

## **Section 22 Settlement - Supervised Administration**

### **22.10 In General**

Section 473.557 requires that the Court notify each personal representative that a settlement is due at least 40 days before the due date. Failure to receive notice does not excuse the filing of a settlement when due. Settlements are due on the anniversary date of issuance of letters or as ordered by the court.

References: Form 10559  
§§ 473.540, 473.543, 473.557

### **22.20 Extensions**

Extensions of time to file settlement will only be granted on a showing of good cause upon filing a written application and proposed order of the personal representative or his/her attorney. The clerk has authority to grant one extension not to exceed 30 days. Applications for further extensions or for more than 30 days will be presented to the Judge, Commissioner or Deputy Commissioner.

Extensions requested after notice of filing final settlement is published will be closely scrutinized. While a continuance is necessary to preserve publication, an extension will not be granted solely for that purpose. The estate should be in a condition to be closed prior to publication.

References: Form 10553  
§ 473.540

### **22.30 Failure to File Settlement**

#### **22.30.1 Citation**

Failure to timely file a settlement will result in the issuance of an order for 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 unless it is continued. The citation will be dismissed upon:

- (1) the filing of the settlement,
- (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.

#### **22.30.2 Continuance by Court on Its Own Motion**

The Court in its discretion generally grants one continuance and notifies the personal representative and attorney prior to issuance of a citation. Failure to receive this warning is not a basis for setting aside the citation. Disregard of settlement dates may result in disallowance, in whole or in part, of applications for compensation by those responsible.

References: §§ 473.560, 473.563

#### 22.40 Settlement - Contents

##### 22.40.1 Income - Disbursement, Additional Property

Each settlement must record the date and description of each item of income or disbursement. Property, other than real property, discovered subsequent to the filing of the original inventory must be brought into the estate on the next settlement or by filing an additional inventory and bringing it into the estate on the next settlement. See Section 14.60, supra.

##### 22.40.2 Disbursement Supported by Court Order

Each disbursement shown on any settlement must be supported by an order of the Court. Limited exceptions to this rule include (1) expenses of administration, such as bond premiums, court costs and filing fees; (2) taxes; and (3) claims allowable pursuant to §§ 473.360 through 473.443. See Section 28, infra, regarding Claims.

##### 22.40.3 Estates Open More than Two Years

In addition to showing receipts and disbursements, each settlement shall include, if applicable, a report as to the necessity for keeping the estate open for more than two years. This report shall be included in the second annual settlement and each settlement afterwards until the estate is closed.

##### 22.40.4 Debits - Credits

Receipts will be shown as debits (“paid in”) and disbursements will be shown as credits (“paid out”). See Section 22.170, infra.

References: Form 10559  
§§ 473.543, 473.550

#### 22.50 Closing Costs of a Real Property Sale

A closing statement from any third party handling the closing will be accepted as a voucher for real property closing costs and only the net proceeds of sale need be reported on the settlement. If the personal representative or his/her attorney handles the closing, the full purchase price as well as the closing costs must be reported on the settlement and the closing costs must be supported by vouchers. See also Sections 20.10.3 through 20.10.7, supra, regarding Sales and Reporting Sales of Real Property.

## 22.60 Foreclosure, Abandonment or Surrender of Estate Property

### 22.60.1 Real Property

Proof of foreclosure on property of the estate must be made on the settlement next following the foreclosure. The personal representative must file a copy of the trustee's deed showing the date of conveyance, the consideration and the name of the grantee. See § 443.300 regarding stay of foreclosure on death. See Section 20.10.10, Abandonment and Section 20.10.11, Foreclosure.

### 22.60.2 Personal Property

The abandonment, loss or surrender of property of the estate must be reported on the settlement next following the abandonment, loss or surrender.

The inventory value of the abandoned property must be reflected as a credit. See Section 22.170, Debit-Credit Entries on the settlement. See also Section 20.20.5, Abandonment.

