Stepping Up & Stepping Out: The New Lawyer Experience
How To Proceed Through Probate

PART ONE

November 14, 2015
Holiday Inn Airport West
St. Louis, Missouri

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I. ADMINISTRATION OF A DECEDENT'S PROBATE ESTATE

A. Independent Administration

Independent administration was introduced in Missouri for the first time by the Probate Code Revision of 1980. The traditional method of court supervised administration under the Probate Code is "Supervised Administration." To distinguish the traditional administration method from the new method, the new procedure is "Independent Administration" and the fiduciary known as an "Independent Personal Representative." Either form of administration is available in testate or intestate estates under specified conditions.

Independent administration must be affirmatively granted by the decedent's will. Absent an affirmative authorization by, the decedent in a will, all of the distributees under the will or the heirs of an intestate estate must consent to independent administration. Section 473.783 RSMo states that: "the Personal Representative may administer the estate independently, without adjudication, order or direction of the probate Division of the Circuit Court, unless a petition for supervised administration is made to and granted by the Court." When the Independent Personal Representative has been appointed, the Personal Representative takes possession of all the assets except any real property or tangible personal property left with or surrendered to "the person presumptively entitled thereto unless or until, in the judgment of the Independent Personal Representative, possession of the property by him will be necessary for purposes of administration." The Independent Personal Representative may pay taxes on estate property and to take all steps necessary for management, protection and preservation of property in its possession and may maintain actions to recover possession of property or to determine title thereto. While the Independent Personal Representative may act without court supervision or authorization, the Independent Personal Representative may invoke the jurisdiction of the court to resolve questions concerning the estate or its administration or distribution.

The Independent Personal Representative must file an inventory with the court within thirty days after the Independent Personal Representative's appointment. If the Independent Personal Representative discovers new assets thereafter, supplemental inventories must record such assets or to revise the valuations on assets already listed.

Section 473.810 gives the Independent Personal Representative an extensive list of powers which may be utilized without court approval, as long as the independent Personal Representative acts reasonably for the benefit of the interested persons. The powers of an independent administrator are similar to powers usually set forth in a well-drafted will.

To assure persons that the independent Personal Representative has the authority to effect transactions with third persons, Section 473.811 relieves any person who in "good faith" deals with an Independent Personal Representative for value. There is no obligation on behalf of a purchaser to inquire into the existence of a power or the propriety of its exercise.

The theory of independent administration is that if everyone is consenting to the
actions of the Independent Personal Representative, the court will give the Personal Representative free reign. Any interested person, however, may petition the court for revocation of independent administration. The probate judge holds broad discretionary authority to revoke independent administration. It is unnecessary to demonstrate that the assets of the estate are in jeopardy or that the estate is being improperly administered. *In re: Estate of Buder*, 781 S.W.2d 259 (Mo. App. 1989).

The Independent Personal Representative is given two options for the final accounting.

1. One is called a "Statement of Account." Under Section 473.837, the Independent Personal Representative may petition the court for an order of "Complete Settlement." Vouchers are filed and the settlement is audited and the Personal Representative receives a discharge. A one-year statute of limitations after discharge applies to the liability of a Personal Representative under this method.

2. The Independent Personal Representative may file a "Statement of Account with a Schedule of Distribution" which, after filing a final Statement of Account to which no objections are filed, the Independent Personal Representative makes the distribution. There are no final receipts or petition for discharge.

If no objections are filed within six months from the date of the final Statement of Account, the Independent Personal Representative is discharged by operation of law.

B. Supervised Administration — the Differences

In a supervised estate, the Personal Representative has possession of all assets except real property. Under paragraph 2 of Section 473.263, the court, on its own motion, or the motion of any interested person may order the Personal Representative to take possession of the real property when necessary for the payment of claims or the preservation of the real property.

The employment of specialists such as appraisers, the sale of assets and distributions by the Personal Representative are supervised and must be authorized and approved by the Probate Division upon petition.

Annual settlements and final settlements must be filed with the appropriate vouchers, which settlements are audited and approved by the Probate Division.

There is no time requirement regarding how long an estate may be open, but a court will monitor the estate for timely administration. An Independent Personal Representative is to file a Statement of Account or petition for an order of complete settlement within one year after the original appointment of the Independent Personal Representative. The time, however, may be continued by a Probate Division order.
Notice of Final Publication must be made prior to filing a final settlement with vouchers. The final settlement must be audited, and the court enters an order approving final settlement and orders final distribution of the assets. Upon filing a final receipt, the Personal Representative is discharged.

C. Factors to Consider in Electing Independent or Supervised Administration

1. Does the will authorize the independent administration? If not, are all the heirs or distributees in agreement and on good terms with each other?

2. Is marshalling and management of assets possible with a minimum of potential for liability?

3. What is the reasonable likelihood of a will contest?

4. Do the distributees trust the Personal Representative and are they likely to challenge his or her actions?

II. GRANT OF LETTERS OF ADMINISTRATION AND LETTERS TESTAMENTARY

A. Venue

Under Section 473.010, the will of a decedent shall be probated and Letters Testamentary or of Administration shall be granted:

1. In the county in which the domicile of the decedent is situated;

2. If the decedent had no domicile in the state, then in any county wherein the decedent left property, except that if a major part of the estate is real estate, then in the county in which the real estate or the majority of it is located;

3. If the decedent had no domicile in the state and left no property here, then in any county in which granting letters is required to protect or secure any legal right.

B. Content of Application for Letters

Section 473.017 sets forth the items to be included in an Application for Letters Testamentary or of Administration, as follows:

1. The name, age, sex, domicile, last residence address and the fact and date of death of the decedent. If there is a will, list the name as signed on the will, and any other names the decedent was known by, including any variations as shown by ownership on various assets. Domicile is defined in Section
422.010(1). An incapacitated person is not considered to have the requisite intent to voluntarily change his or her domicile, so an application should be filed where the guardianship was filed and administered. The decedent's last home address should be listed, not a hospital.

2. The names, relationship to the decedent and residence addresses of the surviving spouse, heirs, devisee and legatees of the decedent and their birth dates, if minors; the names and addresses of the conservators of any minor or disabled heirs, legatees or spouses of the decedent, if known.

3. If the decedent had no domicile in the state, the location and probable value of any land owned by the decedent in the state at the decedent's death and the probable value of the personal property or legal rights within the state, so far as it known, which may be subject to administration of the state.

4. If the decedent died intestate, and the will has not been delivered to the court, the contents of the will, either by attaching a copy of it to the petition, or if the will is lost, destroyed or suppressed, by including a statement of the provisions of the will, so far as known.

5. The names and residence addresses of the persons named as the Personal Representative. The application should state the Personal Representative's name as it appears in the will, and then show any change in the name. List the names of deceased Personal Representatives of those who decline to serve, in the order they appear in the will. List the residence address of the Personal Representative even if he or she is the attorney.

6. Where Letters of Administration of the estate of an intestate are sought, the names and residence addresses of the persons for whom letters are prayed and the applicant's relationship to the decedent or other facts which entitle such person to appointment. Again, the applicant's home address is to be shown even if the applicant is an attorney.

