

## **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 should be electronically filed by attorneys. Self-represented litigants may submit their filing in person, via email, fax, or postal mail. See Section 6.50. 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 PR33, Form PR25  
§§ 473.070, 473.090, 474.250, 474.260  
Supreme Court Rule 103  
Supreme Court Operation Rule 27  
Local Court Rule 72.3

#### **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 \$24,000 (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 \$24,000 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.

**Practice Tip:** Redact all but the last four digits of the taxpayer's social security number from any documents, prior to filing.

#### **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/her 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 valued by a letter from a licensed realtor familiar with property values in the area of the subject property or by a drive-by appraisal dated within the last six months. The application must reflect the highest dollar amount on the appraisal if a price range is given. For recording title to real property, see section § 473.090.4.

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.

**Practice Tip:** When apportionment of property between surviving spouse and surviving minor children is required, the attorney should provide the proposed order of refusal of letters that includes the just and equitable apportionment of the property, pursuant to § 473.095.

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 - "Affidavit to Establish Title to Exempt Property" [Form 2305](#), Missouri Department of Revenue)

References: Form PR30  
§§ 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) may be used to secure assets up to \$15,000 in value. The application must be filed within one year from the date of death of the decedent, with limited exceptions. The application must be verified. 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 or that the funeral home has consented to the application. Additionally, evidence of the debt owed to the creditor is required. This could be in the form of a copy of a receipt, cancelled check, copy of a bank statement, etc., showing that the payment was made by the creditor who is filing the application. If the value of the assets to be set over is greater than the amount of the creditor's claim, a bond in an amount equal to the difference between the creditor's claim and the value of the property will be required.

**Practice Tip:** This procedure may not be used to transfer real property. This procedure also may not be used if there is a surviving spouse or surviving minor children.

References: Form PR23, Form 10501, Form PR30  
§§ 473.070, 473.090.1(2), 473.444

### 8.30 Collection of Small Estates on Affidavit

The affidavit must be filed by a distributee - a person who is *entitled to receive a distribution*, or by a person designated as personal representative under the will (See 473.097.2). Whether a person is entitled to distribution depends on whether the affidavit is based on an admitted will or based on the rules of descent in intestate estates (See § 474.010). A trustee may file the affidavit in the event that a trust is a devisee/legatee under the will.

#### 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. The

distributees listed in the affidavit should be comprised of the devisees and legatees pursuant to the admitted will.

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. The distributees listed in the affidavit should be comprised of the heirs at law of the decedent. See § 474.010. Examples of common scenarios for listing the heirs at law can be found in PPM Section 10.

### 8.30.2 Value of Estate

The value of the estate's assets is determined by subtracting liens, debts, and encumbrances from its gross value. Funeral expenses can also be considered when determining the amount for qualification, and if so, said expenses should be included within the affidavit and proof of debt should also be filed. See example showing common scenarios for listing the assets at the conclusion of this section. Real property passing pursuant to the small estate affidavit must be valued by a letter from a realtor or a drive-by appraisal dated within the last six months and the small estate affidavit must reflect the highest dollar amount on the appraisal if a price range is given.

References: Form 10620  
§§ 473.070, 473.097, 474.010

### 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. 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. 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. For foreign wills, please see Section 9.30.

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 proposed publication notice in compliance with § 473.040 and electronically file it with the court. A sample of this notice can be found in Form 10363. If purported heirs are located, the personal representative may file a petition to determine heirship. If the personal representative files a petition to determine heirship within the decedent's estate, the matter will be designated as an adversary proceeding. See PPM Section 7.40.