If secured property is taken or surrendered in satisfaction of a security agreement, lien or pledge, any written evidence of an accounting to the personal representative must be filed with the settlement. The settlement must reflect a credit (“paid out”) entry equal to the inventory value. Any surplus due the estate, whether paid or due, must be reflected as a debit (“paid-in”) entry. If a deficiency exists, the payment of the deficiency must be reflected as a credit (“paid-out”) entry. But see Section 28 regarding the estate's obligation for paying any deficiency which must be handled as a claim against the estate. See § 443.300 regarding stay of foreclosure on personal property subject to a security interest with power of sale after the death of the debtor. See Section 20.20.6, *supra*.

References: §§400.9-502, 400.9-504, 473.360, 473.387, 473.440, 473.444

## 22.70 Vouchers (Receipts)

The voucher (receipt or canceled check) supporting each disbursement on any settlement must be electronically filed with the settlement. Receipts for general and/or specific bequests are required.

Acceptable vouchers include, but are not limited to: copies of the original canceled checks (front and back), along with an attached certified affidavit signed by an officer of the banking institution stating that copies are the exact duplicates of the originals; copies of the original receipts; and check 21's. A bank statement is also acceptable as long as the payment for the expenditure specifically states who received the payment or if the bank statement supplies the copies of checks (front only is sufficient) and the entire bank statement is filed.

When obtaining vouchers from utility companies, you may submit the bill that reflects the expenditure in question as being received. For example, the settlement reflects a payment to KCP&L in March; you may submit the April bill as long as the bill reflects the KCP&L has received the March payment for the amount reflected in the settlement.

Reference: §§ 362.413, 473.543

## 22.80 Corrections - Auditor's Exception Letter – Extensions

### 22.80.1 In General

Each settlement filed is audited by the Court. Incomplete, inaccurate or otherwise defective settlements will delay the audit process. Until the settlement is approved, action on applications for compensation may be delayed or compensation may be disallowed in whole or in part.

### 22.80.2 Exception Letter - Errors in Settlement

The auditor assigned to audit the settlement will issue an exception letter enumerating any errors in the settlement which must be corrected before the settlement can be approved. The exception letter grants 60 days within which to satisfy the requirements. The Judge, Commissioner, or Deputy Commissioner may grant additional extensions.

The attorney or paralegal should contact the auditor to clear the exceptions unless a court order is necessary to clear exceptions. Required documents or information necessary to clear exceptions must be electronically filed. It is the attorney's responsibility to determine whether documents filed have cleared the exceptions by reviewing the electronic file or contacting the auditor.

### 22.80.3 Show Cause Orders

Failure to comply with the exception letter within the time prescribed will result in an order to show cause why the personal representative should not be removed. If a show cause order issues, both the personal representative and his/her attorney must appear at the hearing unless the hearing is continued or the show cause is dismissed prior to the hearing. The exception letter will not be cleared from the bench. The filing of documents and/or pleadings in response to the exception letter does not automatically result in dismissal of the show cause order. The attorney must contact the auditor to confirm that all exceptions are cleared and pay all costs relating to the issuance of the order to show cause before requesting dismissal from the Judge, Commissioner, or Deputy Commissioner. The order will be dismissed when the exception letter is cleared and the costs of the show cause order are paid. The costs of the show cause order may not be paid from estate assets. The attorney must allow sufficient time prior to the date of the hearing to contact the auditor for this purpose and not wait until the morning of the hearing date.

### 22.80.4 Effect of Exception Letter on Fees

When an exception letter has been issued, no orders for the allowance of any fees will be routinely granted unless the allowance is necessary to satisfy the exception letter.

### 22.80.5 Rescission of Exceptions

If any requirement listed in any exception letter appears inappropriate, it is the responsibility of the personal representative's attorney to contact the auditor, Deputy Commissioner, Commissioner or Judge to determine if the requirement should be rescinded.

#### 22.90 Additional Bond

If, upon the audit of any settlement it appears that additional bond is necessary, the auditor will issue an exception requiring the filing of the additional bond.

#### 22.100 Orders Ratifying Expenditures

When the personal representative has taken action or made an expenditure without court authority or power in the will, he may file an application with supporting documentation and a proposed order ratifying the action or expenditure. The application must be signed by the personal representative. If the action or expenditure appears reasonable and necessary, the order will be entered.

