

## **PROCEDURE FOR FILING PETITION TO APPROVE SETTLEMENT OF WRONGFUL DEATH CLAIM AND DISTRIBUTE PROCEEDS**

1. Petition To Approve Settlement of Wrongful Death Claim and Distribute Proceeds may be filed in Probate Court only if **an action is not pending in another court for damages for wrongful death or for a claim existing under the laws of this state relating to the survival of actions.** MCL 700.3924.
2. Petition must be filed by the Personal Representative.
3. Attach a schedule of proposed disbursement of proceeds after deducting attorney fees and costs, and medical, hospital, funeral and burial expenses if one is proposed.
4. If attorney fees are contingent, a copy of the written agreement must be filed with the Petition, along with a bill setting forth the fees and costs.
5. Court will normally set hearing. Notice of Hearing, PC 562
6. Unless Waiver/Consent, PC561 filed, notice of the hearing must be given to the following persons who survive decedent (MCL 700.3924, MCR 5.125 (13); MCL 600.2922); PCM562:
  - a. Decedent's spouse
  - b. Decedent's children
  - c. Decedent's descendants
  - d. Decedent's parents
  - e. Decedent's grandparents
  - f. Decedent's siblings
  - g. If none of the persons listed in a. through f. have survived decedent, then those persons to whom decedent's estate would pass under the laws of intestate succession determined as of date of decedent's death
  - h. Children of decedent's spouse
  - i. Devisees under decedent's will
  - j. Persons designated in decedent's will as possible recipients of damages paid pursuant to a wrongful death action.
  - k. Beneficiaries of a testamentary trust
  - l. Beneficiaries of an inter vivos trust where there is a devise to that trust in decedent's will
  - m. Creditors whose claims have been filed and remain unpaid.
  - n. Other persons suffering loss
  - o. The fiduciary or guardian ad litem for any of the above who are minors, disappeared persons or legally incapacitated individuals
7. Notice of Hearing, PC 562, shall contain the following information MCL 700.3924:
  - a. The name and address of the Personal Representative.
  - b. The name and address of the attorney for the Personal Representative
  - c. The following statement: "FURTHER TAKE NOTICE that if you claim to be entitled to damages as a result of the wrongful death of (decedent's name) or as a result of the injuries resulting in decedent's death you must present a claim for damages to (the name of the Personal Representative) on or before (the date set for hearing on the motion for distribution of the proceeds).

Failure to present a claim for damages within the time provided shall bar you from making a claim to any of the proceeds.

8. Serve notice in the manner provided by MCR 5.105.
9. File a Proof of Service, PC 564 or Waiver/Consent, PC 561 of notice in accordance with MCR 5.104.
10. If any interested person is a minor, disappeared person or legally incapacitated individual for whom a fiduciary is not appointed, a fiduciary or guardian ad litem must first be appointed for that interested individual (MCL 700.3924 (c))
  
11. If none of the persons entitled to the proceeds is a minor, disappeared person or legally incapacitated individual and all of the persons entitled to the proceeds execute a verified stipulation or agreement in writing in which the portion of the proceeds to be distributed to each of the persons is specified, the Order Granting Petition for Leave to Settle Claim and Distribute Proceeds, KCPC23 shall be entered in accordance with the stipulation or agreement (MCL 700.3924(e)).