

(b) Transfer to the Family Court Division.

In the event the petition is contested, this court will determine whether or not there are other family/juvenile court proceedings pending and, if so, will order the guardianship proceedings transferred to the family court division.

(c) Appointment of Guardian Ad Litem.

In the event the court determines that the proceeding should not be transferred to the family court, the court will, pursuant to § 452.490.4 RSMo, appoint a guardian ad litem for the minor.

(d) Pre-Trial Conference.

In contested guardianships, after the guardian ad litem has completed an investigation of the facts, the court will order a pre-trial conference to narrow the issues and to set a trial date.

(e) Uncontested Hearings.

Notice of hearing on the petition shall be served on:

(1) The minor, if over fourteen years of age; (However, the minor may consent to appointment in which case notice of hearing to the minor will not be given. To consent, the minor's signature must appear on the application and be witnessed.)

(2) The parents of the minor, unless they consent to the appointment; and

(3) The spouse of the minor, if any.

The Court may also require notice to any person or agency which has custody of or provides benefits to the minor.

Notice to both parents is mandatory, regardless of the provisions of any custody order or of the fact that the minor is illegitimate. Where the identity of the natural parent is unknown, the petitioner must so allege. Where the identity of the natural parent is known, but the parent's whereabouts is unknown, a request for service by publication should be made consistent with Civil Rule 54.17b.

Reference: § 475.070
Civil Rule 54.17b

29.60 Temporary Emergency Detention Procedures

When a petition for the appointment of a guardian/conservator is filed, if the respondent, by reason of mental disorder or mental retardation, presents a likelihood of serious physical harm to himself or others he may be detained by use of the procedures in Chapter 632 or Chapter 633, RSMo. Generally, a hearing must be held on the guardianship / conservatorship petition within 96 hours after detention or, if that is not feasible, a hearing on the need for continued detention must be held unless respondent's counsel waives the hearing. As in mental health proceedings, mental health coordinators may be of assistance in emergency situations. See Section 39, Mental Health Proceedings, generally and section 39.30.1 regarding contact of a Mental Health Coordinator.

References: Form 10188
Chapters 632 & 633, RSMo

29.70 Prehearing Procedures

29.70.1 Adults

29.70.1 (a) Appointment of Attorney for Respondent

Immediately upon filing the petition, the Court shall appoint a lawyer to represent the respondent. While the lawyer must act as an advocate for the respondent, he also must act in his client's best interest. See § 475.075.3, RSMo, and In re Link, 713 S.W.2d 487 (Mo. 1986). If the respondent is found to be incapacitated and disabled, the appointed attorney's fee will be taxed as costs to be paid by the respondent's estate unless the respondent is eligible for public assistance pursuant to § 208.180, RSMo. However, if the respondent is found not to be incapacitated, costs, including respondent's attorney fees, will be paid by the petitioner, unless the petitioner is a public employee acting in his official capacity. Where the respondent is eligible for public assistance, the attorney's fees and other costs will be paid by the county.

References: §§ 208.180, 475.075

29.70.1(b) Appointment of Examining Physician

The Court may order a medical or mental examination of the respondent and tax the physician's fees as costs to be paid in the same manner as are the appointed attorney's as set out above.

29.70.1(c) Jury Trial Request or Waiver

The respondent in any guardianship or conservatorship proceeding is entitled to a trial by jury, request for which may be made at the initial setting.

The petitioner has no right to demand a jury trial.

Where the respondent desires to waive his right to a jury trial, a specific waiver will be taken on the record prior to the commencement of the hearing. The respondent's attorney may waive the respondent's right to be present and his right to a jury trial only under certain limited circumstances to be determined by the Court on a case by case basis. See In re Link, 713 S.W.2d 487 (Mo. 1986).

29.70.2 Minors

The Court may appoint a guardian ad litem to represent the interest of the minor during the pendency of a proceeding to appoint. a guardian for the minor. Where two or more parties seek appointment as guardian, with the right to custody, or where a natural parent alleged to be unfit is contesting the petition, the Court will appoint a guardian ad litem for the minor. §§ 452.335(2), 452.490.4 RSMo.

29.80 Hearing

29.80.1 In General

The nominated guardian/conservator of an adult or a minor must be present at the hearing to testify as to his qualifications.

Practice Tip: The nominated guardian/conservator should be asked under oath at the hearing, if he has ever been convicted of a crime and if he has read, understands and agrees to perform the duties of the guardian/conservator listed on the Court's form 10194a.

References: Form 10194(a)

29.80.2 Expert Medical Evidence

The examining physician for petitioner must appear in person and testify unless his appearance is waived by agreement of respondent's attorney. If the Physician's appearance is waived, medical evidence may be adduced a written report in letter form. The report must conform to the requirements specified in the Memorandum entitled "Medical Reports For Guardianship Proceedings," Appendix 3, infra. Notwithstanding the fact that respondent's attorney waives the hearsay objection to a written medical report, such report must nevertheless constitute clear and convincing evidence of respondent's mental condition, otherwise, the Court may not find the respondent to be incapacitated or disabled to some degree.

If petitioner desires to adduce medical evidence by written report, the report should be filed with the petition and a copy should be provided to respondent's attorney. It is petitioner's responsibility to determine whether or not respondent's attorney will waive the hearsay objection. If the objection will not be waived, it is incumbent upon petitioner's attorney to produce the examining physician as a witness.

It is not necessary to produce a psychiatrist or psychologist as petitioner's expert medical witness. However, the examining physician must have performed an adequate mental status evaluation.

References: Form 10194(a)
§ 475.010

29.80.3 Adults - Evidence

Petitioner must prove incapacity and/or disability by clear and convincing evidence. In order to establish a prima facie case of incapacity or disability, petitioner must adduce evidence of mental incapacity or disability, evidence as to whether or not the incapacity or disability is treatable, and, if so, the nature and probable duration of the

treatment, and evidence as to the placement of respondent taking into consideration the respondent's mental and physical condition and his financial resources.

The statute imposes an affirmative duty upon the Court not to impose any greater restraints upon the respondent's liberty than is necessary to protect the respondent and his financial resources. Section 475.975.10, RSMo. See § 475.010(9), RSMo for a definition of "least restrictive environment." When the Court finds that respondent is incapacitated or disabled to some extent, but not totally, the Court may appoint a limited guardian or conservator, whose powers will be limited as is consistent with the respondent's capacities or abilities.

References: §§ 475.010(9), 475.075.10, 475.078, 475.120.3(l)

29.80.4 Minors - Evidence

Notwithstanding that a petition for appointment of a guardian or conservator for a minor is uncontested, the proposed guardian/conservator must appear and testify as to the nominee's qualifications and the nominee's plan of custody and care.

The appointment of a guardian for a minor entitles the guardian to the minor's custody. Where a petition for appointment of a guardian is contested, the Court will appoint a guardian ad litem to represent the minor's interest. §§ 452.445(2) and 452.490.2 RSMo. Evidence must be adduced in support of petitioner's qualifications to serve and petitioner's plan of custody and care. As in other custody proceedings, the primary issue to be determined is the "best interests of the minor."

Section 475.045.1, RSMo specifies the classes of persons who may be appointed guardian or conservator for a minor.

A hearing is not necessary where the application is for the appointment of a conservator only and both parents, or the surviving parent, consents to the appointment of the conservator.

Reference: § 475.045

29.90 Guardian or Conservator Ad Litem - Emergencies

The emergency procedures set forth below may be conducted on an expedited basis for good cause shown. A telephone conference with the Judge or Commissioner in advance of filing a petition seeking emergency relief is advisable for the purpose of demonstrating that an emergency, in fact, exits and for the purpose of fixing the time for the hearing and expediting service on respondent and the appointment of respondent's attorney.

29.90.1 Adults - Prior to Adjudication

Section 475.075.11, RSMo, provides that a guardian or conservator ad litem may be appointed for an alleged incapacitated or disabled for 30 days where an emergency exists that places the respondent's person or property at risk. Before such an appointment can be made, petitioner must file a petition for an adjudication of incapacity or disability and for the appointment of a guardian or conservator as prescribed by §§ 475.060 and 475.061, RSMo, and notice of hearing must be served upon the respondent and his attorney. Petitioner must adduce medical evidence of respondent's incapacity or disability. After the original appointment, the Court may extend the appointment for additional 30 day periods upon a further showing of continuing emergency need. Employment of this procedure should only be used when the required notice of hearing to other interested persons pursuant to § 475.075.2, RSMo is not immediately possible.

Because the Court is capable of conducting a hearing on the merits of a petition in a very short period of time on an emergency basis, when all appropriate interested persons can be promptly notified, the procedures specified in § 475.075.11, RSMo. will not be employed. Instead, the Court, after notice and hearing, will appoint a guardian or conservator ad litem when it appears that the respondent's mental or physical condition may respond to treatment and respondent may regain his capacity or ability within the foreseeable future.

References: §§ 475.075.2, 475.075.11, 475.091

29.90.2 Adults or Minors - Where Existing

Section 475.097, RSMo, allows a guardian ad litem or conservator ad litem to be appointed with or without notice when the Court finds a guardian or conservator of a minor or adult is not adequately performing his duties. The appointment of the guardian ad litem or conservator ad litem must be limited in duration to the period preceding the hearing on an appointment or removal of a permanent guardian or for a specified period not to exceed six months. The order appointing a guardian ad litem and/or conservator ad litem will usually provide for the suspension of the authority of the permanent guardian and/or conservator.

Reference: § 475.097

29.100 Issuance of Letters Granted

Once the judgment is entered and the bond, if required, is filed, the Probate Division will issue the letters of guardianship or conservatorship. See Section 30, Bond.

References: §§ 475.100, 475.105

29.100.1 Adults

The original letters are usually sent to the attorney for the guardian/conservator. However, when respondent is indigent, the original is sent directly to the guardian/conservator.

In 1993, the General Assembly amended § 475.210 RSMo to repeal the six months non-claim period. Accordingly, the court no longer requires the publication of notice of issuance of letters of conservatorship.

Reference: § 475.140

29.100.2 Minors

When an order to proceed in forma pauperis has been entered, the original letters are sent directly to the guardian/conservator. in all other cases, the original letters are sent to the attorney for the guardian/conservator.

29.110 Annual Report of Guardian

29.110.1 In General

Every guardian must file an annual report concerning the personal status of his ward. The statement is due on the anniversary date of the issuance of letters. Approximately 40 days prior to the due date, a notice to file an annual report form will be sent to the guardian for completion. Failure to receive notice does not excuse the filing of the report when due. See Section 35.10 regarding the conservator's requirement to file settlement and 35.170 for waiver of settlement through no further process.

Reference: Form 10198, Form 10199
§ 475.082

29.110.2 Citation

Failure to timely file an annual report in an estate which has been placed on no further process or where there is a guardian only will result in the issuance of a notice of continuance stating that unless the report is filed within two weeks, an order for citation will issue to show cause why the guardian should not be removed. If a citation issues, the guardian and his attorney must appear at the hearing unless it is continued. The citation will be dismissed upon:

(1) the filing of the report,

(2) the payment of the citation costs and

(3) obtaining the dismissal from the Judge, Commissioner or Deputy Commissioner

The costs of the citation may not be paid from the assets of the estate.

References: § 473.560, 473.563

29.110.3 Contents of Annual Report

In estates where a guardian only has been appointed, and in asset estates where a guardian and conservator have been appointed, the annual report form requests information about the placement and personal condition of the ward and is separate from the financial accounting due from the conservator. See section 35, Settlements.

However, in estates which have been placed on no further process status so that no annual settlement is required, the annual statement of affairs requests general information regarding income and expenditures on behalf of the ward. See Section 35,170.1, No Further Process.

References: Form 10602, Form 10198, Form 10199
§§ 475.270, 475.276

29.110.4 Corrections - Exception Letter - Extension

Each annual report is reviewed by the Court. In an asset estate where a settlement is filed, the Chief Auditor reviews the report. If the annual report is not filed with the settlement, an auditor's exception will issue.

The reviewer will issue an exception letter enumerating errors to be corrected or requesting additional information to be provided before the report can be approved. The exception letter grants 30 days within which to satisfy the requirements. Requests for additional time should be directed to the reviewer.

29.110.5 Show Cause Order

Failure to comply with the exception letter within the time prescribed will result in the issuance of a warning letter stating that unless the requirements are met within 15 days a show cause order will issue to show cause why the guardian should not be removed and to set a date certain for hearing. If a show cause order issues, both the guardian and his attorney must appear at the hearing unless the hearing is continued or the show cause is dismissed prior to the hearing. The order will be dismissed when the exception letter is cleared and the costs of the show cause order are paid. The exception letter will not be cleared from the bench. The filing of documents and/or pleadings in response to the exception letter does not automatically result in dismissal of the show cause. The attorney must meet with the reviewer to clear exceptions before requesting the dismissal from the Judge, Commissioner or Deputy Commissioner. The attorney must allow sufficient time prior to the hearing date to meet with the auditor for this purpose and not wait until the morning of the hearing date. The costs of the show cause may not be paid with estate assets.

29.120 Death of Protectee - Distribution Without Administration

29.120.1 In General

If a protectee dies intestate, leaving no debts incurred before adjudication, the estate may be distributed by the conservator in the manner set forth in § 475.320, RSMo.

The conservator must file a Suggestion of Death of Protectee and Petition That No Letters of Administration be granted. They may be filed without a filing fee in the conservatorship estate.

References: Form 10190 (pages 1,2 & a)
§ 475.320

29.120.2 Suggestion of Death - Form and Contents

As in an application for letters of administration, the names, relationship to the decedent and residence address of the surviving spouse and heirs must be adequately shown in the Suggestion of Death since it is the foundation upon which the order of distribution is predicated. The Suggestion of Death should also indicate those believed by the applicant to be mentally incapacitated and the birth dates of those who are minors and should state so far as is known to applicant, the names and addresses of the guardians and conservators of those who are minors or disabled.

Reference: Form 10190 (pages 1, 2 & a)
§ 475.320

29.120.3 Order to Proceed

If the Court determines that the requirements of § 475.320, RSMo, have been met, it may in its discretion order the conservator to make distribution to the heirs in the same manner and with the same effect as in the case of an administrator. See Section 29.120.5 on final settlement requirements.

References: Form 10191
§ 475.320

29.120.4 Publication of Notice, Bond

No publication is required for distribution without administration.

No bond in addition to that for the conservatorship estate will be required, except as set out in Section 30 on bonds. Liability on the conservator's bond continues and applies to the complete administration of the estate of a deceased protectee.

29.120.5 Final Settlement

The conservator proceeding under § 475.320, RSMo, shall file a final settlement in the same manner as a personal representative closing a decedent intestate estate, except that published notice is not required. However, proof of mailing or waivers of notice of the final settlement to all heirs must be filed. See Section 37.60 for a checklist of forms to be filed.

Reference: § 475.320

29.120.6 Distribution and Discharge

A conservator making distribution without administration is subject in all respects and to the same extent to the liabilities of an administrator. See Section 36 on distribution and discharge.

29.130 Restoration

A verified petition for restoration may be filed on behalf of any incapacitated person with or without the concurrence of the guardian/conservator. The petition shall be set for hearing and notice thereof shall be given to the guardian/conservator (if the guardian/conservator has not joined in the petition) and to any other persons who may be interested in the proceeding as determined by the Court. If the ward is not represented by an attorney, an attorney shall be appointed to represent him. Even if the petition is uncontested, the evidence adduced at the hearing shall include a currently dated written report of a licensed physician stating his opinion that the ward has regained his capacity and is able to manage his affairs. If restoration is ordered, the Court shall also direct the conservator, in asset cases, to file his final settlement within 60 days, and upon approval thereof, shall direct the delivery of the protectee's assets to him.

References: Form 10210
§§ 475.082.4, 475.083

[END OF SECTION]

Section 30 - Bonds - Conservatorship Estates

30.10 Bond, When Required

A bond will be required in all conservatorship estates and will not be waived unless Chapter 208 is applicable. Letters will not issue until the bond is filed.

Sections 473.157 to 473.217, RSMo, relating to the bonds of personal representatives, except §§ 473.157.1 and 473.160.1, RSMo, are applicable to the bonds o conservators.

Reference: § 475.100

30.20 Type of Bond

Because of the requirements necessary to qualify the principal and sureties on a personal surety bond, a corporate surety bond is usually more cost effective.

References: Form 10032 or corporate surety's bond form
§ 473.160

30.30 Bond Form, Requirements

30.30.1 Condition of Bond and Signatures

The condition of the bond as set out at § 473.157.2, RSMO, must be stated on the bond. Each bond shall be signed by the principal (conservator) and his surety, and their signatures must be acknowledged. Where an attorney-in-fact signs for the surety, a copy of the power-of-attorney must be attached to the bond.

References: §§ 473.157, 473.167

30.30.2 Uniformity of Sureties

All additional bonds which may be required must be executed by the same surety as the original bond. If this is not possible or desirable, then a new bond in the full amount required must be filed accompanied by an application and order to terminate the original surety's future liability as of the date of the Court's approval of the new bond. The surety company s bond number must be included on the original bond. On any subsequent bonds, the number must be consistent with the original bond and must be stated on the bond. All additional bonds or riders shall be designated "Additional" or "Rider." All additional bonds or riders must contain or refer to the condition of the bond set forth in § 473.157.2, RSMO, and must be executed and acknowledged in compliance with § 473.167, RSMO; and where an attorney-in-fact signs for the surety, a copy of the power-of-attorney must be attached to the additional bond or rider.

References: §§ 473.157.2, 473.167, 473.203

30.40 Amount of Bond

30.40.1 In General

The initial amount of the bond shall be set by the Court at the hearing based on the actual value of the personal property and one year's income alleged in the petition or testified to by witnesses. Later adjustments in the amount of the bond will be based on the actual value of the property and annual income as reflected in the most recent of the inventory or latest annual settlement, as more particularly set out in Sections 31 and 35, Inventory and Settlement, infra.

30.40.2 Trust Assets

The Court, on a case-by-case basis, will determine what amount of the trust principal and/or income, in which the protectee has an interest will be bonded. A copy of the trust agreement will usually be required for this purpose. See also Sections 31.50.10 and 35.190, Inventory and Accounting for Trust Estates.

30.40.3 Minimum Bond

Except in cases covered by § 208.180, RSMO, a minimum bond of $1,000 shall be required in all cases.

References: §§ 208.180, 475.100

30.50 Increase of Bond

Upon the filing of the original inventory or any supplemental, corrected or amended inventory or an annual settlement, the Court shall determine whether the bond is sufficient and, if not, shall notify the conservator to file additional bond. Within two weeks, the additional bond must be filed or the conservatory or attorney must show why an additional bond is not necessary. See Section 35.60 regarding the consequences of failure to file additional bond.

