

## **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

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