7. The name and address of the attorney for the applicant.

8. If letters are issued, the applicant will make a perfect inventory of the estate, pay the debts and legacies as far as the assets extend and the law directs, and account for and distribute or pay all assets which come into possession of the Personal Representative, and perform all things required by law concerning the administration of the estate.

9. Whether the application is for supervised or independent administration.

10. Whether the applicant is a resident or non-resident and designating an agent for the service of process and the name and address of the agent.
C. Heirs

The Personal Representative must account for all heirs, even if their full names and whereabouts are unknown. To the extent possible, it is necessary to provide complete addresses of all heirs and devisee, including any zip codes, as the court must send notice of the grant of letters to all heirs and devisees.

In certain cases, it may be necessary to file an Affidavit of Due and Diligent Search setting forth the steps taken by the Petitioner to locate heirs. Checking telephone directories, writing to last-known addresses, searching for other relatives and friends who may know of the whereabouts of heirs can be required by the court prior to opening an estate.

Describe fully how each heir is related to the decedent. Do not just describe an heir as a "nephew" but as "child of Susan Smith, Deceased sister of the decedent."

The heirs are those who are entitled to receive the deceased's assets from the Estate after payment of the decedent's debts and costs of administration, if the decedent had no will. The laws of intestacy provide how a decedent's assets are distributed. See Section 474.010.

1. The surviving spouse is the sole heir if the decedent is not survived by any issue.

2. If there is surviving issue, who are children of the surviving spouse, the surviving spouse receives one-half of the estate plus the first $20,000 in value of the estate.

   a) The remaining one-half of the estate shall be distributed to the surviving issue in equal shares.

3. If there are surviving issue who are not children of the surviving spouse, the surviving spouse shall receive one-half of the estate.

   a) The remaining one-half of the estate shall be distributed to the surviving issue in equal shares.

4. If no surviving spouse, the estate is distributed to:

   a) The decedent's children (which by definition includes adopted and illegitimate children, Section 472.010(2)), in equal shares. If a child has predeceased the decedent, that child's descendants per stirpes, are entitled to an equal share of the estate.

   b) If the decedent died without children, the decedent's children predeceased decedent and died without descendants, then the decedent's father, mother, brother or sister or their descendants, in
equal parts.

c) If there are no surviving father, mother, brother or sister or their descendants, then the grandfathers, grandmothers, uncles or aunts or their descendants, in equal parts.

d) If none of the above listed persons survive decedent, then the descendants of the nearest lineal ancestor and their children. The degree of kinship shall be at least the 9th degree.

e) If no kin survive, then to the bloodline of the deceased's spouse who was married to the decedent at the time of the spouse's death.

f) If none of the above persons can be located, the estate will escheat to the State of Missouri.

Note on the application whether a child of the decedent is a child of the surviving spouse; as it will affect the distribution to a surviving spouse under Section 474.010(c).

Legatees are defined in Missouri to be persons entitled to personal property under a will, Section 472.010(9). Distributees are defined in Missouri Probate Code to include those persons entitled to the real property and personal property under a will or by intestacy, Section 472.010(9). Heirs, under §474,010, and legatees, with complete names and addresses, must be listed on the application for letters.

Occasionally, a devisee's name as stated in a will differs from the way the person normally signs his or her name. Indicate on the application how the person normally signs his or her name and note the new name used in the will.

Names of deceased devisee should be listed on the application, and if a devisee died before the decedent, describe that devisee as "predeceased" with the date of death. If a devisee died after the decedent, described that person as "deceased" and also list the date of death. The descendants who are to receive the share of the deceased devisee should also be listed with their home addresses.

A certified copy of the death certificate of the decedent must be filed with the Application for Letters. List a Trustee as devisee but it is unnecessary to list the trust beneficiaries.

Do not list contingent beneficiaries if the contingency has not occurred or no longer exists.

*Please note Section 474.420, which states that if, after making a will, the Testator or Testatrix is divorced, all provisions in the will in favor of the spouse so divorced are thereby revoked. The effect of the revocation is the same as if the divorced spouse had died before the
Testator or Testatrix.

D. Bond Requirements

In an intestate estate, or where the bond is not waived in a will, the bond is based upon the estimate of the value of the personal property. Even if there are not assets in the estate or the only asset is real estate, a minimum bond of $1,000 will be required to ensure payment of court costs.

E. Persons Entitled to Letters

Section 473.110 deals with persons entitled to letters. Letters Testamentary shall be granted to the Personal Representative or Personal Representatives designated in the will. If persons designated in the will are found by the Court to be incompetent, unsuitable or improper, or are disqualified or fail to apply for letters, letters shall be granted to the others designated and if none of the Personal Representatives designated are competent or if none so apply, then letters shall be granted to some other qualified person.

Letters of Administration are to be granted to the following persons if otherwise qualified:

1. To the surviving spouse;

2. To one or more heirs of the estate entitled to distribution of the estate and who the Court believes will best manage and preserve the estate. A Conservator of a distributee is not entitled to preference;

3. If the Court believes that none of the heirs is suitable or if no heir applies to the Court, the Court may appoint some other person.

Section 473.117 also lists persons and corporations disqualified to serve as Personal Representatives, which include:

1. No full-time judge of any Court of this state or clerk, deputy clerk or division clerk of any Court, except for a deceased spouse or a person who is with the third degree of relationship by consanguinity or affinity as calculated according to civil law.

2. A person under the age of 18 or of unsound mind.

3. A person under legal disability because of conviction of a crime. In the case of In re: Estate of Foxworth, 732 S.W.2d 931 (Mo. App. 1987), the Court held that Section 561.021 does not forever disqualify a person convicted of a felony from holding a Missouri public office. The felony conviction merely goes to the issue of a person's competency and is not a complete bar.
4. A habitual drunkard (yes, this is actually written in the statute).

5. Except as otherwise provided in Section 362.600, corporations, partnerships and associations organized under the laws of another state or any United States National Banking Association whose principal place of business is not in Missouri.

6. No Personal Representative of a Personal Representative, in consequence thereof, shall be a Personal Representative of the first decedent.

Both the St. Louis City Probate Division and the St. Louis County Probate Division have their own application forms for Letters of Administration and Letters Testamentary, available on the court website. More counties are developing their own forms as well, so it is advised to check the county court website.

F. Publication

As soon as Letters Testamentary are issued, Section 473.033 provides that the clerk shall cause to be published a newspaper notice of the appointment of the Personal Representative, which shall include a notice to creditors to file their claims within six (6) months or forever be barred. This notice is to be published one week for four consecutive weeks. The clerk is to send a copy of the notice by ordinary mail to each heir and devisee whose name and address are shown on the Application for Letters. (Referred to as "the postcards."

G. Admission of a Will

After the death of a testator or testatrix, the person having custody of the will is directed by Section 473.043 to deliver the original will to the Probate Division of the Circuit Court which has jurisdiction of the estate or the Probate Division of the Circuit Court of the county where the will is found.

Section 473.050 provides that a will must be presented within six months from the date of the first publication of the notice of granting Letters Testamentary or of administration or within 30 days from the commencement of the will contest, whichever is later.

Mere delivery does not constitute presentment. An application to admit the will to probate must be filed with the will and the will proven and an order entered.

Section 473.070 requires that no written will shall be admitted to probate and no administration granted unless application is made to the Court for the same within one year from the death of the decedent.

