

PROBATE CODE

CHAPTER X. PAYMENT OF ESTATES INTO STATE TREASURY

Sec. 427. WHEN ESTATES TO BE PAID INTO STATE TREASURY. If any person entitled to a portion of an estate, except a resident minor without a guardian, shall not demand his portion from the executor or administrator within six months after an order of court approving the report of commissioners of partition, or within six months after the settlement of the final account of an executor or administrator, as the case may be, the court by written order shall require the executor or administrator to pay so much of said portion as is in money to the comptroller; and such portion as is in other property he shall order the executor or administrator to sell on such terms as the court thinks best, and, when the proceeds of such sale are collected, the court shall order the same to be paid to the comptroller, in all such cases allowing the executor or administrator reasonable compensation for his services. A suit to recover proceeds of the sale is governed by Section 433 of this Code.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 27, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 15.01, eff. Sept. 1, 1997.

Sec. 428. INDISPENSABILITY OF COMPTROLLER AS PARTY. The comptroller is an indispensable party to any judicial or administrative proceeding concerning the disposition and handling of any portion of an estate that is or may be payable to the comptroller under Section 427 of this Code. Whenever an order shall be made by the court for an executor or administrator to pay any funds to the comptroller under Section 427 of this Code, the clerk of the court in which such order is made shall serve on the comptroller by personal service of citation a certified copy of such order within five days after the same has been made.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 27, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 15.02, eff. Sept. 1, 1997.

Sec. 429. PENALTY FOR NEGLECT TO NOTIFY COMPTROLLER. Any clerk who shall neglect to have served on the comptroller by personal citation a certified copy of any such order within the time prescribed by Section 428 of this Code shall be liable in a penalty of One Hundred Dollars, to be recovered in an action in the name of the state, after personal service of citation, on the information of any citizen, one-half of which penalty shall be paid to the informer and the other one-half to the state.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 27, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 15.03, eff. Sept. 1, 1997.

Sec. 430. RECEIPT OF COMPTROLLER. Whenever an executor or administrator pays the comptroller any funds of the estate he represents, under the preceding provisions of this Code, he shall take from the comptroller a receipt for such payment, with official seal attached, and shall file the same with the clerk of the court ordering such payment; and such receipt shall be recorded in the minutes of the court.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 15.04, eff. Sept. 1, 1997.

Sec. 431. PENALTY FOR FAILURE TO MAKE PAYMENTS TO COMPTROLLER. When an executor or administrator fails to pay to the comptroller any funds of an estate which he has been ordered by the court so to pay, within 30 days after such order has been made, such executor or administrator shall, after personal service of citation charging such failure and after proof thereof, be liable to pay out of his own estate to the comptroller damages thereon at the rate of five per cent per month for each month, or fraction thereof, that he fails to make such payment after 30 days from such order, which damages may be recovered in any court of competent jurisdiction.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 28, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 15.05, eff. Sept. 1, 1997.

Sec. 432. COMPTROLLER MAY ENFORCE PAYMENT AND COLLECT DAMAGES. The Comptroller shall have the right in the name of the state to apply to the court in which the order for payment was made to enforce the payment of funds which the executor or administrator has failed to pay to him pursuant to order of court, together with the payment of any damages that shall have accrued under the provisions of the preceding section of this code, and the court shall enforce such payment in like manner as other orders of payment

are required to be enforced. The comptroller shall also have the right to institute suit in the name of the state against such executor or administrator, and the sureties on his bond, for the recovery of the funds so ordered to be paid and such damages as have accrued. The county attorney or criminal district attorney of the county, the district attorney of the district, or the attorney general, at the election of the comptroller and with the approval of the attorney general, shall represent the comptroller in all such proceedings, and shall also represent the interests of the state in all other matters arising under any provisions of this Code.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 28, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 15.06, eff. Sept. 1, 1997.

