

Section 36 - Distribution and Discharge - Conservatorship Estates

36.10 When Distributed

The estate of a protectee may be distributed:

- (1) to a successor conservator where the prior conservator dies, resigns or is removed by the Court (see Sections 37.10 and 37.20 for a list of forms);
- (2) to the protectee upon restoration (see Sections 37.30 and 37.40 for a list of forms);
- (3) to a minor upon reaching 18 years (see Sections 37.30 and 37.40 for a list of forms);
- (4) to a legal representative, heirs or devisees upon the death of the protectee (see Sections 37.40, 37.50 and 37.60 for a list of forms). With respect to a distribution to an heir or devisee who is a debtor in bankruptcy, see the United States Bankruptcy Code, 11 U.S.C. §541.

References: §§ 475.300, 475.320
11 U.S.C. §541

36.20 All Distributions

36.20.1 Order of Distribution

The order must distribute all personal property as reflected on the final settlement. No deductions for expenses of the estate may be included on the order of distribution to be made from the distributable cash as shown by the final settlement. Where the protectee is deceased and the estate is closed pursuant to § 475.320. 1, RSMo, all real property shown on the inventory which has not been sold by the conservator must also be included in the order.

Reference: § 475.320.1

36.20.2 Description of Property

The descriptions of the property to be distributed must coincide with the descriptions contained in the inventory. If the description in the inventory is inadequate, e.g., street address only of real property, the inventory must be amended prior to distribution. The order of distribution should not reflect the value of any asset except cash.

36.20.3 Assignment

The Probate Division lacks jurisdiction to determine the enforceability of an assignment to a third person by a restored protectee, former minor who is sui juris or heir of a deceased protectee to a third person. Consequently, the Court will not recognize such an assignment. Distribution must be made to the restored protectee, former minor who is sui juris or an heir.

Distribution to an assignee may, however, be effected by appointing the assignee as attorney in fact to receipt for the distribution. If the conservator receives notice of an assignment, he should not, however, proceed with final distribution until the assignee's rights have been satisfied in such a manner as will relieve the conservator from personal liability. See Section 36.10(4) for information regarding distribution to an heir or devisee in bankruptcy. For additional explanation on the power of attorney, see 3 Missouri Practice - Probate Forms Manual (1985), Form 3.348 and Comment.

Reference: § 473.657

36.20.4 Escheats

If any minor, upon reaching 18 years of age, heir or any distributees cannot, after diligent search, be located or after being located, fails or refuses to accept or receipt for his distributive share then the share shall, upon petition and order filed by the conservator, be escheated. The petition must set forth the effort made to locate the missing person, or other facts constituting grounds for escheat, and the exact amount due from the estate. If the distributive share consists of any property other than cash, the non-cash property must be sold. The distribution will reflect: State of Missouri Escheat Funds for (name of minor, heir or devisee). The conservator shall then issue a check payable to the State Collector of Revenue, and, upon securing a receipt from the Collector, the same shall be filed in lieu of a receipt for the minor, heir or devisee concerned. The costs attributable to the escheat proceeding (including attorney's fees, if any, allowed by the Court) shall be charged against the escheated distributee's share.

References: §§ 470.010, 472.025, 474.010, 475.325

36.30 Distribution Pursuant to Section 475.320.1, RSMo, Where Protectee Deceased

36.30.1 Partial Distribution to Heirs

A partial distribution may be allowed by court order at any time after entry of the Order to Proceed Without Administration. The Court will consider the condition of the estate and the assets to be distributed in examining the application for partial distribution. No partial distribution will be permitted when it appears that the estate is or may be insolvent.

36.30.2 To Whom Distributed

The order of distribution shall follow 474.010, RSMo. The order shall fully set out the name of every person who is a distributee. The interest of the heir in the property must be shown, e.g., one-half interest.

Reference: § 474.010

36.30.3 Equal Distribution Required

Every item of property of the estate must be equally divided among the heirs entitled thereto. Failure to so divide the property is deemed an unequal distribution. A distribution of cash or property to offset an unequal distribution will not be permitted without the written consent of the heirs affected.