An order confirming the sale of real property will not be entered until the conservator files an additional bond sufficient to cover the proceeds of the sale receivable by the conservator unless the current bond is already adequate. Proceeds receivable by the conservator, if less than the sales price, must be evidenced by a closing statement prepared by a title company, financial institution or licensed real estate broker.

References: §§ 473.190, 473.193, 473.197

30.60 Citation - Failure to File Additional Bond

Failure to timely file the additional bond within two weeks of the Court's request will result in the issuance of an order to file additional bond stating that unless the additional bond is filed within two weeks, an order for. citation will issue to show cause why the conservator should not be removed. If a citation issues, the conservator and his attorney must appear at the hearing unless it is continued. The citation will be dismissed upon:

(1) the filing of the additional bond,

(2) the payment of the citation costs and

(3) obtaining the dismissal from the Judge, Commissioner or Deputy Commissioner.

The costs of the citation may not be paid from the assets of the estate.

30.70 Reduction of Bond

The amount of a bond may be reduced provided that the conservator upon application and order places the funds or securities in a restricted account or restricted safe deposit box at a Missouri financial institution to be withdrawn only upon order of the Court. In no case shall a bond be reduced below the amount of $1,000 except in Chapter 208 estates. The Court may issue an order reducing bond at the time of auditing the settlement, if appropriate. Bond will not be reduced between settlement dates except when money or securities are placed in an appropriate restricted account. See Section 30.80 regarding the effect of restricted deposits on bond.

Practice Tip: Prior to restricting all assets in an estate the conservator and attorney must analyze the cost to the estate of obtaining court orders to release funds for specific needs such as court costs, taxes, bond premium and attorney fees versus the cost of bond to cover sufficient unrestricted assets to pay annual expenses without the necessity of obtaining court orders to release the funds from restricted account. This issue will come up most often in a minor's estate where assets are not needed for support and maintenance and all assets may be restricted but the minor's estate is not eligible for NFP (Section 35.170) and thus court costs and attorney fees for settlement preparation will still be incurred.

References: Form 10113, Form 10114, Form 10530, Form 10531,
§§ 473.160.2, 473.197

30.80 Effect of Restricted Assets on Bonds

30.80.1 Verification of Restriction Required

The deposit of cash or securities in an account at a Missouri financial institution or in a Missouri safe deposit box which is restricted so that withdrawals may be made

only on order of the Court may be employed to reduce the amount of the conservator's bond. Before the bond is actually reduced, a verification of restricted deposit or box must be executed by the depository describing the securities or stating the amount of cash and filed with the Court. Thereafter, so long as the restricted account is in existence, a dated verification of the restriction and the amount of the restricted asset must be filed with each settlement. The date of the verification must be same date as the ending date of the settlement.

Reference: Form 10532, Form 10533
§ 473.160.2

30.80.2 Amount of Bond

Notwithstanding the fact that all personal property has been placed in restricted custody, the Court shall require the conservator to maintain a bond of not less than 1,000 and may require a bond greater than that amount if the restriction covers securities subject to market fluctuations which could result in a loss to the estate.

30.80.3 Release of Restricted Property

As a condition precedent to the release of property from a restricted account, the conservator's bond shall be increased. The amount of the increase in bond shall be equal to the current value of the property released. The fact that the property is to be immediately disbursed or transferred to a different financial institution by the conservator does not operate to waive this requirement. However, if funds are to be transferred, authority for a direct transfer may be sought, wherein the transferring bank transfers funds to the receiving bank to a restricted account for the benefit of the protectee. The bank may also make a direct payment of expenditures from a restricted account if the Court's order contains language authorizing the bank to pay a specific amount to a named payee. If the funds do not go though the conservator's hands, they will not have to be bonded.

[END OF SECTION]

Section 31 - Inventory - Conservatorship Estates

31.10 Time for Filing

The inventory must be filed within 30 days after the issuance of letters. Extensions of the time to file will only be granted on a showing of good cause. One extension of time, of not more than 30 days, for the filing of the inventory may be granted by the Inventory Clerk upon the filing of a written application for good cause shown. The Chief Auditor may grant the first or second continuance of 30 days each. Requests for further extension of time will be considered by the Judge, Commissioner or Deputy Commissioner.

If there is an asset (e.g., stock in a closely-held corporation) whose value may not be readily ascertained, an inventory shall be promptly filed listing the asset as "value undetermined" but listing all other assets with their values. An amended inventory shall be filed as soon as the value is determined and, in any event, on or before the due date of the first annual settlement.

References: Form 10260, Form 10264
§§ 475.145, 473.233, 473.240

31.20 Citation - Failure to File Inventory

Failure to timely file an inventory will result in the issuance of a notice of continuance stating that unless the inventory is filed within two weeks, an order for citation will issue to show cause why the conservatory should not be removed. If a citation issues, the conservatory and his attorney must appear at the hearing unless it is continued. The citation will be dismissed upon:

(1) the filing of the inventory,

(2) the payment of the citation costs and

(3) obtaining the dismissal from the Judge, Commissioner or Deputy Commissioner.

The costs of the citation may not be paid from the assets of the estate.

31.30 Contents

The inventory must contain a list of all protectee's property valued as of the date of adjudication. In addition to assets held solely in the protectee's name, all assets in which the protectee has an interest must be listed, such as trust assets, entirety property, jointly held real property, multiple party bank accounts and other jointly held personal property. The inventory must show the fractional

interest of the protectee as a tenant in common, if any. The name(s) of any individual who has an interest in the property, in addition to the protectee, must be reflected on the inventory.

The protectee's income and benefits from all sources must also be listed indicating the amount and frequency of periodic payments. The corpus of the trust in which a protectee has an interest and income and benefits from all sources must be listed as information only items on the inventory. Their value or amounts must not be included in the value column or ending totals.

Changes in the nature of assets made subsequent to adjudication but prior to preparation of the inventory should be reflected in the first settlement, not in the inventory. For example, an uncashed social security check must be listed under personal property (category 6) on the inventory. When cashed, it must be shown as a wash entry on the settlement debiting the cash amount and crediting the appropriate inventory number and amount. All original, supplemental and amended inventory values must be date of adjudication values. However, when real property is acquired during the administration of the estate such as when property is inherited or purchased with estate funds, then the inventory value is the value on the date of acquisition. Personal property acquired during the administration of the estate may be brought in on the next settlement and valued on the date of acquisition. See Section 31.60, Supplemental Inventory.

References: Form 10260
§§ 473.233, 473.237

31.40 Multiple Party Accounts - Jointly Held Property

All property in which the protectee has a joint or entirety interest must be included on the inventory and the entire value of the property included in the value column. See Section 31.20 as to the requirement to list all property in the inventory. For methods of inventorying various types of jointly held property, see Section 31.50. The names of any joint tenant or tenant by the entirety must be included with the description of the asset.

Reference: § 475.145

31.50 Description of Property

NOTE: Categories of property should be grouped together in the inventory, i.e., all real property together, all common stock together and so forth.

31.50.1 REAL PROPERTY

State legal description and street address including the city, county and state. If encumbered, show balance due, subtract from appraised value as shown

and set forth only "equity" in value column. The attorney should verify the legal description and ownership of record. Include real property located in other states. Note that this is different from decedents' estates where real property located in another state is not included in the inventory.

NOTE: The inventory must show the fractional interest of the protectee, if any. The names(s) of any individual who also has an interest in the property must be reflected on the inventory.

31.50.2 FURNITURE, HOUSEHOLD GOODS AND WEARING APPAREL

No detailed appraisal or listing of the items is required unless items which have a significant value such as valuable antiques and objects of art are found to be assets of the estate.

31.50.3 CORPORATION STOCKS

State number of shares, class of stock, full name of company and value on date of adjudication. List accrued dividends to date of adjudication as a separate but related inventory item.

31.50.4 MORTGAGES, DEEDS OF TRUST, BONDS, NOTES AND OTHER WRITTEN EVIDENCE OF DEBT

For mortgages and deeds of trust state: name or other identifying data; issue date; face value; maturity date; rate and due date of interest' date of adjudication value; outstanding principal at date of adjudication; amount of interest accrued to date of adjudication; maker, payee and endorser; and security, if any. List accrued interest to date of adjudication as a separate but related inventory item.

For notes state: name or other identifying data; issue date; face value; maturity date; rate and due date of interest; date of adjudication value; principal balance due at date of adjudication; amount of interest accrued to date of adjudication; maker, payee and endorser; name of pledgor or mortgagor, if any, and security for note, if any. List accrued interest to date of adjudication as a separate but related inventory item.

For bonds state: name or other identifying data; face value; issue date; maturity date; rate and due date of interest; serial number; dated of adjudication value; and amount of interest accrued to date of adjudication. List accrued interest to date of adjudication as a separate but related inventory item.

31.50.5 BANK ACCOUNTS, MONEY, BURIAL PLANS AND INSURANCE POLICIES

State specific names and locations of banks, type of account. account number, deposit balances and accrued interest to date of adjudication. For life insurance policies owned by the protectee, whether on his life or the life of another, list the company name, policy number, cash value, face value-and beneficiary. For information purposes only, the company name and policy number of health insurance policies should be included. For burial plans, include the name of the company, value and policy number, if any.

31.50.6 CONTRACTS FOR DEED RELATING TO SALE OF PROTECTEE'S PROPERTY

The legal description shall be shown under the heading "Real Estate" with nothing in the value column. A parenthetical reference should be made to the appropriate item of personal property. The contract itself shall be described under "Personal Property" and the value shown as the unpaid balance on the date of adjudication.

31.50.7 CONTRACTS FOR DEED RELATING TO PURCHASE BY PROTECTEE

The contract right shall be described under personal property listing the original amount of the contract and the unpaid balance for information only. For purposes of value, list the value of the underlying property less the amount owed on the contract on the date of adjudication. If the contract is fully performed and the legal title is conveyed, the inventory shall be amended listing the legal description under "Real Estate" and the value at the tme legal title was conveyed.

NOTE: This valuation is an exception to the general rule that estate property is valued at the date of adjudication.

31.50.8 REAL PROPERTY, UNPERFORMED, ENFORCEABLE CONTRACT

If a protectee executed an enforceable real property contract for sale and conveyance of real property, the legal description together with a description of the contract shall be shown under the heading "Real Estate" with the amount shown in the value column to be the net contract price.

31.50.9 OIL AND GAS LEASES, ROYALTY AND MINER&L INTERESTS

Mineral interests may be real or personal property depending upon the state from which they originate. (See 4 Summers, Oil & Gas Law, Chapter 26, "Taxation"). All such interests must be listed. Note that this requirement is different from decedents' estates where real property interests located in another state are not included in the inventory.

31.50.10 TRUST ASSETS OF WHICH PROTECTEE IS A BENEFICIARY

As an information item only, list the name of the trust, trustees and corpus of trust. Describe the protectee's interest in the trust, noting whether the protectee has any power over the trust. Do not place the amount of the corpus in the value column.

31.50.11 PERIODIC INCOME

State source of income, amount and frequency of payment but do not include amounts in the value column. Include benefits such as Social Security, Veterans Administration, Railroad Retirement, Civil Service, other pensions and income from a trust.

Reference: § 475.145

31.50.12 ALL OTHER PERSONAL PROPERTY

Include any other personal property which does not fit one of the preceding categories on the inventory. For example, list automobiles, (make, model, year and I.D. number) mobile homes, collections (stamp, coin, etc.), tools, equipment and sole proprietorship business or partnership interest. Do **NOT** include the detailed business or partnership inventory. For sole proprietorship and partnership interest, list only the net value of the protectee's interest.

References: § § 473.220, 473.230

31.50.13 PROPERTY POSSESSED BY PROTECTEE, BUT OWNED OR CLAIMED TO BE OWNED BY ANOTHER

List separately from other property, together with a statement as to the knowledge of the conservator as to its ownership. Do NOT place value in the value column.

NOTE: Categories of property should be grouped together in the inventory, i.e., all real property together, all common stock together and so forth.

31.60 Supplemental Inventory

Additional assets discovered subsequent to the filing of the original inventory may be included in a supplemental inventory or, if the additional assets consist of property other than real property, then the assets may be shown on the next settlement without the necessity of a supplemental inventory. Any supplemental inventory should carry a balance forward of the total value of all

personal property previously inventoried. All supplemental inventories must be executed by the conservator.

References: Form 10260 § 473.240

31.70 Amended lnventory

Amended inventories to correct errors and make changes may be filed at any time. All amended inventories must be executed by the conservator. Amended inventories may be filed to provide a value that was originally listed as "undetermined value," but are not to be filed to reflect accounting transactions, which must instead be included in the settlement.

If items remain unchanged from the original inventory, the amended inventory may read, for example, "Items 1-39 remain unchanged" followed by the total value of those items. Then the items which are to be corrected or changed should be specifically itemized.

Reference: Form 10260

31.80 Orders Pending Inventory

Generally, no order in an estate, except in emergency situations or involving perishable property, will be granted until the original inventory has been filed.

31.90 Lawsuits

Where there is a pending lawsuit in which the protectee is plaintiff, the inventory must state "Litigation-Value Undetermined" and list the style of the case, case number and identify the court in which it is pending. Instead of filing an amended inventory, a copy of any settlement agreement or judgment entry shall be filed with the next settlement and the proceeds from the lawsuit, if any, shall be brought in on that settlement. See Section 38.20.3 regarding minors' personal injury claims.

[END OF SECTION]

Section 32 - Compensation - Guardianship and Conservatorship Estates

32.10 In General

32.10.1 Fee Standard

All compensation allowable to attorneys, guardians and conservators shall be based upon a reasonable hourly fee standard. Attorney fee applications will be considered in light of Rule 4-1.5 of the Code of Professional Responsibility. A "reasonable fee standard" for attorneys' compensation only applies to legal services. Attorneys will not be compensated at normal hourly professional rates for administrative services.

Reference: § 475.265

32.10.2 Fee Applications

Each application for compensation shall be in writing and be signed by the conservator. If the conservator's signature cannot be obtained, then the matter shall be set for hearing with notice to the conservator. The attorney shall also sign applications for attorney's compensation.

Fee applications for both attorneys and guardians/conservators must be prepared in manuscript form and contain a reasonably detailed description of the nature of the services performed, the date performed, the amount of time expended in connection with the service, the total hours expended and the hourly rate charged. Where attorney services and paralegal services are shown in the same application, it is necessary to distinguish which services and time were spent by the attorney and which by the paralegal, differentiating total hours and hourly rates charged.

32.10.3 Effect of Citation, Show Cause or Exception Letter

The Court may decline to consider an application for compensation while a citation, show cause order or auditor's exception letter is unresolved.

32.10.4 Attorney as Guardian./Conservator

An attorney serving as guardian/conservator may bill at his professional hourly rate only for legal services rendered. He may bill for time of paralegals and attorneys employed by him for the protectee's benefit, at reasonable hourly rates for the type of services performed. He may also bill for services performed in his guardian/conservator capacity, such as visiting the ward in a nursing home, paying routine bills and making bank deposits, at a rate appropriate for those types of services.

32.10.5 Notice to Veterans Administration

In any estate, in which the protectee is receiving VA benefits, if the original petition for appointment of a guardian or conservator was filed on or before December 31, 1980, no order authorizing the payment of fees to guardians, conservators or attorneys will be entered and no settlement will be approved unless notice of hearing thereon has been given to the Veterans Administration in accordance with §§ 475.380 through 475.480 or unless a waiver of notice of hearing has been obtained from the Veterans Administration.

32.20 Determination of Corporate Conservators' Fees

All applications by corporate conservators for compensation shall be based upon the amount of time devoted by the trust administrators, officers or the administrative assistants employed by the conservator using a reasonable fee standard. Where administrator/officer's services and administrative assistant's services are shown in the same application, it is necessary to distinguish which services and time were spent by each respectively, differentiating total hours and hourly rates charged.

32.30 Compensation of Lay Fiduciaries

In determining whether the lay fiduciary's request for compensation is reasonable, the Court will consider the amount of supervision and participation necessary by the attorney. A guardian/conservator's earning capacity in his normal business or occupation shall not constitute grounds for determining the rate of compensation, but may be considered along with any special skills or expertise in determining reasonableness, only to the extent the estate directly benefits therefrom.

32.40 Fees, When Allowed

Fees for the guardian or conservator and his attorney may be allowed at any time when it appears that the fees have been earned or it is otherwise appropriate; generally, however, fees in conservatorship estates should not be sought more frequently than annually.

32.50 Reimbursement for Expenses

Ordinarily the Court will not allow attorneys or corporate fiduciaries to be reimbursed for items of expense which are usual and customary costs of doing business, e.g., routine photocopies, in-town mileage and postage. These expenses are contemplated in the hourly rate. If, however, extraordinary expenses are generated because of litigation or other circumstances unique to the estate, the application requesting reimbursement should so state.

[END OF SECTION]

Section 33 - Claims - Conservatorship Estates

33.l0 In General

Claims are defined at § 475.010(2), RSMO, and include costs and expenses of administration. However, claims should not be filed for the payment of costs and expenses of administration (as defined in the statutes and Section 1.20.10 . Expenses of administration shall be paid upon application and order, except that no order is necessary for payment of surety bond premiums, publication expenses and court costs (including respondent's attorney fee). Fees of conservators and attorneys shall only be paid upon application and order. See Section 32, Compensation and Section 35.40.2, Settlement procedures.

The sections in Chapter 473, RSMO, related to claims apply in conservatorship estates except where inconsistent with Chapter 475, RSMO. See Section 28, Claims.

References: §§ 475.010(2), 475.075.3, 475.085

33.20 Time for Filing - Adults

In 1993, the General Assembly amended § 475.210 RSMo to delete the 6 months non-claim period in adult conservatorship estates. The amendment is effective as to estates of disabled persons whose disability was adjudicated on or after August 28, 1993. § 475.210.2 RSMo specifically provides that § 473.360 RSMo shall not apply to the estates of disabled persons. Thus, like minor's estates, there is no time limitation for the filing of claims against an adult protectee's estate except the general statutes of limitations. [Revised 12/07/95].

References: § 475.205, 475.210

33.30 Time for Filing - Minors

There is no time limitation for the filing of claims against a minor's estate except the general statutes of limitations.

Reference: § 475.210

33.40 Form of Pleading and Hearing

33.40.1 Sufficiency of Pleading

The claim form provided by the Court may be used for filing a claim against an estate. The claim must state sufficient facts to give reasonable notice to the conservator of the nature and amount of the claim. The claim must be specific enough that a judgment rendered would be res judicata on the underlying obligation. See Siegel v.

Ellis, 288 S.W.2d 932,938 (Mo. 1956); Jensen v. Estate of McCall, 426 S.W.2d 52, 55 (Mo.1968); Jones v. Estate of McReynolds, 762 S.W.2d 854 (Mo. App. 1989).

