

Section 24 - Distribution and Discharge Supervised Administration

24.10 Partial Distribution to Beneficiaries

24.10.1 When Allowed: Bond Required, When

A partial distribution may be allowed at any time after the inventory is filed. The Court will consider the condition of the estate and the assets to be distributed in examining the applications. The personal representative may be required to file a surety bond to cover the value of the distribution. No partial distribution will be permitted when it appears that the estate is or may be insolvent, or when a will contest is pending.

Reference: § 473.613

Practice Tip: No application for partial distribution shall be made prior to the expiration of the will contest period.

24.10.2 Unequal Distributions

Partial distributions to less than all of an equally situated class of distributees, or unequal distributions, will not be permitted, absent consents or extenuating circumstances. Court approval is required. For example, if a partial distribution is made where there are three equal residuary devisees, it shall be made to each of the three in equal amounts at the same time.

Reference: § 473.613

24.10.3 Real Property

Real property may be distributed by a partial distribution. However, if the personal representative has previously taken charge of real property under court order, the personal representative should obtain an order terminating the order to take charge, before requesting the partial distribution of such real property.

Reference: § 473.613

Practice Tip: Practitioners should consider filing the application for partial distribution simultaneously with the request to terminate the order to take charge.

24.20 Payment of Tax on Specific or General Devises

If the will does not provide for the payment of estate taxes from the residuary estate and partial distribution of a specific or general devise is made to any person other than the residuary devisee, the amount of the tax must be deducted from the distributive portion. In the alternative, it must affirmatively appear from the application for partial distribution that the distributee has advanced funds for the payment of the tax on his distributive portion.

24.30 Final Distribution

24.30.1 Order

The order of final distribution must dispose of all personal property not previously distributed, as reflected on the final settlement. All real property shown on the inventory, which has not been sold by the personal representative, must also be included on the order. Where the heirs or devisees sell the real property, see Section 24.30.8 regarding sale without court order.

24.30.2 To Whom Distributed

The order of distribution, in testate estates, shall follow the directions of the will. If any provision in the will is ambiguous, then, prior to distribution, the personal representative should file a petition for will construction, in which event the distribution shall follow the Court order construing the will. In intestate estates, the order shall follow § 474.010. See Section 24.30.10 regarding the requirement for corporate fiduciaries to obtain a certificate of reciprocity. 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: Testate estates: Form 10581, Form 10582, Form 10583
Intestate estates: Form 10584, Form 10585, Form 10586
§§ 473.617, 474.010
11 U.S.C. § 541

24.30.3 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. The order shall fully set out the name of every person who is a distributee and, in case of distribution to a trust, the description should match the designation of the trust or trusts described in the will, e.g., "ABC Bank as Trustee of Trust A" or ". . . as Trustee of Marital Trust" or ". . . as Trustee of Non-Marital Trust." In intestate estates, the interest of the heir in the property must be shown, e.g., one-half interest.

24.30.4 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 and court order, except where there is one share or a fractional share difference. However, in testate estates, the will may specifically permit an unequal distribution.

24.30.5 Rents or Income on Specifically Devised Property

Rents or income earned on specifically devised real or personal property must be distributed to the specific devisee less any expenses related to the property, unless otherwise directed in the will.

24.30.6 Sale of Personal Property to Effect Distribution

Personal property, especially securities, may be sold in order to affect 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 20.20.4, Sales.

24.30.7 Balance as Shown on Distribution

The order of final distribution must reflect the net distributable estate. Payment of statutory allowances shall be reflected in a settlement and not in the order of final distribution. No deductions will be made from the distributable cash as shown in the ending recapitulation of the final settlement. Any expense inadvertently overlooked may not be deducted from the distributable cash, but must be shown as a credit on the final settlement thereby reducing the distributable cash. The final settlement and order of distribution must be amended in such cases.

24.30.8 Real Property Sold by Heirs or Devisees Without Court Order

The heirs or devisees do not need a court order to sell real property, but any real property sold by the heirs or devisees must be included in the order of final distribution. Failure to do so may create a cloud upon the title and may expose the personal representative to liability for the expenses incurred in correcting the title defect. The quantum of interest of the distributees in the real property must be shown rather than the character thereof, i.e., "All of" rather than "fee simple," or if less, a fractional interest. Legal descriptions should be checked carefully against a title report or deed and compared to the inventory for accuracy.

24.30.9 Minor Distributee

24.30.9(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 pursuant to the Missouri Transfers to Minors Law RSMo. §§ 404.005-404.094 (See also Section 40);
- (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).

24.30.9(b) Any personal representative may designate a custodian for a minor distributee (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. Such designation by a personal representative is effective until the minor has attained 18 years of age, at which time the property is immediately transferable to the beneficiary. A custodial designation in a will is effective until the beneficiary has attained twenty-one years of age at which time the property is immediately transferable to the beneficiary. See §§ 404.005 - 404.094 generally and § 404.041 in particular.

24.30.9(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.

