

## **Section 34 - Real and Personal Property** **Conservatorship Estates**

### 34.10 Taking Charge

The conservator must take charge of the protectee's property and has a duty to preserve and manage the property. If the protectee is not residing on the real property and is not likely to return there to live, the property should be sold, unless it is income producing. Expenditures, other than real property taxes, insurance and to maintain or repair property, must be supported by court order.

References: §§ 475.130.1, 475.130.2, 475.130.5

### 34.20 Discovery of Assets - Action to Obtain Assets of Protectee

Any person who claims an interest in property which is claimed to be an asset of a protectee or which is claimed should be an asset of the estate, may file a petition seeking determination of the title and right to possession of the property. A petition for discovery of assets is a procedural vehicle for alleging a substantive cause of action. See Barrett v. Flynn, 728 S.W.2d 288 (Mo.App.1987).

The petition must be in accordance with § 473.340, RSMo, and the proceeding will be designated as an adversary proceeding. See Section 7, Adversary Proceedings.

References: §§ 473.340, 475.160

### 34.30 Real Property

#### 34.30.1 Procedure for Private Sale

##### 34.30.1 (a) Petition - Notice

The petition to sell real property shall be filed with a proposed order. No notice of hearing is required.

##### 34.30.1 (b) Report of Sale and Order Approving

After the order of sale is entered, the report of sale may be filed. Section 473.513.1, RSMo, states that a full report shall be made within 10 days after making a sale (the date the contract is signed). Failure to file within that period of time may create title problems. The real property contract should not be attached to the report of sale or otherwise filed with the Court. On the eleventh day, after the filing of the report of sale, as calculated by Civil Rule 44.01, the Court, if satisfied that the sale is at the price and terms most advantageous to the estate, shall enter the order approving and confirming the sale. Additional bond in an amount sufficient to cover the net sale price, as evidenced by a closing statement prepared by a title company, financial institution or licensed real

estate broker, must be filed before the Court will enter the order confirming sale. Upon entry of the order confirming the sale, the parties may effect the closing of the sale by delivery of deed and receipt of the sale proceeds.

References: Form 10470, Form 10475, Form 10477, Form 10482  
§§ 473.513, 473.493, 475.200, 475.230, 475.235, 475.245

#### 34.30.1 (c) By Public Auction

A public sale under § 473.507, RSMo, is infrequently used. Any other public auction must follow the same procedures as a private sale. See Section 34.20 in its entirety.

#### 34.30.2 Purchase Price - Private Sale

The purchase price must be at least three-fourths of the inventory value of the real property. If, in the judgment of the conservator, due to change in conditions, the inventory value of the real property is excessive, he may file an inventory amending the value of the real property. In this event, the purchase price shall be at least three-fourths of the amended inventory value.

Reference: § 475.235

#### 34.30.3 Terms of Private Sale

While cash sales are preferable, the Probate Code does not preclude the payment of the purchase price of the sale of real property in installments, nor does the Code preclude a sale which is contingent upon the happening of an ascertainable event, e.g., approval of an application to rezone. However, the Court is required to find that the proposed sale is at a price and on terms most advantageous to the estate, so that when the sale terms and/or consideration are unusual, the attorney should consult with the Judge, Commissioner or Deputy Commissioner prior to the signing of the contract. It is recommended that the real property contract provide that it is subject to approval by the Probate Division.

**NOTE:** If the conservator becomes aware of a bona fide, more advantageous offer, the conservator should advise the Court thereof prior to entry of the order confirming sale.

References: §§ 473.513, 475.240

#### 34.30.4 Suggested Practice Aids

In preparation for the sale of real property:

- (1) The attorney should consult the title company or examiner for exceptions to marketable title;

- (2) The legal description contained in the inventory and the ownership should be reverified;
- (3) The conservator should determine, if possible, whether an amended inventory will be needed; and
- (4) The report of sale should contain language authorizing the disbursement of any incidental closing costs from the proceeds of the sale such as title insurance, real estate commission, loan discount, proration of taxes, insurance and/or loan escrow account and liens not assumed by the purchaser.

Reference: §§ 475.240, 475.530, 475.513

#### 34.30.5 Reporting Real Property Sales on Settlement

##### 34.30.5(a) Time for Reporting

The proceeds of the sale of all real property sold by the conservator must be accounted for on the settlement next following the date the sale is completed.

##### 34.30.5(b) Disbursement of Proceeds by Conservator or His Attorney

If disbursement of the sale proceeds is handled by the conservator or his attorney, receipts for each item of expense must be filed in support thereof. The purchase price should be shown in the debit column and the expenses of sale in the credit column.

##### 34.30.5(c) Disbursement of Proceeds by Title

If disbursement of the sale proceeds is handled by a title company or real estate broker, a copy of the closing statement reflecting the disbursements shall be a sufficient voucher to support the expenses of sale. The net sale proceeds should be shown in the debit column.