References: Form 10140
§ 473.380

33.40.2 Procedure

The Court will not set any claim for hearing unless requested to do so. The request for hearing may be made by the conservator or the claimant, must be in writing and must provide the names and addresses of all persons who must be given notice of the hearing. If requested to set a claim for hearing, the Court will enter an order designating the claim as an adversary probate proceedings The Court may require the filing of an amended claim which conforms to Civil Rule 55 if the Court anticipates that the issues are complex or if it appears that a counterclaim or third party claim may be involved. The Court's order may also require the conservator to file an answer to the claim.

If no answer to the claim is required, then at the hearing on the claim, the conservator may present evidence of any defenses to the claim which the conservator has. If the Court requires that the conservator file an answer, then the conservator must plead all defenses in the answer which the conservator intends to raise. Notwithstanding the fact that the Court does not require an answer to be filed, the conservator may elect to file an answer. If the conservator voluntarily files an answer, he is bound by the allegations contained therein and will not later be permitted to assert a defense which has not been pleaded in an answer. See Section 7, Adversary Proceedings.

33.50 Classification

All claims against the estate of a minor or other protectee shall be divided into the following classes and paid in the following order:

(1) Court costs (including respondent's attorney fee);

(2) Expenses of administration, including fees of the guardian and conservator and their attorneys;

(3) Expenses for the reasonable support and maintenance of the protectee incurred subsequent to issuance of letters of guardianship or conservatorship; or

(4) All other claims which are filed against the estate within the time prescribed by law.

References: §§ 475.211, 475.213

33.60 Allowance by Court

Any claim of not more than $1,000 for liabilities incurred prior to conservatorship, other than the conservator's own claim, may be paid by him without allowance by the Court if there has been compliance with § 475.210, RSMO, (filing) and § 473.433, RSMO, (service on the conservator). See Rhodes v. Lockwood, 695 S.W.2d 130 (Mo. App. 1985).

Any claim for liabilities incurred by the conservator for the benefit of the protectee subsequent to the issuance of letters may be paid, whether or not a claim is filed, but claims, other than costs, expenses of administration and income taxes, must be authorized by court order or § 475.130.5, RSMO.

References: Form 10140
§§ 473.433, 475.130.5, 475.205, 475.210, 475.211

33.70 Payment of Claims

Unless the claim has been timely filed and served, the conservator may not, at any time, pay claims for liabilities incurred prior to the date of adjudication. Compare this restriction on the conservator with §§ 473.360 and 473.403.2, RSMO, which allow the personal representative to pay claims within the non-claim period even though the claim is not filed.

The conservator may pay any claim of not more than one thousand dollars ($1,000) without court order if the claim is timely filed and served. The conservator must have court authority to pay any claim over $1,000.

33.80 Compromise of a Claim

The conservator may without court authorization compromise a properly filed claim of not more than one thousand dollars ($1,000). The settlement following the payment of the compromised amount must contain a credit entry for the compromised claim supported by a receipt or separate statement signed by the creditor claimant acknowledging in some manner that the claim has been satisfied. This procedure is also applicable to insolvent estates where the payment of claims must be prorated. See Section 33.90, Insolvent Estates.

References: §§ 475.130.5, 475.211, 475.213

33.90 Insolvent Estates

If there are insufficient assets to pay all claims, no claim of one class shall be paid until all previous classes are satisfied or it appears that there are sufficient assets to satisfy all previous classes. If there are insufficient assets to pay the whole of any one class, claims shall be paid in proportion to their amounts.

The conservator may file an application establishing the order of payment of claims or he may simply pay them (if not more than $1,000 per claim) at his own risk according to §§ 475.211 and 475.213, RSMO. If a court order is sought, the application shall:

(1) Itemize the claims and expenses of administration for which the estate is liable, classifying them pursuant to 475.211, RSMO;

(2) State the total amount of assets available for the payment thereof; and

(3) Set forth the proposed order of payment of any class of claims and the proportionate payment of each claim. At the time of filing the application, the conservator shall also cause notice of the hearing on the application to be served upon all creditors of the estate, as the Court may direct.

References: §§ 475.211, 475.213

33.100 Conservator as Claimant

The personal claim of a conservator must be timely filed as a claim against the estate. A conservator may establish a claim against the estate by proceeding against his co-conservator in the manner prescribed for other claimants. If there is no co-conservator, the Court shall appoint a conservator ad Iitem to act on the claim. The conservator ad litem will investigate the propriety of the claim and will recommend, subject to court approval, one of the following:

(1) Allowance of the claim, as prayed,

(2) Compromise of the claim or

(3) A hearing on the claim.

The conservator ad litem will also recommend to the Court, the amount and source of the ad litem's fee allowance. The fee may be assessed against the estate or against the claimant/conservator.

Any conservator, however, may reimburse himself at any time for the following expenses of administration advanced by him without the necessity of filing a claim or application for reimbursement: (a) filing fee, (b) bond premium, (c) expense of publication and (d) court costs. Any sums paid by the conservator out of his own funds for a debt of the protectee may not be reimbursed to the conservator until the timely filing and allowance of conservator's claim against the estate as set forth above.

Practice Tip: The attorney representing a claimant must be paid by the claimant, not from estate funds, even R the claimant is the conservator who has an individual claim against the estate.

References: Form 10140
§ 473.423

33.110 Disposition of Claims

Except in insolvent estates, before final settlement will be approved, the file must evidence disposition of all claims against the estate. If a claim has not been disposed of, the auditor will issue an exception requiring some final disposition. The auditor cannot determine whether a claim is barred by time, lack of service or by defects in form from the face of the claim.

[END OF SECTION]

Section 34 - Real and Personal Property Conservatorship Estates

34.10 Taking Charge

The conservator must take charge of the protectee's property and has a duty to preserve and manage the property. If the protectee is not residing on the real property and is not likely to return there to live, the property should be sold, unless it is income producing. Expenditures, other than real property taxes, insurance and to maintain or repair property, must be supported by court order.

References: §§ 475.130.1, 475.130.2, 475.130.5

34.20 Discovery of Assets - Action to Obtain Assets of Protectee

Any person who claims an interest in property which is claimed to be an asset of a protectee or which is claimed should be an asset of the estate, may file a petition seeking determination of the title and right to possession of the property. A petition for discovery of assets is a procedural vehicle for alleging a substantive cause of action. See Barrett v. Flynn, 728 S.W.2d 288 (Mo.App.1987).

The petition must be in accordance with § 473.340, RSMo, and the proceeding will be designated as an adversary proceeding. See Section 7, Adversary Proceedings.

References: §§ 473.340, 475.160

34.30 Real Property

34.30.1 Procedure for Private Sale

34.30.1 (a) Petition - Notice

The petition to sell real property shall be filed with a proposed order. No notice of hearing is required.

34.30.1 (b) Report of Sale and Order Approving

After the order of sale is entered, the report of sale may be filed. Section 473.513.1, RSMo, states that a full report shall be made within 10 days after making a sale (the date the contract is signed). Failure to file within that period of time may create title problems. The real property contract should not be attached to the report of sale or otherwise filed with the Court. On the eleventh day, after the filing of the report of sale, as calculated by Civil Rule 44.01, the Court, if satisfied that the sale is at the price and terms most advantageous to the estate, shall enter the order approving and confirming the sale. Additional bond in an amount sufficient to cover the net sale price, as evidenced by a closing statement prepared by a title company, financial institution or licensed real

estate broker, must be filed before the Court will enter the order confirming sale. Upon entry of the order confirming the sale, the parties may effect the closing of the sale by delivery of deed and receipt of the sale proceeds.

References: Form 10470, Form 10475, Form 10477, Form 10482
§§ 473.513, 473.493, 475.200, 475.230, 475.235, 475.245

34.30.1 (c) By Public Auction

A public sale under § 473.507, RSMo, is infrequently used. Any other public auction must follow the same procedures as a private sale. See Section 34.20 in its entirety.

34.30.2 Purchase Price - Private Sale

The purchase price must be at least three-fourths of the inventory value of the real property. If, in the judgment of the conservator, due to change in conditions, the inventory value of the real property is excessive, he may file an inventory amending the value of the real property. In this event, the purchase price shall be at least three-fourths of the amended inventory value.

Reference: § 475.235

34.30.3 Terms of Private Sale

While cash sales are preferable, the Probate Code does not preclude the payment of the purchase price of the sale of real property in installments, nor does the Code preclude a sale which is contingent upon the happening of an ascertainable event, e.g., approval of an application to rezone. However, the Court is required to find that the proposed sale is at a price and on terms most advantageous to the estate, so that when the sale terms and/or consideration are unusual, the attorney should consult with the Judge, Commissioner or Deputy Commissioner prior to the signing o the contract. It is recommended that the real property contract provide that it is subject to approval by the Probate Division.

NOTE: If the conservator becomes aware of a bona fide, more advantageous offer, the conservator should advise the Court thereof prior to entry of the order confirming sale.

References: §§ 473.513, 475.240

34.30.4 Suggested Practice Aids

In preparation for the sale of real property:

(1) The attorney should consult the title company or examiner for exceptions to marketable title;

(2) The legal description contained in the inventory and the ownership should be reverified;

(3) The conservator should determine, if possible, whether an amended inventory will be needed; and

(4) The report of sale should contain language authorizing the disbursement of any incidental closing costs from the proceeds of the sale such as title insurance, real estate commission, loan discount, proration of taxes, insurance and/or loan escrow account and liens not assumed by the purchaser.

Reference: §§ 475.240, 475.530, 475.513

34.30.5 Reporting Real Property Sales on Settlement

34.30.5(a) Time for Reporting

The proceeds of the sale of all real property sold by the conservator must be accounted for on the settlement next following the date the sale is completed.

34.30.5(b) Disbursement of Proceeds by Conservator or His Attorney

If disbursement of the sale proceeds is handled by the conservator or his attorney, receipts for each item of expense must be filed in support thereof. The purchase price should be shown in the debit column and the expenses of sale in the credit column.

34.30.5(c) Disbursement of Proceeds by Title

If disbursement of the sale proceeds is handled by a title company or real estate broker, a copy of the closing statement reflecting the disbursements shall be a sufficient voucher to support the expenses of sale. The net sale proceeds should be shown in the debit column.

Since the inventory value of real property is not included in the carrying value of the personal property, no credit entry should be made as to the inventory value of the real estate.

34.30.6 Purposes for Sale

The purposes for sale are set forth in § 475.200, RSMo.

34.30.7 Abandonment of Real Property

Property may be abandoned, upon court order, when it is so encumbered as to be a burden to the estate or when it is of no value. See Section 35.60.1 for the manner in which to reflect an abandonment of property on the settlement.

Reference: § 473.293

34.30.8 Foreclosure

Depending upon the assets of the estate, it may be desirable to obtain a court order allowing foreclosure, in advance of the foreclosure. See Section 35.60.1 for the manner in which to reflect a foreclosure on the settlement.

34.40 Personal Property

34.40.1 Value of Property

Personal property shall be valued as of the date of adjudication. See Section 31.40 for specific types of property.

Property may be valued by the conservator or by an appraiser. Generally, the services of an appraiser will not be necessary unless the estate contains tangible personal property of potentially significant value or of a value that cannot be determined by general knowledge of the conservator or contains stock in a closely held corporation or a business interest of the protectee.

If the original value listed on the inventory changes for some reason other than destruction or loss, an amended inventory should be filed reflecting the correct value. Changes to assets as a result of loss or destruction must be reflected on the next filed settlement. See Section 35.60.2 on personal property.

34.40.2 Possession

The conservator shall take possession of all the personal property of the protectee.

Reference: § 475.130.2

34.40.3 Multiple Party Accounts and Joint Property

A protectee's interest in assets held in the protectee's name with another person are considered a part of the protectee's estate and should be included in the inventory. See Section 31.40, Inventory. The conservator, absent a court order, may not use such multiple party accounts or property. Section 475.322, RSMo, allows the conservator to seek a court order to utilize the share contributed by the protectee to the extent needed for the support of the protectee and his dependents, or claims of the protectee. A court order will be entered with the consent of the joint tenants or the application must be set for hearing with notice of hearing to the joint tenants.

The conservator has a dual obligation to the protectee regarding jointly held property: he must provide for the care of the protectee and he must, in the process, preserve the protectee's estate plan to the greatest extent possible.

It is, therefore, advisable for the conservator to examine, where possible, the protectee's estate plan, including will and trust documents, in an effort to utilize specifically devised or designated (as through a jointly held account) property last. An "estate plan" may consist of the protectee's actions in titling one or more bank accounts, certificates of deposit or other property in joint names with right of survivorship or as a Totten Trust or a beneficiary deed pursuant to Chapter 461, RSMo notwithstanding the protectee has not executed a last will and testament or an inter vivos trust indenture. The conservator may seek an order authorizing proportionate use of such property where property is titled in the names of the protectee and two or more joint tenants.

For additional explanation see 3 Missouri Practice - Probate Forms Manual 1985), Form 4.103 and Comment.

34.40.4 Investment of Funds

The conservator shall invest the assets of the minor or protectee as set out in § 475.190, RSMo. These investments are (1) direct obligations of the United States Government or those unconditionally guaranteed by the U.S. Government, or (2) savings accounts and time deposits in banking or savings institutions to the extent they are insured by the FDIC. Other types of investments may be authorized by court order; however, the conservator remains liable on losses related to assets.

Funds kept for current expenses (support and maintenance, claims, expenses of administration) in excess of $1,500 shall be deposited in an interest bearing checking account. See Section 35.120, Investments.

References: §§ 475.130, 473.333

34.40.5 Sales

The conservator may sell personal property of the estate for the purposes set forth at § 475.200, RSMo. Court authorization is required for sales in excess of $1,000. See Section 35.140 for the manner in which to reflect a sale on the settlement.

References: §§ 475.130.5, 475.200

34.40.6 Abandonment of Personal Property

Property may be abandoned, upon court order, when it is so encumbered as to be a burden to the estate or when it is of no value. See Section 35.60.2 for the manner in which to reflect an abandonment of property on the settlement.

Reference: § 473.293

34.40.7 Secured Property

The conservator may want to obtain a court order before allowing personal property to be taken in satisfaction of a pledge or other lien. The Court may determine instead that assets of the estate will be used to preserve the property depending upon the type of property and the condition of the estate. See Section 35.60.2 for the manner in which to reflect a surrender of property on the settlement.

34.40.8 Storage Fees and Moving Expenses

Generally, storage fees are not allowed for storage of the protectee's property. The reason for this is that frequently storage fees exceed the value of the personal property and the property should be sold if it is not needed for the use of the protectee.

Storage fees may be allowed for a brief period of time if the protectee is in transition, either as to his living arrangements or where the potential for restoration exists, if the property needs to be stored pending a sale or if title to the property is in dispute.

Reasonable expenses of moving a protectee's property to other living quarters, to storage or to a place for sale will be allowed upon petition and order.

[END OF SECTION]

Section 35 - Settlement - Conservatorship Estates

35.10 In General

35.10.1 Notice to File

The Settlement Clerk will notify each conservator that a settlement is due, at least 30 days before the due date. Failure to receive notice does not excuse the filing of a settlement when due. Settlements are due on the anniversary date of issuance of letters.

References: Form 10559 (Two Pages)
§§ 475.270, 475.280

35.10.2 Notice/Waiver - Veterans Administration

In any estate, in which the protectee is receiving VA benefits, if the original petition for appointment of a guardian or conservator was filed on or before December 31, 1980, no order approving an annual settlement will be entered unless notice of hearing thereon has been given to the Veterans Administration in accordance with §§ 475.380 through 475.480 or unless a waiver of notice of hearing has been obtained from the Veterans Administration.

35.20 Extensions

Extensions of the time to file will only be granted on a showing of good cause. The Settlement Clerk has authority to grant one extension not to exceed 30 days upon written application of the conservator or his attorney. The Chief Auditor may grant the first or second continuance of 30 days each. Applications for further continuances or for more than 30 days will be presented, in person or in writing, to the Judge, Commissioner or Deputy Commissioner.

References: Form 10553
§ 473.540

35.30 Failure to File Settlement

35.30.1 Citation

Failure to timely file a settlement will result in the issuance of a continuance stating that unless the settlement is filed within two weeks, an order for citation will issue to show cause why the conservator should not be removed. If a citation issues, the conservator and his attorney must appear at the hearing unless it is continued or the citation is dismissed prior to the hearing. The citation will be dismissed upon:

(1) the filing of the settlement,

(2) the payment of the citation costs and

(3) obtaining the dismissal from the Judge, Commissioner or Deputy Commissioner.

The costs of the citation may not be paid from the assets of the estate.

35.30.2 Continuance by Court On Its Own Motion

The Court in its discretion generally grants one continuance and notifies the conservator and attorney prior to issuance of a citation. Failure to receive the warning is not a basis for setting aside the citation. Disregard for settlement dates may result in disallowance, in whole or in part, of applications for compensation by those responsible.

References: §§ 473.560, 473.563, 473.567, 475.265, 475.280

35.40 Settlement - Contents

35.40.1 Income - Disbursement, Additional Property

The first settlement should begin with the date of issuance of letters. Each settlement must record each item of income and disbursement affecting the estate. Property, other than real property, discovered subsequent to the filing of the original inventory must be brought into the estate on the next settlement or by filing a supplemental inventory and bringing it into the estate on the next settlement. See Section 31.50 on supplemental inventories.

35.40.2 Disbursement Supported by Court Order

Each disbursement shown on any settlement must be supported by an order of the Court, except the following:

(1) expenses of administration (other than compensation of fiduciary and his attorney and, other than compensation of appraisers and tax return preparers whose fees exceed $350);

(2) taxes;

(3) claims allowable pursuant to §§ 475.205 through 475-213, RSMo; and

(4) expenses for support and maintenance of adult protectee as set out in Section 35.110.1.

See Section 33 on claims.

35.40.3 Debits - Credits

Receipts will be shown as debits and disbursements will be shown as credits. See Section 35.170, Debit-Credit Entries.

References: Form 10559 (Two Pages)
§ 473.543, 475.270

35.50 Closing Costs of a Real Property Sale

If the closing of the sale of real estate is handled by someone other than the conservator or his attorney, a closing statement from the third party will be accepted as a voucher for real property closing costs and only the net proceeds of sale need to be reported on the settlement. If the conservator or his attorney handles the closing, the full purchase price as well as the closing costs must be reported on the settlement and the closing costs must be supported by vouchers.

35.60 Foreclosure, Abandonment or Surrender of Estate Property

35.60.1 Real Property

Proof of foreclosure on property of the estate must be made on the settlement next following the foreclosure. The conservator must file a copy of the trustee's deed showing the date of conveyance, the consideration and the name of the grantee. Depending upon the assets of the estate, it may be desirable to obtain a court order allowing foreclosure in advance of the foreclosure. See Sections 34.30.7, Abandonment and 34-30.8, Foreclosure.