H. Self-proving will

A written will may, at the time of its execution or at any subsequent date, be made
self-proved by acknowledging the testator and witnesses before an officer authorized to administer oaths under the laws of this state and evidenced by a certificate under official seal attached and annexed to the will. Section 474.337 suggests the following form:

THE STATE OF ______________ )
                        ) ss COUNTY OF ______________
I, the undersigned, an officer authorized to administer oaths, certify that ______________, the Testator and the witnesses, whose names are signed to the attached or foregoing instrument, having appeared together before me and having been first duly sworn, each then declared to me that the Testator, signed and executed this instrument as his Last Will and Testament, and that he had willingly signed or willingly directed another to sign, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the Testator, signed the Will as witness and that to the best of their knowledge, the Testator was at that time eighteen (18) years or more of age, of sound mind, and under no constraint or undue influence.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal this________ day of________,20____.

(signed)________________________________________________
(sealed)________________________________________________

If the will meets this criterion it may be probated without further proof. A self-proving codicil that republishes a will also eliminates the need for proving signatures on the original will.

If the will is not self-proving, Section 473.053 provides that at least two of the subscribing witnesses to the will shall be examined if they are alive and competent to testify and otherwise available. This requires two witnesses to travel to the Probate Court and to attest before an issue clerk that their signature is genuine and valid and that they attest to the fact they are the witnesses to the will.

If a witness is dead, the fact of death may be established by the testimony of other witnesses or by a death certificate or affidavit. Substitute proof may then be taken, such as a person familiar with a witness's signature, may appear to identify it. The other subscribing witness to a will may not identify the dead witness's signature as the testimony of two separate witnesses is required by Section 473.053.

If a witness is unavailable or the whereabouts of the witnesses are unknown, an affidavit can be submitted explaining the efforts made to find the witnesses requiring a "due and diligent search". Thereafter, substitute testimony from a person who can identify the witnesses' signatures can submit the will to probate. If both witnesses cannot be found and no one can be found to identify their signatures, the Will will be rejected for failure of proof.
Section 473.057 provides that if a witness does not live in the area or cannot, for good cause, appear, the Court may issue a commission empowering a notary public to take and certify the attestation of the witness. The courts generally require an affidavit stating the reason for a commission and the current address of the witness.

If a codicil ratifies and republishes a will, only the signatures on the codicil must be proved to have both the will and the codicil admitted to probate. A self-proving codicil therefore eliminates the need for proof of the signatures on the original will. However, if the codicil is successfully challenged in a will contest and six months have elapsed since the date of first publication, it may then be too late to prove the signatures on the will and have it admitted to probate on the basis of the testimony of the original witnesses. A conservative approach would be to have the signatures on both the will and the codicil proved within six months from the date of letters.

I. Petition to Compel Administration

Under Section 473.020, if no application for letters is filed by a person entitled thereto under Section 473.110 within 20 days after the death of the decedent, any interested persons may apply to the Court:

1. To have the decedent's will, if any, admitted to probate;
2. To appoint a Personal Representative if designated in the will;
3. To appoint a Personal Representative, if no Personal Representative is designated in the will, or if the person so named is disqualified as unsuitable, or refuses to serve, or there is no will.

The petition shall state the date of death of the decedent, the place of residence, the general nature and approximately value of the estate so far as it is known and the names of the persons named as Personal Representatives who may administer the estate of the decedent.

The petition is to be set for hearing within 15 days and notice thereof shall be served upon the persons allegedly named as Personal Representatives entitled to administer the estate within such time as the Court requires.

After a hearing, the Court may order the issuance of Letters Testamentary or of Administration to the person found by the Court entitled thereto and who applies and qualifies therefore within three days or within such time allowed by the Court, and, in default of application and qualification to some other person found suitable, or the Court may refuse letters on the estate and dismiss the petition.
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A. DISPENSING WITH ADMINISTRATION
   §§ 473.090 through 473.107

I. REFUSAL OF LETTERS (§ 473.090)

A. Refusal of Letters for a Surviving Spouse
   1. Value of estate, less liens, debt, and encumbrances, is less than the amount
      allowed for Exempt Property and Family Allowance.
   2. Spouse may collect and sue for personal property in the same
      manner as if qualified as a Personal Representative.
   3. Spouse may take real estate or personal property under Refusal of Letters
      and may retain the property. The spouse may establish title to real estate
      by filing a certified copy of the Refusal of Letters with the Recorder of
      Deeds in the County where the real estate is located.

B. Refusal of Letters for a Minor
   1. No surviving spouse and the value of the estate, less encumbrances is less
      than the amount allowed for Exempt Property and Family Allowance.
   2. Same allegations as for surviving spouse but make statement that there is
      no surviving spouse.
   3. If there is a surviving spouse there may still be reasons to file on behalf of
      the minor.
      a) Minor is not living with the surviving spouse
      b) Minor may be from a previous marriage or relationship.
   4. Apportionment of estate assets between surviving spouse and minor
      children is provided in §473.095.

C. Refusal of Letters for Creditor
   1. Any person who has paid the funeral expense or debts of the decedent is a creditor.
   2. The value of the estate is less than $15,000.00 after payment of secured debts.
   3. No surviving spouse and no minor children.
   4. The claim is not barred by §473.444.
   5. A bond is required in the amount of the value of the estate in excess of
      the funeral bill.
   6. The liability of the surety ends two years after the bond is filed.
   7. The Court may dispense with the bond.
   8. The Creditor agrees to
      a) Pay all creditors in order of preference (§ 473.397)
      b) Pay creditors to the extent of the value of the assets of the estate
      c) Pay any excess to the persons entitled to receive the assets
         by law
9. There is no reference to creditors taking real estate in satisfaction of their claim. The presumption is that creditors may not take real estate under a creditors’ refusal of letters.

D. Clerks of the Court, under the supervision of the Judge, may assist in completing forms for Refusal of Letters. This is not the practice of law as defined in §484.010

II. SMALL ESTATES (§473.097)

A. Small Estate affidavit may be filed when:
   1. The value of the estate, less encumbrances, is less than $40,000.00
   2. Thirty days have elapsed since the death of the decedent.
   3. No Letters Testamentary have been granted on the estate
   4. No Refusal of Letters have been granted or if Refusal of Letters have been granted the refusal must be revoked
   5. Bond in the amount of the estate has been filed (see G below for exceptions)
   6. The filing fee has been paid and notice to creditors has been published, if it is necessary (if the value of the assets exceeds $15,000.00)

B. Affidavit may be filed by:
   1. Any person entitled to receive property for the decedent’s estate
   2. The person designated in the decedent’s Last Will and Testament if the Will is presented to the Court within the time limits set forth in §473.050.

