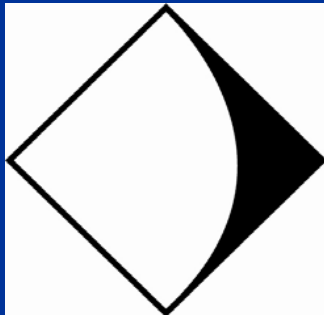


Probate Basics: Small Estates

CLE Potpourri for the General Practitioner

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Recent Changes to the Small Estate procedure

- 1996: More than 1 year from date of death.
- Brundage, 85 SW3d 43 (W.D. 2002)
- 2004: More than \$40,000.00

Small Estate Affidavit §473.097

- The Basics
- Getting Fancy
- Disadvantages

Chapter 472

PROBATE CODE — GENERAL PROVISIONS

Sec. 472.075. Clerk and certain personnel of probate division to be appointed by judge (St. Louis City).

472.075. Clerk and certain personnel of probate division to be appointed by judge (St. Louis City). — The clerk and other nonjudicial personnel of the probate

division of circuit courts of any city not within a county shall be appointed by the judge of the probate division with the consent of the court en banc, unless otherwise provided by local court rule.

§. 2996 S.B. 1211

Chapter 473

PROBATE CODE — ADMINISTRATION OF DECEDENTS' ESTATES

DISPENSING WITH ADMINISTRATION

Sec. 473.095. Small estate — distribution of assets without letters, when — affidavit — procedure — fee.

ESTATES OF ABSENT PERSONS

473.097. Letters of administration for persons absent for five or more years — application — notice — hearing.

PUBLIC ADMINISTRATORS

473.100. Public administrators — qualifications — duties — oath — bond — public administrators deemed public office, duties — substituted public administrators deemed county officials.

DISPENSING WITH ADMINISTRATION

473.097. Small estate — distribution of assets without letters, when — affidavit — procedure — fee. — 1. Distributors of an estate which consists of personal property or real property or both personal and real property have a defensible right to the personal property, and are entitled to the real property of such estate, as provided in this section, without awaiting the granting of

letters testamentary or of administration, if all of the following conditions are met:

- (1) The value of the entire estate, less liens, debt, and encumbrances, does not exceed forty thousand dollars.
- (2) Thirty days have elapsed since the death of the decedent and no application for letters or for administration or for refusal of letters under section 473.090 is pending or has been granted, or if such refusal has been granted and subsequently revoked.
- (3) A bond, in an amount not less than the value of the personal property, approved by the judge or clerk of the probate division is filed by the person making the required affidavit conditioned upon the payment of the debts of the decedent, including any debts to the state of Missouri, the expenses of funeral and burial and compliance with future orders of the court in relation to the estate of the decedent, and further conditioned that any part of the property to which the distributee is not entitled will be delivered to the persons entitled to the property

under the law. Liability of the sureties on the bonds provided for in this section terminates unless proceedings against them are instituted within two years after the bond is filed, except that the court may dispense with the filing of a bond if it finds that the same is not necessary.

(4) A fee, in the amount prescribed in subsection 1 of section 483.580, RSMo, and when required, the publication cost of the notice to creditors are paid or the proof of payment for such publication is provided to the clerk of the probate division.

2. Notwithstanding the limitation periods set out in section 473.050, the affidavit required by this section may be made by the person designated as personal representative under the will of the decedent, if a will has been presented for probate within the limitation periods specified in section 473.050, otherwise by any distributee entitled to receive property of the decedent any time after thirty days after decedent's death, and shall set forth all of the following:

- (1) That the decedent left no will or, if the decedent left a will, that the will was presented for probate within the limitation periods specified in section 473.050;
- (2) That all unpaid debts, claims or demands against the decedent or the decedent's estate and all estate taxes due, if any, on the property transfers involved have been or will be paid, except that any liability by the affiant for the payment of unpaid claims or demands shall be limited to the value of the property received;
- (3) An itemized description and valuation of property of the decedent. As used in this subdivision, the phrase "property of the decedent" shall not include property which was held by the decedent as a tenant by the entirety or a joint tenant at the time of the decedent's death;
- (4) The names and addresses of persons having possession of the property;
- (5) The names, addresses and relationship to the decedent of the persons entitled to and who will receive, the specific items of property remaining after payment of claims

and debts of the decedent, included in the affidavit;

(6) The facts establishing the right to such specific items of property as prescribed by this section.

The certificate of the clerk shall be annexed to or endorsed on the affidavit and shall show the names and addresses of the persons entitled to the described property under the facts stated in the affidavit and shall recite that the will of decedent has been probated or that no will has been presented to the court and that all estate taxes on the property, if any are due, have been paid.