Sec. 433. SUIT FOR THE RECOVERY OF FUNDS PAID TO THE COMPTROLLER. (a) Mode of Recovery. When funds of an estate have been paid to the comptroller, any heir, devisee, or legatee of the estate, or their assigns, or any of them, may recover the portion of such funds to which he, she, or they are entitled. The person claiming such funds shall institute suit on or before the fourth anniversary of the date of the order requiring payment to the comptroller, by petition filed in the district court of Travis County, against the comptroller, setting forth the plaintiff's right to such funds, and the amount claimed by him.

(b) Citation. Upon the filing of such petition, the clerk shall issue a citation for the comptroller, to be served by personal service, to appear and represent the interest of the state in such suit. As the comptroller elects and with the approval of the attorney general, the attorney general, the county attorney or criminal district attorney for the county, or the district attorney for the district shall represent the comptroller.

(c) Procedure. The proceedings in such suit shall be governed by the rules for other civil suits; and, should the plaintiff establish his right to the funds claimed, he shall have a judgment therefor, which shall specify the amount to which he is entitled; and a certified copy of such judgment shall be sufficient authority for the comptroller to pay the same.

(d) Costs. The costs of any such suit shall in all cases be adjudged against the plaintiff, and he may be required to secure the costs.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 29, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 15.07, eff. Sept. 1, 1997.

Sec. 434. REPEAL OF LAWS SUPPLANTED BY THIS CODE. The following statutes and laws of this State are supplanted by the provisions of this Code and are hereby repealed:

(a) Title 48 of the Revised Civil Statutes of Texas of 1925, as amended, and all Articles contained in said Title, as said Articles are amended; Article 932 of the Revised Civil Statutes of Texas of 1925; and Chapter 196, Acts of the 52nd Legislature (1951), page 322; and

(b) Title 129 of the Revised Civil Statutes of Texas of 1925, as amended, and all Articles contained in said Title, as said Articles are amended; and

(1) Sections 1 and 2 of Chapter 196, Acts of the 42nd Legislature (1931), page 329; and

(2) Section 1 of Chapter 297, Acts of the 49th Legislature (1945), page 469; and

(3) Sections 1 and 2 of Chapter 170, Acts of the 50th Legislature (1947), page 275; and

(4) Section 1 of Chapter 120, Acts of the 51st Legislature (1949), page 218; and

(c) Title 54 of the Revised Civil Statutes of Texas of 1925, as amended, and all Articles contained in said Title, as said Articles are amended; and

(1) Acts of the 39th Legislature (1925), Section 1 of Chapter 82, page 253; and

(2) Acts of the 40th Legislature (1927): Section 1 of Chapter 50, page 74; Sections 1, 2 and 3 of Chapter 81, page 123; Section 1 of Chapter 92, page 142; Section 1 of Chapter 152, page 223; and Section 1 of Chapter 244, page 362; and

(3) Acts of the 41st Legislature (1929): Sections 1 and 2 of Chapter 29, page 63; Section 1 of Chapter 63, page 130; Section 2 of Chapter 100, page 235; Section 1 of Chapter 132, page 288; and Section 1 of Chapter 48, First Called Session, page 107; and

(4) Acts of the 42nd Legislature (1931): Chapter 52, page

79; Section 1 of Chapter 59, page 93; Chapter 123, page 210; Section 1 of Chapter 234, page 389; Section 1 of Chapter 235, page 390; Section 1 of Chapter 236, page 391; and Section 1 of Chapter 35a, page 842; and

(5) Acts of the 43rd Legislature, Third Called Session (1934): Section 1 of Chapter 25, page 48; and

(6) Acts of the 44th Legislature (1935): Section 1 of Chapter 247, page 634; Section 1 of Chapter 248, page 635; Section 1 of Chapter 250, page 637; Section 1 of Chapter 251, page 638; Section 1 of Chapter 252, page 638; Section 1 of Chapter 253, page 639; Section 1 of Chapter 266, page 654; Section 1 of Chapter 272, page 658; Section 1 of Chapter 273, page 659; Sections 1 and 2 of Chapter 277, page 662; Section 1 of Chapter 278, page 664; Section 1 of Chapter 280, page 665; and Chapter 446, Second Called Session, page 1729; and

