

## **Section 35 - Settlement - Conservatorship Estates**

### **35.10 In General**

#### **35.10.1 Notice to File**

The Clerk will notify each conservator 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.

**Practice tip:** Where successor letters have been issued, the due date for the annual settlement remains the anniversary date of the issuance of the original letters.

References: Form 10559  
§§ 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.

Practice note: The Court does not require that notice be given if an order for no further process has been entered for the estate and the conservator is filing an abbreviated statement of affairs authorized by the Court.

### **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 or her attorney. Applications for further continuances must be e-filed with a proposed judgment to be ruled upon by the Judge, Commissioner or Deputy Commissioner.

**Practice Tip:** The court prefers that attorneys use Form 10553 for said extension requests.

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 or her 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.

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 31.60 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; 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: Forms 10559, 10559A, and 10559B  
§ 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 or her 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 as a debit entry. If the conservator or his or her 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. In this situation, the gross sale price is entered as a debit entry and all closing costs are entered as separate credit entries.

### 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 entry on the settlement. 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, is shown as a debit entry. If a deficiency exists, the payment of the deficiency must be reflected as a credit 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 Vouchers (Receipts)

Vouchers (or copies of receipts or copies of canceled checks with a business records affidavit provided by the financial institution) supporting each disbursement on any settlement must be e-filed with the settlement.

**Practice Tip:** See Section 490.692.3 for use in preparation of the business records affidavit.

References: §§ 473.543, 475.270, 490.692.3

### 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, mutual funds 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.

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. Applications for compensation will not be considered until a pending settlement has been approved.

#### 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 60 days within which to satisfy the requirements. Any request for an extension must be e-filed for consideration by the Judge, Commissioner or Deputy Commissioner.

The attorney or paralegal should communicate directly with the auditor to clear the exceptions unless a court order is necessary to clear the exception. Required documents or information necessary to clear exceptions and complete an audit must be e-filed. It is the attorney's responsibility to determine whether documents e-filed have cleared the exceptions by communicating 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 an order 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 or her 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 e-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 communicate with the auditor to confirm the exceptions have been cleared before requesting the dismissal from the Judge, Commissioner or Deputy Commissioner. The attorney must allow sufficient time prior to the hearing date to communicate 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 and remains unresolved, no orders for the allowance of any fees will be 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, the attorney may seek an order reducing the bond.

Reference: §§ 473.197, 475.100

#### 35.110 Support and Maintenance

##### 35.110.1 Adults

Section 475.130 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. If the protectee has ongoing and regular monthly expenses, the conservator should secure an order for support and maintenance. The application must specify average anticipated monthly expenses. For example:

|                                      |            |
|--------------------------------------|------------|
| Nursing Home                         | \$7,200.00 |
| Medical                              | 500.00     |
| Misc. Personal<br>(haircut, laundry) | 100.00     |
|                                      | \$7,800.00 |

Funds needed in excess of that allowed by § 475.130, 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

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.

### 35.110.2 Minors

A 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. If the foregoing is established, 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. For example,

|           |          |
|-----------|----------|
| Rent      | \$300.00 |
| Groceries | 100.00   |

|         |          |
|---------|----------|
| Clothes | 50.00    |
| Misc.   | 20.00    |
|         | \$470.00 |

Social Security benefits may be expended on behalf of the minor without court order, if the Estate is designated as No Further Process.

Reference: § 475.125

**Practice Tip:** If the Conservator is not the representative payee, the Conservator should seek a court order relieving them of accountability for Social Security or any other public benefits.

### 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. See also, the Missouri Prudent Investor Act, RSMo. §§ 469.901-469.913.

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. *Hamiltonian Federal Sav. and Loan Ass'n 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 35.110, 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 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, and, where the conservator has advanced the funds,

compliance with § 473.423. If reimbursement is sought of funds advanced, it must be approved by the Court, be reflected as a credit entry on the Settlement and 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 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 below.

#### 35.170.1 Chronological Order

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

| Date<br>2016 | Description  | Debit<br>(Rec'd.) | Credit<br>(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<br>goods and wearing apparel | 400.00            |                     |
|              | Credit Inventory Item #1   |                   | 350.00              |
| 7-21         | Abandon automobile per 7/11/16 court<br>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 6-30-16 and 7-20-16. For example:

| Date<br>2016 | Description  | Debit<br>(Rec'd.) | Credit<br>(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<br>goods and wearing apparel | 400.00            |                     |

|      |   |  |          |
|------|---|--|----------|
|      | Credit Inventory Item #1<br>furniture, household goods and wearing<br>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 7-11-16 court<br>order                                 |  | 200.00   |

Reference: Forms 10559, 10559A (cash ledger), and 10559B (non-cash ledger)