Reference: § 473.040, Form 10363

##### 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, and the petition should be accompanied by a proposed judgment determining heirship. Upon filing of the petition, the clerk will generate an order designating the matter as an adversary proceeding. See PPM Section 7.40. The Clerk will generate the publication notice required by § 473.663.3. If publication for known heirs whose whereabouts are unknown is required by § 472.100, their names will be included on the publication notice **if** the attorney has taken appropriate steps in accordance with Rule 54.12 (c). The attorney is responsible for delivering the publication notice, along with payment for said publication, to the appropriate legal publication. The attorney must electronically file the affidavit of publication and any certified mail return receipts (of notices sent by certified mail) and certificates of mailing no later than seven days prior to the date of the hearing. Please note that even when the petitioner is the sole heir, publication pursuant to § 473.663.3 is still required.

**Practice Tip:** Practitioners should be aware that if there are known heirs with unknown addresses, the practitioner must file a motion, affidavit, and proposed order for service by publication. The affidavit must contain sufficient facts regarding the information that is known about the heirs and the steps taken to locate the heirs, and must be verified by a person with knowledge of those facts. MO. Rul. Civ. Pro. 54.12 (c); see *Metmor Financial, Inc. v. Leggett*, 787 S.W.2d 733 (Mo. App. 1989).

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 the 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."

**Practice Tip:** If additional property is found after the judgment determining heirship has been entered, the attorney may provide an amended petition and proposed judgment for the Court's consideration. Generally, no additional publication or hearing will be required.

References: §§ 472.010, 472.100, 473.663.3, 473.663.4

### 8.50 Transitioning from Full Administration to Short Form Proceeding

When transitioning an estate pursuant to § 473.092, the fiduciary 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, Form 10407  
§ 473.092

[END OF SECTION]

**Example Scenarios of an Itemized Description and Valuation of Property for a  
SMALL ESTATE AFFIDAVIT, pursuant to § 473.097.**

Example 1:

<b>Real Property</b>	<b>Value</b>	<b>Persons Having Possession</b>
Tract 1: [Insert legal description of real property here], commonly known as: 123 Main St., KCMO 64xxx	\$100,000 Appraised Value, less 85,000 Mortgage Lien = <b>Net Value of \$15,000.</b>	Mary Doe
Tract 2: [Insert legal description of real property here], commonly known as: 456 Main St., KCMO 64xxx	\$10,000 Appraised Value	Mary Doe
<b>Personal Property</b>	<b>Value</b>	<b>Persons Having Possession</b>
Bank of Bank Land Checking Account Number ending in: 4321.	\$2,000	
5 Shares of XYZ Stock, valued at \$500 each.	\$2,500	
2000 Ford Escort, Vin Number: [Insert VIN Number here]	\$500	Mary Doe
Federal Income Tax Refund Check Number: 123456789	\$1,200	Mary Doe
Insurance R Us - Policy Number: 54321	\$1,000	
Series X Savings Bond – Serial Number: 99999	\$200	
<b>Net Value of Real &amp; Personal Property:</b>	<b>\$32,400</b>	

Example 2:

<b>Real Property</b>	<b>Value</b>	<b>Persons Having Possession</b>
Tract 1: [Insert legal description of real property here], commonly known as: 123 Main St., KCMO 64xxx	\$100,000 Appraised Value, less 60,000 Mortgage Lien = <b>Net Value of \$40,000.</b>	Mary Doe
<b>Personal Property</b>	<b>Value</b>	<b>Persons Having Possession</b>
Bank of Bank Land Checking Account Number ending in: 4321.	\$2,000	
Total Value of Real & Personal Property:	\$42,000	
<b>Debts/Expenses to be Paid</b>	<b>Amount:</b>	<b>Description</b>
ABC Funeral Home	\$5,000	Funeral Expenses
Doe, Doe & Doe, P.C.	\$1,000	Estimated Attorney's Fees
Probate Department	\$55.50	Court Costs/Filing Fee
The 123 Legal Newspaper	\$52.00	Publication Fee
Total Debts/Expenses to be Paid:	\$6,107.50	
<b>Net Value of Real &amp; Personal Property After Payment of Debts/Expenses:</b>	<b>\$35,892.50</b>	