

Probate Process Overview

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Probate Process Overview

General Information

- Probate estate required only if the decedent owned any property in their sole name that did not have a beneficiary listed or designated.
 - Generally, jointly owned property goes to the surviving joint owner
 - Caveat: If decedent and the other owner were tenants in common, then decedent's interest in property must be probated
- Review the statutes – Chapter 473, with reference to some provisions of Chapter 472 and 474
- Check your county's local rules and/or procedures
 - Jackson County's Probate Procedures Manual
 - Boone County's Probate forms repository

Client Intake – Information to Gather

- Decedent
 - Name, Date of Birth, Date of Death, SSN
 - Residence at death
- Venue
 - County where decedent was domiciled (§473.010)
 - If no domicile in the state, where property is located
- Whether there is a Will
- Personal Representative (PR)
 - Person named in Will OR statutory priority (§473.110.2-4)
 - Name, DOB, SSN, address, phone number
- Heirs:
 - Surviving Spouse / Children / Others / Charities
 - Names, DOB, SSN/EIN, address, phone number
- Assets and Creditors

Client Intake – Documents to Gather

- Decedent's death certificate
- Original Will (and Codicils, if any)
- Copy of trust, if trust is distributee under Will
- Personal Representative's driver license for estate bank account
- Assets
 - Bank Statements
 - Stock Certificates
 - Uncashed checks
 - Deeds to real estate
 - Appraisals for real/personal property
 - Life insurance policies
- Creditors
 - Statements of balances
- Tax Returns of decedent

Forms of Administration

GENERAL / DEADLINES AND TIMING

Forms of Administration

- Full Probate Administration
 - Supervised – §473.010 et seq
 - Independent – §473.780 et seq
- Refusal of Letters – §473.090
- Small Estate – §473.097
- Determination of Heirship – §473.663

Deadlines and Timing

- Full Probate Administration
 - If Will, it must be presented for probate within 1 year of decedent's date of death – §473.050.3(2), RSMo
 - If no Will, must apply for letters of administration within 1 year of decedent's date of death – §473.050.6, RSMo.
 - Time: 7+ months (average 12 months)
- Refusal of Letters – §473.090, RSMo.
 - Can be filed no earlier than 30 days after the decedent's date of death
 - May be filed beyond the 1-year limitations period in §473.050
 - Time: 60-90 days

Deadlines and Timing (continued)

- Small estate affidavit – §473.097, RSMo.
 - Can be filed no earlier than 30 days after the decedent's date of death
 - May be filed beyond the 1-year limitations period in §473.050
 - Time: 60-90 days
- Determination of Heirship – §473.663 RSMo
 - Can only be filed after 1-year limitations period in §473.050 has passed
 - Time: 90+ days

Forms of Administration

PROBATE FORMS OTHER THAN FULL ADMINISTRATION

When Full Probate Administration Is Not Needed

Refusal of Letters – §473.090 RSMo

- Spouse, minor children, or creditor may apply
 - *Spouse/minor children*: May apply if estate does not exceed exempt property under §474.250 and statutory allowances under §474.260
 - *Creditor*: May apply if estate does not exceed \$15,000 and there is no surviving spouse or unmarried minor children AND if claim is not otherwise barred by 473.444, meaning it is within 1 year from the date of the decedent's death
- Applicant may collect assets of estate as if appointed as PR
- Real estate may be transferred by recording certified copy of order of refusal of letters
- If creditor receives property, after paying itself, it must turn over the balance of the property to persons entitled to it

When Full Probate Administration Is Not Needed (continued)

Small Estate Affidavit §473.097 RSMo

- Estate value below \$15K or \$40K (assets *less* liens/encumbrances)
 - If \$15k or below, no publication required
 - If between \$15K and \$40K, publication required
- Affiant may collect assets of estate as if appointed as PR, has authority to liquidate, if needed
- Real estate may be transferred by recording certified copy of Affidavit and Certificate of Clerk
- Affiant must promise to pay any known creditors
- Can be used to avoid large creditors if decedent had significant non-probate assets

When Full Probate Administration Is Not Needed (continued)

Determination of Heirship §473.663 RSMo.