3. A copy of the affidavit and certificate shall be filed in the office of the clerk of the probate division and copies of the affidavit and certificate shall be furnished by the clerk.

4. The distributees mentioned in this section may establish their right to succeed to the real estate of the decedent by filing a copy of the foregoing affidavit and certificate of the clerk in the office of the recorder of deeds of each county where the real property is situated.

5. When the value of the property listed in the affidavit is more than fifteen thousand dollars, the clerk shall cause to be published in a newspaper of general circulation within the county which qualifies under chapter 493, RSMo, a notice to creditors of the decedent to file their claims in the court or be forever barred. The notice shall be published once a week for two consecutive weeks. Proof of publication of notice pursuant to this section shall be filed not later than ten days after completion of the publication. The notice shall be in substantially the following form:

"To all persons interested in the estate of _____, Decedent:
On the _____ day of _____, 20__, a small estate affidavit was filed by the distributees for the decedent under section 473.097, RSMo, with the probate division of the circuit court of _____ County, Missouri.
All creditors of the decedent, who died on _____, 20__, are notified this section 473.444 sets a limitation period that would bar claims one year after the death of the decedent. A creditor may request that this estate be opened for administration.

Receipt of this notice should not be construed by the recipient to indicate that the recipient may possibly have a beneficial interest in the estate. The names and assets of any persons interested, if any, may possibly be determined from the affidavit in this estate filed with the probate division of the circuit court of _____ County, Missouri.

Date of first publication is _____, 20__.

Clerk of the Probate Division of the Circuit Court of _____ County, Missouri.

6. Upon compliance with the procedure required by this section, the personal property and real estate involved shall not thereafter be taken in execution for any debts or claims against the decedent, but such compliance lies the same effect in establishing the right of distributees to succeed to the property as if complete administration was had, but nothing in this section affects the right of secured creditors with respect to such property.

7. The affiant shall collect the property of decedent described in the affidavit. The property of decedent shall be liquidated by the affiant to the extent necessary to pay debts of decedent. If the decedent's property is not sufficient to pay such debts, abatement of the shares of the distributees shall occur in accordance with section 473.020. The affiant shall distribute the remaining property to such persons identified in the affidavit as required in subdivision (5) of subsection 2 of this section who are entitled to receive the specific items of personal property, as described in the affidavit, or to have any evidence of such property transferred to such persons. To the extent necessary to facilitate distribution, the affiant may liquidate all or part of decedent's property.

Ch. 1995 p. 383 § 54, A.L. 1997 p. 823, A.L. 1997 p. 640, A.L. 1997 S.B. 16, A.L. 1997 S.B. 112, A.L. 1998 H.B. 104, A.L. 1998 S.B. 67, A.L. 1997 S.B. 113, A.L. 1998 S.B. 34, A.L. 1998 S.B. 767, A.L. 1997 S.B. 86, A.L. 1994 S.B. 767, A.L. 1998 S.B. 494, A.L. 2001 S.B. 1597.

CLAIMS

473.444.

03043 Department of Social Services is a "testing authority" exempt from one-year limit for filing administrative claims against a decedent's estate. In re Callis, 131 S.W.3d 859, 876, 2004 WL 1511.

Small Estate Procedure: The Basics

- At Least 30 Days
- For Estates <\$40,000
- Complete Affidavit
 - List Assets
 - List Heirs
 - Swear to Pay Claims
- Publication >\$15,000
- Consents
- Bond if Necessary

165 PROBATE CODE — ADMINISTRATION OF DECEDENTS' ESTATES § 473.097

Chapter 472

PROBATE CODE — GENERAL PROVISIONS

472.007. Clerk and certain personnel of probate divisions to be appointed by judge (St. Louis City). — The clerk and other nonjudicial personnel of the probate division of circuit courts of any city not within a county shall be appointed by the judge of the probate division with the consent of the court en banc, unless otherwise provided by local court rule.

Chapter 473

PROBATE CODE — ADMINISTRATION OF DECEDENTS' ESTATES

DISPENSING WITH ADMINISTRATION

473.007. Small estate — distribution of assets without letters, when allowed — procedure — fee.

ESTATES OF ABSENT PERSONS

PUBLIC ADMINISTRATORS

DISPENSING WITH ADMINISTRATION

473.007. Small estate — distribution of assets without letters, when — affidavit — procedure — fee. — 3. Distribution of an estate which consists of personal property or real property or both personal and real property have a defeasible right to the personal property, and are entitled to the real property of such estate, as provided in this section, without awaiting the granting of

under the law. Liability of the sureties on the bonds provided for in this section terminates unless proceedings against them are instituted within two years after the bond is filed; except that, the court may dispense with the filing of a bond if it finds that the same is not necessary.