#### 22.110 Funds Advanced from Source Outside the Estate

##### 22.110.1 To Prevent Sale of Assets or Where Estate is Not Liquid

If heirs or devisees desire to prevent the sale of any asset of the estate, they may advance sufficient cash to pay expenses of administration, taxes, claims and any cash bequests. The advancement should be reflected in the debit column of the settlement and disbursements reflected in the credit column in the usual manner. The disbursements must be supported by proper vouchers.

Funds may also be advanced to the estate because liquid assets are not available or assets are insufficient to pay filed and allowable claims, expenses of administration, taxes and cash bequests. The accounting procedures are the same as described above. Reimbursements of these amounts may be made without court order.

**NOTE:** A distinction must be made between advancements as set forth above and advancements for the payment of claims as set forth in Sections 22.110.2. See also Section 28, Claims.

Reference: § 473.470

##### 22.110.2 To Pay Debts of Decedent Prior to Opening of Estate

Funds advanced at any time to pay debts of the decedent, including funeral and burial expenses, are claims against the estate and will be treated as such. The persons advancing the funds, including the later-appointed personal representative, may not be reimbursed from the estate unless there is compliance with §§ 473.360 and 473.403 and, where the personal representative has advanced the funds, compliance with § 473.423. See also *Adams v. Braggs*, 739 S.W. 2d 744 (Mo.App.1987) and Section 28, Claims.

References: §§ 473.360, 473.403, 473.423

### 22.120 Sale or Redemption of Personal Property

Upon the sale of personal property or redemption of certificates of deposit or other like instruments, the sale price shall be shown as a debit and the inventory value shall be shown as a credit thus deleting the property sold from the inventory. The ending settlement recapitulation must reflect the deletion of the property from its original category by subtracting the inventory value from that category and adding the proceeds derived there from to the cash category. An order to sell must be secured before any sale of personal property, unless a power of sale is contained in the will or the sale is affected in the final year of the estate and reflected on the final settlement.

Reference: § 473.487

### 22.130 Verification of Restricted Accounts

Where cash or securities are placed in restricted account by court order, a verification of restricted account must be filed with each annual settlement.

References: Form 10532, Form 10533  
§ 473.160

### 22.140 Will Contest

See Section 9.70, supra, regarding Will Contests and their effect on settlement.

### 22.150 Waiver of Legal Requirements

All persons who are sui Juris then interested in an estate may waive, in writing, the requirements imposed on a personal representative under the provisions of Chapters 472, 473 or 474. All then interested persons may consent to any discrepancies on the part of the personal representative. If an interested person is under disability, his/her conservator, if appointed by this court, may not, absent court order, waive requirements on his/her behalf, other than notice of filing final settlement. Where substantial rights of a protectee under the jurisdiction of another court may be affected by his/her conservator's waiver, this court may require a court order authorizing the conservator to so act. If the conservator is appointed by any court other than this court, a certified copy of the conservator's letters, certified within the last six months, must be filed with the court before the waiver will be given effect.

The Court will review each waiver to determine whether discrepancies are in fact waived.

A waiver which specifically describes the matters to be waived will eliminate an exception as to that matter, including vouchers. A waiver in which the party acknowledges receipt of a copy of the settlement and proposed order of distribution will waive any exception including the requirement for filing vouchers. **However, vouchers are still required to support payment of a filed claim.**

All interested persons may waive objections to an annual settlement other than for partial distributions and for failure to timely close the estate. Interested persons include claimants of all unresolved or unpaid claims.

In no event may interested persons waive the requirement of filing settlements except when an administrator pendente lite is appointed (Section 9.70.4(b)) or when the personal representative dies or resigns. See § 473.603, PPM Section 22.190.

References: Form 10368  
§ 472.135

22.160 Beginning and Ending Balances

The beginning balance on the first settlement must coincide exactly with the balance on the inventory. The beginning balance on each successive settlement must agree with the ending balance on the previous settlement. The ending debit column total includes the beginning balance of the assets total.

