

Section 33 - Claims - Conservatorship Estates

33.10 In General

Claims are defined at § 475.010(2), RSMO, and include costs and expenses of administration. However, claims should not be filed for the payment of costs and expenses of administration (as defined in the statutes and Section 1.20.10 . Expenses of administration shall be paid upon application and order, except that no order is necessary for payment of surety bond premiums, publication expenses and court costs (including respondent's attorney fee). Fees of conservators and attorneys shall only be paid upon application and order. See Section 32, Compensation and Section 35.40.2, Settlement procedures.

The sections in Chapter 473, RSMO, related to claims apply in conservatorship estates except where inconsistent with Chapter 475, RSMO. See Section 28, Claims.

References: §§ 475.010(2), 475.075.3, 475.085

33.20 Time for Filing - Adults

In 1993, the General Assembly amended § 475.210 RSMo to delete the 6 months non-claim period in adult conservatorship estates. The amendment is effective as to estates of disabled persons whose disability was adjudicated on or after August 28, 1993. § 475.210.2 RSMo specifically provides that § 473.360 RSMo shall not apply to the estates of disabled persons. Thus, like minor's estates, there is no time limitation for the filing of claims against an adult protectee's estate except the general statutes of limitations. [Revised 12/07/95].

References: § 475.205, 475.210

33.30 Time for Filing - Minors

There is no time limitation for the filing of claims against a minor's estate except the general statutes of limitations.

Reference: § 475.210

33.40 Form of Pleading and Hearing

33.40.1 Sufficiency of Pleading

The claim form provided by the Court may be used for filing a claim against an estate. The claim must state sufficient facts to give reasonable notice to the conservator of the nature and amount of the claim. The claim must be specific enough that a judgment rendered would be res judicata on the underlying obligation. See Siegel v.

Ellis, 288 S.W.2d 932,938 (Mo. 1956); Jensen v. Estate of McCall, 426 S.W.2d 52, 55 (Mo.1968); Jones v. Estate of McReynolds, 762 S.W.2d 854 (Mo. App. 1989).

References: Form 10140
§ 473.380

33.40.2 Procedure

The Court will not set any claim for hearing unless requested to do so. The request for hearing may be made by the conservator or the claimant, must be in writing and must provide the names and addresses of all persons who must be given notice of the hearing. If requested to set a claim for hearing, the Court will enter an order designating the claim as an adversary probate proceedings. The Court may require the filing of an amended claim which conforms to Civil Rule 55 if the Court anticipates that the issues are complex or if it appears that a counterclaim or third party claim may be involved. The Court's order may also require the conservator to file an answer to the claim.

If no answer to the claim is required, then at the hearing on the claim, the conservator may present evidence of any defenses to the claim which the conservator has. If the Court requires that the conservator file an answer, then the conservator must plead all defenses in the answer which the conservator intends to raise. Notwithstanding the fact that the Court does not require an answer to be filed, the conservator may elect to file an answer. If the conservator voluntarily files an answer, he is bound by the allegations contained therein and will not later be permitted to assert a defense which has not been pleaded in an answer. See Section 7, Adversary Proceedings.

33.50 Classification

All claims against the estate of a minor or other protectee shall be divided into the following classes and paid in the following order:

- (1) Court costs (including respondent's attorney fee);
- (2) Expenses of administration, including fees of the guardian and conservator and their attorneys;
- (3) Expenses for the reasonable support and maintenance of the protectee incurred subsequent to issuance of letters of guardianship or conservatorship; or
- (4) All other claims which are filed against the estate within the time prescribed by law.

References: §§ 475.211, 475.213

33.60 Allowance by Court

Any claim of not more than \$1,000 for liabilities incurred prior to conservatorship, other than the conservator's own claim, may be paid by him without allowance by the Court if there has been compliance with § 475.210, RSMO, (filing) and § 473.433, RSMO, (service on the conservator). See Rhodes v. Lockwood, 695 S.W.2d 130 (Mo. App. 1985).