(4) A fee, in the amount prescribed in subsection 1 of section 483.580, RSMo, and when required, the publication cost of the notice to creditors are paid or the proof of payment for such publication is provided to the clerk of the probate division.

2. Notwithstanding the limitation periods set out in section 473.050, the affidavit required by this section may be made by the person designated as personal representative under the will of the decedent, if a will has been presented for probate within the limitation periods specified in section 473.050, otherwise by any distributee entitled to receive property of the decedent any time after thirty days after decedent's death, and shall set forth all of the following:

(1) That the decedent left no will or, if the decedent left a will, that the will was presented for probate within the limitation periods specified in section 473.050;

(2) That all unpaid debts, claims or demands against the decedent or the decedent's estate and all estate taxes due, if any, or the property transfers involved have been or will be paid, except that any liability by the affiant for the payment of unpaid claims or demands shall be limited to the value of the property received;

(3) An itemized description and valuation of property of the decedent. As used in this subdivision, the phrase "property of the decedent" shall not include property which was held by the decedent as a tenant by the entirety or a joint tenant or the trustee of a decedent's trust;

(4) The names and addresses of persons having possession of the property;

(5) The names, addresses and relationship to the decedent of the persons entitled to and who will receive the specific items of property remaining after payment of claims

167 PROBATE CODE — ADMINISTRATION OF DECEDENTS' ESTATES

and debts of the decedent, included in the affidavit;

(6) The facts establishing the right to each specific item of property as prescribed by this section.

The certificate of the clerk shall be annexed to or endorsed on the affidavit and shall show the names and addresses of the persons entitled to the described property under the facts stated in the affidavit and shall recite that the will of decedent has been probated or that no will has been presented to the court and that all estate taxes on the property, if any are due, have been paid.

3. A copy of the affidavit and certificate shall be filed in the office of the clerk of the probate division and copies of the affidavit and certificate shall be furnished by the clerk.

4. The distributees mentioned in this section may establish their right to succeed to the real estate of the decedent by filing a copy of the foregoing affidavit and certificate of the clerk in the office of the recorder of deeds of each county where the real property is situated.

5. When the value of the property listed in the affidavit is more than fifteen thousand dollars, the clerk shall cause to be published in a newspaper of general circulation within the county which qualifies under chapter 493, RSMo, a notice to creditors of the decedent to file their claims in that court or be forever barred. The notice shall be published once a week for two consecutive weeks. Proof of publication of notice pursuant to this section shall be filed not later than ten days after completion of the publication. The notice shall be in substantially the following form:

"To all persons interested in the estate of _____ Decedent: _____, a small estate affidavit was filed by the distributees for the decedent under section 473.007, RSMo, with the probate division of the circuit court of _____ County, Missouri. All creditors of the decedent, who did on _____, 20____, are notified that section 473.044 sets a limitation period that would be closed _____ years after the death of the decedent. A creditor may request that this estate be opened for administration.

6. Upon compliance with the procedure required by this section, the personal property and real estate involved shall not thereafter be taken in execution for any debts or claims against the decedent, but such compliance has the same effect as establishing the right of distributees to succeed to the property as if complete administration was had, but nothing in this section affects the right of secured creditors with respect to such property.

7. The affiant shall collect the property of decedent described in the affidavit. The property of decedent shall be liquidated by the affiant to the extent necessary to pay debts of decedent. If the decedent's property is not sufficient to pay such debts, abatement of the shares of the distributees shall occur in accordance with section 473.020. The affiant shall distribute the remaining property to each person identified in the affidavit as required by subdivision (5) of subsection 2 of this section who are entitled to receive the specific items of personal property, as described in the affidavit, or to have any evidence of such property transferred to such persons. To the extent necessary to facilitate distribution, the affiant may liquidate all or part of decedent's property.

473.444.

CLAIMS

Bonds

- Do you need bond?

