

## **Section 38 - Minors, Estates - Miscellaneous Provisions**

### 38.10 Choosing a Method of Distribution to a Minor

#### 38.10.1 In General

A minor may own and possess property in his own name, and may receive property outright. Persons engaging in property transactions with minors may not be protected, however. As a result, various methods have been established to provide adult and judicial supervision over financial transactions involving minors.

Set out in this section are three ways money or property may be transferred to or for the benefit of a minor. The Court receives frequent inquiry as to when one of these alternatives is preferable to the others. This section briefly and generally explores that question. A more thorough discussion may be found in Chapter 14, "Missouri Transfers to Minor's Law," 2 Guardianship & Trust Law (Mo Bar CLE 1985, 1987).

References: §§ 362.465, 369.169

#### 38.10.2 Conservatorship

Conservatorship is used most often when the amount to be received by the minor exceeds \$10,000. Because of the bonding and annual accounting requirements, it provides the best protection of the assets, while permitting use of the funds when needed as allowed by court order.

#### 38.10.3 Dispensing with Conservatorship

Dispensing with conservatorship may be utilized only when the value of the asset to be received is less than \$10,000. Generally, even though the amount to which the minor is entitled is less than \$1 0,000, the Court will require the funds be deposited in an interest bearing restricted deposit, restricted so that no withdrawals of principal or interest will be permitted until the minor attains the age of 18 years or until further order of the Court. See Section 38.30, Dispensing With Conservatorship.

Reference: § 475.330

#### 38.10.4 Transfer Pursuant to the Missouri Transfers to Minors Act

A transfer to a minor may be appropriately utilized where a debtor such as an insurance company desires to make a single payment to a minor and receive discharge on the obligation. It may also be utilized where a gift is being made to a minor and the donor desires adult supervision without full

conservatorship until the minor reaches majority. Some debtors may be reluctant to designate a custodian.

If the value of the assets at the time of transfer is in excess of \$10,000, court approval will be required if the custodian is not a trust company. The Court may require the custodian to serve with a bond and/or under court supervision.

Where the value of the assets is less than \$10,000, a custodian may be designated and payment made without court supervision. The careful practitioner will insist on a professional custodian or will satisfy himself that the custodian will preserve the assets for the minor. The least protection is provided by the alternative of a private individual serving as custodian under the Transfers to Minors Law. See Section 40, Transfers to Minors.

#### 38.10.5 Cost Variables

Costs of the various proceedings are a frequent concern of practitioners and other interested persons. Generally, dispensing with conservatorship or a transfer to a custodian of less than \$10,000 are most cost effective, but as set out at 38.10.3 and 38.10.4, have limited applicability due to the \$10,000 maximum. A transfer of more than \$10,000 to a financial institution as custodian may appear more cost effective than a conservatorship. However, when custody fees of the financial institution are explored this may not be the case. Costs can be dramatically reduced in a conservatorship by restricting all funds and placing the estate on NFP. See Section 35.170.

In NFP estates, a minimum bond premium may be due annually or, in a minor's estate, a single premium may be due until majority. Court costs are waived and attorney expense is not contemplated since settlement is also waived.

### 38.20 Minors' Estates - Procedure for Settlement of Personal Injury Claims

#### 38.20.1 Jurisdiction

The Probate Division and regular divisions of the circuit court have concurrent jurisdiction to hear and approve the settlement of a minor's claim for personal injuries. If a lawsuit has been filed in a regular division of the circuit court on behalf of the minor, the hearing on any settlement must be held in that division. If, however, no lawsuit has been filed and the parties have negotiated a settlement, then the parties may choose whether the Probate Division or a regular division will hear and determine the reasonableness of the settlement. This is normally called a friendly suit. If the parties elect to ask the Probate Division to hear the friendly suit, then the pleadings filed shall be in substantially the same form as those which are customarily filed in friendly

suits in other divisions. The practitioner is also referred to Sections 507.182-188 (the "next friend" statutes).

### 38.20.2 Bond

The amount of bond required of the conservator, whether the friendly suit is heard in the Probate Division or elsewhere, shall be based upon the actual amount of funds paid to the conservator. If the settlement is effectuated in another division of the circuit court, Civil Rule 52.02 (h) (1) allows the Court to take judicial notice of the bond filed by the conservator in the Probate Division as sufficient. All bonds submitted to the Probate Division for approval shall be in accordance with Section 30.

### 38.20.3 How Inventoried

An inventory must be filed by the conservator regardless of whether the friendly suit settlement is effected in the Probate Division or elsewhere. If the friendly suit is effected in another court, the amount shown in the inventory shall be the amount stated in the judgment for payment to the conservator. In addition to filing the inventory, an attested copy of the judgment approving the settlement shall also be filed in the Probate Division. That portion of any settlement paid to the parents of the minor must be shown. If the friendly suit is effected in the Probate Division, the amount shown in the inventory shall be the gross amount of the settlement. Disbursements the conservator must make as authorized by the judgment entry shall be shown on the first settlement filed subsequent to the date of the judgment supported by proper vouchers or receipts except that no vouchers or receipts for the attorney's fee need be filed. See Section 31.80, Inventory.

### 38.30 Dispensing with Conservatorship

When the total value of a minor's estate is less than \$1 0,000, the Court may, in its discretion, dispense with conservatorship in one of three ways:

- (1) upon deposit of the assets in a restricted account until a conservator is appointed or until the minor reaches age 18;
- (2) by delivery of the assets to a suitable person for ultimate delivery to the conservator if appointed, or to the minor at age 18; or
- (3) by delivery of the assets to the minor's parent, custodian or to the minor.

Where the minor's estate is derived from a decedent's estate, the petition to dispense with conservatorship should be filed in the decedent's estate. No filing fee is required. Where the minor's estate is derived other than from a decedent's estate, the petition to dispense with conservatorship must be

filed with the New Estates Clerk. A filing fee will be charged. See Section 40.10, Transfers to Minors.

Implicit in a petition to dispense with conservatorship where restriction of funds is contemplated is an allegation that the money will not be needed for the minor's benefit until he reaches age 18. Consequently, after an order to dispense with conservatorship is entered, no further orders will be entered absent exigent circumstances. No expenditure of the funds will be allowed absent dire emergency.

References: Form 10324, Form 10325  
§ 475.330

[END OF SECTION]