

PROPERTY CODE
TITLE 6. UNCLAIMED PROPERTY
CHAPTER 71. ESCHEAT OF PROPERTY
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 71.001. ESCHEAT. (a) If an individual dies intestate and without heirs, the real and personal property of that individual is subject to escheat.

(b) "Escheat" means the vesting of title to property in the state in an escheat proceeding under Subchapter B.

Acts 1983, 68th Leg., p. 3585, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 230, Sec. 2, eff. Sept. 1, 1985.

Sec. 71.002. PRESUMPTION OF DEATH. An individual is presumed dead for the purpose of determining if the individual's real or personal property is subject to escheat if the individual:

(1) is absent from the individual's place of residence for seven years or longer; and

(2) is not known to exist.

Acts 1983, 68th Leg., p. 3585, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 230, Sec. 3, eff. Sept. 1, 1985.

Sec. 71.003. PRESUMPTION OF INTESTACY. An individual is presumed to have died intestate if, on or before the seventh anniversary of the date of the individual's death, the individual's will has not been recorded or probated in the county where the individual's property is located.

Acts 1983, 68th Leg., p. 3585, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.004. PRESUMPTION OF DEATH WITHOUT HEIRS. An individual is presumed to have died leaving no heirs if for the seven-year period preceding the court's determination:

(1) a lawful claim to the individual's property has not been asserted; and

(2) a lawful act of ownership of the individual's property has not been exercised.

Acts 1983, 68th Leg., p. 3585, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.005. ACT OF OWNERSHIP. For the purposes of this chapter, an individual exercises a lawful act of ownership in property by, personally or through an agent, paying taxes to this state on the property.

Acts 1983, 68th Leg., p. 3585, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.006. REVIEW OF PROBATE DECREE. (a) If the state claims that an estate that has been administered in probate court in this state is subject to escheat, the state may have the judgment of the probate court reviewed by filing a petition in district court alleging that the administration of the estate was obtained by fraud or mistake of fact.

(b) The case shall be tried in accordance with the law for the revision and correction of a decree of the probate court.

Acts 1983, 68th Leg., p. 3585, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.007. IDENTIFICATION OF REAL PROPERTY SUBJECT TO ESCHEAT. The tax assessor-collector of each county shall:

(1) take all steps necessary to identify real property that may be subject to escheat; and

(2) notify the commissioner of the General Land Office and the attorney general so that they may take appropriate action.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 13.002(d), eff. Sept. 1, 2003.

SUBCHAPTER B. ESCHEAT PROCEEDINGS

Sec. 71.101. PETITION FOR ESCHEAT. (a) If any person, including the attorney general, the comptroller, or a district attorney, criminal district attorney, county attorney, county clerk, district clerk, or attorney ad litem is informed or has reason to believe that real or personal property is subject to escheat under this chapter, the person may file a sworn petition requesting the escheat of the property and requesting a writ of possession for the property.

(b) The petition must contain:

(1) a description of the property;

(2) the name of the deceased owner of the property;

(3) the name of the tenants or persons claiming the estate, if known; and

(4) the facts supporting the escheat of the estate.

(c) If the petition is filed by a person other than the attorney general, the person shall send to the attorney general written notice of the filing and a copy of the petition to permit

the attorney general to elect to participate on behalf of the state.

(d) An action brought under this section is governed by the procedure relating to class actions provided by the Texas Rules of Civil Procedure.

(e) A petition filed under this section is not subject to an objection relating to misjoinder of parties or causes of action. Acts 1983, 68th Leg., p. 3586, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 230, Sec. 4, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 153, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.01, eff. Sept. 1, 1997.

Sec. 71.102. CITATION. (a) If a petition is filed under this subchapter, the district clerk shall issue citation as in other civil suits to:

(1) each defendant alleged by the petition to possess or claim the property that is the subject of the petition;

(2) any person required by this chapter to be cited; and

(3) persons interested in the estate, including lienholders of record.

(b) The citation required by Subdivision (3) of Subsection (a) must be published as required for other civil suits and must:

(1) briefly state the contents of the petition; and

(2) request all persons interested in the estate to appear and answer at the next term of the court.

Acts 1983, 68th Leg., p. 3587, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 923, Sec. 21, eff. Aug. 26, 1985.

Sec. 71.103. PARTY TO PROCEEDING. (a) A person who exercises a lawful act of ownership in property that is the subject of an escheat proceeding must be made a party to the proceeding by:

(1) personal service of citation if the person is a resident of this state and the person's address can be obtained by reasonable diligence; or

(2) service of citation on a person's agent if the person is a nonresident or a resident who cannot be found and the agent can be found by the use of reasonable diligence.

(b) For the purposes of this section, reasonable diligence includes an inquiry and investigation of the records of the office of the tax assessor-collector of the county in which the property sought to be escheated is located.

(c) The comptroller is an indispensable party to any judicial or administrative proceeding concerning the disposition and handling of property that is the subject of an escheat proceeding and must be made a party to the proceeding by personal service of citation.

Acts 1983, 68th Leg., p. 3587, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 2, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 5, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.02, eff. Sept. 1, 1997.