35.60.2 Personal Property

The abandonment, loss or surrender of property of the estate must be reported on the settlement next following the abandonment, surrender or event resulting in loss.

The inventory value of the abandoned, lost or surrendered property must be reflected as a credit. See Section 35.170, Debit-Credit Entries.

If secured property is taken or surrendered in satisfaction of a security agreement, lien or pledge, any written evidence of an accounting to the conservator must be filed with the settlement. The settlement must reflect a credit entry equal to the inventory value. Any surplus due the estate, whether paid or due, a debit entry. If a deficiency exists, the payment of the deficiency must be reflected as a debit entry. But payment of any deficiency must be handled in the same manner as a claim against the estate. See Sections 33, Claims, 34.40.7, Abandonment of Personal Property and 34.40.8, Secured Property.

References: §§ 400.9-502, 400.9-504, 473.387, 473.440, 475.205 475.213

35.70 Original Vouchers (Receipts)

The original voucher (receipt or canceled check) supporting each disbursement on any settlement must be filed with the settlement, provided, however, that corporate conservators may file photocopies. The original vouchers may be returned to the conservator upon approval of the settlement, provided that legible copies, front and back, are substituted. The copies should be

made prior to submitting the originals to the Court as the originals, once submitted, may not be removed for the purpose of making copies. Substitution may not be effected by mail. Original vouchers will not be returned to the conservator by mail.

References: §§ 473.543, 475.270

35.80 Verification of Assets

Verification of deposit and/or securities (restricted or unrestricted) must be filed with each settlement. The date of the verification must be the ending date of the settlement. The totals of the verifications of deposit must total the cash balance in the estate as reflected on the settlement. The total of the verifications of securities must total the number of shares of stock or bonds as reflected on the inventory and carried on the settlement, and as changed by any sales, redemptions, reinvestments and stock splits. The verification must evidence how the deposits or securities are titled and otherwise comply with § 475.275, RSMo.

The court will not accept a verification that contains any alterations unless each alteration is initialed by the verifying officer and, if multiple pages, each page must be signed.

References: Form 10532, Form 10533, Form 10534, Form 10535
§ 475.275

35.90 Corrections - Auditor's Exception Letter - Extensions

35.90.1 In General

Each settlement filed is audited by the Court and will not be approved until the audit proves the settlement. Incomplete, inaccurate or otherwise defective settlements may delay the commencement of the audit. Additionally, action on applications for compensation may be delayed or compensation may be disallowed in whole or in part.

35.90.2 Exception Letter - Errors in Settlement

The auditor assigned to audit the settlement will issue an exception letter enumerating any errors in the settlement, which must be corrected before the settlement can be approved. The exception letter grants 30 days within which to satisfy the requirements. The auditor is authorized to grant an extension of time up to an additional 30 days. The chief auditor may grant additional extensions, but may also require the attorney to see the Judge, Commissioner or Deputy Commissioner.

The attorney, paralegal or conservator should meet with the auditor to clear the exceptions unless a court order is necessary to clear the exception. Required documents or information necessary to clear an audit may be mailed to the auditor. It is the attorney's responsibility to determine whether documents filed have cleared the exceptions by reviewing the file or meeting with the auditor.

35.90.3 Show Cause Orders

Failure to comply with the exception letter within the time prescribed will result in the issuance of a warning letter stating that unless the requirements are met within 15 days an order will issue to show cause why the conservator should not be removed and to set a date certain for hearing. If a show cause order issues, both the conservator and his attorney must appear at the hearing unless the hearing is continued or the show cause is dismissed prior to the hearing. The order will be dismissed when the exception letter is cleared and the costs of the show cause order are paid. The exception letter will not be cleared from the bench. The filing of documents and/or pleadings in response to the exception letter does not automatically result in dismissal of the show cause. The attorney must meet with the auditor to clear exceptions before requesting the dismissal from the Judge, Commissioner or Deputy Commissioner. The attorney must allow sufficient time prior to the hearing date to meet with the auditor for this purpose and not wait until the morning of the hearing date. The costs of the show cause may not be paid with estate assets.

35.90.4 Effect of Exception Letter

When an exception letter has been issued, no orders for the allowance of any fees will be routinely granted unless the allowance is necessary to satisfy the exception letter.

35.90.5 Rescission of Exceptions

If any requirement listed in any exception letter appears inappropriate, it is the responsibility of the conservator's attorney to confer with the auditor, Deputy Commissioner, Commissioner or Judge to determine if the requirement should be rescinded.

35.100 Additional Bond or Reduction in Bond

If, upon the audit of any settlement it appears that additional bond is necessary, the auditor will issue an exception letter which will require the filing of the additional bond. If a reduction in bond is appropriate, an order will issue reducing bond. A copy of the order is mailed to the attorney.

Reference: §§ 473.197, 475.100

35.110 Support and Maintenance

35.110.1 Adults

(a) Section 475.130, RSMo, lists certain expenditures that a conservator may make for his protectee. Thus, a court order is not required for these expenditures, if the expenditure is clearly explained on the settlement so that the auditor can determine its necessity and reasonableness. In order to insure their allowance, however, the conservator should secure an order

for support and maintenance. The application must specify average anticipated monthly expenses. For example:

Nursing Home	$1,200.00
Medical	150.00
Misc. Personal (haircut, laundry)	50.00
	$1,400.00

Funds needed in excess of that allowed by § 475.130, RSM0, or in excess of the support and maintenance order must be approved by application and order in advance of the expenditure. The Court may consider an application to ratify expenditures made without court order, but they are subject to disallowance. See Section 35.130, Ratification of Expenditures.

References: §§ 475.091, 475.130

(b) In any estate, in which the protectee is receiving VA benefits, if the original petition for appointment of a guardian was filed on or before December 31, 1980, no order for support and maintenance, will be entered unless notice of hearing thereon has been given to the Veterans Administration in accordance with §§ 475.380 through 475.480 or unless a waiver of notice of hearing has been obtained from the Veterans Administration.

l35.110.2 Minors

The conservator has a duty to secure a court order authorizing expenditures for support and maintenance of a minor, except for Social Security benefits used for this purpose, as set out below. The conservator must establish that the expenditures are reasonable in amount and necessary for the benefit of the minor. The application must specify average anticipated monthly expenses.

Rent	$100.00
Groceries	100.00
Clothes	50.00
Misc.	20.00
	$270.00

Social Security benefits may be expended on behalf of the minor without court order. Otherwise, the minor's assets are not available for the minor's support and maintenance absent a showing that the natural parents are deceased or are otherwise financially unable to provide for the minor. Financial inability of the parent must be supported by detailed information with respect to parent's income, monthly expenditures specific to the minor, monthly expenditures of the household, number of family members and ability to gain employment.

Reference: § 475.125

35.120 Investments

The protectee's assets must be invested reasonably and prudently. Any estate investment suffering a loss in income or principal may result in personal liability to the conservator. See Section 34.40.4, Investment of Funds.

References: §§ 473.333, 475.130, 475.190

35.130 Orders Ratifying Expenditures

When the conservator has taken action or made an expenditure without court authority, he takes the chance of disallowance of that action or expenditure. Hamilton Federal Savings Loan Association v. Reliance Ins. Co., 527 S.W.2d 440 (Mo. App. 1975). He may, however, file an application and proposed order to ratify the action or expenditure. The application must detail the nature and amount of the expenditure or action and why it is reasonable and necessary. If the action or expenditure appears reasonable and necessary, the order will be entered. However, applications and orders to ratify expenditures submitted with a settlement will not be considered by the Court until the settlement has been audited and is ready for approval. See Sections 35.1 1 0, Support and Maintenance, 35.40.2, Settlement procedures and requirement for disbursements to be supported by court order.

Reference: § 475.091 (2)

35.140 Funds Advanced from Source Outside the Estate

Funds advanced to pay debts of the protectee incurred prior to adjudication are claims against the estate and must be handled accordingly. The persons advancing the funds, including the conservator, may not be reimbursed unless there is compliance with § 475.205, RSMo, and, where the conservator has advanced the funds, compliance with § 473.423, RSMo.

Funds may be advanced to the estate because liquid assets are not available or assets are insufficient to pay filed and allowable claims, expenses of administration, taxes or support and maintenance of the protectee. Reimbursement of these amounts may be made without court order but only to the extent that the protectee would have been liable for the obligation. The advancement should be reflected in the debit column of the settlement and disbursements reflected in the credit column in the usual manner. The disbursements must be supported by proper vouchers.

Practice Tip: Bond premiums can be advanced for estates on no further process (NFP). However, the funds cannot be reimbursed until the final settlement (or any earlier settlement required upon the termination of the NFP status). See generally Section 35.180, NFP and specifically Section 35.180.4(d) for an exception to this rule.

References: §§ 473.423, 475.205

35.150 Sale or Redemption of Personal Property

The conservator may sell tangible personal property, choses in action and investment securities worth not more than $1,000 without court order. Other sales of personal property must be supported by court order.

Upon the sale of personal property or redemption of certificates of deposit or other like instruments, the sale price shall be shown as a debit and the inventory value shall be shown as a credit thus deleting the property sold from the inventory. The ending settlement recapitulation must reflect the deletion of the property from its original category by subtracting the inventory value from that category and adding the proceeds derived therefrom to the cash category.

References: Form 10460, Form 10461
§§ 475.130, 475.200

35.160 Beginning and Ending Balances

The beginning balance on the first settlement must coincide exactly with the balance on the inventory. The beginning balance on each successive settlement must agree with the ending balance on the previous settlement. The ending debit column total includes the beginning balance of assets total.

35.170 Debit-Credit Entries

Debit entries consist of increases in the estate. Credit entries consist of decreases in the estate. There are two acceptable methods of setting forth debits and credits on a settlement. See Sections 35.170.1 and 35.170.2.

35.170.1 Chronological Order

Debit and credit entries may be set forth in chronological order. For example:

Date 1988	Description	Debit (Rec'd.)	Credit (Pd. Out)
6-10	Court Costs Deposits		$75.00
6-15	Dividend - A.T.T.	$45.00	

6-20	XYZ Nursing Service		3,000.00
6-30	Proceeds sale of A.B.C. stock	6,000.00	
	Credit Inventory Item 3		6,000.00
7-7	Bond Premium LMN Ins.. Agency		50.00
7-8	Refund Gas Co.	20.00	
7-20	Proceeds sale of furniture, household goods and wearing apparel	400.00	
	Credit Inventory Item #1		350.00
7-21	Abandon automobile per 7/11/88 court order		200.00

35.170.2 Debits Segregated From Credits

Debits may be segregated from credits, but must be set out in chronological order, except that credit entries for estate assets that have changed character should be shown immediately after the related debit entry. See entries on 6-30-88 and 7-20-88. For example:

Date 1988	Description	Debit (Rec'd.)	Credit (Pd. Out)
6-15	Dividend - A.T.T.	$45.00	$75.00
6-30	Proceeds sale of A.B.C. stock	6,000.00	
	Credit Inventory Item 3, ABC Stock		6,000.00
7-8	Refund Gas Co.	20.00	
7-20	Proceeds sale of furniture, household goods and wearing apparel	400.00	
	Credit Inventory Item #1 furniture, household goods and wearing apparel		350.00
	Disbursements (Credits)		
6-10	Court Cost Deposit		75.00
6-20	XYZ Nursing Service		3,000.00

7-7	Bond Premium LMN Ins.. Agency		50.00
7-21	Abandon automobile per 7-11-88 court order		200.00

Reference: Form 10559 (two pages)

35.170.3 Support and Maintenance - Lump Sum

Periodic payments of an equal amount for each support obligation of the protectee may be lumped together for a single credit entry. The entry in the transaction section of the settlement must set forth the periodic amount and the dates paid or the period over which paid. The total paid must be reflected in the credit column. For example:

Description	Debit (Rec'd.)	Credit (Pd. Out)
Shelter Nursing Home $1,200/mo. Jan. - June $1,400/mo. July - Dec.		 7,200.00 8,400.00
Blue Cross/Blue Shield $197/quarter Jan., May, Sept.		 591.00
Lawn Care - 2634 Madison $25/mo. April - Sept.		 150.00

35.170.4 Support and Maintenance - To Custodian

Depending upon the wording of the support and maintenance order, the conservator, where the protectee is in his custody, may be authorized to expend a sum monthly for the support of the protectee without providing receipts on the settlement for each expenditure represented. The settlement must reflect the monthly amount allowed and the dates paid during the settlement period. The total paid must be reflected in the credit column. For example:

Description	Debit (Rec'd.)	Credit (Paid Out)
Support and Maintenance $750/Mo. Feb. 1988 - Jan. 1989 per court order dated 1-17-88		 9,000.00

The signature of the conservator on the settlement is a receipt for those sums.

35.170.5 Periodic Income

Periodic income of an equal amount may be lumped together for a single debit entry. The entry in the transaction section of the settlement must set forth the periodic amount and the dates received or the period over which received. The total received must be reflected in the debit column. For example:

Description	Debit (Rec'd.)	Credit (Pd. Out)
Worker's Compensation $266/Mo. Jan. - Dec.	3,192.00	
Social Security $463/Mo. Dec. 1988 - June 1989 $481/Mo. July - Nov. 1989	3,241.00 2,405.00	

35.170.6 Rental Income

If the estate retains income producing rental properties and the conservator has employed, with court authorization, an agency to manage and collect the rents, a summary entry of rents received may be entered as a debit on the settlement if there is also attached an itemized statement from the agency setting forth all rents collected, expenses incurred and to what property each transaction is attributable. Where the conservator has managed the property and handled the rents, receipts and disbursements must be specifically itemized.

35.180 Waiver of Settlement - No Further Process (NFP)

35.180.1 General

The requirements of filing settlement may be waived in the following situations:

(1) if the estate meets the indigency standards of Chapter 208, RSMo, whether or not the protectee receives benefits from the federal government or the State of Missouri (or any state from which the protectee is entitled to benefits);

(2) if all assets of a protectee are in cash or its equivalent and have been restricted by court order so that no withdrawals of principal or interest may be made without court order or all assets available to a protectee are in a trust with a corporate trustee. See Sections 30.60 and 30.70, Restricted Assets.

References: §§ 475.270, 475.276

35.180.2 Requirements

If settlement is waived the estate is considered to be on no further process (NFP). Court costs are waived during the time that an estate is on NFP.

The conservator must file annually a statement of affairs of the protectee and his estate on a form provided by the Court. The conservator will be sent a notice to file the annual statement of affairs at least 30 days prior to the anniversary date of the issuance of letters. Failure to file the statement may ultimately result in removal of the conservator.

The Court may place an estate on NFP from its inception if the indigency standards of Chapter 208, RSMo, are met. Otherwise, an estate will only be placed on NFP upon application of the conservator and if the requirements set forth at Section 35.170.3 for adults and Section 35.170.4 for minors are satisfied.

Where a settlement reflects assets that appear to meet the requirements of NFP, the auditor will issue an exception advising the attorney of that fact and suggesting that the estate be placed on NFP. It is the attorney's duty to affirmatively show good cause why no further process is inappropriate.

Outstanding court costs and all fees previously allowed by the Court must be paid before the order of NFP will be entered. The entry of a court order after the estate is placed on NFP automatically removes the estate from NFP and at the next anniversary date a settlement will be required and costs due. For an exception to this rule applicable to minors, see Section 35.180.4(d).

35.180.3 Adult Protectee

35.180.3(a) Meets Indigent Standards of Chapter 208, RSMo. Ineligible for Welfare

(1) Request for Final Court Cost Estimate (adapt form 10407 for NFP)

(2) Settlement form (Form 10559, pages 1 and 2)

(3) Petition for approval of settlement and for NFP (Form 10212)

(4) Order for NFP (Form 10213a)

The conservator may establish the protectee's eligibility for public assistance by reflecting the receipt of the benefits on the settlement or by filing evidence of the amount of benefits due the protectee from the state or federal government, such as an award notice from the Division of Family Services.

Bond will be waived in the Order for NFP.

35.180.3(b) Meets lndigency Standards of Chapter 208 RSMo. Ineligible for Welfare

(1) Request for Final Court Costs Estimate (adapt form 10407 for NFP)

(2) Settlement form (Form 10559, pages 1 and 2)

(3) Petition for Approval of Settlement and for an Order of NFP (Form 10212)

(4) Order of NFP (Form 10213)

A surety bond will be required in the amount of one year's annual income of the protectee.

35.180.3(c) All Assets of Protectee Restricted or in Trust With Corporate Trustee

To place the estate on NFP the conservator must file:

(1) Request for Final Court Costs Estimate (adapt form 10407 for NFP)

(2) Settlement form (Form 10559, pages 1 and 2)

(3) Petition to Invest Funds in Restricted Account, if not previously restricted (Form 10530)

(4) Order to Invest Funds in Restricted Account, if not previously restricted (Form 10531)

(5) Verification of Restricted Assets (one for each account) (Form 10532)

(6) Copy of trust instrument of which protectee is a beneficiary

(7) Petitioner Approval of Settlement and for Order of NFP (Form 10227)

(8) Order of NFP (Form 10228)

A minimum bond of $1,000 will be required where assets are restricted. Bond will be waived where trust assets are in the custody of a corporate conservator.

35.180.3(d) Accumulation of Assets - Purchase of Burial Plan

When a conservator of an estate on NFP accumulates enough assets to remove the estate from NFP the Court may instead suggest that a burial plan be purchased for the ward. If the purchase of the plan depletes the assets to NFP levels, the estate will remain on NFP. Otherwise, the estate will be removed from NFP. See Section 35.180.5 on termination of NFP.

A minor's estate normally will not be placed on NFP If the minor owns real property.

A minor's estate may be placed on NFP immediately after it is opened or at the time of any settlement.

35.180.4(a) Meets Indigency Standards of Chapter 208, RSMo Eligible or Ineligible for Welfare

To place the estate on NFP the conservator must file:

(1) Request for Final Court Cost Estimate (adapt form 10407 for NFP)

(2) Settlement form (Form 10559, pages 1 and 2)

(3) Petition for approval of settlement and for NFP (Form 10334)

(4) Order for NFP (Form 10335(a))

The conservator may establish the protectee's eligibility for public assistance by reflecting the receipt of the benefits on the settlement or by filing evidence of the amount of benefits due the protectee from the state or federal government, such as an award notice from the Division of Family Services.

Bond will be waived in the Order for NFP ff eligible for welfare. A surety bond will be required in the amount of one year's annual income of the protectee if ineligible for welfare.