C. The Affidavit shall set forth the following:
   1. Whether or not the decedent left a Last Will and Testament and that the Will was presented to the Court within the limits set forth in §473.050.
   2. That all debts, claims or demands against the estate and all taxes due have either been paid or will be paid. The liability of the affiant is limited for the value of the assets of the estate.
   3. An itemized description, including value, of the property of the decedent. This does not include jointly owned property.
   4. The name and address of each person in possession of the property.
   5. The name, address and relationship to the decedent of each person entitled to receive property from the decedent after the payment of claims against the estate and debts of the decedent.
   6. Facts establishing the right of a person to distribution of property from the estate.
      a) Item in the Last Will and Testament
      b) Relationship to the decedent

D. Affiant must:
   1. Agree to pay the creditors of the estate.
   2. Agree to distribute any amount over debts to the persons entitled
to the property by law

3. Post a bond for the value of the estate.
   This must include the value of real estate since the real estate is likely to be
   sold and converted to cash (see G below for exceptions). The liability of
   the surety terminates two years after the date the bond is issues.

E. Distributees may establish their right to real estate by filing a certified copy of the
   affidavit in the Recorder of Deeds Office in the county where the real estate
   is located.

F. If the value of the estate is greater than $15,000.00 a publication of notice
   to creditors must be published once per week for two consecutive weeks.

G. The court has eliminated the requirement of filing a surety bond in the
   following situations:
   1. The will is admitted to probate, and
   2. The affiant is the same as the named person in the will, and
   3. The will provides for the Personal Representative to serve without
      bond

III. DETERMINATION OF HEIRS (§473.663)

A. Requirements for Determination of Heirs
   1. No administration begun within one year after date of death
   2. Will not presented within time limits set forth in §473.050
   3. No dollar limit on the value of assets of the decedent
   4. Any person claiming an interest as an heir or through an heir may file
      petition to determine heirs
   5. Petition must be filed in the Probate Division which would be the proper
      venue for the administration of the estate of the decedent

B. Contents of Petition
   1. Name, age, domicile, last address and date of death of decedent
   2. Names, addresses, and relationship to decedent of heirs at the time of
      decedent's death
   3. Name and address of any person claiming through any heir who died
      since the death of the decedent
   4. Description of property in this state owned by the decedent

C. Notice of Hearing
   1. Court shall set time for hearing
   2. Notice shall be given to:
      a) All persons claiming any interest in the property of the
         decedent
      b) All persons shown by the records of conveyance to claim an
         interest in the real property through an heir
c) Any unknown heirs

3. Notice
   a) Publication once per week for four consecutive weeks with the last publication to be at least seven days before the hearing
   b) Certified mail to all known heirs, to be received by the addressee only, with proof of service to be filed with the Court on/ or before the hearing date

4. Upon hearing the petition, the Court shall make a decree determining those entitled to the property and their interest in the property.

5. A certified copy of the decree shall be filed in all counties in which real property contained in the petition is located.

IV. ELECTIVE SHARE OF SURVIVING SPOUSE

A. Spousal Share §474.160

1. Spouse receives one-half (1/2) of the "estate", subject to the payment of claims, if there are no lineal descendants of the testator.
2. Spouse receives one-third (1/3) of the "estate", subject to the payment of claims, if there are lineal descendants of the testator.
3. If spouse elects to take against the will he/she is deemed to take by descent, and cannot also receive a benefit under a will. The spouse can take the most advantageous election — either an elective share or what he/she would receive under the will.
4. Any Homestead Allowance under § 474.290 is offset against the surviving spouse's share.

B. §474.164 - Valuation of "Estate"

All money and property owned by decedent at death (gross probate at date of death values)
- Funeral and administration expenses
- Exempt property and family allowance
- Claims against the estate
+ All money and property derived by the surviving spouse from the decedent outside of probate (interest in trusts, property appointed to spouse by decedent, Insurance, annuities, jointly-held assets, TOD assets, POD assets)
  = "ESTATE"
÷ By 2 or 3 depending upon the existence of lineal descendants of testator.
= Surviving Spouse's Elective Share
- All money and property derived by the surviving spouse from the decedent outside of probate (see above)
= Value of probate assets available to satisfy spouse's elective share.
Date of death values to apply to all assets.

C. §474.163(6)

Spouse may rescind the election to take against the Will if it is later determined to be less advantageous than the provisions for the spouse in the Will.

D. §474.170—Notice from Court

Court to give notice of right to elect to spouse - if spouse has been adjudicated but has no guardian or conservator, court may appoint an Ad Litem.

E. §474.1180 - Time for Making Election

Must be made within 10 days after the expiration of the period for contesting the Will (6 months from date admitting Will to probate or 6 months from date of first publication of granting of letters, whichever is later), unless there is pending litigation regarding the validity or construction of the Will, the existence of issue, or other matters which would affect the amount of the elective share of the spouse, which extends the time limit to 90 days after such litigation is final.

F. §474.190 – Form of Election

1. In writing
2. Signed by spouse, guardian ad litem, or conservator
3. Filed in Probate Division

G. §474.200

Right to Elect is personal, non-transferable, and cannot be exercised after the death of the surviving spouse.
PROBATE COURT DOCUMENTS WHICH MUST BE NOTARIZED

Section 472.080 RSMo states that "except as otherwise specifically provided in this code" every document filed with the court shall contain a statement it is made under oath or affirmation and that its representations are true and correct to the best knowledge and belief of the person signing same, subject to the penalties of making a false affidavit or declaration.

Below is a list of statutory sections and Probate Court documents which must be by affidavit and notarized:

472.110 Proof of Service of Notice
473.237 Inventory
473.097 Affidavit for Collection of Small Estate
473.513 Report of Sale of Real Estate
473.340 Discovery of Assets
473.303 Petition for Specific Execution of Contract
473.140 Petition to Remove Personal Representative
473.315 Final Receipt from a Minor
473.220 Partnership Inventories
473.223 Petitions to Compel Settlements by Partner.
473.363 Personal Rep's Affidavit of Actions Pending Against Decedent
473.640 Commissioners Affidavit in Partition Actions
473.177 Personal Sureties
DISTRIBUTION AND DISCHARGE
Supervised Administration
Final Settlement

Time. The final settlement may be filed after six months and ten days after the date of first publication. As a practical matter, the final settlement initiation should be docketed at least thirty days prior to that time to allow for publication of notice of final settlement. The court may continue the final settlement. A continuance must be obtained by the date published for filing of the final settlement or publication will be lost. Should this happen, see the exhibits and forms attached for three alternate methods to correct the lost publication. A settlement may be filed prior to the date published for filing, but it cannot be approved until twenty days after the publication date.

Notice. Notice of final settlement must be published in the manner provide by §472.100 with the statements required by §473.587. The notice is published in a legal publication once a week for four consecutive weeks with the last publication at least seven days prior to the intended filing date. At least 15 days prior to the filing date the personal representative shall give notice by ordinary mail to each interested distributee (§473.587) and an affidavit of mailing filed with the court. The legal publication normally supplies the postcards with the required notice and the affidavit of mailing. The publication requirements consume over a month so an early closing of the estate requires action at least thirty days prior to the closing date.

Petition for Approval. The contents of the final settlement were covered earlier in this seminar. The final settlement in supervised administration is to be designated as the Final Settlement and is filed simultaneously with a Petition for Approval of Final Settlement and Order of Distribution (§473.617(1)). The court will not accept one without the other. A sample form is attached. The order of distribution is a decree of the court approving the petition and containing a description of all property and to whom it is to be distributed. The petition must be in such form that the court can prepare a decree based on the contents of the petition. Real property should be distributed separately from the personal property as provided in the sample petition. Real property sold by the personal representative during administration, either under court order or under power granted in the will, should not be accounted for in the order of distribution other than as cash received by the estate. Real property sold during administration in what is commonly called an "heirs sales" must be included in the order of distribution to provide a chain of title.