- The Bar Plan



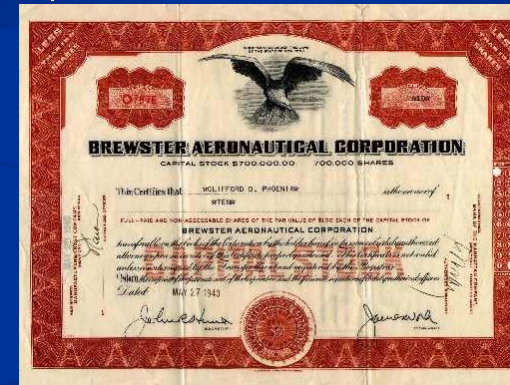
- Consider “Bondability” of Client

- Social Security Number
- Employment Information
- Credit History



Advantages to the Small Estate

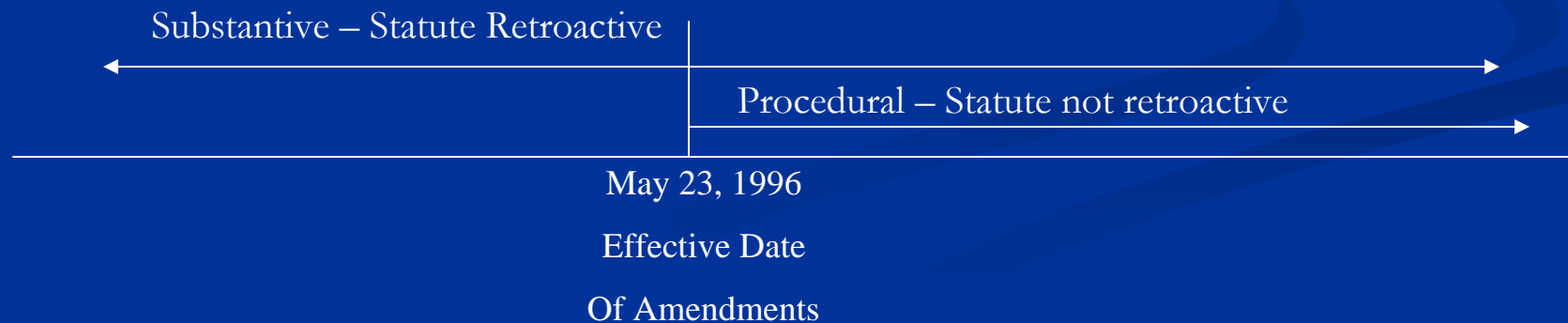
- Treated as mostly ministerial
- Use it to transfer property
 - Real Property – Recorder of Deeds
 - Bank Accounts
 - Stocks – Transfer Agents
- Open a bank account?
- Very fast
- Extended Statute of Limitations



One Year from Date of Death

- Prior to May 23, 1996 only allowed up to one year from date of death.
- Procedural or Substantive?
- Impact: Retroactivity

Timeline



Small Estate Procedure

Getting Fancy

- Probating a Will
- Wiggle Room for \$40,000.00
- Claims and Creditors

Testate Small Estate

- Does not extend S.O.L for will (1 year only)
- Petition to probate will
- Could be pour over will
- Waiver of Bond in Will?



The \$40,000.00 Question

- To determine if estate is “small estate”:
 - Value of entire estate
 - Subtract Liens, Debt, and Encumbrances
 - ~~More~~ More than \$40,000

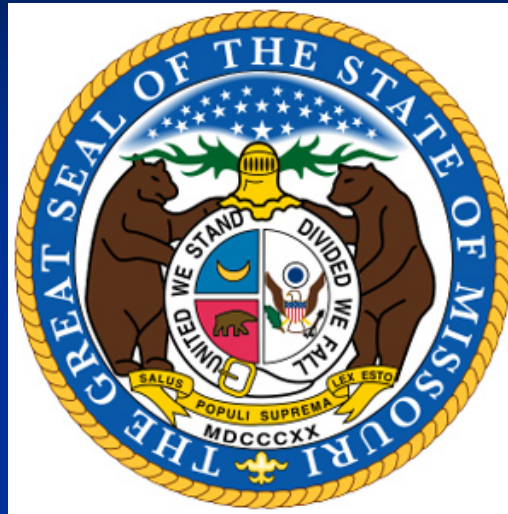


Offsetting Debts, Liens, Encumbrances

- May Have to agree to validity
- The sky is the limit
- If estate is close to \$40,000 limit:
 - Funeral Debts
 - Credit Cards
 - Attorney's Fees for administration



Defeating Creditors



- Brundage 85 SW 3d 43 (W.D. 2002)
- Mostly for Medicaid (State of Mo.) estates
- Medicaid actively looking for a case to appeal this.

Questions Raised by Brundage

- What if Affiant does not distribute to heirs/beneficiaries?
- Determination of heirship for unlisted heir?
- Spousal Abandonment?
- Bank Refuses to turn over assets?

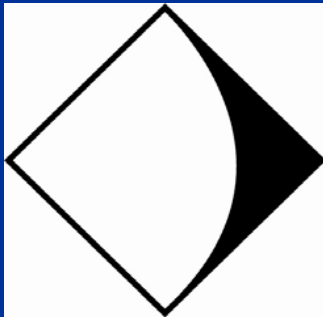


Problems With Small Estates

- No Personal Representative
- No Administration
 - Can't Sell Real Estate
 - Can't give one heir car and the other cash
 - No mechanisms for feuding heirs
 - Maybe no banking
 - Problems with creditors
- Bad for creditors



Conclusion



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