35.180.4(b) All Assets of Minor Restricted

35.180.4(b)(1) Immediately After Opening

The conservator must file:

(1) Inventory

(2) Petition to invest Funds in Restricted Account for all funds shown on the inventory. If any expenditures (other than court costs, bond premiums or attorney fees allowed by court order or by settlement of a claim on behalf of the minor) have been paid from estate funds, thereby reducing the inventory assets, a settlement must be filed before the estate can be placed on NFP. The payment of bond premium or attorney fees that result in a reduction of the inventoried amount must be supported by a voucher. (Form 10530)

(3) Order to Invest Funds in Restricted Account (Form 10531)

(4) Verification of Restricted Assets - one for each account (Form 10532)

(5) Petition for Approval of Settlement and for Order of NFP (Form 10334)

(6) Order of NFP (Form 10335)

A minimum bond of $1,000 is required. The bond will be reduced to this amount on the order restricting assets.

The conservator must file:

(1) Request for Final Court Costs Estimate (adapt form 10407 for NFP)

(2) Settlement form (form 10559, pages 1 and 2)

(3) Petition to Invest Funds in Restricted Account, if not previously restricted (Form 10530)

(4) Order to Invest Funds in Restricted Account, if not previously restricted (Form 10531)

(5) Verification of Restricted Assets - one for each account (Form 10532)

(6) Petition for Approval of Settlement and for NFP (Form 10334)

(7) Order of NFP (Form 10335)

A minimum bond of $1,000 is required. The bond will be reduced to this amount on the Order Restricting Assets.

35.180.4(c) Effect of Court Order

As stated at Section 35.180.2, generally the entry of a court order for the payment of any expenses after the estate is placed on NFP will automatically remove the estate from NFP with one exception. See Section 35.180.4(d).

For this reason, a minor's estate should not be placed on NFP unless the parents or conservator can pay the annual bond premium from their own funds. They may be reimbursed for these sums advanced at the time final settlement is filed or upon filing an application to pay taxes as set out at Section 35.180.4(d). See Section 35.140, Advancements.

35.180.4(d) Exception - Taxes

If funds are needed to pay taxes due from the minor to the IRS or State of Missouri, the conservator may file annually a petition and proposed order to pay taxes; bond premium; tax return preparer fees and any attorney fees for services rendered in connection with obtaining the order, without removing the estate from NFP classification. The order must state that the estate

will remain on NFP, specify the restricted account from which the assets will be removed and authorize the bank to issue checks directly payable to the payees rather than the conservator. The attorney's request for compensation must comply with Section 32 on compensation in guardianship/conservatorship estates.

35.180.5 Termination of NFP

NFP status terminates upon:

(1) the receipt of property such that the estate no longer qualifies for NFP;

(2) the restoration of the ward;

(3) the minor reaching the age of majority;

(4) the death of the ward; or

(5) the entry of a court order allowing expenditures other than the exception for minors set forth at Section 35.180.4(d)

Any of these events must be immediately reported to the Court. The following procedures apply.

35.180.5(a) Receipt of Property

If the property is real property, an inventory (original or supplemental, as appropriate) must be filed.

The conservator must obtain a bond to cover all unrestricted assets (other than real property) plus one year's income. See Section 30 on bonds. As soon as the conservator reports the receipt of property and the amount, the Inventory Clerk will issue a request for bond. The conservator must file petitions and obtain orders authorizing all future expenditures other than for expenses of administration, taxes or those allowed by § 475.130.5(l), RSMo.

A settlement, rather than an annual statement of affairs, will be required at the time of the next and for future annual accountings. The settlement must begin with the ending balance reflected on the last approved annual statement of affairs. Any property received other than real property shall be brought in on the settlement with an explanation of the source of the property. If property received is from an inheritance or settlement of a lawsuit, the conservator must file a copy of the document establishing the amount the protectee received. Sections 30 through 35 on various aspects of conservatorship estates are applicable.

35.180.5(b) Restoration of the Protectee

If the estate has accumulated assets or has restricted assets, the conservator must file all documents set forth at Section 37.30. If there are no assets remaining, that fact must be reported to the Court.

35.180.5(c) Minor Reaching Majority

If the estate has restricted assets, the conservator must file all documents set forth at Section 37.30. The conservator will be required to file a surety bond for any assets that will pass through his hands. To avoid the filing of the bond, the conservator's proposed order of distribution may authorize the bank that holds the restricted account to release the funds directly to the minor and any other appropriate payee, e.g., for payment of final attorney fees.

If the minor's estate was placed on NFP because the minor qualified under Chapter 208, RSMo, the estate will automatically be closed by the Court upon the minor reaching eighteen years of age.

35.180.5(d) Death of the Protectee

If the estate has accumulated assets or has restricted assets, the conservator must file all documents set forth at Section 37.50 or 37-60.

The conservator may exhaust accumulated assets of the protectee (other than restricted assets) in payment of final bills of the protectee for necessaries only e.g., funeral bill, nursing home, pharmacy, physicians. If there are no assets then remaining, that fact must be reported to the Court. The file will be closed by the Court and if appropriate, the conservator will be discharged.

References: §§ 475.270, 475.276, 475.320

35.190 Accounting for Trust Assets

Where a protectee is the beneficiary of a trust, all trust principal or income disbursed to the conservator for the use of the protectee must be accounted for on the settlement as any other receipt and the expenditure of the assets must be reflected as disbursements. See Section 35.40 on the contents of settlements. Where trust principal or income is disbursed by the trustee directly to payee/providers for the benefit of the protectee, the conservator is not required to account for the property.

Regardless of the manner in which principal or income is disbursed by the trustee, the conservator has a duty to determine whether the trustee is faithfully performing his fiduciary duty.

See Sections 30.40.2 and 31.20, Bonds and Inventory procedures.

35.200 Accounting for Multiple Party Accounts and Tenancy by the Entirety Property

Use by the conservator of multiple party accounts and tenancy by the entirety property is prohibited without court order obtained pursuant to § 475.322, RSMo. See Sections 31.20 and 31.30 for information regarding inventory procedures. See Section 34.40.3 for information regarding the use and handling of joint or multiple party titled property. Accounting for joint and multiple party titled property is the same as for any other estate assets.

35.210 Payment of Costs

The conservator is notified of annual court costs due in the notice to file annual settlement. Costs must be paid on the date of, or prior to, the filing of annual settlement and reflected as a credit entry on the settlement before the settlement will be approved.

35.220 Final Settlement

Conservators must make final settlement within sixty (60) days of the termination of their authority. Section 475.083, RSMo, lists various situations under which the authority of the conservator terminates. An earlier date may be fixed by the Court. Application for extension of time will be considered.

For a checklist of requirements for filing final settlements, see Section 35.280. For a checklist of forms required before closing various estate situations, see Section 37.

References: Form 10553
§§ 475.083, 475.290, 475.295

35.220.1 Resignation or Removal of Conservator

If a conservator resigns or his letters are revoked, he or his legal representative must file a final settlement. Notice of filing of the final settlement must be given to the successor conservator.

Reference: §§ 475.290, 475.295

35.220.2 Death of Conservator

Section 475.295, RSMo, provides for the procedure for final settlement where the conservator dies. In this circumstance, the Court, with the agreement of the successor conservator, may waive the requirement of the appointment of a personal representative for the deceased conservator.

35.230 Liability of Successor Conservator

It is the responsibility of a successor conservator to see that a former conservator files a final settlement. The successor conservator must check the audited settlement to determine that the former conservator has met all audit requirements and insure that the successor conservator has received the estate in proper condition.

Where necessary, the successor conservator must file and pursue a determination of liability against the former conservator. Failure to assure that the former conservator's final settlement is proper and pursue any liability of the former conservator may result in the successor conservator assuming the former conservator's liability.

35.240 Costs - Final Settlement

Where a protectee is restored or dies, or where a minor reaches majority, a final cost calculation must be made. The final cost calculation form must be obtained from and returned to the Cost Clerk. If the final cost calculation form evidences costs due to the Court, the costs must be paid on the date of, or prior to, the filing of final settlement and reflected as a credit entry on the settlement, before the settlement will be approved. The attorney is mailed a copy of the cost calculation.

Reference: Form 10407 - Request for Final Court Cost Estimate

35.250 Proof of Payment of Expenses of Administration and Taxes

Before any final settlement is approved, proof of payment must be shown for each of the following:

(1) Court costs;

(2) Missouri Income Tax and Federal Income Tax, if applicable; and

(3) Fees of respondent's attorney at the adjudication hearing and fees of conservator ad litem, if any.

35.260 Final Compensation - Fiduciary and Attorney

Final compensation is not payable until approval of the final settlement and order of distribution. The attorney will be notified when the final settlement and order of distribution has been approved. The amount of compensation is shown as a credit entry on the final settlement.

References: Form 10161, Form 10163

35.270 Objections to Settlement

The filing of any objections by interested persons to the final settlement suspends the audit of the settlement until the objections are resolved. The auditor will advise the attorney of the suspension of the audit in an exception letter.

35.280 Check List of Requirements to be Satisfied Prior to Filing Final Settlement

(1) Verify that all expenses of administration and taxes have been paid.

(2) Verify that all allowable claims have been paid, withdrawn by the creditor or otherwise disposed of.

(3) Confirm that all property has been inventoried.

(4) Conclude all litigation involving the estate, including appeals. Copies of all judgments must be filed with the Court.

(5) Review the Court's file.

(6) Request and complete final cost form and pay costs.

(7) Publish and mail notice of filing final settlement unless waivers have been obtained. (Not applicable to minors' estates.)

(8) See Section 37 for a checklist of forms and documents required to close conservatorship estates.

[END OF SECTION]

Section 36 - Distribution and Discharge - Conservatorship Estates

36.10 When Distributed

The estate of a protectee may be distributed:

(1) to a successor conservator where the prior conservator dies, resigns or is removed by the Court (see Sections 37.10 and 37.20 for a list of forms);

(2) to the protectee upon restoration (see Sections 37.30 and 37.40 for a list of forms);

(3) to a minor upon reaching 18 years (see Sections 37.30 and 37.40 for a list of forms);

(4) to a legal representative, heirs or devisees upon the death of the protectee (see Sections 37.40, 37.50 and 37.60 for a list of forms). With respect to a distribution to an heir or devisee who is a debtor in bankruptcy, see the United States Bankruptcy Code, 11 U.S.C. §541.

References: §§ 475.300, 475.320
11 U.S.C. §541

36.20 All Distributions

36.20.1 Order of Distribution

The order must distribute all personal property as reflected on the final settlement. No deductions for expenses of the estate may be included on the order of distribution to be made from the distributable cash as shown by the final settlement. Where the protectee is deceased and the estate is closed pursuant to § 475.320. 1, RSMo, all real property shown on the inventory which has not been sold by the conservator must also be included in the order.

Reference: § 475.320.1

36.20.2 Description of Property

The descriptions of the property to be distributed must coincide with the descriptions contained in the inventory. If the description in the inventory is inadequate, e.g., street address only of real property, the inventory must be amended prior to distribution. The order of distribution should not reflect the value of any asset except cash.

36.20.3 Assignment

The Probate Division lacks jurisdiction to determine the enforceability of an assignment to a third person by a restored protectee, former minor who is sui juris or heir of a deceased protectee to a third person. Consequently, the Court will not recognize such an assignment. Distribution must be made to the restored protectee, former minor who is sui juris or an heir.

Distribution to an assignee may, however, be effected by appointing the assignee as attorney in fact to receipt for the distribution. If the conservator receives notice of an assignment, he should not, however, proceed with final distribution until the assignee's rights have been satisfied in such a manner as will relieve the conservator from personal liability. See Section 36.10(4) for information regarding distribution to an heir or devisee in bankruptcy. For additional explanation on the power of attorney, see 3 Missouri Practice - Probate Forms Manual (1985), Form 3.348 and Comment.

Reference: § 473.657

36.20.4 Escheats

If any minor, upon reaching 18 years of age, heir or any distributes cannot, after diligent search, be located or after being located, fails or refuses to accept or receipt for his distributive share then the share shall, upon petition and order filed by the conservator, be escheated. The petition must set forth the effort made to locate the missing person, or other facts constituting grounds for escheat, and the exact amount due from the estate. If the distributive share consists of any property other than cash, the non-cash property must be sold. The distribution will reflect: State of Missouri Escheat Funds for (name of minor, heir or devisee). The conservator shall then issue a check payable to the State Collector of Revenue, and, upon securing a receipt from the Collector, the same shall be filed in lieu of a receipt for the minor, heir or devisee concerned. The costs attributable to the escheat proceeding (including attorney's fees, if any, allowed by the Court) shall be charged against the escheated distributee's share.
References: §§ 470.010, 472.025, 474.010, 475.325

36.30 Distribution Pursuant to Section 475.320.1, RSMo, Where Protectee Deceased

36.30.1 Partial Distribution to Heirs

A partial distribution may be allowed by court order at any time after entry of the Order to Proceed Without Administration. The Court will consider the condition of the estate and the assets to be distributed in examining the application for partial distribution. No partial distribution will be permitted when it appears that the estate is or may be insolvent.

36.30.2 To Whom Distributed

The order of distribution shall follow 474.010, RSMo. The order shall fully set out the name of every person who is a distributes. The interest of the heir in the property must be shown, e.g., one-half interest.

Reference: § 474.010

36.30.3 Equal Distribution Required

Every item of property of the estate must be equally divided among the heirs entitled thereto. Failure to so divide the property is deemed an unequal distribution. A distribution of cash or property to offset an unequal distribution will not be permitted without the written consent of the heirs affected.

36.30.4 Sale of Personal Property to Effect Distribution

Personal property, especially securities, may be sold in order to effect a distribution of the proceeds where the property cannot be divided in kind or where it would be burdensome upon the heirs to create a tenancy in common among them in a particular security. See Section 34.40.5 on sales of personal property.

36.30.5 Minor Distributees

36.30.5(a) If an heir is a minor, his distributive share of personal property must be distributed:

(1) to a custodian for the minor (See Section 40.10);

(2) to a legally appointed conservator; or

(3) pursuant to an order to dispense with conservatorship, if less than $10,000 (See Section 38.30).

36.30.5(b) Any conservator may designate a custodian for a minor distributes (under age 18 years). However, court approval must be obtained if the designated custodian is not a trust company and the value of the property at the time of transfer exceeds $10,000. See Section 40, Transfers to Minors.

36.30.5(c) If a conservator is appointed by any court other than this court, a certified copy of the conservator's letters, certified within the last 6 months, must be in this court's file before the order of distribution will be signed.

36.30.5(d) The petition and order to dispense with conservatorship may be filed in the deceased protectee's estate rather than in a separate file for the minor.

36.30.5(e) Real property is always distributed in the name of the minor except where there is a custodial designation.

References: Form 10324, Form 10325
§§ 404.005 - 404.660, 475.330

36.30.6 Renunciation or Disclaimer

Where an heir renounces or disclaims all or a portion of his interest in the estate, the Court must be provided with all facts to determine who is entitled to the disclaimed share. The

disclaimant may not designate the recipient of disclaimed property. The disclaiming heir is treated as having predeceased the decedent. Therefore, the conservator must provide names and relationships of those who would take the disclaiming heir's share as though he actually predeceased the decedent.

Example:

Intestate estate to son A and eight grandchildren, the children of predeceased son S. A disclaims his interest. A is not survived by any lineals. The eight grandchildren take the entire estate pursuant to § 474.010, RSMo.

References: §§ 474.490, 474.010

36.30.7 Judgment Creditors

Section 473.618 relating to a request by a judgment creditor for notice of any partial or final distribution or both to a debtor-distributee does not apply to conservatorship proceedings.

A judgment creditor may attach or garnish a distributee's share of an estate by compliance with the Missouri Statutes, Civil Rules and the Jackson County Circuit Court Rules on attachments and garnishments.

Reference: Form 10371

36.40 Distribution From Conservatorship Estate Pursuant to Refusal of Letters or Small Estate Affidavit (Sections 473.090 and 473.097, RSMo) Where Protectee Deceased

36.40.1 To Whom Distributed

The order of distribution must conform with the Order Refusing Letters or must name each heir or devisee entitled to the estate according to the Clerk's Certificate issued pursuant to § 473.097, RSMo. The order shall fully set out the name of every person who is a distributes. The interest of the heir or devisee must be shown, e.g., one-half interest.

36.40.2 Equal Distribution Required

Every item of property of the estate must be equally divided among the distributees entitled thereto. Failure to so divide the property is deemed an unequal distribution. A distribution of cash or property to offset an unequal distribution will not be permitted without the written consent of the distributees, except where there is one share or a fractional share difference.

36.40.3 Sale of Personal Property to Effect Distribution

Personal property, especially securities, may be sold in order to effect a distribution of the proceeds where the property cannot be divided in kind or where it would be burdensome upon the distributees to create a tenancy in common among them in a particular security. See Section 34.40.5, Sales of Personal Property.

36.40.4 Minor Distributees

36.40.4(a) If a distributes is a minor, unless the will otherwise directs, his distributive share of personal property must be distributed:

(1) to a custodian for the minor (See Section 40.10);

(2) to a legally appointed conservator; or

(3) pursuant to an order to dispense with conservatorship, if less than $10,000 (See Section 38.30).

36.40.4(b) Any conservator may designate a custodian for a minor (under age 18 years) where no custodian has been designated by the decedent in his will. However, court approval must be obtained if the designated custodian is not a trust company and the value of the property at the time of transfer exceeds $10,000. A custodial designation in a will is effective until the beneficiary has attained twenty-one years of age after which time the property is immediately transferable to the beneficiary. See Section 40, Transfers to Minors.

36.40.4(c) If a conservator is appointed by any court other than this court, a certified copy of the conservator's letters, certified within the last 6 months, must be in this court's file before the order of distribution will be signed.

36.40.4(d) The petition and order to dispense with conservatorship may be filed in the deceased protectee's estate rather than in a separate file for the minor.

36.4.0.4(e) Real property is always distributed in the name of the minor except where there is a custodial designation.

References: Form 10324, Form 10325, Form 10620
§§ 404.005 - 404.660, 475.330

36.40.5 Renunciation or Disclaimer

Where a devisee or heir renounces or disclaims all or a portion of his interest in the estate, the Court must be provided with all facts to determine who is entitled to the disclaimed share. (However, this rule does not apply to an interest in a testamentary trust or a trust which is the recipient of a pour-over distribution.) The disclaimant may not designate the recipient of disclaimed property. The disclaiming distributes is treated as having predeceased the decedent. Therefore, the conservator must provide names and relationships of those who would take the

disclaiming devisee's share as though he actually predeceased the decedent. Based on this information the Court will determine whether § 474.460 or § 474.465, RSMo applies.

Examples:

1. Residuary estate left to A, B & C, all children of the decedent. C disclaims his interest. Unless the will otherwise directs, § 474.460, RSMo, applies and C's lineals, if any, will take his share.

2. Residuary estate left to A, B & C, not related to the decedent. C disclaims his share. Unless the will otherwise directs, § 474.465, RSMo, applies and A & B will take C's share.