The decree of final distribution is a final determination of the persons to receive distribution from the estate and the extent and character of their interest in the estate (§473.617(4)).
Objections to Settlement. Objections to the final settlement may be filed with the court by any interested person within twenty days after the filing date specified for the final settlement in the published notice or as continued by the court. The objections must state the specific grounds for the objection and thereafter must be set for hearing. An interested party would include an unpaid creditor, objections are filed, the court may approve the settlement. The court may grant an interested party an extension of time to file objections.

Final Receipts and Discharge. The Personal Representative is discharged upon filing of final receipts (§473.660). See the attached form of final receipt. Current practice in St. Louis County requires the receipts to be filed in ninety days. The discharge is a release of the personal representative from his duties and bars any suit not commenced within one year from the date of discharge.

Independent Administration

Statement of Account

Time. A Statement of Account may be filed at any time after six months and ten days after the date of first publication. As a practical matter, the final settlement initiation should be docketed at least thirty days prior to that time to allow for publication of notice of final settlement unless publication is waived.

Statement of Account. Independent administration requires no settlements other than a final accounting, which is called a Statement of Account under §473.840(2). See the sample statement attached. Unlike supervised administration the Statement of Account includes the accounting and proposed distribution in one document §473.480(2). The statement has many of the same requirements of a Petition for Approval Final Settlement and for an Order of Distribution found in the supervised environment. The code provides that the settlement does not require filing vouchers. As a practical matter, the Statement of Account is not thoroughly audited. However, the court checks the distribution schedule and the amount taken for attorney fees and personal representative fees. Fees over the statutory fee schedule must be allowed by petition presented to the court or by consent of the residuary beneficiaries (§ 473.823(3)).

Notice. Notice of final settlement must be published in the manner provide by §472.100 with the statements required by §473.587. The notice is published in a legal publication once a week for four consecutive weeks with the last publication at least seven days prior to the intended filing date. This is the same as supervised administration with the exception that a separate notice by ordinary mail is not required. The current practice of probate divisions is to allow all interested parties to waive the requirement of publication. See attached form. §473.840(3) has special notice requirements. A copy of the Statement of Account, copies of all inventories and a notice shall be mailed to each interested party. The notice states the date that the settlement will be filed with the court and that if no objection is filed within twenty days of filing of the settlement the personal representative will make distribution in accordance the proposed distribution. Proof of mailing to the interested parties must be signed by the personal representative and filed with the court. See the attached form.
Objections to Settlement. Objections to the Statement of Account may be filed with the court by any interested person within twenty days after the filing date specified for filing of the Statement of Accounts in the notice to interested parties. If no objections are filed, the personal representative may make distribution. If no proceedings are filed against the personal representative within six months after the Statement of Account is filed, the personal representative is discharged (§473.840.6). The court makes no order of distribution or discharge.

Final Matters

Certain matters are common to both supervised and independent administration.

Real Estate. 474.500 has a little known statutory provision that requires wills to be recorded in each county in which land is located and devised. This makes sense since title to real property passes according to the terms of the will. In supervised administration, §473.617(5) requires recording the order of distribution in each county in which real property is devised. The will and order be recorded together. This recording completes the chain of title. There is, however, a gap in independent administration as there is no order of court that can be recorded. The practice has been to prepare a personal representative's deed showing distribution of the real property to the devisee under the will. This has its drawbacks since the personal representative does not own the property, the distributees or heirs do. The personal representative cannot convey property except to sell it. If the personal representative's deed is used, make certain that the deed is a quit claim deed or your client will breach the warranty of title. Another problem is in the City of St. Louis where the grantee must join in the deed. St. Louis County also wants assessment information on every deed. To avoid these problems, much less the fictitious nature of the deed, I would suggest recording an affidavit reciting the facts of probate and a legal description of the property. See the attached affidavit. The affidavit avoids the problem of the fictitious conveyance. If property has been sold by the personal representative, there is no need to record an affidavit or final order and recording of the will would be useless. In an heirs sale, the recording is required and desired to show the chain of title.

Final Tax Return. A final fiduciary income tax return, form 1041, must be filed. The final receipt form has a place for the social security number of each distributee. This is there for a good reason. This number is necessary for a distributee’s final K-1 or the IRS will fine your client for failing to supply this number. Try to time closing the estate to coordinate the income earned in the estate with the estate deductions. Income can be offset with expenses such as attorney's fees but only if they fall in the same fiscal/calendar year. The personal representative has the power to select a fiscal year for the estate's tax return. This timing is important. Also remember that a partial distribution to a residual distributee will carry income out of the estate. Also, if representing Personal Representative, file tax forms 4810 (prompt assessments of tax) and 5495 to discharge Personal Representative after nine months.

Minor Beneficiaries. Distribution to a minor cannot be made directly. If the minor has a conservator, distribution can be made to the conservator (§473.657(2)). If there is no conservator and the estate is less than $10,000, the court may select one of the alternatives provided in §475.330, but the court almost exclusively uses the method provided in §475.330.1(1) which allows
for the deposit of the funds in a restricted bank account, payable to a conservator, if appointed, or to the minor upon attaining age 18. If the amount is over this, then a custodial arrangement may be possible under chapter 404. See § 404.041 for possible custodial alternatives. If all else fails, it would appear that the personal representative may designate a financial institution as custodian, which would not require approval of the probate division (§404.031). This same section authorizes the personal representative to appoint an individual custodian without approval of court if the amount is under $10,000. Because the court has not formally approved of any of the procedures under §404.031 and §404.041, consult with the legal staff for guidance on a case-by-case basis.

Deceased Beneficiary. As with a minor, distribution can be made to the personal representative of the estate of a beneficiary who has died after the decedent §473.617(3). All of the methods to avoid full probate of the deceased beneficiary's estate are also available such as a refusal of letters or a small estate. The order of distribution relating to real estate should not refer to death but state the name of the deceased beneficiary. Probate of the beneficiary's estate will take care of the title. Distribution to the personal representative of the deceased beneficiary's estate must be made of tangible and intangible personal property, and the personal representative must receipt for the distribution.

Missing Distributee. Normally a missing beneficiary's interest will escheat under the escheat statutes of Missouri. A separate petition to escheat the missing beneficiary's share must be filed, either before or after filing the Petition for Final Distribution, detailing what efforts have been made to find or identify the missing beneficiary.

Powers of Attorney & Missouri Family Trust (pooled trust). Distribution may be made to the distributee or to a person holding a valid power of attorney executed by the distributee under the law of the place of execution §473.657(1), or to a distributee’s personal representative, guardian, or conservator. If distribution is to be made to someone who qualifies for Medicaid, this distribution will probably disqualify him or her. This may be avoided by distribution to the Missouri family trust under chapter 402. §473.657(2), if it is in the best interests of the distributee under §475.093. Court authority must be obtained for any distributions under these statutes.
PERSONAL REPRESENTATIVE FEES AND ATTORNEY FEES

Personal representative fees and attorney fees may be claimed and paid during the administration of a decedent’s estate in one of three ways:

1. Statutory fee;
2. By petition; or
3. By consent.

This applies to both supervised estates and independently administered estates.