22.170 Debit (“Paid-In”) and Credit (“Paid-Out”) Entries

Debit entries consist of increases in the estate. Credit entries consist of decreases in the estate. There are two acceptable methods of setting forth debits and credits on a settlement, as set out in Sections 22.170.1 and 22.170.2 below.

22.170.1 Chronological Order

Debit and credit entries may be set forth in chronological order. For example:

Date	Description	Voucher No.	Debit (Rec'd)	Credit (Pd. Out)
6/10/20	Payment of Court Costs			245.00
6//15/20	Dividend-A.T.T. Stock		45.00	
6/20/20	XYZ Funeral Home			3,000.00
6/30/20	Proceeds A.B.C. Life Insurance		6,000.00	
	Credit Inventory Item 3			6,000.00
7/7/20	Bond Premium Ins. Agency			50.00
7/8/20	Refund Gas Co.		20.00	
7/20/20	Proceeds sale of furniture, household goods and wearing apparel		400.00	
	Credit Inventory Item 1			350.00

22.170.2 Debits (“Paid-In”) Segregated from Credits (“Paid-Out”)

Debits may be segregated from credits, but must be set out in chronological order, except that credit entries for estate assets that have changed character should be shown immediately after the related debit entry. See entries on 6/30/20 and 7/20/20. For example:

<b>Date</b>	<b>Description</b>	<b>Voucher No.</b>	<b>Debit (Rec'd)</b>	<b>Credit (Pd. Out)</b>
	<b>Debits (Receipts)</b>			
6/15/20	Dividend-A.T.T. Stock		45.00	
6/30/20	Proceeds A.B.C. Life Insurance		6,000.00	
6/30/20	Credit Inventory Item 3, A.B.C. Life Insurance Co.			6,000.00
7/8/20	Refund Gas Co.		20.00	
7/20/20	Proceeds sale of furniture, household goods and wearing apparel		400.00	
7/20/20	Credit Inventory Item 1, furniture, household goods and wearing apparel			350.00
	<b>Credits (Disbursements)</b>			
6/10/20	Payment of Court Costs			245.00
6/20/20	XYZ Funeral Home			3,000.00
7/7/20	Bond Premium Ins. Agency			50.00

Reference: Form 10559, Form 10559A, Form 10559B

### 22.170.3 Rental Income

If the personal representative has taken charge of rental properties and has employed an agency to manage and collect the rents, a summary entry of rents received may be entered as a debit on the settlement if there is also attached an itemized statement from the agency setting forth all rents collected, expenses incurred and to what property each transaction is attributable. Where the personal representative has managed the property and handled the rents, receipts and disbursements must be specifically itemized.

### 22.170.4 Payment of Costs

The personal representative is notified of annual court costs due in the notice to file annual settlement. Costs must be paid on the date of, or prior to, the filing of annual settlement and reflected as a credit entry on the settlement or they may be taken as a credit on the next annual settlement if paid after the settlement cutoff date.

### 22.180 Final Settlement



The final settlement should be filed only when the estate is in a proper condition to be closed. The attorney should always check the court file, as well as his/her own file before preparing final settlement.

For a checklist of requirements for filing final settlements, see Section 22.260.

For a checklist of forms required before closing various supervised estate situations, see Section 26.

References: Form 10559  
§ 473.583, 473.587

#### 22.190 Settlement on Death, Resignation or Removal of Personal Representative

When personal representatives die, resign, or have their letters revoked, they or their legal representative must file a final settlement unless waived by interested persons. Notice of filing of the final settlement must be given to, or waived by, the successor personal representative.

Reference: § 473.603

#### 22.200 Liability of Successor Personal Representative

It is the responsibility of a successor personal representative to see that a former personal representative files a final settlement. The successor personal representative must determine that the former personal representative has met all audit requirements and insure that the successor personal representative has received the estate in proper condition.

Where necessary, the successor personal representative must file and pursue a determination of liability action against the former personal representative. Failure to assure the propriety of the former personal representative's final settlement and to pursue liability, if any, of the former personal representative may result in the successor personal representative assuming the former personal representative's liability.

