

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

28.10 In General

Claims are defined at § 472.010(3), 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 1.20.7). 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, requests for partial compensation prior to the filing of the final settlement are discouraged, and shall only be paid upon application and order. All requests for final compensation shall not be the subject of a separate application, but shall be included as a credit entry on the final settlement, to be approved as part of the final settlement. See Sections 18 and 19 Compensation.

References: Form 10140
§ 472.010(3)

28.20 Time for Filing

The time limitations governing the filing of claims are set forth in § 473.360 and 473.444. Generally, § 473.360 provides that all claims which are not filed in the Probate Division or paid by the personal representative within six months from the date of first publication of the notice of issuance of letters are forever barred. The six-month period can be extended by up to two months from the date the notice described in § 473.033 was mailed or served by the personal representative upon the creditor. Published notice alone is not sufficient to bar creditors of the decedent who are known or reasonably ascertainable by the personal representative. See Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. 478, 108 S. Ct. 1340, 99 L. Ed. 2d 565 (1988). 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 must file their claim in the Probate Division and serve a copy on the personal representative before the expiration of the non-claim period.

Under § 473.444, all claims other than those excepted by § 473.444.1, which are not filed in the Probate Division and served upon the personal representative or paid by the personal representative, shall become unenforceable and be forever barred one year following the date of the decedent's death. The one-year limitation period of § 473.444 is self-executing and does not require any action by the personal representative or the probate court. The limitation period described in §473.360 does not extend the one-year statute of limitations imposed by § 473.444.

Reference: Form 10140
§§473.033, 473.360, 473.444
Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. 478, 108 S. Ct. 1340, 99 L. Ed. 2d 565 (1988)
State ex. rel. Houska v. Dickhaner, 323 S.W.3d 29 (Mo. banc 2010)

Practice Tip: The Missouri Supreme Court has discussed what constitutes a “reasonably ascertainable creditor” In the Estate of Austin, 389 S.W.3d 168 (Mo. 2013). The attorney is advised to consult this case when determining what efforts are necessary to determine whom are reasonably ascertainable creditors.

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)

Practice Tip: The State of Missouri’s claim for recoupment of Missouri Health Net benefits are not subject to the non-claim period in pending estates. See In the Estate of Cahill, 131 S.W.3d 859 (Mo. Ct. App. 2004). See also, § 473.398.

28.40 Lawsuits Pending At or Commenced After Decedent's Death

Sections 473.363 and 473.367 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.

28.50 Judgments as Claims

A person having a claim against an estate as a result of a judgment or decree must file their claim within the time specified in § 473.360. 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, available on the Court’s website, 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. The Court's Form 10370 may be used to request the hearing. If requested to set a claim for hearing, the Court will enter an order designating the claim as an adversary probate 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, they are 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, Form 10370

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 other 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 all amounts realized on the surrender of the collateral in excess of the amount claimed must be filed. See § 473.387.

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) Debts for medical assistance owed to the state of Missouri under § 473.398;
- (7) Expenses of the last sickness, wages of servants, claims for medicine and medical attendance during last sickness, and the reasonable cost of a tombstone;
- (8) Debts and taxes due the state of Missouri, any county, or any political subdivision of the state of Missouri;
- (9) Judgments rendered against the decedent in their lifetime and judgments rendered upon attachments levied upon property of decedent during their lifetime;
- (10) All other claims not barred by § 473.360.

References: §§ 430.330, 430.340, 473.360, 473.397, 473.398, 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 7 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(7)

28.100 Allowance by Court

Except for the personal representative's own claim, any claim may be paid by the personal representative 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) except that the bar of § 473.444, may shorten that six-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 them 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, the claim has 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) They 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) They may be liable to distributees if they pay 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 they may simply pay them at their own risk according to §§ 473.397 and 473.430. 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 request a hearing on said application, and 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.

A personal representative may establish a claim against the estate by proceeding against their 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 their self at any time for the following expenses of administration advanced by them 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 their 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, 473.497

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.

Practice Tip: In an insolvent estate, mailed notice of filing final settlement should be sent to any claimants with outstanding claims.

28.160 Other Applicable Sections

Other relevant statutory sections include:

- § 473.383 Claims not due, proceedings.
- § 473.390 Contingent claims.
- §473.393 Collection of contingent claims from distributees...
- § 473.398 Recovery of public assistance funds from recipient's estate, when...
- § 473.407 Defense against claims.
- § 473.410 Offsets or counterclaims...
- § 473.440 Enforcement of judgment, attachment or execution liens which attached prior to decedent's death.

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