A. The Statutory Fee Calculation.

The statutory minimum fee calculation is the same for personal representatives and attorneys, and is governed by §473.153 RSMo. If you are claiming the statutory fee for either the personal representative or the attorney, it is very important to calculate the fee correctly. Otherwise, change all of the final figures on your final settlement or your statement of account and all of the figures you used in your petition for final distribution or schedule of proposed distribution.

The statutory fee is computed on the value of all personal property administered during the estate and the proceeds of all real property sold under order of the probate court (§473.153 RSMo). This would also include the sale proceeds of real property sold under a power in the decedent’s will, since the real property is reduced to cash and is then administered as personal property by the personal representative. The value of real estate is not included in this calculation unless the real estate has been sold during administration of the estate. If real property is distributed during the administration of the estate or on the petition for final distribution, the value of such real property is not to be included in calculating the statutory fee.

If real property is sold during the administration of the estate, only the net sale proceeds which actually come into the estate may be used in calculating the statutory fee. You may not use the gross sales price because only the net sales proceeds actually come into the possession of the personal representative and are administered and ultimately distributed. Such items as mortgages, liens, real estate commissions, and other closing costs and adjustments do not qualify as disbursements or property administered to calculate the statutory fee. (See Estate of Newhart, 622 S.W.2d 398(Mo. App. W.D. 1981)).

There are two separate and distinct ways of arriving at your basis for calculating the statutory minimum fee. One method is based upon actual cash disbursements and distributions made on your settlement or statement of account, plus the current value of all assets on hand for final distribution. The second method is based upon the inventoried value of assets, adjusted for gains or losses on the sale or distribution of any inventoried items, plus any receipts of income or principal during the administration of the estate. Applying either of these methods should give you a correct basis for the calculation of the statutory fee. If you use both methods, you should come out with the exact same calculation. Employing both methods can provide you with a safety check of your basis for the calculation of the statutory fee. See the attached schedule setting forth these two methods or formulas for calculating the statutory fee.
Once you have determined your basis for the calculation of the statutory fee, apply the mathematical percentages set forth in §473.153 RSMo, namely:

<table>
<thead>
<tr>
<th>Percentage</th>
<th>First Amount</th>
<th>Next Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>5%</td>
<td>$5,000.00</td>
<td>$250.00</td>
</tr>
<tr>
<td>4%</td>
<td>$20,000.00</td>
<td>$800.00</td>
</tr>
<tr>
<td>3%</td>
<td>$75,000.00</td>
<td>$2,250.00</td>
</tr>
<tr>
<td>2.75%</td>
<td>$300,000.00</td>
<td>$8,250.00</td>
</tr>
<tr>
<td>2.50%</td>
<td>$600,000.00</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>2%</td>
<td>$1,000,000.00</td>
<td>$20,000.00</td>
</tr>
</tbody>
</table>

Please check your math carefully at this point, as any errors will cause changes to your final balance and your final distribution figures.

Remember that if the estate has not been liquidated during administration and you have assets on hand for distributions which fluctuate in value, such as stocks, bonds, notes, or other securities, the statutory fee calculation is based upon the current value of these type of assets. The statutory fee calculation would be higher in situations where fluctuating assets have gone up in value during administration, and lower than a date of death calculation if they have gone down in value. Do not use date of death values for valuation of assets for distribution unless these values have not changed since the date of death of the decedent, such as closely-held stock, jewelry, household goods, etc.

Also, remember that if partial distributions of stock or securities were made during the administration of the estate, you must ascertain the date of distribution value of such assets to be applied and calculated in the statutory fee.

If you are claiming the statutory fee in your final settlement or on your statement of account, it is very helpful to the court staff, and to the beneficiaries, to attach a schedule showing how the computation of the statutory fee was made. It also helps the auditors determine where any errors were made.

B. Fees by petition.

If the statutory fee does not provide adequate compensation for all the services rendered on behalf of the estate, the attorney or personal representative may petition the court for the fee which they deem reasonable. The petition should contain sufficient information to allow the court to determine whether the fee requested is reasonable. The petition should set forth the services rendered to the estate in summary form, and should contain a detailed schedule of hours, either in the body of the petition or as an attached exhibit.

The detailed time records should identify who did the work (partner, associate, paralegal, secretary, etc.) date performed, time spent, and normal hourly charge for that person’s services.

Remember that the petition for fees must be for the entire fee requested, and not just
for a particular amount over and above the statutory fee. As an example, if the statutory fee is $3,000.00 but your time and services indicate a fee of $4,500.00 would be more reasonable, your petition for fees must justify and substantiate your request for the entire $4,500.00, and not just request and justify $1,500.00 in addition to the statutory fee.

All fee petitions must be signed and consented to by both the personal representative of the estate and the attorney, and presented to a member of the legal staff, the commissioners, or the judge. If the personal representative refuses to consent to the petition for attorney fees, the petition must be set for hearing, with notice given to the personal representative.

In reviewing petitions for attorney fees, the court must judge these petitions on more than just the number of hours spent and the hourly rate of the attorney requesting the fee. The other factors the court must consider in awarding a reasonable fee are the size of the estate, the services rendered the estate, the difficulties of the services rendered, the beneficial results obtained by the rendering of the services and the overall "reasonableness" of the total fee as it relates to the size of the estate and to the beneficiaries. *Estate of Newhart*, 622 S.W.2d 398 (Mo. App. W.D.1981); *Estate of Black*, 693 S.W.2d 899 (Mo. App. E.D. 1985).

The court usually looks negatively at time charged for such items as continuances, time spent researching routine probate administrative proceedings, reviewing notices, letters, and orders from the court, and appearances on our show cause docket. The hourly charge allowed by the Court depends on the experience and normal hourly charge of the attorney or paralegal, their expertise in probate practice, their efficiency and the complexities of the services rendered, and other factors.

Section 473.823(3) RSMo. also specifically states that the personal representative and the attorney for the estate must obtain a court order for any fees over the statutory fee calculation in independently administered estates.

C. Consents to fees:

Because the statutory minimum fee calculation often provides no reasonable fee for the attorneys (and occasionally for the personal representative), and because preparing a petition for fees can be very burdensome and time consuming, plus the sometimes dubious outcome of such an effort, one should always consider the possibility of having a desired fee consented to by the residuary legatees or beneficiaries. Since any amount of fee over the statutory fee will ultimately be borne by these beneficiaries reducing their final share of the estate, the probate courts have allowed such residuary legatees and beneficiaries to consent to an agreed upon fee.

Consents to fees are usually executed by the residuary legatees of a testate estate or by the heirs-at-law of an intestate estate. There are situations, however, where other entities may be the ultimate interested parties, such as creditors in an insolvent estate or trust beneficiaries where distribution goes to a testamentary or intervivos trust. The consent must be executed by any party whose ultimate interest or share of the estate is affected by the allowance of the fee.

For the consents to be acceptable to the court, the consent should be for a specific amount and that amount should be set forth on the consent document itself. You should not
draft a consent that merely refers to "the amount shown in the final settlement or statement of account". If the exact amount is set forth in the consent, it will eliminate any fears that the court might have about the legatees not really giving an "informed" consent. It also protects. The attorney for the estate should a legatee or beneficiary later claim that they only consented to a lesser amount than that claimed and paid.