3. Intestate estate to son A and eight grandchildren, the children of predeceased son B. A disclaims his interest. A is not survived by any lineals. The eight grandchildren take the entire estate.

References: §§ 474.490, 474.460, 474.465

36.40.6 Judgment Creditors

Section 473,618 RSMo relating to the request by a judgment creditor for notice of any partial or final distribution or both to a debtor-distributee that does not apply to conservatorship estates.

A judgment creditor may attach or garnish a distributee's share of an estate by compliance with the Missouri Statutes, Civil Rules and the Jackson County Circuit Court Rules on attachments and garnishments. However, assets or funds in the hands of a personal representative may not be garnished or attached until after entry of an order of partial or final distribution has been entered distributing the same to a judgment debtor distributes.

36.50 Discharge

36.50.1 Time for Filing Receipts - Extensions

Within 60 days after the date of notice of approval of final settlement and order of distribution, the conservator shall make distribution of the assets of the estate and file with the Court receipts and a proposed order of discharge.

The Settlement Clerk has authority to grant one extension for good cause shown not to exceed 30 days upon written application of the conservator or his attorney. The Chief Auditor may grant the first or second extension of 30 days each.

Applications for further extensions or for more than 30 days will be presented to the Judge, Commissioner or Deputy Commissioner and will be granted only upon good cause shown.

Reference: Form 10572

36.50.2 Receipts Must Conform With Order

The order of discharge will be entered upon the filing of the receipts of all distributees receiving personal property which corresponds with the decree of distribution.

References: Form 10575
§§ 475.315, 473.660

36.50.3 Acceptable Receipts

Valid receipts consist of original canceled checks with proper endorsement or receipts signed by the distributees. However, the receipt of a restored protectee, or a minor upon reaching majority, must be a written statement signed by the restored protectee or minor and the signature must be notarized or must be an original canceled check with proper endorsement. If any individual other than the distributes endorses the check or the receipt of distributes, evidence must be presented with the receipt of the individual's authority to receipt for the distributes, i.e., power of attorney or letters of conservatorship, if not filed previously.

Receipts signed by an assignee are not acceptable unless the assignor has complied with § 473.657, RSMo. See Section 36.20.3, Assignments.

Reference: § 475.315

36.50.4 Citation for Failure to File

Failure to timely file receipts will result in the issuance of an order for citation to show cause why the conservator should not be removed. If a citation issues, the conservator and his attorney must appear at the hearing unless it is continued. The citation will be dismissed upon:

(1) the filing of the receipts;

(2) the payment of the citation costs; and

(3) obtaining the dismissal from the Judge, Commissioner or Deputy Commissioner.

The costs of the citation may not be paid from the assets of the estate.

36.50.5 Effect of Discharge

No costs shall accrue for the securing of an extension of time to file final receipts, unless a citation for failure to file final receipts has issued. If a citation has issued, the conservator shall be personally responsible for the costs of the citation. See Section 22.30.1 on citations.

The conservator is not relieved of his duties nor is his surety, if any, relieved of liability until an order of discharge has been entered.

References: Form 10594
§§ 473.660, 475.315

[END OF SECTION]

Section 37 - Forms - Final Settlement or Closing in Conservatorship Estates

Following is a checklist of forms and documents required for finalizing or closing the various types of conservatorship estates. Specific requirements are listed under the appropriate headings.

37.10 Conservator Resigned- Removed - Successor Appointed

(1) Request for Final Court Costs Estimate (obtain from and submit to cost clerk at least two weeks prior to filing final settlement)

(2) Final settlement (Form 10559, pages 1 and 2)

(3) All original receipts or canceled checks (vouchers)

(4) Acceptance or waiver of notice by successor (adapt Form 10330 for waiver)

(5) Order of distribution to successor (Form 10593)

(6) Receipt of successor (adapt form 10575)*

(7) Order of Discharge (Form 10333)*

NOTE: Letters to the successor must issue prior to approval of the settlement and distribution. The Court will not audit the final settlement of a removed/resigned conservator until the successor conservator has had an opportunity to object to the final settlement. The successor conservator will be notified in writing by the Court of the right to file objections and the time in which to do so. If no objections are filed by the successor, the Court will audit the settlement. If objections are filed, they must be resolved before the settlement will be audited. See Section 35.270 for a checklist of requirements to be satisfied prior to filing the final settlement.

*To be filed after the Order of Distribution has been entered.

37.20 Conservator - Deceased

(1) Request for Final Court Costs Estimate (obtain from and submit to cost clerk at least two weeks prior to filing final settlement) (Form 10407)

(2) Final settlement (Form 10559, pages 1 and 2)

(3) All original receipts or canceled checks (vouchers)

(4) Acceptance or waiver of notice by successor (adapt Form 10330 for waiver)

(4) Order of distribution to successor (adapt Form 10574)

(5) All original receipts or canceled checks (vouchers)

(6) Receipt of successor (adapt Form 10575)*

(7) Order of Discharge (adapt Form 10333)*

*To be filed after the Order of Distribution has been entered.

37.30 Minor Reaching Majority - Estate With Assets
Disabled Person Restored - Estate With Assets

(1) Request for Final Court Costs Estimate (obtain from and submit to cost clerk at least two weeks before final settlement) (Form 10407)

(2) Final Settlement (Form 10559, pages 1 and 2)

(3) All original receipts or canceled checks (vouchers)

(4) Proof of notice or waiver by former protectee (Form 10330)

(5) Petition for Approval of Final Settlement and For Order to Deliver Assets (Form 10339)

(6) Order of distribution (Form 10331)

(7) Receipt of Protectee (Form 10332)***

(8) Order of Discharge (Form 10333)***

***May be filed with the final settlement.

37.40 All Exhausted Estates Protectee Reaching Majority, Restored or Deceased**

(1) Request for Final Court Costs Estimate (obtain from and submit to cost clerk at least two weeks prior to filing final settlement) (Form 10407)

(2) Final settlement (Form 10559, pages I and 2)

(3) All original receipts or canceled checks (vouchers)

(4) Acceptance or waiver of notice by former protectee (adapt Form 10330)****

** Publication and mailed notice is not required. Discharge is entered on the settlement by the Court.

**** This form is only necessary where the protectee is restored or has reached majority.

37.50 Death of Protectee - With Assets - Section 475.320.2. RSMO

(1) Request for Final Court Costs Estimate (obtain from and submit to cost clerk at least two weeks prior to filing final settlement) (Form 10407)

(2) Final settlement (Form 10559, pages 1 and 2)

(3) All original receipts or canceled checks (vouchers)

(4) Petition for approval of final settlement (Form 10573)

(5) Order of distribution (Form 10331)

(6) Acceptance or waiver or notice by personal representative (adapt Form 10330)

(7) Receipt of personal representative (adapt Form 10332)***

(8) Order of Discharge (Form 10333)***

*** May be filed with the final settlement.

37.60 Intestate Protectee Without Debts - Close Without Administration Pursuant to RSMO 475.320.1

(1) Suggestion of death and petition to close estate without administration (Form 10190, pages 1 and 2)

(2) Order to proceed without administration (Form 10191)

(3) Request for Final Court Costs Estimate (obtain from and submit to cost clerk at least two weeks prior to filing final settlement) (Form 10407)

(4) Final settlement (Form 10559, pages 1 and 2)

(5) All original receipts or canceled checks (vouchers)

(6) Petition for approval of final settlement (Form 10573)

(7) Mailed notice and proof of mailed notice (Forms 10197 and 10197a) or waiver of notice

(8) Order of Distribution (Form 10214)

(9) Receipt of Distributee (Form 10575)*

(10) Order discharging guardian/conservator (Form 10594)*

*To be filed after the Order of Distribution has been entered.

Section 38 - Minors, Estates - Miscellaneous Provisions

38.10 Choosing a Method of Distribution to a Minor

38.10.1 In General

A minor may own and possess property in his own name, and may receive property outright. Persons engaging in property transactions with minors may not be protected, however. As a result, various methods have been established to provide adult and judicial supervision over financial transactions involving minors.

Set out in this section are three ways money or property may be transferred to or for the benefit of a minor. The Court receives frequent inquiry as to when one of these alternatives is preferable to the others. This section briefly and generally explores that question. A more thorough discussion may be found in Chapter 14, "Missouri Transfers to Minor's Law," 2 Guardianship & Trust Law (Mo Bar CLE 1985, 1987).

References: §§ 362.465, 369.169

38.10.2 Conservatorship

Conservatorship is used most often when the amount to be received by the minor exceeds $10,000. Because of the bonding and annual accounting requirements, it provides the best protection of the assets, while permitting use of the funds when needed as allowed by court order.

38.10.3 Dispensing with Conservatorship

Dispensing with conservatorship may be utilized only when the value of the asset to be received is less than $10,000. Generally, even though the amount to which the minor is entitled is less than $1 0,000, the Court will require the funds be deposited in an interest bearing restricted deposit, restricted so that no withdrawals of principal or interest will be permitted until the minor attains the age of 18 years or until further order of the Court. See Section 38.30, Dispensing With Conservatorship.

Reference: § 475.330

38.10.4 Transfer Pursuant to the Missouri Transfers to Minors Act

A transfer to a minor may be appropriately utilized where a debtor such as an insurance company desires to make a single payment to a minor and receive discharge on the obligation. It may also be utilized where a gift is being made to a minor and the donor desires adult supervision without full

conservatorship until the minor reaches majority. Some debtors may be reluctant to designate a custodian.

If the value of the assets at the time of transfer is in excess of $10,000, court approval will be required if the custodian is not a trust company. The Court may require the custodian to serve with a bond and/or under court supervision.

Where the value of the assets is less than $10,000, a custodian may be designated and payment made without court supervision. The careful practitioner will insist on a professional custodian or will satisfy himself that the custodian will preserve the assets for the minor. The least protection is provided by the alternative of a private individual serving as custodian under the Transfers to Minors Law. See Section 40, Transfers to Minors.

38.10.5 Cost Variables

Costs of the various proceedings are a frequent concern of practitioners and other interested persons. Genera y, dispensing wit conservatorship or a transfer to a custodian of less than $10,000 are most cost effective, but as set out at 38.10.3 and 38.10.4, have limited applicability due to the $10,000 maximum. A transfer of more than $10,000 to a financial institution as custodian may appear more cost effective than a conservatorship. However, when custody fees of the financial institution are explored this may not be the case. Costs can be dramatically reduced in a conservatorship by restricting all funds and placing the estate on NFP. See Section 35.170.

In NFP estates, a minimum bond premium may be due annually or, in a minor's estate, a single premium may be due until majority. Court costs are waived and attorney expense is not contemplated since settlement is a also waived.

38.20 Minors' Estates - Procedure for Settlement of Personal Injury Claims

38.20.1 Jurisdiction

The Probate Division and regular divisions of the circuit court have concurrent jurisdiction to hear and approve the settlement of a minor's claim for personal injuries. If a lawsuit has been filed in a regular division of the circuit court on behalf of the minor, the hearing on any settlement must be held in that division. If, however, no lawsuit has been filed and the parties have negotiated a settlement, then the parties may choose whether the Probate Division or a regular division will hear and determine the reasonableness of the settlement. This is normally called a friendly suit. If the parties elect to ask the Probate Division to hear the friendly suit, then the pleadings filed shall be in substantially the same form as those which are customarily filed in friendly

suits in other divisions. The practitioner is also referred to Sections 507.182-188 (the "next friend" statutes).

38.20.2 Bond

The amount of bond required of the conservator, whether the friendly suit is heard in the Probate Division or elsewhere, shall be based upon the actual amount of funds paid to the conservator. If the settlement is effectuated in another division of the circuit court, Civil Rule 52.02 (h) (1) allows the Court to take judicial notice of the bond filed by the conservator in the Probate Division as sufficient. All bonds submitted to the Probate Division for approval shall be in accordance with Section 30.

38.20.3 How Inventoried

An inventory must be filed by the conservator regardless of whether the friendly suit settlement is effected in the Probate Division or elsewhere. If the friendly suit is effected in another court, the amount shown in the inventory shall be the amount stated in the judgment for payment to the conservator. In addition to filing the inventory, an attested copy of the judgment approving the settlement shall also be filed in the Probate Division. That portion of any settlement paid to the parents of the minor must be shown. If the friendly suit is effected in the Probate Division, the amount shown in the inventory shall be the gross amount of the settlement. Disbursements the conservator must make as authorized by the judgment entry shall be shown on the first settlement filed subsequent to the date of the judgment supported by proper vouchers or receipts except that no vouchers or receipts for the attorney's fee need be filed. See Section 31.80, Inventory.

38.30 Dispensing with Conservatorship

When the total value of a minor's estate is less than $1 0,000, the Court may, in its discretion, dispense with conservatorship in one of three ways:

(1) upon deposit of the assets in a restricted account until a conservator is appointed or until the minor reaches age 18;

(2) by delivery of the assets to a suitable person for ultimate delivery to the conservator if appointed, or to the minor at age 18; or

(3) by delivery of the assets to the minor's parent, custodian or to the minor.

Where the minor's estate is derived from a decedent's estate, the petition to dispense with conservatorship should be filed in the decedent's estate. No filing fee is required. Where the minor's estate is derived other than from a decedent's estate, the petition to dispense with conservatorship must be

filed with the New Estates Clerk. A filing fee will be charged. See Section 40.10, Transfers to Minors.

Implicit in a petition to dispense with conservatorship where restriction of funds is contemplated is an allegation that the money will not be needed for the minor's benefit until he reaches age 18. Consequently, after an order to dispense with conservatorship is entered, no further orders will be entered absent exigent circumstances. No expenditure of the funds will be allowed absent dire emergency.

References: Form 10324, Form 10325
§ 475.330

[END OF SECTION]

Section 39 - Involuntary Civil Commitments: Mental Health and Substance Abuse Proceedings

39.10 In General

Sections 632.300 through 632.475, RSMO, govern involuntary hospitalization of persons who are mentally ill, and Chapter 631 governs involuntary detention for treatment and rehabilitation of persons who are substance abusers. These statutes are procedurally similar, and both provide for incremental periods of detention for treatment. The initial period in both (96 hours) may be requested by ex parte application. Subsequent detention for 21 days (mental health) or 30 days (substance abuse) may follow only after the treatment facility petitions for additional detention, and a full due process adversary proceeding is held. Detention for 90 days (for mental health and substance abuse) and one year (mental health only) is possible after similar hearings.

In hearings for involuntary civil commitments, the petitioner must prove by clear and convincing evidence that the respondent is either mentally ill, or is a substance abuser, as applicable, and, in either case, presents a likelihood of serious physical harm to himself or others.

39.20 Initial Detention

Initially, the petitioner should always contact the Mental Health Coordinator. See Section 39.30. 1.

Any adult person may, ex parte and without counsel, file an application for a 96 hour detention through the New Estates Clerk. The application must be supported by an affidavit citing specific facts which demonstrate the respondent is mentally ill or a substance abuser, and dangerous. It is the policy of the Court to require the concurrence of a Mental Health Coordinator or other mental health professional whenever feasible. On a finding of probable cause, the Court will issue a detention order and warrant for the respondent to be picked up and detained.

Where the risk of harm is imminent, the police or a Mental Health Coordinator may arrange for immediate transport to an appropriate detention facility without court order.

Reference: § 632.305

39.30 Detention After 96 Hours

Subsequent detentions are instituted by mental health professionals at the detention facility who are represented by the Jackson County Counselor's Office. Consequently, the private practitioner should consult the County Counselor's Office for further information as to how to proceed in a given case.

39.30.1 Mental Health Coordinators

The Mental Health Coordinators employed by and reachable through the Missouri Department of Mental Health are of invaluable assistance when facts arise wherein detention under Chapters 631 or 632, RSMO, is a possibility. The Mental Health Coordinators may be reached at Western Missouri Mental Health Center by calling the following phone number, (816) 234-5970.

39.30.2 Due Process Requirement

In every case, respondents in proceedings under Chapters 631 or 632 will be afforded the full panoply of due process protections available under the United States and Missouri Constitutions and state law. This includes and is not limited to the right to legal counsel and a jury trial, where requested.

References: § § 632.325, 632.335, 632.340, 632.355

39.30.3 Jackson County Counselor's Office

The Jackson County Counselor's Office represents petitioners in these matters beyond the initial 96 hour detention, but only in connection with subsequent petitions for further detention. They may be consulted in a given case. See § 630.140.5, RSMO, which deals with the confidentiality of mental health records.

39.30.4 References

Additional information is available in Chapter 5, 'Civil Commitment Under the Mental Health Law," 1 Guardianship & Trust Law (Mo Bar CLE 1985, 1987).

[END OF SECTION]

Section 40 - Transfers to Minors and Personal Custodian Law

40.10 Missouri Transfers to Minors Law

40.10.1 In General

This section discusses the most basic procedural and legal issues related to the Missouri Transfers to Minors Law, §§ 404.005 to 404.094 RSMo 1989. This is a very complex area and the reader is cautioned to thoroughly review the statute, and Chapter 14, "Missouri Transfers to Minors Law," 2 Guardianship & Trust Law (Mo Bar Deskbook, 1987 and 1990 Supp.).

The Missouri Transfers to Minors Law provides one method for transferring money or property to a minor. For the purpose of this chapter minor is defined as an individual who has not attained the age of twenty-one years. See Section 38 for a discussion of the various options available for transferring property to a minor. The process involves the designation of a custodian to hold the property of the minor. This designation may be made by a donor, or if there is no conservator of the minor's estate, by the minor or an obligor as set out in Section 40.10.4.

NOTE: Upon attaining age 18 years, a minor may request delivery of property held by a custodian if the transferor was an obligor.

References: §§ 404.005 to 404.094

40.10.2 Creation

A minor's custodianship is created whenever property is placed in the name of a person by a writing that uses in substance the words "as custodian for (name of minor) under the Missouri Transfers to Minors Law."

Although acceptance of the custodial designation by the custodian is not necessary, the careful practitioner may want to obtain a writing from the designated custodian acknowledging that he will administer the custodial property for the minor as prescribed by §§ 404.005 - 404.094, RSMo.

Reference: § 404.047

40.10.3 Types of Property

Any type of property may be transferred to a custodian for a minor. Section 404.047, RSMo, provides specific methods for transferring various types of property.

Reference: §§ 404.007(17), 404.011, 404.047

40.10.4 Transferors

Any person or corporation may transfer property to a minor by designating a custodian. There are three categories of transferors: (a) donors, (b) obligors and (c) minors.

40.10.4(a) Donors

A donor may make a present or future transfer of property to a minor.

A donor making a present transfer of property to a minor may designate and transfer any amount of money or value to a custodian for a minor.