Reference: § 473.210

#### 22.210 Settlement, Exhausted Estate

If a decedent's estate is or becomes insolvent so that no distribution to heirs or devisees can be made, the estate can be closed by filing a final settlement showing the disbursement of all assets for the payment of expenses of administration, taxes and for the pro rata payment of claims. In this case, it is not necessary to publish notice of filing final settlement nor to file petitions for approval or for order of distribution or order of discharge. Mailed notice of the filing of the exhausted estate final settlement to interested persons is required by the Court unless waived by interested persons.

An estate in which any partial distribution has been made cannot be closed as an exhausted estate notwithstanding the fact that no assets may be distributable to the heirs or devisees upon the final settlement.

Reference: § 473.430

#### 22.220 Costs - Final Settlement

The request for final court cost estimate form must be electronically filed with the Court. If costs are due to the Court, they must be paid on the date of, or prior to, the filing of final settlement and reflected as a credit entry on the settlement before the settlement will be approved. If a refund is due, the final settlement must reflect the refund as a debit entry. See Section 5.40, specifying the procedure for requesting final costs. The attorney is provided a copy of the cost calculation via the electronic filing system.

References: Form 10407  
§ 483.580

#### 22.230 Proof of Payment of Expenses of Administration and Taxes

Before any final settlement is approved, proof of payment or waiver of payment must be shown for each of the following:

- (1) court costs (typically can be verified by the auditor by reviewing the case);
- (2) any applicable estate taxes; and
- (3) fees of administrator ad litem, if any.

#### 22.240 Final Compensation of Personal Representative and Attorney

Final compensation is not payable until approval of the final settlement and order of distribution. The attorney will be notified when the final settlement and order of distribution has been approved. The amount of compensation is shown as a credit entry on the final settlement.

References: Form 10160, Form 10161, Form 10162, Form 10163

#### 22.250 Objections to Settlement

The filing of any objections by any interested persons to the final settlement suspends the audit of the settlement until the objections are resolved. The auditor will advise the attorney of this in an exception letter.

#### 22.260 Checklist of Requirements to be Satisfied Prior to Filing a Final Settlement

- (1) Review the Court's file.

- (2) Verify that the Affidavit of Publication as to the Notice of Letters Granted is filed with the Court
- (3) Verify that all expenses of administration and taxes have been paid or otherwise provided for.
- (4) Verify that all filed claims have been paid, withdrawn by the creditor or otherwise resolved. Electronically file receipts from creditors for claims that have been paid.
- (5) Check that the identity of all heirs or devisees has been ascertained and their location verified.
- (6) See that a legal representative has been appointed or refusal of letters or affidavit of distributees filed, when applicable, for an heir or devisee who died subsequent to the decedent or for an adult under disability. A certified copy of letters or evidence of other form of probate proceeding must be filed, if the appointment or proceeding did not occur in Jackson County. The certified copy must have been certified in the six months prior to filing the final settlement.
- (7) See that a conservator or custodian has been appointed for any minor receiving personal property or, if appropriate, obtain an order dispensing with conservatorship (Forms 10324 and 10325). Certified copies of letters or of the order dispensing with conservatorship must be filed, if not issued by this court.
- (8) Confirm that all property has been inventoried.
- (9) Conclude all litigation involving the estate, including appeals. Copies of all judgments must be filed with the Court.
- (10) Resolve all will construction issues.
- (11) Complete request for final court cost estimate form, electronically file it with the court and pay costs due, if any.
- (12) Mail and publish notice of filing final settlement unless waivers have been obtained. Electronically file Notice and Proof of Mailing and Affidavit of Publication with the Court, if applicable.
- (13) See that any conservator of a Jackson County estate is adequately bonded to receive his/her protectee's distributive share. The conservator must file the bond, but the decree of distribution will not be approved until the required bond has been filed and approved.
- (14) Electronically file release or waiver from Missouri HealthNet Division as required by § 473.398 if decedent was enrolled

- (15) See Section 26 for a checklist of forms and documents required to close supervised estates.

[END OF SECTION]