24.30.9(d) The petition and order to dispense with conservatorship may be filed in the decedent's estate rather than in a separate file for the minor. 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 - 404.650, 475.330

24.30.10 Nonresident Corporate Fiduciaries - Reciprocity

Before distribution may be made to a nonresident corporate fiduciary, the corporate fiduciary must obtain a certificate of reciprocity in compliance with § 362.600 if the trust property will be administered in Missouri. See Section 41.60.3, Nonresident Corporate Fiduciaries.

Reference: § 362.600

24.30.11 IRS Closing Letter - Marital/Non-Marital Trusts

If the will requires distribution to marital/non-marital trusts, the personal representative may not close the estate without the IRS closing letter unless all beneficiaries who could be affected by the final approval of the federal estate tax return and who are not incapacitated or minors, consent in writing to closing the estate. The consent must state that they realize their interest could be affected by a final IRS determination.

24.30.12 Marital/Non-Marital Distribution

Unless all property involved is distributable to trustees who are required to make a marital/non-marital distribution, a formula-type marital deduction distribution, determined upon acceptance of the marital deduction provisions of the federal estate tax return, must be established by filing, with the final settlement and proposed order of distribution, the following:

- (1) IRS closing letter,
- (2) Schedule M of the estate tax return and

(3) Worksheets showing how the distributive share was calculated.

24.30.13 Assignment

The Probate Division lacks jurisdiction to determine the enforceability of an assignment by a distributee to a third person. Consequently, the Court will not recognize such an assignment. Distribution must be made to the distributee designated by the will or by § 474.010. Distribution to an assignee may be effected by appointing the assignee as attorney in fact to execute a receipt for the distribution. § 473.657. If the personal representative receives notice of an assignment, he should not, however, proceed with final distribution until the assignee's rights have been satisfied in a manner which will relieve the personal representative from personal liability. See Section 24.30.2 if the heir or devisee is a debtor in bankruptcy.

NOTE: Disclaimer (§§ 469.010 – 469.120) may not be made in favor of a particular person and should not be used as a substitute for assignment. See Section 24.30.14, Disclaimer.

Reference: § 473.657

24.30.14 Renunciation or Disclaimer

Where a devisee or heir renounces or disclaims all or a portion of his/her 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 disclaimer or renunciation must be by a written instrument which complies with § 469.020. The disclaimant may not designate the recipient of disclaimed property. The disclaiming distributee is treated as having predeceased the decedent. Therefore, the personal representative 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 applies.

Examples:

Residuary estate left to A, B and C, all children of the decedent. C has living lineal descendants and disclaims his interest. Unless the will otherwise directs, § 474.460 applies and C's lineals, will take his share.

Residuary estate left to A, B and C, who are not related to the decedent. C has living lineal descendants and disclaims his interest. Unless the will otherwise directs, § 474.465 applies and A and B will take C's share. C's lineal descendants do not take C's share.

Intestate estate to son A and eight grandchildren, the children of predeceased son B. A disclaims his interest. A has no lineals. The eight grandchildren take the entire estate.

References: §§469.010-469.120 et seq., 474.460, 474.465

24.30.15 Escheats - Missing Heirs

If any distributee cannot, after diligent search, be located, or being located, fails or refuses to accept or receipt for his/her distributive share, then the share shall, upon petition and order filed by the personal representative, escheat and be transferred to the unclaimed property division of the State of Missouri. The petition must set forth the effort made to locate the missing distributee, 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: "Missouri State Treasurer for (name of heir or devisee)". The personal representative shall then issue a check payable to the "Missouri State Treasurer for (name of heir or devisee)" and, upon securing a receipt from the Treasurer, the same shall be filed in lieu of a receipt from the heir or devisee concerned. The costs attributable to the escheat proceeding (including attorney's fees, if allowed by the Court) shall be charged against the escheated distributee's share.

Reference: § 474.010, 470.010, 470.020

24.30.16 Abatement

Where the estate is insufficient to satisfy specific, general or residuary devises, the abatement statutes govern the distribution. It may be advisable to confer with the Judge, Commissioner or Deputy Commissioner before proceeding. An order authorizing the abatement is not required.

References: §§ 473.620, 473.623

24.40 Judgment Creditors

The request by a judgment creditor for notice of any partial or final distribution or both to a debtor-distributee that complies with § 473.618, imposes responsibility on the personal representative, not the Court, to give the required notice.

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.

Reference: Form 10371
§ 473.618

24.50 Discharge

24.50.1 Time for Filing Receipts

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

The clerk has authority to grant one extension for good cause shown not to exceed 30 days upon written application of the personal representative or his/her attorney. Applications for further continuances 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.

References: Form 10572, Form 10575

24.50.2 Receipts Must Conform to Order

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

Exception: If the receipts are for more than the amount distributed, they will be accepted if it is apparent that the greater amount consists of interest earned and that it is distributed proportionately among the entitled distributees.

24.50.3 Acceptable Receipts

Valid receipts consist of original canceled checks with proper endorsement or receipts signed by the distributee. 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. See Section 24.30.13, Assignment.

24.50.4 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 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 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.

24.50.5 Effect of Discharge

No costs shall accrue for securing 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 personal representative shall be personally responsible for the costs of the citation. See Section 24.50.4, Citation.

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

References: Form 10594
§ 473.660

[END OF SECTION]