36.30.4 Sale of Personal Property to Effect Distribution

Personal property, especially securities, may be sold in order to effect a distribution of the proceeds where the property cannot be divided in kind or where it would be burdensome upon the heirs to create a tenancy in common among them in a particular security. See Section 34.40.5 on sales of personal property.

36.30.5 Minor Distributees

36.30.5(a) If an heir is a minor, his distributive share of personal property must be distributed:

- (1) to a custodian for the minor (See Section 40.10);
- (2) to a legally appointed conservator; or
- (3) pursuant to an order to dispense with conservatorship, if less than \$10,000 (See Section 38.30).

36.30.5(b) Any conservator may designate a custodian for a minor distributee (under age 18 years). However, court approval must be obtained if the designated custodian is not a trust company and the value of the property at the time of transfer exceeds \$10,000. See Section 40, Transfers to Minors.

36.30.5(c) If a conservator is appointed by any court other than this court, a certified copy of the conservator's letters, certified within the last 6 months, must be in this court's file before the order of distribution will be signed.

36.30.5(d) The petition and order to dispense with conservatorship may be filed in the deceased protectee's estate rather than in a separate file for the minor.

36.30.5(e) Real property is always distributed in the name of the minor except where there is a custodial designation.

References: Form 10324, Form 10325
§§ 404.005 - 404.660, 475.330

36.30.6 Renunciation or Disclaimer

Where an heir renounces or disclaims all or a portion of his interest in the estate, the Court must be provided with all facts to determine who is entitled to the disclaimed share. The

disclaimant may not designate the recipient of disclaimed property. The disclaiming heir is treated as having predeceased the decedent. Therefore, the conservator must provide names and relationships of those who would take the disclaiming heir's share as though he actually predeceased the decedent.

Example:

Intestate estate to son A and eight grandchildren, the children of predeceased son S. A disclaims his interest. A is not survived by any lineals. The eight grandchildren take the entire estate pursuant to § 474.010, RSMo.

References: §§ 474.490, 474.010

36.30.7 Judgment Creditors

Section 473.618 relating to a request by a judgment creditor for notice of any partial or final distribution or both to a debtor-distributee does not apply to conservatorship proceedings.

A judgment creditor may attach or garnish a distributee's share of an estate by compliance with the Missouri Statutes, Civil Rules and the Jackson County Circuit Court Rules on attachments and garnishments.

Reference: Form 10371

36.40 Distribution From Conservatorship Estate Pursuant to Refusal of Letters or Small Estate Affidavit (Sections 473.090 and 473.097, RSMo) Where Protectee Deceased

36.40.1 To Whom Distributed

The order of distribution must conform with the Order Refusing Letters or must name each heir or devisee entitled to the estate according to the Clerk's Certificate issued pursuant to § 473.097, RSMo. The order shall fully set out the name of every person who is a distributee. The interest of the heir or devisee must be shown, e.g., one-half interest.

36.40.2 Equal Distribution Required

Every item of property of the estate must be equally divided among the distributees entitled thereto. Failure to so divide the property is deemed an unequal distribution. A distribution of cash or property to offset an unequal distribution will not be permitted without the written consent of the distributees, except where there is one share or a fractional share difference.

36.40.3 Sale of Personal Property to Effect Distribution

Personal property, especially securities, may be sold in order to effect a distribution of the proceeds where the property cannot be divided in kind or where it would be burdensome upon the distributees to create a tenancy in common among them in a particular security. See Section 34.40.5, Sales of Personal Property.

36.40.4 Minor Distributees

36.40.4(a) If a distributee is a minor, unless the will otherwise directs, his distributive share of personal property must be distributed:

- (1) to a custodian for the minor (See Section 40.10);
- (2) to a legally appointed conservator; or
- (3) pursuant to an order to dispense with conservatorship, if less than \$10,000 (See Section 38.30).

36.40.4(b) Any conservator may designate a custodian for a minor (under age 18 years) where no custodian has been designated by the decedent in his will. However, court approval must be obtained if the designated custodian is not a trust company and the value of the property at the time of transfer exceeds \$10,000. A custodial designation in a will is effective until the beneficiary has attained twenty-one years of age after which time the property is immediately transferable to the beneficiary. See Section 40, Transfers to Minors.