The consents to a personal representative or attorney fee can only be made by competent adults (18 or older) and can only be made by the real parties of interest. A parent cannot consent on behalf of a minor beneficiary and a trustee cannot consent on behalf of the trust beneficiaries.

D. When personal representative is an attorney.

Section 473.153-3 and 473.155,2 RS Mo provide that if the personal representative of an estate is an attorney, only one statutory minimum fee can be claimed on the estate unless the last will and testament of the decedent provides otherwise, or by court order or by consent of all the legatees or heirs-at-law. These sections apply even where the personal representative is not a probate attorney, is a retired attorney, or is not a practicing attorney. These sections also apply in independently administered estates.

E. Fees to co-personal representatives.

Section 473.153.2 RS Mo provides for the compensation allowable where there are two or more joint or successor personal representatives. This section has often been misread and misinterpreted. The St. Louis County Probate Court has historically interpreted the language in this section to indicate there is a maximum limitation on co-personal representatives’ fees, that maximum not to exceed twice the statutory minimum or five percent of the value of the personal property administered, whichever is less. (at just over $1,300,000.00, twice the statutory becomes less than five percent) However, because §473.153 provides for a statutory minimum fee, the court has long decided that it will not automatically allow the maximum amount provided in subsection 2 of §473.153.

The court policy when there are co-personal representatives is to allow a single statutory minimum fee, to be allocated among the co-personal representatives as they agree, or by petition to the court based upon the actual services rendered by each of the co-personal representatives. The co-personal representatives may petition for an amount over the single statutory minimum fee, or take the fee by consents of all the interested parties. A testator can also make provision for a fee over the single statutory minimum fee in the decedent's last will and testament.

F. Accountant's Fees.

The personal representative and the attorney for the estate are authorized under Sections 473.153.4 and 473.155.3 RS Mo to employ accountants or tax specialists to assist them in filing estate tax returns, federal and state income tax returns, and other special financial reports in unique circumstances. In the past, any such allowed fees were deducted from the statutory fee of the personal representative.
CHECK LISTS FOR SPECIFIC PETITIONS/FILINGS

1. Sell Personal Property.
   a) Not needed in Independent.
   b) Must be sold by PR/Fiduciary (not a Third Party).
   c) Description in Petition must match inventory.
   d) Cars must include VIN.
   e) Could the property be taken as an exemption?
   f) Does not preclude sale if proceeds of sale are segregated.
   g) Must be sold at 90% of Inventory value.
   h) Is the property specifically bequeathed?

2. Entry/withdrawal of Appearance (in an open case).
   a) Best if both are on same piece of paper or filed simultaneously.
   b) If withdrawal is not accompanied by an entry then:
      i) Client must have been given two weeks notice prior to filing.
      ii) Or client has dismissed attorney.
      iii) After proper notice period then file and court will place fiduciary on show cause docket for failure to retain counsel.
   c) If you file entry without a withdrawal, explain to the court if:
      i) It is for someone besides fiduciary.
      ii) It is co-counsel.
      iii) A withdrawal will be forthcoming.

3. Petition to expend funds (Guardianship/Conservatorship)
   a) Not for Taxes, court costs or Bond Premiums; can pay without order.
   b) List totals not individual payments to payees receiving multiple payments.
   c) Do not attach a copy of settlement and expect the staff attorney to dig out what needs approval.
   d) Do not combine with fees.
   e) Explain how expenditure favors ward/protectee-Don't expect that it is obvious from the payee.

4. Request for Continuance.
   a) Provide reason why it is needed.
   b) Provide date to be continued.
   c) Be certain date is not weekend/holiday.

5. Request for Special Notice. (§ 473.030 RSMo)
   a) Include status of person requesting pursuant § 472.010 RSMo.
   b) Name and address of person to receive notice (can be attorney).
   c) Signature of requestor and attorney.
   d) Affidavit (i.e.-notarized) of mailing to attorney for fiduciary.
SETTLEMENTS IN DECEDENT'S ESTATES

Settlements serve two functions. First they enable the Court to protect beneficiaries of an estate by providing a full disclosure of the administration of the estate with a remedy if it appears there has been some negligent or intentional malfeasance. The intensity with which a Court reviews a Settlement will vary from jurisdiction to jurisdiction; Settlements also provide information to beneficiaries which allow them to see how the particular distributions were arrived at and an opportunity to object to the accounting, as they see fit.

The Personal Representative (in a supervised estate) will be required to file a Settlement annually on the anniversary date of the granting of Letters, until such time as administration is completed, and at such other times as directed by the Court. The Personal Representative (in both supervised and independent estates) shall also file a Final Settlement (Statement of Account in independently administered estates) upon completion of administration. A Settlement shall also be filed within ten days after the revocation of a Personal Representative's Letters or upon his application to resign. (§473.540 RSMo)

Generally, a Settlement is a detailed accounting of all receipts and disbursements of the estate from the date of the granting of Letters to the due date of the Settlement. (§473.543 RSMo) The Settlement is audited by the Court, and all deficiencies must be corrected by the Personal Representative with his failure to do so possibly resulting in his being removed as the Personal Representative and being surcharged for any unapproved loss to the estate assets.

The Court must send a notice to the Personal Representative forty days prior to the due date; however, it is good practice for the attorney to keep a tickler item on his calendar forty to sixty days before the anniversary date so he can notify his client well in advance, to gather all the documentation. Failure to receive the notice from the Court is no excuse for failing to make a timely filing. (§473.557 RSMo)

While the Court may for good cause shown, extend the time for filing the Settlement (§473.540 RSMo), every effort should be made to file the Settlement on the due date. This is particularly important due to the Court's increased reluctance to grant multiple continuances.

A timely filing of the Settlement is not difficult if the Personal Representative has kept thorough and organized records. The ease of completing the Settlement can further be facilitated by the attorney using appropriate software. While the Court provides a Settlement form, and some attorneys are inclined to use word processing software, it is recommended that any attorney that must deal with Settlements regularly would do well to, at least, use spreadsheet software, setting up a format the attorney feels comfortable with. Particularly with long and involved Settlements, being relieved of mathematical computations will save the Settlement preparer a good deal of time, frustration and stress.

Settlements are basically divided into four sections: Opening Balance (from Inventory or last Settlement), Receipts and Disbursements, Recapitulation and Closing Balance.
Opening Balance

You can see from the sample provided with this section, the Opening Balance of a Settlement is relatively straightforward. If the Settlement is the first Annual Settlement, the opening balance will merely reflect the Inventory, or the latest Amended Inventory, filed in the estate, less the detail. Take note that although you list by description real property in the estate, you do not include its value in the opening balance.

If the Settlement is not the first Settlement to be filed, then the Opening Balance would be the Closing Balance of the last Settlement filed.

Even if you "cut and paste" from the Inventory, make sure that the total is the same. Also, if after auditing of the preceding Settlement, there were changes in that Settlement's Closing Balance, remember to reflect those changes in your present Opening Balance.

The most common problems found by auditors:

1. No Opening Balance included in Settlement;
2. Changes in preceding Settlement's Closing Balance not picked up in Opening Balance of Current Settlement;
3. Real property incorrectly listed or not listed.