- May be filed only if 1-year limitations period has passed
- May require published notice, if not all heirs are actively involved or identifiable

Forms of Administration

FULL PROBATE ADMINISTRATION

Opening the Probate Estate

With Will:

- Application to admit will to probate
- Application for letters testamentary
- File original Will to clerk
 - If not self-proving, obtain witness “commissions” or affidavits
- If don't have original Will, can probate a copy, but harder

Without Will:

- Application for letters of administration

Opening the Probate Estate (continued)

All Estates:

- Death Certificate
- Notify Mo HealthNet / DHSS
- Designation of Resident Agent, if PR lives outside of MO
- Some counties require paid funeral receipt to be filed

Administering the Estate

- Get PR bond (unless waived) – §473.157 to §473.217
- Verify assets
- File Inventory within 30 days of letters – §473.233
 - Must be verified (§473.237)
 - Amend as necessary (§473.240)
 - For value...
 - Appraisal, if necessary
 - County assessor's records for real estate
 - Kelly Blue Book / NADA for vehicles
 - Statements for bank accounts, CDs, etc.

Administering the Estate (continued)

- Collect assets – §473.260 to §473.340
 - If Supervised : File motions...
 - For sale/lease/mortgage of real property (§473.493)
 - For sale/lease/mortgage of personal property (§473.487)
 - For disposal of valueless property (§473.293)
 - To continue business of decedent (§473.300)
 - If Independent: Sell/transfer assets as needed
- May sell property under power of sale in Will without obtaining specific court approval – §473.457

Administering the Estate (continued)

- Process for Sale of Real Property
 - Hearing required, unless waived by interested parties/Court
 - Report required (§473.513)
 - Filed within 10 days of the sale, i.e., signing of contract for sale
 - File Contract for Sale with Report
 - Report must be verified
 - Signed Order Confirming Sale required before closing
- Process for Sale of Personal Property
 - No hearing required unless Court orders
 - No report required unless Court orders

Administering the Estate (continued)

- Get EIN, open estate bank account
- Annual Settlements – Due every year on anniversary date of letters – §473.540.1(1) RSMo.

Claims and Tax Responsibilities

- Determine and pay creditor claims
 - Claims bar dates:
 - 6 months after date of first publication (§473.360.1)
 - 2 months if notice of estate sent to/served on creditor (§473.360.1)
 - 1 year after decedent's date of death, even if no probate administration (§473.444)
 - Bar dates apply to all claims except “costs and expenses of administration, exempt property, family allowance, homestead allowance, claims of the United States and claims of any taxing authority within the United States”
 - Some courts schedule hearings automatically; others require a request for hearing
- Negotiate claims, if applicable/needed
- File fiduciary tax returns, if required

Closing the Estate – Supervised

- Final publication (§473.587) or obtain waivers from heirs
- Prepare petition for approval of final settlement (§473.583) and final settlement (§473.543)
 - Report of all money received and payments made by PR
 - For expenditures over \$75, voucher required (can be cancelled check or bank statement)
 - Signed by PR (petition for approval needs to be verified)
- Request PR or attorney's fees, or waivers – §473.153
- File proposed order of distribution with petition for approval of final settlement and final settlement

Closing the Estate – Supervised (continued)

- Amend inventory, if needed
- Prepare tax documents for accountant
- Once order of distribution signed, distribute asset to heirs (§473.617)
- Obtain receipts
- File receipts and zero-balance statement
- Request PR discharge (§473.660)

Closing the Estate – Independent

- Set internal deadline for statement of account
 - Notify interested parties 29+ days before (§473.840.3)
- File statement of account (§473.840) or final settlement (§473.837)
 - Required within 1 year after date of original appointment, unless time extended by court (§473.843)
 - PR fees: same as supervised, minimum fee under §473.153 (§473.823.1)
 - Attorney's fees: fees set by §473.153 are **maximum** unless otherwise authorized by the court (§473.823.3)
- Distribute assets
- PR discharge
 - Order of discharge (§473.837)
 - If no order, automatic discharge in 6 months if nothing filed against PR (§473.840)

Re-Opening the Estate

- If unadministered assets are found, apply to appoint PR
DBN – §473.147.2
- Letters DBN also issued if a new PR must be appointed
because of death, resignation, removal of initial PR –
§473.147.1