(7) Acts of the 45th Legislature (1937): Section 1 of Chapter 193, page 391; and Section 1 of Chapter 250, page 499; and

(8) Acts of the 46th Legislature (1939): H.B.No.656, page 318; H.B.No.158, page 319; H.B.No.31, page 320; and S.B.No.141, page 321; and

(9) Acts of the 47th Legislature (1941): Section 1 of Chapter 382, page 633; and Chapter 521, page 845; and

(10) Acts of the 48th Legislature (1943): Section 1 of Chapter 234, page 356; and

(11) Acts of the 49th Legislature (1945): Section 1 of Chapter 214, page 296; Section 1 of Chapter 296, page 468; Section 2 of Chapter 297, page 469; and Sections 1 and 2 of Chapter 316, page 525; and

(12) Acts of the 50th Legislature (1947): Section 1 of Chapter 401, page 942; and

(13) Acts of the 52nd Legislature (1951): Chapter 37, page 62; and

(d) Title 69 of the Revised Civil Statutes of Texas of 1925, as amended, and all Articles contained in said Title, as said Articles are amended; and

(1) Acts of the 39th Legislature (1925): Section 1 of Chapter 156, page 367; and Section 1 of Chapter 134, page 338; and

(2) Acts of the 40th Legislature (1927): Section 1 of Chapter 16, page 22; Section 2 of Chapter 31, page 43; Section 1 of Chapter 164, page 237; and Sections 1, 2 and 3 of Chapter 179, page 257; and

(3) Acts of the 41st Legislature (1929): Section 1 of Chapter 31, page 65; Chapter 126, page 281; Sections 1 and 2 of Chapter 127, page 282; Sections 1 and 2 of Chapter 128, page 283; Sections 1 and 2 of Chapter 129, page 284; Sections 1 and 2 of Chapter 130, page 285; Sections 1, 2, 3, 4, 5 and 6 of Chapter 131, page 286; Section 1 of Chapter 133, page 289; and Chapter 305, page 684; and

(4) Acts of the 42nd Legislature (1931): Section 1 of Chapter 237, page 392; and

(5) Acts of the 43rd Legislature (1933): Chapter 47, page 93; Chapter 239, page 838; and Section 1 of Chapter 26, Third Called Session (1934), page 49; and

(6) Acts of the 44th Legislature (1935): Section 1 of Chapter 13, page 5; Section 1 of Chapter 79, page 196; Section 1 of Chapter 84, page 206; Section 1 of Chapter 254, page 640; Section 1 of Chapter 279, page 664; and

(7) Acts of the 45th Legislature (1937): Chapter 289, page 579; Chapter 336, page 673; Sections 1 and 2 of Chapter 27, First Called Session, page 1803; and Section 1 of Chapter 54, Second Called Session, page 1964; and

(8) Acts of the 46th Legislature (1939): S.B.No.189, page 340; and

(9) Acts of the 47th Legislature (1941): Section 3 of Chapter 303, page 480; and Sections 1, 2, 3, 4, 5, 6 and 7 of Chapter 541, page 867; and

(10) Acts of the 48th Legislature (1943): Section 1 of Chapter 56, page 65; Chapter 281, page 414; and Section 1 of Chapter 378, page 684; and

(11) Acts of the 49th Legislature (1945): Sections 3, 4 and 5 of Chapter 316, page 525; and

(12) Acts of the 50th Legislature (1947): Section 1 of Chapter 39, page 51; and Section 1 of Chapter 256, page 453; and

(13) Acts of the 51st Legislature (1949): Section 1 of Chapter 499, page 923; Section 1 of Chapter 556, page 1093; Chapter 456, page 842; and Section 3 of Chapter 259, page 447; and

(14) Acts of the 52nd Legislature (1951): Section 1 of Chapter 34, page 56.

(15) Acts of the 53rd Legislature (1953): Section 1 of Chapter 70, page 104.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.

Sec. 435. EMERGENCY CLAUSE. The need for revision of the probate statutes of this state creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and said Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.