Receipts and Disbursements

The Receipts and Disbursements section of the Settlement is the "meat" of the Settlement. From this section the auditors will determine whether all expenditures have been approved and all income accounted for. The auditors are guided by § 473.543 RSMo.

The particular style with which the presentation is made within the Settlement will depend upon the particular inclinations of the attorney preparing the Settlement. However, remember that the auditors appreciate a logical, thorough, easy-to-read format. One such approach is as follows.

Asset Activity:

Since the activity of each asset declared in the Opening Balance (other than real property, unless it is sold) must be tracked through the year, one approach in the Receipts and Disbursements presentation is to take the assets in the order they appear in the Opening Balance and place them in that order in the Receipts and Disbursements section of the Settlement, setting out what activity has occurred regarding each such asset during the year. On the sample provided, the first item in the Opening Balance is "Real Property". Under Receipts and Disbursements this is the first item considered. There was a sale of this asset during the year. Each activity, as is true throughout this section of the Settlement, must be dated and have a brief description of what the activity entailed. The next asset in the Opening Balance is "Checking Account" and it appears next under Receipts and Disbursements.

What if no activity occurred such as with the "Series H Bonds" on our sample? It may seem unnecessary; however, noting "no activity" has three purposes. First, it forces you to consider each asset not just those for which you receive dividends, interest income, etc. Second, it lets the auditors
know that you did not forget about the asset. Third, it forces you to consider your argument to the Court concerning why the estate is retaining an asset that brings in no income and perhaps had little appreciation in value.

**Separating Receipts/Disbursements:**

Consider the entries for the checking account. Note that the disbursements and receipts are segregated into separate sections. Regarding the disbursements, you will note that each has a voucher number, which is usually the check number. In the description section, the majority of time merely naming the payee is sufficient since vouchers will be filed with the Settlement should a question arise concerning the service, product, etc., being provided by the payee. However, if the name of the payee is vague enough to completely question what it was for, put a brief notation regarding same. (See V855 in our sample)

Note also that many disbursements have a notation "per Court Order of 4/24/02). While this notation is not required, it is good practice. By doing this you can anticipate where you might have to petition the Court to ratify expenditures. Additionally, this mirrors the approach the auditors take, and they will appreciate your directing them to your authority for making expenditures. This, in turn will facilitate a quicker audit of your Settlement.

The receipts are further segregated. In this Settlement the checking account interest earned has its own section and is not mixed in with checks written (disbursements). This presentation allows the preparer of the Settlement and the auditor to easily assure that each month is accounted for.

**Sales:**

Sale of personal property, just as in sale of real property, must be set out in the body of the Settlement. Regarding sale of real property, obtain a copy of the sales settlement statement for the auditors. They will want that document to see how the proceeds from the sale were arrived at. (See sale of VERIZON stock in sample)

Purchases or Reinvestments: Purchase of personal property must be reflected on the Settlement. Normally use the purchase price as the receipt price and be sure and include the item as an inventoried asset in the closing balance on hand. Purchased items for which there is a security note is valued differently. Dividend reinvestment is handled as a purchase. Show this on the Settlement by date of sale, number of shares purchased and price per share. (See VALUE STOCK in sample)

**Discovered Property:**

Often property is discovered during the administration of the estate. You must bring the value of the property into the Settlement listing it similar to a purchase. You will probably also be required to file an Amended Inventory. (See YUMI stock in sample) As a general rule, any asset purchased or discovered with a value of over $100.00, needs to be brought in as an inventoried asset.

**Abandonment:**

Don't forget, if you have a Court Order to abandon (charge off) property as having no value, handle that abandoned asset accordingly on the Settlement treating it like a sale with no proceeds
brought in and total cash out.

**Valuation:**

Finally, a suggestion for those estates where there will be a requirement to update the value of assets (usually for bonding). Rather than wait for auditing to request the current value of stocks and related items, another approach is to handle revaluation within the Settlement adjusting your carrying value. (See PEPSICO stock in sample)

Again, the attorney preparing the Settlement may have a different approach for presentation, but he must keep in mind it is the Court auditors who we want to most easily satisfy.

**The most common problems found by auditors:**
1. No fee schedule attached to Settlement;
2. Settlement pages not numbered;
3. Failure to note distinction between documentation required for Supervised Estate Final Settlement and Independent Administration Statements of Accounts; and
4. Settlements need no CPA rendering.

**Recapitulation**

The third section of the Settlement is the Recapitulation merely the calculation of the Opening Balance, adding in the total Receipts, less the total Disbursements, resulting in the Closing Balance on hand at the end of the Settlement accounting period.

**Closing Balance**

The Closing Balance is a statement of all assets in the estate at the close of the Settlement. Obviously, the resulting figure in the Recapitulation must equal the resulting, value of all the assets set out in the Closing Balance. In listing the assets in the Closing Balance, provide sufficient detail so each asset is easily identifiable.

**The most common problem found by auditors: insufficient or incorrect detail.**

**Accompanying Documents**

Several types of documents must accompany each Settlement (with exception in independent administration).

First are the "vouchers". Each disbursement in the Settlement must be backed up by a voucher. (See $75 exception below.) Usually, the voucher comprises a copy of the original bill. Make sure that it is clear from the bill that the disbursement was made on behalf of the Decedent or his or her estate. Occasionally, when a bill merely provides a stub for your keeping, the stub may indicate the name of the deceased or estate. In such case, copy the entire bill before payment. If the Personal Representative has lost a bill or was not provided one (such as the case in hiring someone to mow a lawn) he may have to request a duplicate bill or some statement from the service provider regarding the payment. On rare occasions, an affidavit of the Personal Representative may suffice.
Each voucher should also be accompanied by the canceled check (or photo copy of same). It should be a "canceled" check. Occasionally, vouchers will be filed with a copy of the check made when it was written. This will usually result in a note from the auditors concerning this deficiency and require the Personal Representative to go the bank or go through bank statements to retrieve the actual canceled check. What if the bank does not return the canceled checks or photocopies? Have the Personal Representative make photo copies of the check after they are written, and when filed with the Settlement, accompany them with the bank statement.

The final document which you may need, from time to time, to file with the Settlement is a "note to the auditor" explaining any items in the Settlement that will assist the auditor in understanding the presentation. You will note on the sample Settlement there is included within the Settlement a note concerning the YUMI stock. This works, obviously, only if the explanation can be short.

What Auditors Are Looking For

To increase the possibility that your Settlement will breeze through the auditing department without a problem, it is good to have a grasp of some of the items they are looking for.

First, they will review the file to make sure that all prior Settlements have been approved and that the Opening Balance is correct.

Next, they will make sure that the date and source of the receipts are properly detailed and all disbursements are proper or within appropriation.

They will make sure that the sale of any property is authorized; and that, any fees taken were allowed by petition or with statutory guidelines.

They will make sure that the Settlement is mathematically correct; and that, all the investments on hand are approved.

They may require you to file a petition with the Court to approve any activities not previously approved.

Finally, when all is said and done, they will review the bond on hand to see if it is adequate, considering the Closing Balance on hand in the Settlement.

On Final Settlements, there are numerous additional items that auditors will look for, over and above the basics, set out above.