A donor making a future transfer of property to a beneficiary, who may be a minor at the time the property becomes transferable, may revocably designate a custodian for the beneficiary. The donor may also grant to another the power to revocably designate a custodian. This designation may be made in a will, trust, deed, power of appointment, benefit plan, life or endowment insurance policy, annuity or other contract, or a pay or transfer on death direction. If, at the time the property becomes transferable, the minor beneficiary has attained twenty-one years of age, the custodial designation shall lapse and the property may be transferred directly to the former minor.

Note: Substitute custodians may be designated by a donor in certain situations. For a discussion on the designation of successor and substitute custodians, see Chapter 14, "Missouri Transfers to Minors Law," 2 Guardianship & Trust Law (Mo Bar Deskbook, 1987 and 1990 Supp.).

References: §§ 404.023, 404.027

40.10.4(b) Obligors

An obligor is one indebted to a minor or any person holding property belonging to a minor and may include a personal representative, trustee, benefit plan, insurance company, agency of any state or of the United States or any person holding property belonging to a minor. An obligor may designate and transfer the property to a custodian for the benefit of a minor under the age of 18 years. However, the property must be transferred to the minor's conservator, if one has been appointed.

Court approval is required if the value of the property at the time of transfer exceeds $10,000 and the designated custodian is not a financial institution. See Section 40.10.7 regarding court approval.

Reference: §§ 404.007(9), 404.031

40.10.4(c) Minors

A minor may designate and transfer his own property to a custodian, if no conservator has been appointed for him.

Court approval is required if the value of the property at the time of transfer exceeds $10,000 and the designated custodian is not a financial institution. See Section 40.10.7 regarding court approval.

Reference: §§ 404.007(9), 404.031

40.10.5 Custodians

Any adult person, twenty-one years and older, may be designated custodian including the donor, the obligor, if a member of the minor's family, and any financial institution authorized to do business in this state. However, the designated custodian must be a person or institution who or which is qualified to be appointed conservator of the estate of a minor pursuant to 475.055, RSMo. There is no provision for joint custodians.

Reference: § 404.035

40.10.6 Custodial Designation on Distribution from a Decedent's Estate

Where a probated will creates a custodianship or a personal representative designates a custodian for a minor devisee, the final decree of distribution must use I substance the words "(Name of Custodian) as custodian for (name of minor) under the Missouri Transfers to Minors Law." The personal representative must obtain a receipt from the custodian of the custodial property for filing with the Court prior to discharge the personal representative. . See Section 24, Distribution and Discharge.

References: §§ 404.027, 404.031

40.10.7 Court Approval - Property in Excess of $10,000

Any designation by any obligor or a minor of a custodian that is not financial institution must be approved by the Court where the value of the property at the time of transfer exceeds $10,000.

Court approval may be obtained by filing a petition in the Probate Division. Such a petition is an independent adversary civil proceeding and is not ancillary to a related decedent's estate administration and may not be filed in any related decedent estate, except that a will construction involving distribution to a designated custodian m be filed in a pending decedent's estate administration. Service must be obtained o parents of the minor and the proposed custodian, if other than a parent. The Court m refuse to approve the proposed custodian or may provide in its approval that the custodian serve with or without bond and with or without court supervision, or require that the custodial property be restricted by court order, upon terms as the Court may require.

Reference: §§ 404.007(9), 404.031

40.10.8 Termination

Where a donor designates a custodian or grants to another the power t designate a custodian, the custodianship terminates at twenty-one years of age,

Where the minor or an obligor designates the custodian, the custodial property shall be delivered to the minor on attaining the age of eighteen years if the minor requests the property.

Reference: § 404.051.5

40.20 Missouri Personal Custodian Law

40.20.1 In General

This section is intended to touch on the most basic procedural and legal issues related to the Missouri Personal Custodian Law, §§ 404.400 to 404.650, RSMo 1989. This is a complex area and the reader is cautioned to thoroughly review the statute, and Chapter 15, "Missouri Personal Custodian Law," 2 Guardianship & Trust Law (Mo Bar Deskbook, 1987 and 1990 Supp.).

The Missouri Personal Custodian Law provides one method for transferring money or property to an adult beneficiary, including an adult incapacitated person. The process involves the designation of a custodian to hold the property of the beneficiary. This designation may be made by a donor, or if there is no conservator of the beneficiary' estate, by the property owner or an obligor as set out in Section 40.20.4.

Reference: § 404.410(8), 404.490

40.20.2 Creation

A personal custodianship is created whenever property is placed in the name of a person or institution by a writing that uses in substance the words custodian for (name of beneficiary) under the Missouri Personal Custodian Law."

Although acceptance of the custodial designation by the custodian is n necessary, the careful practitioner may want to obtain a writing from the designate custodian acknowledging that he will administer the custodial property for the beneficia as prescribed by §§ 404.400 through 404.650, RSMo.

Reference: § 404.540

40.20.3 Types of Property

Any type of property and any type of interest in property, such as joint interest with right of survivorship, may be transferred to a custodian for a beneficia Section 404.540 provides specific methods for transferring various types of property. See Chapter 15, 2 Guardianship & Trust Law (Mo Bar Deskbook, 1987 and 1990 Supp.) discussion regarding the type of interest, i.e., joint tenancy, that may be transferred to personal custodian.

References: §§ 404.007(17), 404.540, 404.565

40.20.4 Transferors

Any person or corporation may transfer property to a beneficiary by designating a custodian.

There are three categories of transferors: (a) donors, (b) obligors and (c) property owners.

40.20.4(a) Donors

A donor may make a present or future transfer of property to an adult beneficiary.

A donor making a present transfer of property to a beneficiary may designate and transfer any amount of money or value of property to a custodian for the beneficiary.

A donor making a future transfer of property to a beneficiary, who may be incapacitated at the time the property becomes transferable, may revocably designate a custodian for the beneficiary. The donor may also grant to another the power to revocably designate a custodian. This designation may be made in a will, trust, deed, power of appointment, benefit plan, life or endowment insurance policy, annuity or other contract, or a pay an death direction. If, at the time the property becomes transferable, and if the beneficiary is not an incapacitated person, the custodial designation shall lapse and the property may be transferred directly to the beneficiary.

Note: Substitute custodians may be designated by a donor in certain situations. For a discussion on the designation of successor and substitute custodians, see Section 15.29, 2 Guardianship & Trust Law (Mo Bar Deskbook, 1987 and 1990 supp.).

References: §§ 404.007(8), 404.460, 404.470, 404.480

40.20.4(b) Obligors

An obligor is one indebted to an incapacitated beneficiary or any person holding property belonging to an incapacitated beneficiary which may include a personal representative, trustee, benefit plan, insurance company, agency of any state or of the United States. Any obligor may

designate and transfer the property to a custodian. However, the property must be transferred to the beneficiary's conservator if one has
been appointed.

Court approval is required if the value of the property at the time of transfer exceeds $10,000 and the designated custodian is not a financial institution. See Section 40.20.8 regarding court approval.

Reference: §§ 404.410(9), 404.490

40.20.4(c) The Property Owner

The property owner may designate and transfer his own property to a custodian if no conservator has been appointed for him. See Sec. 40.20.10 Termination.

Reference: § 404.420

40.20.5 Court Designation of Custodian

If the Court determines under Chapter 475 that full administration of an incapacitated person's estate is not required, the Court may designate a custodian. See Section 15.10, 2 Guardianship & Trust Law (Mo Bar Deskbook, 1987 and 1990 Supp.) for examples of situations where the Court may prefer a custodianship rather than a conservatorship. The Court may direct that all or part of the incapacitated person's property be transferred to the custodian. The custodian may be a court appointed conservator or guardian.

The Court may direct the custodian to serve with or without bond and with or without court supervision, upon the terms and conditions as the Court may require.

Reference: § 404.510

40.20.6 Custodians

Any adult person, twenty-one years old may be designated custodian including the donor, the obligor, if a member of the beneficiary's family, an any financial institution authorized to do business in Missouri, may be designated custodian. However, the designated custodian must be a person or institution who or which is qualified to be appointed conservator of the estate of the beneficiary pursuant to §475.055, RSMo. There is no provision for joint custodians.

Reference: § 404.530

40.20.7 Custodial Designation on Distribution from a Decedent's Estate

Where a probated will creates a custodianship or a personal representative designates a custodian for an incapacitated devisee, the final decree of distribution must use in substance the

words "(Name of Custodian) as custodian for (name of incapacitated person) under the Missouri Personal Custodian Law." The personal representative must obtain a receipt from the custodian of the custodial property for filing with the Court prior to discharge of the personal representative. See Section 24, Distribution and Discharge.

References: §§ 404.480, 404.490

40.20.8 Court Approval - Property in Excess of $10,000

Any designation by an obligor of a custodian that is not a financial institution must be approved by the Court where the value of the property at the time of transfer exceeds $10,000.

Court approval may be obtained by filing a petition in the Probate Division. Such a petition is an independent adversary civil proceeding and is not ancillary to any related decedent's estate administration and may not be filed in any related decedent's estate. (An exception to the foregoing statement relates to an action by the personal representative or others to construe decedent's will if the construction affects distribution to a designated custodian.) Service must be obtained on the beneficiary and the designated custodian. An ad litem may be appointed to represent the beneficiary. The Court may refuse to approve the proposed custodian or may provide in its approval that the custodian serve with or without bond and with or without court supervision, or may require that the custodial property be restricted, upon terms as the Court may require.

Reference: § 404.490

40.20.9 Effect of Incapacity of Beneficiary

The incapacity of a beneficiary who has transferred property to a personal custodian does not alter the custodianship. The personal custodian shall continue to hold and administer the custodial property in accordance with the provisions of §§ 404.400 to 404.650, RSMo, applicable to incapacitated beneficiaries and the provisions of any written agreement between the beneficiary and the personal custodian.

Reference: § 404.430

40.20.10 Termination

An adult beneficiary with capacity may terminate a custodianship on demand.

The custodian shall deliver the remaining custodial property to the beneficiary pursuant to a written agreement with the personal custodian executed by a competent beneficiary, or to the beneficiary's estate, upon the beneficiary's death.

Reference: § 404.560

[END OF SECTION]

Section 41 - Trusts

41.10 In General

This section discusses the most common procedural and legal issues related to testamentary and inter vivos trusts in the Probate Division. A comprehensive overview of trusts is outside the scope of this manual. The reader is referred to the Restatement (Second) of Trusts (1959); Vols. 1-16, G. Bogert, The Law of Trusts and Trustees (rev. 2d ed. 1984); Vols. 1-6, A. Scott, The Law of Trusts (Wm. F. Fratcher 1987) 4th ed.; 1 Guardianship & Trust Law (Mo Bar CLE 1985, 1987) and Chapter 456 Missouri Revised Statutes.

41.20 Jurisdiction

The Probate Division possesses concurrent jurisdiction to hear and determine any litigation relating to testamentary and inter vivos trusts.

References: §§ 456.400, 456.450, 472.020, 472.300

41.30 Trust Registration

Registration of a trust may be effected by compliance with § § 456.400-.440, RSMo. The "statement" referred to in § 456.410, RSMo, need not be in any particular form, but it must contain all information required by that section. Upon the filing of the statement and the payment of a filing fee, a file will be opened in the name of the trust. The registration of the trust merely establishes the situs of the trust and nothing else. Before the Court can enter any judgment in connection with the trust, a petition must be filed seeking appropriate relief and service must be obtained upon all necessary parties.

References: §§ 456.400 - 456.440

41.40 Adversary Proceeding

Any issue in connection with a testamentary or inter vivos trust may be determined by the filing of a petition in the Probate Division. Such a petition is an independent adversary civil proceeding and is not ancillary to any related decedent's estate administration, thus it may not be filed within the decedent's estate, except that a will construction action involving the terms of a testamentary trust may be filed in a pending decedent's estate administration. See also Section 7, Adversary Proceedings.

41.50 Testamentary Trusts

41.50.1 Terms of a Will

A trust may be created by the terms of a valid will admitted to probate. The will itself or an existing instrument which the will incorporates by reference must evidence:

(1) The intention of the testator to create the trust,

(2) The property to be held in trust,

(3) The beneficiary, and

(4) The purpose of the trust.

41.50.2 "Pour-Over" Provisions

A will may provide that some or all of the testator's estate is be distributed to an existing inter vivos trust to be held under the terms of that trust.

41.60 Trustees

41.60.1 Identity of Trustee and Beneficiaries

The trustee will either be appointed in the will which creates the trust or in an inter vivos trust to which the testator's estate pours over. In the latter situation, the personal representative of the decedent's estate must provide the Court with a copy of the inter vivos trust instrument to establish the identities of the trustee and beneficiaries.

Reference: § 456.120

41.60.2 Personal Representative as Trustee

It is fairly common for the personal representative of the estate to also be named as trustee. If the personal representative/trustee executes a document that requires the consent of the trustee/distributee, then the consent is inferred by execution of the document, absent evidence to the contrary. When an individual is acting as both personal representative and trustee, the individual must avoid any conflict of interest when acting in either capacity. The Court is sensitive to this relationship and will review the relationship when any petition is filed seeking action which might create a conflict of interest.

41.60.3 Nonresident Corporate Fiduciaries - Reciprocity

A “foreign corporation" which has authority to act in a fiduciary capacity in the foreign state and is qualified to do business in Missouri, is authorized to act as a trustee in Missouri if it meets the requirements of § 362.600, RSMo. “Foreign Corporations" include any bank or corporation incorporated in states which adjoin or touch a state adjoining Missouri and a national banking association whose principal place of business is in a state which adjoins or next adjoins Missouri.

Upon proper application and showing of this reciprocal privilege, the Missouri Director of Finance will issue a certificate of reciprocity to the foreign corporation which authorizes the

foreign corporate fiduciary to serve without a Missouri-resident co-trustee. See Sections 24 and 25, Distribution and Discharge, regarding the requirement for filing the certificate of reciprocity.

References: §§ 362.600, 456.120

41.60.4 Resignation, Death, Inability or Refusal to Act - Successor Trustee

A trust instrument may provide for the appointment of a successor trustee upon the resignation, death, inability or refusal to act of the trustee. It may give the beneficiaries, remaining trustees or other persons the power to appoint a successor. Provisions in the trust instrument control.

However, where no provision for a successor trustee is made in the trust instrument, there must be compliance with § § 456.190 and 456.200, RSMo, for appointment of a successor trustee. The Court will appoint a successor trustee only after appropriate documents/pleadings are filed, the filing fee is paid and service on interested persons (co-trustees, beneficiaries) has been made or their consents have been obtained.

If there are minor beneficiaries and the doctrine of virtual representation does not apply, it may be necessary to appoint a guardian ad item.

References: §§ 456.190, 456.200, 472.300

41.60.5 Accounting

Regardless of whether the trust instrument or court order requires the trustee to file an annual accounting with the Court, the Court will not, on its own motion, audit or otherwise take any action with respect to the accounting filed. The trustee may secure approval of an annual accounting by filing a petition to that effect and securing service of notice of hearing on all necessary parties. If objections to an accounting are filed, the Court will issue an order requiring the trustee to file a responsive pleading within a specified time. After a reasonable period for completion of pretrial discovery has expired, the Court will, on request of one of the parties, set the matter for hearing.

Reference: § 456.233

41.70 Modification, Revocation and Termination

The Court, upon petition by the trustee or by any person beneficially interested under the trust, may by order, confer necessary powers upon the trustees for any transaction that is expedient where such a power is not vested in the trustee by the trust instrument or by law; or may, with the consent of all adult beneficiaries who are not disabled, vary the terms of a private trust or provide for termination of the trust at a time earlier than that provided in the trust instrument.

To vary the terms or provide for early termination of the trust, the Court must find that the variation will benefit the disabled, minor, unborn an unascertained beneficiaries. Any such petition is an adversary civil proceeding subject to the Civil Rules and the Civil Code (Chapters 506 through 516, RSMo). See Section 7, Adversary Proceedings.

Reference: § 456.590

[END OF SECTION]

Section 42 - Durable Power of Attorney

42.10 In General

The law pertaining to durable power of attorney was substantially revised by the General Assembly in 1989. This section only comments on those sections directly related to action by the Probate Division. The Durable Power of Attorney law of Missouri is found in §§ 404.700 to 404.735 RSMo 1989. That law was significantly amended with respect to the handling of health care matters by an attorney-in-fact appointed by a durable power of attorney in 1991 by amendments to § 404.710 and by the addition of several new sections consisting of §§ 404.800 to 404.865 RSMo 1991.

Actions involving a durable power of attorney are adversary civil actions to which the Civil Rules and Civil Code are fully applicable. However § 472.300, RSMo, applies to judicial proceedings involving powers of attorney to the extent that they apply to judicial proceedings involving trusts and are not inconsistent with provisions of the durable power of attorney law.

42.20 Jurisdiction of Probate Division

The Probate Division has concurrent jurisdiction with regular divisions of the Circuit Court to hear all matters related to durable powers of attorney, except that certain provisions of the durable power of attorney law relating to accounting and declaration of disability and incapacity require filing and hearing in the Probate Division.

Reference: § 404.731

42.30 Court Appointment of Guardian,/Conservator for Principal

If the Court appoints a legal representative (guardian or conservator) for a principal who has executed a durable power of attorney, the attorney-in-fact thereunder shall follow the instructions of the Court or legal representative and shall communicate with and be accountable to the principal's guardian on matters affecting the principal's personal welfare and to the principal's conservator on matters affecting the principal's property and business interests, to the extent that the responsibilities of the guardian or conservator and the authority of the attorney-in-fact involve the same subject matter. See Section 42.60.30.

Reference: § 404.714.5

42.40 Court Appointment of Personal Representative for Principal

On the death of the principal, an attorney-in-fact shall follow the instructions of the Court having jurisdiction over the principal's estate and shall be accountable to the principal's personal representative or, if none, the principal's successors. The principal's property, including records held by the attorney-in-fact shall be turned over to the personal representative.

Reference: § 404.714.9

42.50 Accounting

42.50.1 Who May Petition

The principal may petition the Court for an accounting by the principal's attorney-in-fact or the attorney-in-fact's legal representative. If the principal is disabled, incapacitated or deceased, a petition for accounting may be filed by the principal's legal representative, an adult member of the principal's family or any person interested in the welfare of the principal.

Reference: § 404.727.1

42.50.2 Waiver or Ex Parte Approval

Any requirement for an accounting may be waived or approved by the Court without hearing, if the accounting is waived in writing or approved by a principal who is not disabled, or by a principal who has been restored, or by all creditors and distributees of a deceased principal's estate whose claims or distributions remain unsatisfied.