Any claim for liabilities incurred by the conservator for the benefit of the protectee subsequent to the issuance of letters may be paid, whether or not a claim is filed, but claims, other than costs, expenses of administration and income taxes, must be authorized by court order or § 475.130.5, RSMO.

References: Form 10140
§§ 473.433, 475.130.5, 475.205, 475.210, 475.211

33.70 Payment of Claims

Unless the claim has been timely filed and served, the conservator may not, at any time, pay claims for liabilities incurred prior to the date of adjudication. Compare this restriction on the conservator with §§ 473.360 and 473.403.2, RSMO, which allow the personal representative to pay claims within the non-claim period even though the claim is not filed.

The conservator may pay any claim of not more than one thousand dollars (\$1,000) without court order if the claim is timely filed and served. The conservator must have court authority to pay any claim over \$1,000.

33.80 Compromise of a Claim

The conservator may without court authorization compromise a properly filed claim of not more than one thousand dollars (\$1,000). The settlement following the payment of the compromised amount must contain a credit entry for the compromised claim supported by a receipt or separate statement signed by the creditor claimant acknowledging in some manner that the claim has been satisfied. This procedure is also applicable to insolvent estates where the payment of claims must be prorated. See Section 33.90, Insolvent Estates.

References: §§ 475.130.5, 475.211, 475.213

33.90 Insolvent Estates

If there are insufficient assets to pay all claims, no claim of one class shall be paid until all previous classes are satisfied or it appears that there are sufficient assets to satisfy all previous classes. If there are insufficient assets to pay the whole of any one class, claims shall be paid in proportion to their amounts. The conservator must give notice to each creditor of the time for filing claims.

The conservator may file an application establishing the order of payment of claims or he may simply pay them (if not more than \$1,000 per claim) at his own risk according to §§ 475.211 and 475.213, RSMO. If a court order is sought, the application shall:

- (1) Itemize the claims and expenses of administration for which the estate is liable, classifying them pursuant to 475.211, RSMO;
- (2) State the total amount of assets available for the payment thereof; and
- (3) Set forth the proposed order of payment of any class of claims and the proportionate payment of each claim. At the time of filing the application, the conservator shall also cause notice of the hearing on the application to be served upon all creditors of the estate, as the Court may direct.

References: §§ 475.211, 475.213

33.100 Conservator as Claimant

The personal claim of a conservator must be timely filed as a claim against the estate. A conservator may establish a claim against the estate by proceeding against his co-conservator in the manner prescribed for other claimants. If there is no co-conservator, the Court shall appoint a conservator ad litem to act on the claim. The conservator ad litem will investigate the propriety of the claim and will recommend, subject to court approval, one of the following:

- (1) Allowance of the claim, as prayed,
- (2) Compromise of the claim or
- (3) A hearing on the claim.

The conservator ad litem will also recommend to the Court, the amount and source of the ad litem's fee allowance. The fee may be assessed against the estate or against the claimant/conservator.

Any conservator, however, may reimburse himself at any time for the following expenses of administration advanced by him without the necessity of filing a claim or application for reimbursement: (a) filing fee, (b) bond premium, (c) expense of publication and (d) court costs. Any sums paid by the conservator out of his own funds for a debt of the protectee may not be reimbursed to the conservator until the timely filing and allowance of conservator's claim against the estate as set forth above.

Practice Tip: The attorney representing a claimant must be paid by the claimant, not from estate funds, even R the claimant is the conservator who has an individual claim against the estate.

References: Form 10140
§ 473.423

33.110 Disposition of Claims

Except in insolvent estates, before final settlement will be approved, the file must evidence disposition of all claims against the estate. If a claim has not been disposed of, the auditor will issue an exception requiring some final disposition. The auditor cannot determine whether a claim is barred by time, lack of service or by defects in form from the face of the claim.

[END OF SECTION]