Since the inventory value of real property is not included in the carrying value of the personal property, no credit entry should be made as to the inventory value of the real estate.

#### 34.30.6 Purposes for Sale

The purposes for sale are set forth in § 475.200, RSMo.

#### 34.30.7 Abandonment of Real Property

Property may be abandoned, upon court order, when it is so encumbered as to be a burden to the estate or when it is of no value. See Section 35.60.1 for the manner in which to reflect an abandonment of property on the settlement.

Reference: § 473.293

#### 34.30.8 Foreclosure

Depending upon the assets of the estate, it may be desirable to obtain a court order allowing foreclosure, in advance of the foreclosure. See Section 35.60.1 for the manner in which to reflect a foreclosure on the settlement.

#### 34.40 Personal Property

##### 34.40.1 Value of Property

Personal property shall be valued as of the date of adjudication. See Section 31.40 for specific types of property.

Property may be valued by the conservator or by an appraiser. Generally, the services of an appraiser will not be necessary unless the estate contains tangible personal property of potentially significant value or of a value that cannot be determined by general knowledge of the conservator or contains stock in a closely held corporation or a business interest of the protectee.

If the original value listed on the inventory changes for some reason other than destruction or loss, an amended inventory should be filed reflecting the correct value. Changes to assets as a result of loss or destruction must be reflected on the next filed settlement. See Section 35.60.2 on personal property.

##### 34.40.2 Possession

The conservator shall take possession of all the personal property of the protectee.

Reference: § 475.130.2

##### 34.40.3 Multiple Party Accounts and Joint Property

A protectee's interest in assets held in the protectee's name with another person are considered a part of the protectee's estate and should be included in the inventory. See Section 31.40, Inventory. The conservator, absent a court order, may not use such multiple party accounts or property. Section 475.322, RSMo, allows the conservator to seek a court order to utilize the share contributed by the protectee to the extent needed for the support of the protectee and his dependents, or claims of the protectee. A court order will be entered with the consent of the joint tenants or the application must be set for hearing with notice of hearing to the joint tenants.

The conservator has a dual obligation to the protectee regarding jointly held property: he must provide for the care of the protectee and he must, in the process, preserve the protectee's estate plan to the greatest extent possible.

It is, therefore, advisable for the conservator to examine, where possible, the protectee's estate plan, including will and trust documents, in an effort to utilize specifically devised or designated (as through a jointly held account) property last. An "estate plan" may consist of the protectee's actions in titling one or more bank accounts, certificates of deposit or other property in joint names with right of survivorship or as a Totten Trust or a beneficiary deed pursuant to Chapter 461, RSMo notwithstanding the protectee has not executed a last will and testament or an inter vivos trust indenture. The conservator may seek an order authorizing proportionate use of such property where property is titled in the names of the protectee and two or more joint tenants.

For additional explanation see 3 Missouri Practice - Probate Forms Manual 1985), Form 4.103 and Comment.

#### 34.40.4 Investment of Funds

The conservator shall invest the assets of the minor or protectee as set out in § 475.190, RSMo. These investments are (1) direct obligations of the United States Government or those unconditionally guaranteed by the U.S. Government, or (2) savings accounts and time deposits in banking or savings institutions to the extent they are insured by the FDIC. Other types of investments may be authorized by court order; however, the conservator remains liable on losses related to assets.

Funds kept for current expenses (support and maintenance, claims, expenses of administration) in excess of \$1,500 shall be deposited in an interest bearing checking account. See Section 35.120, Investments.

References: §§ 475.130, 473.333

#### 34.40.5 Sales

The conservator may sell personal property of the estate for the purposes set forth at § 475.200, RSMo. Court authorization is required for sales in excess of \$1,000. See Section 35.140 for the manner in which to reflect a sale on the settlement.

References: §§ 475.130.5, 475.200

#### 34.40.6 Abandonment of Personal Property

Property may be abandoned, upon court order, when it is so encumbered as to be a burden to the estate or when it is of no value. See Section 35.60.2 for the manner in which to reflect an abandonment of property on the settlement.

Reference: § 473.293

#### 34.40.7 Secured Property

The conservator may want to obtain a court order before allowing personal property to be taken in satisfaction of a pledge or other lien. The Court may determine instead that assets of the estate will be used to preserve the property depending upon the type of property and the condition of the estate. See Section 35.60.2 for the manner in which to reflect a surrender of property on the settlement.

#### 34.40.8 Storage Fees and Moving Expenses

Generally, storage fees are not allowed for storage of the protectee's property. The reason for this is that frequently storage fees exceed the value of the personal property and the property should be sold if it is not needed for the use of the protectee.

Storage fees may be allowed for a brief period of time if the protectee is in transition, either as to his living arrangements or where the potential for restoration exists, if the property needs to be stored pending a sale or if title to the property is in dispute.

Reasonable expenses of moving a protectee's property to other living quarters, to storage or to a place for sale will be allowed upon petition and order.

[END OF SECTION]