

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 nonresidents.

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
§§ 473.095, 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. 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.

References: Form 10642, Form 10643
§§ 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 \$24,000 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 (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. 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.

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 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, 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 (decedent’s adult children are not issue of the surviving spouse)

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: Exempt Property: \$500.00. Family Allowance: \$3,500.00. Homestead Allowance: \$0.00.

Situation B: Exempt Property: \$500.00. Family Allowance: \$0. Homestead Allowance: \$7,500.00.

Situation C: Exempt Property: \$500.00. Family Allowance: \$3,500.00. Homestead Allowance: \$7,500.00.

Example One			
	Situation A	Situation B	Situation C
Gross Estate	\$20,000	\$20,000	\$20,000
Less Exempt Property	\$500	\$500	\$500
	= \$19,500	= \$19,500	= \$19,500
Less Family Allowance	\$3,500	\$0	\$3,500
	= \$16,000	= \$19,500	= \$16,000
Less Homestead Allowance	\$0	\$7,500	\$7,500
Subtotal:	= \$16,000	= \$12,000	= \$8,500
Less Expenses and Claims	\$3,000	\$3,000	\$3,000
Balance to Distribute:	= \$13,000	= \$9,000	= \$5,500
Plus, Amount of the Homestead Allowance	\$0	\$7,500	\$7,500
Total for Distribution:	\$13,000	\$16,500	\$13,000*

Payable Upon Final Distribution:			
Spouse* (1/2 Share)	½ of \$13,000.00 = \$6,500.	½ of \$16,500 Less \$7,500 = \$750	½ of 13,000 Less \$7,500 = \$0
Child #1 of decedent, but not of surviving spouse (1/4 Share)	¼ of \$13,000 = \$3,250	¼ of 16,500 = \$4,125	\$13,000 Less \$7,500 = \$5,500. ½ of \$5,500 = \$2,750.
Child #2 of decedent, but not of surviving spouse (1/4 Share)	¼ of \$13,000 = \$3,250	¼ of 16,500 = \$4,125	\$13,000 Less \$7,500 = \$5,500. ½ of \$5,500 = \$2,750.
Total Distribution:	\$13,000	\$9,000	\$5,500

Total Received from Estate:			
Spouse*	Exempt Prop. of \$500 + Family Allow. of \$3,500 + Share of remaining assets of \$6,500 = \$10,500	Exempt Prop. of \$500 + Homestead Allowance of \$7,500 + Share of remaining assets of \$750 = \$8,750	Exempt Prop. of \$500 + Family Allow. of \$3,500 + Homestead Allowance of \$7,500 + Share of remaining assets of \$0. = \$11,500*
Child #1 of decedent, but not of surviving spouse	\$3,250	\$4,125	\$2,750
Child #2 of decedent, but not of surviving spouse	\$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 (decedent's adult children are issue of the surviving spouse)

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 D: Exempt Property: \$2,000. Family Allowance: \$8,000. Homestead Allowance: \$0.00.

Situation E: Exempt Property: \$2,000. Family Allowance: \$0. Homestead Allowance: \$7,500.

Situation F: Exempt Property: \$2,000. Family Allowance: \$8,000. Homestead Allowance: \$7,500.

Example Two			
	Situation D	Situation E	Situation F
Gross Estate	\$43,000	\$43,000	\$43,000
Less Exempt Property	\$2,000	\$2,000	\$2,000
	= \$41,000	= \$41,000	= \$41,000
Less Family Allowance	\$8,000	\$0	\$8,000
	= \$33,000	= \$41,000	= \$33,000
Less Homestead Allowance	\$0.00	\$7,500	\$7,500
Subtotal:	= \$33,000	= \$33,500	= \$25,500
Less Expenses and Claims	\$5,000	\$5,000	\$5,000
Balance to Distribute:	= \$28,000	= \$28,500	= \$20,500
Plus, the Amount of the Homestead Allowance	\$0	\$7,500	\$7,500
Total for Distribution:	\$28,000	\$36,000	\$28,000*

Payable Upon Final Distribution:			
	Situation D	Situation E	Situation F
Spouse*	First \$20,000, plus ½ of \$8,000 = \$24,000 - \$0 = \$24,000	First \$20,000, plus ½ of \$16,000 = \$28,000 - \$7,500 = \$20,500	First \$20,000, plus ½ of \$8,000 = \$24,000 - \$7,500 = \$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 Distribution:	28,000	28,500	\$20,500

Total Received from Estate:			
Spouse*	Exempt Prop. of \$2,000 + Family Allowance of \$8,000 + Homestead Allowance of \$0 + Share of Distribution of \$24,000 (Spouse's Share of Distribution = First \$20,000 of the remaining assets + \$4,000 [½ of the remaining balance of the assets]) = \$34,000	Exempt Prop. of \$2,000 + Family Allowance of \$0 + Homestead Allowance of \$7,500 + Share of Distribution of \$20,500 (Spouse's Share of Distribution = First \$20,000 of the remaining assets + 8,000 [½ of the remaining balance of the assets] - \$7,500 homestead allowance previously received) = \$30,000	Exempt Prop. of \$2,000 + Family Allowance of \$8,000 + Homestead Allowance of \$7,500 + Share of Distribution of \$16,500 (Spouse's Share of Distribution = First \$20,000 of the remaining assets + \$4,000 [½ of the remaining balance of the assets] - \$7,500 homestead allowance previously received = \$16,500) = \$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.			