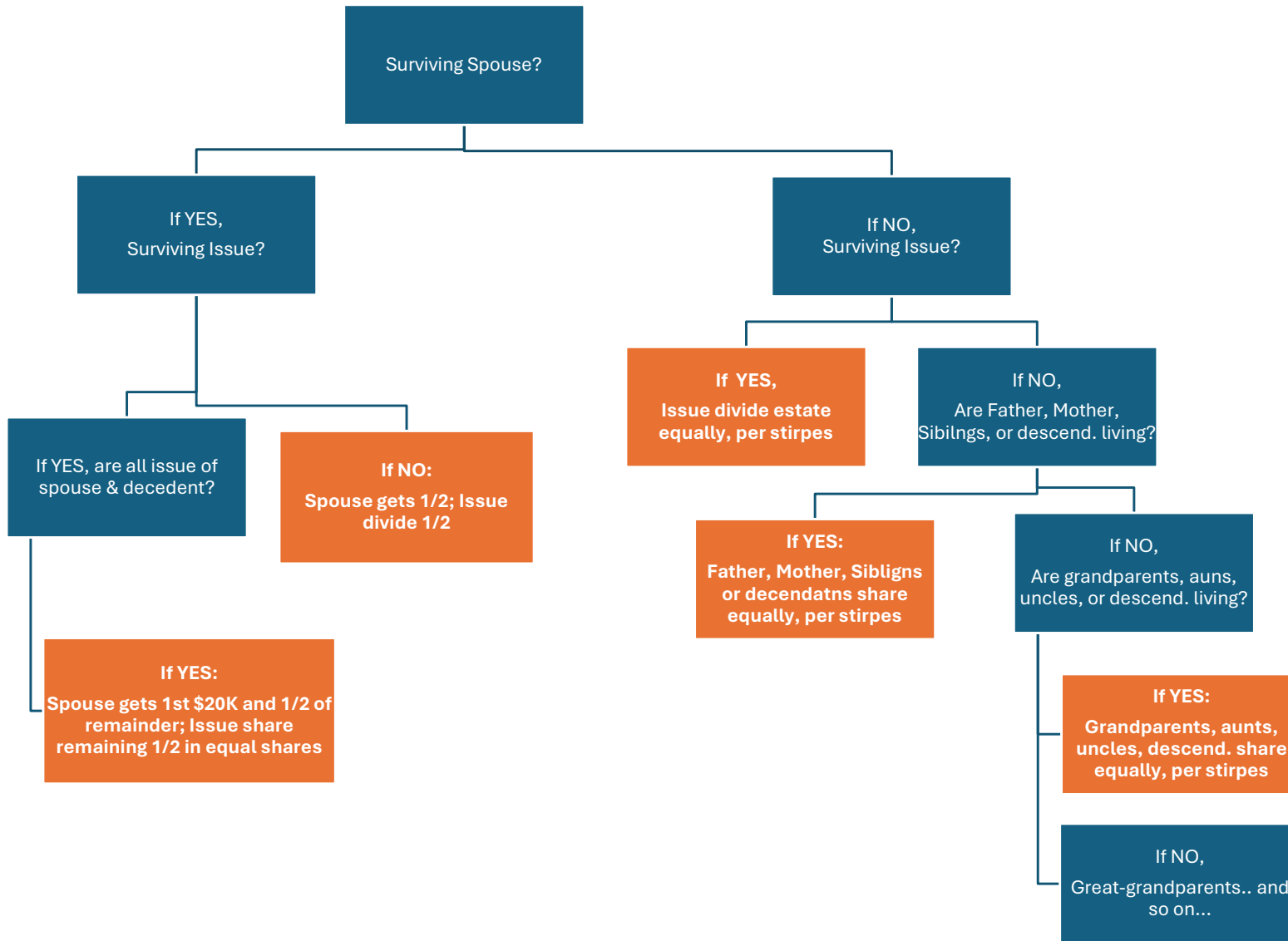
Laws of Intestacy

WHO INHERITS?

Heirs of a Decedent

- Persons named in Will
- Default provisions in statute – §474.010

General Rules of Descent



Heirs of a Decedent

- Persons named in Will
- Default provisions in statute – §474.010
 - Must be related to decedent by 9th degree of kinship to inherit
 - Count UP from decedent to nearest common ancestor, then DOWN to relative
 - Degree of Kinship is the sum of those two counts
 - E.g., brother = 2nd degree of kinship

Sample Forms

Sample Forms

- Estate Intake Form
- MO HealthNet Estate Notice
- Authorization of Personal Representative
- Inventory
- (a) Petition to Sell Real Property and (b) Order to Sell Real Property
- (a) Report of Sale of Real Property and (b) Order Confirming Sale of Real Property
- Tax Identification Forms: (a) IRS Form SS-4 and (b) Online EIN Authorization
- Final Settlement: (a) Final Settlement form and (b) Final Settlement sample
- Personal Representative and Attorney's Fee Calculation
- Statement of Account: (a) Notice of Filing of Statement of Account and (b) Statement of Account and Proposed Distribution
- Small Estate Affidavit

Questions?

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