Reference: § 404.727.2

42.60 Declaration of Incapacity or Disability

42.60.1 Petition for Court Action

If the principal is found to be incapacitated or disabled, on petition of the principal's legal representative, an adult member of his family, or any person interested in the principal's welfare, the Court may terminate, suspend, modify or confirm authority granted under a durable power of attorney, generally or as to particulars, as specifically set out in § 404.727.5

42.60.2 Accounting to Successor

If the Court suspends or terminates the authority of the attorney-in-fact as specified in Section 42.60.1, the Court may require an accounting and order delivery of the principal's property to a successor attorney-in-fact or the principal's legal representative.
Reference: § 404.727.6

42.60.3 Duties and Powers Specified by Court Order

If a principal is declared incapacitated or disabled, and a guardian/conservator is appointed, the Court may enter an order, after notice and hearing, specifying the respective duties and powers of the guardian/conservator and the attorney-in-fact as to the principal/protectee's affairs. See Section 42.30, supra.

Reference: § 404.731.3

42.70 Appointment of Guardian Ad Litem or Conservator Ad Litem

The Court may, upon petition, appoint a guardian ad litem or conservator ad litem to act for the principal if it appears a conflict of interest may exist between the principal and the attorney-in-fact. Compensation for the guardian/conservator ad litem may be paid out of the principal's estate or may be charged as costs against any party whose conduct may have given rise to the appointment of the guardian ad litem/conservator ad litem.

Reference: § 404.731.5

[END OF SECTION]

STATUTORY/PPM CROSS=REFERENCE

STATUTES	**SECTIONS**
208.180	29.70.1(a), 30.40.3
362.465	38.10.1
362.600	24.30.10, 41.60.3
369.169	38.10.1
400.9-502	22.60.2, 35.60.2
400.9-504	22.60.2, 35.60.2
404.005 - **409.094**	7.20, 40.10.1
404.005 - **404.650**	24.30.9, 36.30.5, 36.40.4
404.007(8)	40.20.4(a)
404.007(9)	40.10.4(b)(c), 40.10.7
404.007(17)	40.10.3, 40.20.3
404.011	40.10.3
404.023	40.10.4
404.027	40.10.4, 40.10.6
404.031	40.10.4(b), 40.10.4(c), 40.10.6, 40.10.7
404.035	40.10.5
404.047	40.10.2, 40.10.3
404.051.5	40.10.8
404.400 - **650**	7.20
404.410(8)	40.20.1
404.410(9)	40.20.4(b)
404.420	40.20.4(c)
404.430	40.20.9
404.460	40.20.4(a)
404.470	40.20.4(a)
404.480	40.20.4(a), 40.20.7
404.490	40.20.4(b), 40.20.7, 40.20.8
404.510	40.20.5
404.530	40.20.6

404.540	40.20.2, 40.20.3
404.560	40.20.10
404.565	40.20.3
404.714.5	42.30
404.714.9	42.40
404.727.1	42.50.1
404.727.2	42.50.2

STATUTES	**SECTIONS**
404.727.5	42.60.1
404.727.6	42.60.2
404.731	42.20
404.731.3	42.60
404.731.5	42.70
430.330	28.80
430.340	28.80
443.300	20.10.11
456.120	41.60.1, 41.60.3
456.190	41.60.4
456.200	41.60.4
456.233	41.60.5
456.400	7.20, 41.20
456.400 **- 456.440**	41.30
456.450	7.20, 41.20
456.590	41.70
470.010	36.20.4
472.010	8.40.2
472.010(3)	28.10
472.020	7.20, 9.60, 41.20
472.025	36.20.4
472.080	6.10.4
472.100	7.80, 7.110
472.130	20.10.3(a)
472.135	20.10.3(a), 22.150
472.140.2	7.10
472.141.1	7.40
472.141.2	7.40
472.300	41.20, 41.60.4

473.010	10.10
473.013	9.10.2
473.017	10.20.1, 10.20.4
472.020	10.20.4
473.033	10.60
473.037	10.60
473.040	8.40.1
473.043	9.10.2
473.050	9.10.2
473.053	9.20.2, 9.20.3

STATUTES	**SECTIONS**
473.057	9.20.4
473.060	9.20.4
473.065	9.20.1
473.070	8.10.1, 8.10.6, 8.20, 8.30.1
473.083	9.70.3
473.084	9.60
473.087	9.10.2
473.090	8.10.1, 8.10.6, 12.50
473.090.1(2)	8.20
473.090.4	8.10.4
473.093	8.50, 16.10, 16.20.1
473.095	8.10.5, 8.10.6, 16.10, 16.20.1
473.097	8.30.1, 12.50
473.097.1(3)	8.30.2
473.110	10.30.1, 10.30.2, 10.30.3
473.113	10.30.1, 10.30.2
473.117	29.30.1
473.137	9.70.3, 9.70.4
473.147	26.50
473.153	18.10.1, 18.10.5, 18.10.6, 18.50.2, 19.10, 19.20.2
473.153.1	18.50.3
473.153.3	18.10.10
473.153.4	18.10.7, 18.60
473.155	18.10.1

Statutory/PPM
Cross-Reference
Supp. 1992

473.155.2	18.10.10
473.157	12.10.1, 12.10.2, 12.20, 30.30.1
473.157.2	12.30, 30.30.2
473.160	12.10.1, 12.10.2, 12.70, 22.130, 30.20
473.160.1	12.50, 12.60
473.160.2	12.90, 12.100.1, 12.100.3, 30.70, 30.80.1
473.160.3	12.50
473.160.4	12.60
473.163	12.90
473.167	12.20, 12.30, 30.30.1, 30.30.2
473.173	12.20
473.190	12.70, 30.50
473.193	12.70, 30.50

STATUTES	**SECTIONS**
473.197	12.70, 12.90, 30.50, 30.70, 35.100
473.200	12.80
473.203	12.30, 30.30.2
473.210	22.200
473.220	14.50.10, 31.50.12
473.223	20.20.2
473.230	14.50.10, 31.50.12
473.233	14.10, 14.30, 20.20.1, 31.10, 31.30
473.237	14.10, 31.30
473.240	14.10, 14.60, 31.10, 31.60
473.260	20.10.1, 20.20.2
473.263	20.10.1
473.287	20.20.6
473.293	20.10.10, 20.20.5, 34.30.7, 34.40.6
473.300	20.20.8(a), 20.20.8(e), 20.20.8(k)
473.333	34.40.4, 35.120
473.340	7.80, 20.10.2, 20.20.3, 21.20.4, 34.20
473.360	12.60, 16.10, 16.20.1, 16.40.1, 22.60.2, 22.110.2, 28.80, 28.100, 28.110, 33.70
473.360.1	28.30
473.363	28.110

473.367	28.110
473.380	28.60.1, 33.40.1
473.387	22.60.2, 28.70, 35.60.2
473.397	16.20.5, 16.30.4, 28.30, 28.70, 28.80 28.120, 28.130
473.397(3)	16.10, 16.20.1, 16.40.1
473.397(4)	28.90.1
473.397(6)	28.90.2
473.403	22.110.2, 28.100
473.403.2	33.70
473.423	22.110.2, 28.100, 28.140, 33.100, 35.140
473.427	28.120
473.430	16.10, 16.20.5, 16.30.4, 22.210, 28.80, 28.120, 28.130
473.430.4	28.140
473.433	28.100, 28.110, 33.60
473.433.3	28.130
473.440	22.60.2, 35.60.2

STATUTES	**SECTIONS**
473.444	8.20, 22.60.2, 28.30
473.457	20.10.5, 20.20.4
473.460	20.10.3(a), 20.20.4
473.460.1	18.50.2
473.467	20.10.3(a), 20.20.4
473.470	22.110.1
473.473	20.10.4(c), 20.10.7, 20.10.8
473.483	20.20.4
473.487	20.20.4, 22.120
473.493	20.10.4(a), 20.10.4(c), 34.30.1
473.500	20.10.4(a), 20.10.4(c), 20.10.6
473.513	20.10.4(c), 20.10.7, 20.10.8, 34.30.1, 34.30.3
473.517	20.10.4(c)
473.520	20.10.4(c)
473.530	20.10.8
473.540	22.10, 22.20, 35.20

473.543	20.10.9, 22.10, 22.40.4, 22.70, 35.40.3, 35.70
473.550	22.40.4
473.557	22.10
473.560	22.30.2, 29.110.2, 35.30.2
473.563	22.30.2, 29.110.2, 35.30.2
473.567	35.30.2
473.583	22.180
473.587	22.180
473.603	22.190
473.613	24.10.1, 24.10.2, 24.10.3, 25.10.1
473.617	24.30.2, 25.20
473.620	24.30.16
473.623	24.30.16
473.633.3	8.40.2
473.633.4	8.40.2
473.657	24.30.13, 36.20.3
473.660	24.50.5, 25.40.1, 25.40.2, 36.50.2, 36.50.5
473.671	20.20.2
473.675(3)	16.20.1, 16.40.1
473.689	29.30.1

STATUTES	**SECTIONS**
473.743	29.30.4
473.780	11.10
473.782.2	25.20
473.783	11.60
473.787	23.10
473.787.2	25.10.1
473.787.3	19.10
473.793	15
473.800	15
473.803	21.10.1(a)(b), 21.20.2, 21.20.3
473.810	21.10.1(b), 21.20.3
473.810(14)	19.40
473.810(16)	21.10.2(a), 21.20.5

473.810(17)	21.20.9
473.810(20)	25.10.1, 25.20
473.823	19.10, 19.20.2, 19.40
473.827	19.20.2, 19.40
473.837	25.20, 25.40.1, 27.10
473.840	25.30, 27.20
473.840.2	23.30.2
473.840.3	23.30.2, 25.40.2
473.840.6	25.40.2
473.843	23.10
473.844	21.10.2(b), 25.30
473.844(1)	17
474.010	24.30.2, 36.20.4, 36.30.2, 36.30.6
474.010(4)	24.30.15
474.163	16.20.1
474.250	8.10.1, 8.10.6, 16.10, 17
474.260	8.10.1, 8.10.6, 16.20.1, 17
474.270	16.10
474.280	16.10, 17
474.290	16.40.1, 17
474.293	17
474.300	16.20.1, 16.40.1
474.320	9.20.2
474.333	9.40.3, 14.50.2
474.337	9.20.1, 9.20.2
474.370	9.30

STATUTES	**SECTIONS**
474.380	9.30
474.430	9.60
474.460	24.30.14, 36.40.5
474.465	24.30.14, 36.40.5
474.490	24.30.14, 36.30.6, 36.40.5
474.520	9.60
475.010	29.80.2
475.010(2)	33.10
475.010(9)	29.80.3

475.045	29.30.3, 29.80.4
475.050	29.30.2
475.055	29.30.1
475.055.2	29.30.4
475.060	29.40.2, 29.40.3
475.061	29.40.3
475.070	29.50.2
475.075	29.50.1, 29.70.1(a)
475.075.2	29.90.1
475.075.3	33.10
475.075.4	7.60
475.075.10	29.80.3
475.075.11	29.90.1
475.078	29.80.3
475.082	29.110.1
475.082.4	29.130
475.083	29.130, 35.220
475.085	33.10
475.091	29.90.1, 35.110.1
475.091(2)	35.130
475.097	29.90.2
475.100	29.100, 30.10, 30.40.3, 35.100
475.105	29.100
475.120.3(1)	29.80.3
475.125	35.110.2
475.130	34.40.4, 35.110.1, 35.120, 35.150
475.130.1	34.10, 34.40.4
475.130.2	34.10, 34.40.2
475.130.5	33.60, 33.70, 33.80, 34.10, 34.40.5
475.140	29.100.1

STATUTES	**SECTIONS**
475.145	31.10, 31.40, 31.50.11
475.160	34.20
475.190	35.120
475.200	34.30.1, 34.40.5, 35.150
475.205	33.20, 33.60, 35.60.2, 35.140

475.210	33.20, 33.30, 33.60, 33.70
475.211	33.50, 33.60, 33.80, 33.90
475.213	33.50, 33.80, 33.90, 35.60.2
475.230	34.30.1
475.235	34.30.1, 34.30.2
475.240	34.30.3, 34.30.4
475.245	34.30.1
475.265	32.10.1, 35.30.2
475.270	29.110.3, 35.10.1, 35.40.3, 35.70, 35.180.1, 35.180.5
475.275	35.80
475.276	29.110.3, 35.180.1, 35.180.5
475.280	35.10.1, 35.30.2
475.290	35.220, 35.220.1
475.295	35.220, 35.220.1
475.300	36.10
475.315	36.50.2, 36.50.3, 36.50.5
475.320	29.120.1, 29.120.2, 29.120.3, 29.120.5, 35.180.5, 36.10
475.320.1	36.20.1
475.325	36.20.4
475.330	24.30.9, 36.30.5, 36.40.4, 38.10.3 38.30
475.338	29.30.1
475.513	34.30.4
475.530	34.30.4
476.410	6.40
478.240	7.30
478.245	7.30
478.461	6.40
478.473	6.40, 10.10
483.580	10.10, 22.220
483.580(12)	5.10.2
486.585	7.20

STATUTES	**SECTIONS**
537.021	5.10.4

537.021.1(2)	14.90.2
631.115	7.10
632 & 633	29.60
632.305	7.10, 39.20
632.325	39.30.2
632.335	39.30.2
632.340	39.30.2
632.355	39.30.2

Statutory/PPM
Cross-Reference
Supp. 1992

I N D E X

A

B

C

E

F

G

R

S

WILLS, 9.0
CONSTRUCTION, 9.60
CONTEST, 9.70
SEE, WILL CONTESTS, SUPRA.
DELIVERY TO COURT, 9. 1 0
FOREIGN, 9.30
LIST, TANGIBLE PERSONAL PROPERTY, 9.40
APPLICATION FOR LETTERS, 9.40.3
FILING, 9.40.1
LIMITATIONS ON DISPOSITIONS, 9.40.2
POUR-OVER, COPY TRUST AGREEMENT TO BE FILED, 9.50
PROOF OF EXECUTION, 9.20
COMMISSIONS, 9.20.4
LOST WILL, PRESUMPTION REVOCATION, 9.20.5
SELF-PROVING INSTRUMENTS, 9.20.1
WHEN INSTRUMENT NOT SELF-PROVED, 9.20.2
WITNESS, DECEASED, INCAPACITATED OR WHEREABOUTS UNKNOWN, 9.20.3

X

Y

Z

[END OF DOCUMENT]

DATE _____

TO: _____

_____

_____

_____

RE: _____ DOB _____

SS# _____ SEX _____

A Guardianship Petition is being initiated through my office for the above-identified person. A current medical letter of evaluation is needed for the proceedings in Probate Court. Attached is a memorandum outlining the requirements for such a letter. Please provide me with a current medical letter at your earliest convenience.

Thank you for your assistance in this matter.

Sincerely,

MICHAEL A. WELLS
Mental Health Claims Examiner/Investigator

Jackson County Courthouse
415 East 12th Street, Room 101
Kansas City, Missouri 64106

Phone: (816) 881-3146

IMPORTANT INFORMATION

TO: TREATING PHYSICIANS

FROM: OFFICE OF THE COUNTY COUNSELOR

RE: MEDICAL REPORTS FOR THE GUARDIANSHIP PROCEEDING

Please provide us with a medical report on your patient for a guardianship proceeding pending in the Jackson County Probate Court. As no petition will be considered by the Court without this report, your report is one of the most important pieces of evidence the Court and the attorneys in the case consider in determining the incapacity and disability of your patient. It is essential that your evaluation of the patient's mental status be as detailed as possible.

Your conclusions regarding the patient's condition must be factually substantiated and explained. Otherwise the Court may reject your report as legally insufficient, or at best, accord it little weight in its deliberation. The likely result would be the case's dismissal or continuance to a later date. In the latter case, you would be asked to amend your report or to appear in person to testify. Obviously, there will be cases where, in addition to your report, your testimony at Court may be needed in order to permit defense attorneys to cross-examine you before the court as to your opinions and various alternatives.

In order to facilitate your preparation of a legally sufficient evaluation, we have attached for your convenience an information sheet which outlines the information the Court requires. With your cooperation and assistance, we will be able to provide for the legal protection of your patient without undue delay or inconvenience.

Thank you for your help.

Enc.

MEDICAL REPORTS FOR GUARDIANSHIP PROCEEDINGS

Missouri law provides for the appointment of a guardian of the person for people who are incapacitated as defined by law. It also provides for a conservator of the estate for persons determined to be disabled as defined by law. The statutes also provide for the appointment of limited guardians and conservators for persons who retain the ability to make reasonable choices in certain areas of their life. Incapacity and disability are defined as follows:

An "incapacitated person" is one who is unable, by reason of any physical or mental condition, to receive and evaluate information or to communicate decisions to such an extent that the person lacks capacity to meet essential requirements for food, clothing, shelter, safety or other care, such that serious physical injury, illness or disease is likely to occur.

A "disabled person" is one who is unable, by reason of any physical or mental condition, to receive and evaluate information or to communicate decisions to such an extent that the person lacks ability to mange his financial resources.

A "partially incapacitated person" is one who is unable, by reason of any physical or mental condition, to receive and evaluate information or to communicate decisions to the extent that the person lacks capacity to meet, in part, essential requirements for food, clothing, shelter, safety or other care without court-ordered assistance.

A "partially disabled person" is one who is unable, by reason of any physical or mental condition, to receive and evaluate information or to communicate decisions to such an extent that the person lacks capacity to manage, in part, his financial resources.

Your report should include the following:

1. Identifying information: Include the patient's name, age, sex, race, dates of admission to and discharge from the hospital (if any), and reason for admission (if known).

2. Dates and Places of Examination.

3. Diagnosis of Mental Condition: State your opinion as to whether the patient is incapacitated, disabled, or both, and the reasons for your conclusion.

4. Narrative of the Facts Supporting Your Diagnosis: State any observations, including the results of tests, which you personally have made regarding the patient's orientation as to time, place or person, appearance, speech, memory, though processes, insight and judgment, attention span, intelligence, mood and affect, alertness and examples of abnormal or inappropriate behavior including the patient's handling of financial matters. Please remember that while the Court is interested in knowing if your patient has a chronic condition, we must establish

that the patient is presently incapacitated, disabled or both. Therefore, examples of recent behavior are very important.

5. Physical Condition: Give a description of the patient's physical health. Please comment on any health problems or disability which may either cause or contribute to patient's inability to care for himself or his property.

6. Prognosis and Recommendation: Please state your prognosis for the patient. Please state whether, in your professional opinion, you believe a guardian should be appointed to care for the patient, a conservator appointed to manage his affairs, or both. Please make recommendations for treatment and placement, e.g., patient should be transferred to a boarding home, mental health institution or long term care facility.

This letter must be signed by an M.D. or D.O. The Probate Court requires a typed original. Please mail to Michael A. Wells, Mental Health Claims Examiner/Investigator, Jackson County Counselor's Office, Jackson County Courthouse -- Room 101, 415 East 12th Street, Kansas City, Missouri 64106.