

## **Section 12 - Bonds in Decedents Estates – Supervised Administration**

### 12.10 Bond, When Filed

#### 12.10.1 When Required

A bond is required in all intestate estates. In testate estates, a bond will be required, unless the will specifically waives bond for the applicant, or all interested persons waive bond after the claims period has expired under § 473.444.

Section 473.160.1 provides that the Court may at any time require bond.

References: §§ 473.157, 473.160

#### 12.10.2 Type of Bond

Generally, the court will require a corporate surety bond. In certain situations, the court may authorize a cash bond. Very rarely, the court may authorize a personal surety bond; however, this is usually not cost effective, due to the requirements necessary to qualify the principal and sureties.

References: Form 10032 or corporate surety's bond form  
§§ 473.157, 473.160

### 12.20 Bond Form, Requirements

The condition of the bond as set out at § 473.157.2, must be stated on the bond. Each bond shall be signed by the principal (personal representative) and his/her 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.

The attorney shall electronically file the bond, including the power of attorney page(s). The attorney shall retain the original paperwork that comprises the bond instrument.

References: §§ 473.157, 473.167, 473.173  
Supreme Court Rule 103.07  
Local Court Rule 72.3

### 12.30 Additional Bond

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, and must be executed and acknowledged in compliance with § 473.167; 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

#### 12.40 Amount of Bond

The initial amount of the bond, when required, shall be set by the Court at the hearing, if any, based on the actual value of the personal property to be administered as stated in the Application for Letters. Later adjustments in the amount of the bond will be based on the actual value of the property as reflected in the more recent of the inventory or latest annual settlement, as more particularly set out in Sections 12.70 and 12.90, *infra*. Note that this rule is different from the rule related to the amount of bond in a conservatorship which requires that a conservator also be bonded for one year's income.

**Practice Tip:** When conducting a bond analysis, the Court will not reduce the amount of the bond based upon debts, liens, and/or encumbrances of the estate.

#### 12.50 Minimum Bond

Except in cases covered by §§ 473.090, 473.097, 473.160.1 or 473.160.3, a minimum bond of \$1,000 shall be required in all cases.

References: §§ 473.090, 473.097, 473.160.1, 473.160.3

#### 12.60 Waiver of Bond

All interested parties in a decedent's estate may waive the requirement of a bond, but not sooner than upon the expiration of the non-claim period.

References: §§ 473.160.1, 473.160.4, 473.360, 473.444

#### 12.70 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 personal representative to file additional bond. Within thirty days, the additional bond must be filed or the personal representative or attorney must show why an additional bond is not necessary. See Section 12.80, *infra*.

An order confirming the sale of real property will not be entered until the personal representative files an additional bond sufficient to cover the proceeds of the sale receivable by the estate, as evidenced by the Report of Sale. An additional bond will not be required if the existing bond is adequate.

References: §§ 473.160, 473.190, 473.193, 473.197

#### 12.80 Citation - Failure to File Additional Bond

Failure to timely file the additional bond within thirty days of the Court's request will result in the issuance of a citation to show cause why the personal representative should not be removed. If a citation issues, the personal representative and his/her attorney must appear at the hearing. 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.

Reference: § 473.200

#### 12.90 Reduction of Bond

The amount of a bond may be reduced provided that the personal representative upon application and order places the funds or securities in a restricted account 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 as stated in Section 12.50. Bond will not be reduced between settlement dates except when money or securities are placed in an appropriate restricted account or box and verifications are filed, or upon filing receipts for partial distributions.

References: Forms 10113, 10114, 10530, 10531, 10532, 10533  
§§ 473.160.2, 473.163, 473.197

#### 12.100 Effect of Restricted Deposits on Bonds

##### 12.100.1 Verification of Restriction Required

The deposit of cash or securities in an account at a Missouri financial institution which is restricted so that withdrawals may be made only on order of the Probate Division may be employed to reduce the amount of the personal representative's bond. Before the bond is actually reduced, a verification of restricted deposit or box executed by the depository describing the securities or stating the amount of cash must be 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 the same date as the ending date of the settlement.

Reference: Forms 10532, 10533  
§ 473.160.2

#### 12.100.2 Amount of Bond

Notwithstanding the fact that all personal property has been placed in restricted custody, the Court shall require the personal representative 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.

#### 12.100.3 Release of Restricted Property

As a practical matter, assets in a decedent's estate are seldom restricted. However, where assets are restricted, the personal representative's bond shall be increased as a condition precedent to the release of property from a restricted account. 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, distributed or moved to a different financial institution by the personal representative does not operate to waive this requirement.

**Practice Tip:** When restricting all assets of an estate, the personal representative must weigh the cost of attorney time in preparation of applications to withdraw funds from restriction versus the cost of the bond premium if assets remain unrestricted. Generally, if several applications are filed annually to withdraw funds from restriction, it is more cost effective to leave sufficient funds for annual expenses unrestricted and file a bond to cover the unrestricted assets.

Reference: § 473.160.2

#### 12.100.4 Distribution of Bearer Securities or Stocks

On order of the Court, bearer securities may be distributed directly to the distributees from restricted custody. If the distributee is unable or unwilling to receipt for the securities from the custodial depository, the securities may be forwarded to a correspondent depository who shall secure the distributee's receipt.

Stock registered in the name of the personal representative or in street name may be delivered by the custodial depository to a broker or transfer agent for transfer to the distributee's name. The Court may authorize other similar methods of distribution of securities without requiring increased bond.

References: Forms 10032, 10113, 10114, 10530, 10531, 10532 & 10533.

[END OF SECTION]