

Section 30 - Bonds - Conservatorship Estates

30.10 Bond, When Required

A bond will be required in all conservatorship estates and will not be waived unless Chapter 208 is applicable. Letters will not issue until the bond is filed.

Sections 473.157 to 473.217, RSMo, relating to the bonds of personal representatives, except §§ 473.157.1 and 473.160.1, RSMo, are applicable to the bonds of conservators.

Reference: § 475.100

30.20 Type of Bond

Because of the requirements necessary to qualify the principal and sureties on a personal surety bond, a corporate surety bond is usually more cost effective.

References: Form 10032 or corporate surety's bond form
§ 473.160

30.30 Bond Form, Requirements

30.30.1 Condition of Bond and Signatures

The condition of the bond as set out at § 473.157.2, RSMO, must be stated on the bond. Each bond shall be signed by the principal (conservator) and his surety, and their signatures must be acknowledged. Where an attorney-in-fact signs for the surety, a copy of the power-of-attorney must be attached to the bond.

References: §§ 473.157, 473.167

30.30.2 Uniformity of Sureties

All additional bonds which may be required must be executed by the same surety as the original bond. If this is not possible or desirable, then a new bond in the full amount required must be filed accompanied by an application and order to terminate the original surety's future liability as of the date of the Court's approval of the new bond. The surety company's bond number must be included on the original bond. On any subsequent bonds, the number must be consistent with the original bond and must be stated on the bond. All additional bonds or riders shall be designated "Additional" or "Rider." All additional bonds or riders must contain or refer to the condition of the bond set forth in § 473.157.2, RSMO, and must be executed and acknowledged in compliance with § 473.167, RSMO; and where an attorney-in-fact signs for the surety, a copy of the power-of-attorney must be attached to the additional bond or rider.

References: §§ 473.157.2, 473.167, 473.203

30.40 Amount of Bond

30.40.1 In General

The initial amount of the bond shall be set by the Court at the hearing based on the actual value of the personal property and one year's income alleged in the petition or testified to by witnesses. Later adjustments in the amount of the bond will be based on the actual value of the property and annual income as reflected in the most recent of the inventory or latest annual settlement, as more particularly set out in Sections 31 and 35, Inventory and Settlement, *infra*.

30.40.2 Trust Assets

The Court, on a case-by-case basis, will determine what amount of the trust principal and/or income, in which the protectee has an interest will be bonded. A copy of the trust agreement will usually be required for this purpose. See also Sections 31.50.10 and 35.190, Inventory and Accounting for Trust Estates.

30.40.3 Minimum Bond

Except in cases covered by § 208.180, RSMO, a minimum bond of \$1,000 shall be required in all cases.

References: §§ 208.180, 475.100

30.50 Increase of Bond

Upon the filing of the original inventory or any supplemental, corrected or amended inventory or an annual settlement, the Court shall determine whether the bond is sufficient and, if not, shall notify the conservator to file additional bond. Within two weeks, the additional bond must be filed or the conservatory or attorney must show why an additional bond is not necessary. See Section 35.60 regarding the consequences of failure to file additional bond.

An order confirming the sale of real property will not be entered until the conservator files an additional bond sufficient to cover the proceeds of the sale receivable by the conservator unless the current bond is already adequate. Proceeds receivable by the conservator, if less than the sales price, must be evidenced by a closing statement prepared by a title company, financial institution or licensed real estate broker.

References: §§ 473.190, 473.193, 473.197

30.60 Citation - Failure to File Additional Bond

Failure to timely file the additional bond within two weeks of the Court's request will result in the issuance of an order to file additional bond stating that unless the additional bond 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 attorney must appear at the hearing unless it is continued. The citation will be dismissed upon:

- (1) the filing of the additional bond,
- (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.

30.70 Reduction of Bond

The amount of a bond may be reduced provided that the conservator upon application and order places the funds or securities in a restricted account or restricted safe deposit box at a Missouri financial institution to be withdrawn only upon order of the Court. In no case shall a bond be reduced below the amount of \$1,000 except in Chapter 208 estates. The Court may issue an order reducing bond at the time of auditing the settlement, if appropriate. Bond will not be reduced between settlement dates except when money or securities are placed in an appropriate restricted account. See Section 30.80 regarding the effect of restricted deposits on bond.

Practice Tip: Prior to restricting all assets in an estate the conservator and attorney must analyze the cost to the estate of obtaining court orders to release funds for specific needs such as court costs, taxes, bond premium and attorney fees versus the cost of bond to cover sufficient unrestricted assets to pay annual expenses without the necessity of obtaining court orders to release the funds from restricted account. This issue will come up most often in a minor's estate where assets are not needed for support and maintenance and all assets may be restricted but the minor's estate is not eligible for NFP (Section 35.170) and thus court costs and attorney fees for settlement preparation will still be incurred.

References: Form 10113, Form 10114, Form 10530, Form 10531,
§§ 473.160.2, 473.197

30.80 Effect of Restricted Assets on Bonds

30.80.1 Verification of Restriction Required

The deposit of cash or securities in an account at a Missouri financial institution or in a Missouri safe deposit box which is restricted so that withdrawals may be made

only on order of the Court may be employed to reduce the amount of the conservator's bond. Before the bond is actually reduced, a verification of restricted deposit or box must be executed by the depository describing the securities or stating the amount of cash and filed with the Court. Thereafter, so long as the restricted account is in existence, a dated verification of the restriction and the amount of the restricted asset must be filed with each settlement. The date of the verification must be same date as the ending date of the settlement.

Reference: Form 10532, Form 10533
§ 473.160.2

30.80.2 Amount of Bond

Notwithstanding the fact that all personal property has been placed in restricted custody, the Court shall require the conservator to maintain a bond of not less than 1,000 and may require a bond greater than that amount if the restriction covers securities subject to market fluctuations which could result in a loss to the estate.

30.80.3 Release of Restricted Property

As a condition precedent to the release of property from a restricted account, the conservator's bond shall be increased. The amount of the increase in bond shall be equal to the current value of the property released. The fact that the property is to be immediately disbursed or transferred to a different financial institution by the conservator does not operate to waive this requirement. However, if funds are to be transferred, authority for a direct transfer may be sought, wherein the transferring bank transfers funds to the receiving bank to a restricted account for the benefit of the protectee. The bank may also make a direct payment of expenditures from a restricted account if the Court's order contains language authorizing the bank to pay a specific amount to a named payee. If the funds do not go through the conservator's hands, they will not have to be bonded.

[END OF SECTION]