### 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<br>(Rec'd.) | Credit (Pd.<br>Out)  |
|---|-------------------|----------------------|
| Shelter Nursing Home \$1,200/mo. Jan. - June<br>\$1,400/mo. July - Dec. |                   | 7,200.00<br>8,400.00 |
| Blue Cross/Blue Shield<br>\$197/quarter Jan., May, Sept.                |                   | 591.00               |
| Lawn Care - 2634 Madison \$25/mo. April -<br>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 or her 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<br>(Rec'd.) | Credit<br>(Paid Out) |
|---|-------------------|----------------------|
| Support and Maintenance \$750/Mo.<br>Feb. 2015 - Jan. 2016 per court order<br>dated 1-17-15 |                   | 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<br>(Rec'd.)    | Credit (Pd.<br>Out) |
|--|----------------------|---------------------|
| Worker's Compensation \$266/Mo. Jan. -<br>Dec.                                   | 3,192.00             |                     |
| Social Security<br>\$463/Mo. Dec. 2015 - June 2016<br>\$481/Mo. July - Nov. 2016 | 3,241.00<br>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 settlements 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.

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 or her estate on a form provided by the Court. The conservator will be sent a notice to file the annual statement of affairs at least 40 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 35.180.3 for adults and Section 35.180.4 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, unless the order provides otherwise, 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. Eligible for Public Benefits

- 1) Request for Final Court Cost Estimate (Form 10407)
- 2) Settlement form (Forms 10559, 10559A (cash ledger), and 10559B (non-cash ledger))

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 appropriate state agency.

Bond will be waived in the Order for NFP.

35.180.3(b) Meets Indigency Standards of Chapter 208 RSMo. Ineligible for Public Benefits

1) Request for Final Court Costs Estimate (Form 10407)

2) Settlement form (Form 10559, 10559A (cash ledger), and 10559B (non-cash ledger))

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 (Form 10407);

2) Settlement form (Form 10559, 10559A (cash ledger), and 10559B (non-cash ledger));

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) Petition for Approval of Settlement and for Order of NFP (Form 10227); and

8) Order of NFP (Form 10228).

A minimum bond of \$10,000 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.

35.180.4 Minor Protectee

A minor's estate may be placed on NFP immediately after it is opened or at the time of any settlement.

**Practice Tip:** A minor's estate normally will not be placed on NFP if the minor owns real property.

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

To place the estate on NFP the conservator must file:

- 1) Request for Final Court Cost Estimate (Form 10407);
- 2) Settlement form (Forms 10559, 10559A (cash ledger), and 10559B (non-cash ledger));
- 3) Petition for approval of settlement and for NFP (Form 10334); and
- 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 appropriate state agency.

Bond will be waived in the Order for NFP if the minor is eligible for public benefits. A surety bond will be required in the amount of one year's annual income of the minor if he or she is ineligible for public benefits.

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); and
- 6) Order of NFP (Form 10335).

A minimum bond of \$10,000 is required. The bond will be reduced to this amount on the order restricting assets.

#### 35.180.4(b)(2) During Administration

The conservator must file:

- 1) Request for Final Court Costs Estimate (Form 10407);
- 2) Settlement form (Forms 10559, 10559A (cash ledger), and 10559B (non-cash ledger));
- 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); and
- 7) Order of NFP (Form 10335).

A minimum bond of \$10,000 is required. The bond will be reduced to this amount on the Judgment Approving Settlement and Order for NFP.

**Practice Tip:** Some bonding companies require the bond number in the Order for NFP reducing the bond.

#### 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 the exception of certain administrative expenses as described in Section 35.180.4(d) below.

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 approved 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 and Administrative Expenses

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 sale of protectee's real estate;
- 5) the death of the ward; or
- 6) the entry of a court order allowing expenditures other than the exceptions 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 Clerk will issue an order 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).

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.

#### 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 and the estate closed as exhausted.

#### 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 necessities 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 31.30, 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. See Sections 31.30 and 31.40 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 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 revoked fiduciary's final settlement must be given to the successor conservator or acting conservator ad litem.

Reference: §§ 475.290, 475.295

#### 35.220.2 Death of Conservator

Section 475.295, provides for the procedure for final settlement where the conservator dies.

#### 35.230 Liability of Successor Conservator

The successor conservator should check the audited final settlement of the former conservator 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 e-filed with the Court on the proper form. The form is available on the Court's website. 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 receives e-mailed notification 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.

#### 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 and accounted for.
- 4) Conclude all litigation involving the estate, including appeals. Copies of all judgments must be filed with the Court.
- 5) Confirm that all expenditures authorized by Court judgment or § 475.130.
- 6) Request and complete final cost form and pay any costs due.
- 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]