36.40.4(c) If a conservator is appointed by any court other than this court, a certified copy of the conservator's letters, certified within the last 6 months, must be in this court's file before the order of distribution will be signed.

36.40.4(d) The petition and order to dispense with conservatorship may be filed in the deceased protectee's estate rather than in a separate file for the minor.

36.40.4(e) Real property is always distributed in the name of the minor except where there is a custodial designation.

References: Form 10324, Form 10325, Form 10620
§§ 404.005 - 404.660, 475.330

36.40.5 Renunciation or Disclaimer

Where a devisee or heir renounces or disclaims all or a portion of his interest in the estate, the Court must be provided with all facts to determine who is entitled to the disclaimed share. (However, this rule does not apply to an interest in a testamentary trust or a trust which is the recipient of a pour-over distribution.) The disclaimant may not designate the recipient of disclaimed property. The disclaiming distributee is treated as having predeceased the decedent. Therefore, the conservator must provide names and relationships of those who would take the

disclaiming devisee's share as though he actually predeceased the decedent. Based on this information the Court will determine whether § 474.460 or § 474.465, RSMo applies.

Examples:

1. Residuary estate left to A, B & C, all children of the decedent. C disclaims his interest. Unless the will otherwise directs, § 474.460, RSMo, applies and C's lineals, if any, will take his share.
2. Residuary estate left to A, B & C, not related to the decedent. C disclaims his share. Unless the will otherwise directs, § 474.465, RSMo, applies and A & B will take C's share.
3. Intestate estate to son A and eight grandchildren, the children of predeceased son B. A disclaims his interest. A is not survived by any lineals. The eight grandchildren take the entire estate.

References: §§ 474.490, 474.460, 474.465

36.40.6 Judgment Creditors

Section 473,618 RSMo relating to the request by a judgment creditor for notice of any partial or final distribution or both to a debtor-distributee that does not apply to conservatorship estates.

A judgment creditor may attach or garnish a distributee's share of an estate by compliance with the Missouri Statutes, Civil Rules and the Jackson County Circuit Court Rules on attachments and garnishments. However, assets or funds in the hands of a personal representative may not be garnished or attached until after entry of an order of partial or final distribution has been entered distributing the same to a judgment debtor distributee.

36.50 Discharge

36.50.1 Time for Filing Receipts - Extensions

Within 60 days after the date of notice of approval of final settlement and order of distribution, the conservator shall make distribution of the assets of the estate and file with the Court receipts and a proposed order of discharge.

The Settlement Clerk has authority to grant one extension for good cause shown not to exceed 30 days upon written application of the conservator or his attorney. The Chief Auditor may grant the first or second extension of 30 days each.

Applications for further extensions or for more than 30 days will be presented to the Judge, Commissioner or Deputy Commissioner and will be granted only upon good cause shown.

Reference: Form 10572

36.50.2 Receipts Must Conform With Order

The order of discharge will be entered upon the filing of the receipts of all distributees receiving personal property which corresponds with the decree of distribution.

References: Form 10575
§§ 475.315, 473.660

36.50.3 Acceptable Receipts

Valid receipts consist of original canceled checks with proper endorsement or receipts signed by the distributees. However, the receipt of a restored protectee, or a minor upon reaching majority, must be a written statement signed by the restored protectee or minor and the signature must be notarized or must be an original canceled check with proper endorsement. If any individual other than the distributee endorses the check or the receipt of distributee, evidence must be presented with the receipt of the individual's authority to receipt for the distributee, i.e., power of attorney or letters of conservatorship, if not filed previously.

Receipts signed by an assignee are not acceptable unless the assignor has complied with § 473.657, RSMo. See Section 36.20.3, Assignments.

Reference: § 475.315

36.50.4 Citation for Failure to File

Failure to timely file receipts will result in the issuance of an order for citation 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 receipts;
- (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.

36.50.5 Effect of Discharge

No costs shall accrue for the securing of an extension of time to file final receipts, unless a citation for failure to file final receipts has issued. If a citation has issued, the conservator shall be personally responsible for the costs of the citation. See Section 22.30.1 on citations.

The conservator is not relieved of his duties nor is his surety, if any, relieved of liability until an order of discharge has been entered.

References: Form 10594
§§ 473.660, 475.315

[END OF SECTION]