Sec. 71.104. APPEARANCE OF CLAIMANTS. Any person, whether named in the escheat petition or not, who claims an interest in property that is the subject of an escheat proceeding may appear, enter a pleading, and oppose the facts stated in the petition.

Acts 1983, 68th Leg., p. 3588, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.105. TRIAL. (a) If a person appears and denies the state's right to the property or opposes a material fact of the petition, the court shall try the issue as any other issue of fact.

(b) The court may order a survey as in other cases in which the title or the boundary of the land is in question.

Acts 1983, 68th Leg., p. 3588, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.106. DEFAULT JUDGMENT. If citation is issued in accordance with Section 71.102 and no person answers within the period provided by the Texas Rules of Civil Procedure, the court shall render a default judgment in favor of the state.

Acts 1983, 68th Leg., p. 3588, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.107. JUDGMENT FOR STATE. (a) If the court renders a judgment for the state finding that an intestate died without heirs, the property escheats to the state and title to the property is considered to pass to the state on the date of death of the owner as established by the escheat proceeding. The court may award court costs to the state.

(b) If the judgment involves real property, the state may sell the property under the general laws governing the sale of Permanent School Fund lands, and, after the second anniversary of

the date of the final judgment, the court shall issue a writ of possession for the property.

(c) If the judgment involves personal property, the court shall issue a writ of possession that contains an adequate description of the property as in other cases for recovery of personal property.

(d) When the record of an escheat proceeding reflects that a lienholder or his predecessor received actual or constructive notice of the escheat proceeding, the entry of the judgment in the escheat proceeding will either satisfy or extinguish any lien which the lienholder or his predecessor claimed or could have claimed on the escheated property at the escheat proceeding.

(e) The sheriff, constable, court clerk, or other officer appointed by the judge in an escheat proceeding shall execute a writ of possession by filing the writ with the deed or map records of the county when the escheated property relates to realty and by serving the writ on any holder, tenant, or occupant of any escheated property. Additionally, the person who executes a writ of possession shall either:

(1) post the writ for at least three consecutive weeks on the door or posting board of the county courthouse in the county where the proceeding was conducted or in the county where the property is located; or

(2) in the case of real property, post the writ for at least two consecutive weeks at a reasonably conspicuous place on the realty; or

(3) publicize the writ in any other fashion ordered by the court.

(f) After validly executing a writ of possession, the sheriff, constable, court clerk, or other appointed officer shall note the method of the execution of the writ on the writ return and shall return the writ to the clerk to be filed in the court records of the escheat proceeding.

Acts 1983, 68th Leg., p. 3588, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 230, Sec. 5, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 923, Sec. 22, eff. Aug. 26, 1985.

Sec. 71.108. COSTS PAID BY STATE. If the property does not escheat, the state shall pay court costs. The clerk of the court shall certify the amount of the costs, and when the certificate is filed in the office of the comptroller of public accounts, the comptroller shall issue a warrant for the amount of the costs.

Acts 1983, 68th Leg., p. 3588, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.109. APPEAL; WRIT OF ERROR. A party who appeared at an escheat proceeding may appeal the judgment rendered or may file an application for a writ of error on the judgment. The attorney general or the other person acting on behalf of the state in the escheat proceeding may make an appeal or file the writ.

Acts 1983, 68th Leg., p. 3589, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER C. DISPOSITION OF ESCHEATED PROPERTY

Sec. 71.201. SEIZURE AND SALE OF PERSONAL PROPERTY. (a) If personal property escheated to the state, the court shall issue to the sheriff a writ that commands the sheriff to seize the escheated property.

(b) The sheriff shall:

(1) dispose of the personal property at public auction in accordance with the law regarding the sale of personal property under execution; and

(2) deposit into the State Treasury the proceeds of the sale, less court costs.

Acts 1983, 68th Leg., p. 3589, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.202. DISPOSITION OF REAL PROPERTY. (a) Real property that escheats to the state under this title before January 1, 1985, becomes a part of the permanent school fund. Real property that escheats to the state on or after January 1, 1985, is held in trust by the Commissioner of the General Land Office for the use and benefit of the foundation school fund. The revenue from all leases, sales, and use of land held for the foundation school fund shall be deposited to the credit of the foundation school fund.

(b) Before the 91st day after the day on which a judgment that provides for the recovery of real property is rendered, the clerk of the district court rendering the judgment shall send to the Commissioner of the General Land Office:

(1) a certified copy of the judgment; and

(2) notice of any appeal of that judgment.

(c) The commissioner shall list real property as escheated

foundation school fund land or permanent school land as appropriate when the commissioner receives:

(1) a certified copy of a judgment under which the property escheats to the state and from which appeal is not taken; or

(2) a certified copy of notice of the affirmance on appeal of a judgment under which the property escheats to the state. Acts 1983, 68th Leg., p. 3589, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 28, art. II, part B, Sec. 13, eff. Sept. 1, 1984.

Sec. 71.203. ACCOUNT OF ESCHEATED PROPERTY. The comptroller shall keep an account of the money paid to and real property vested in this state under this chapter.

Acts 1983, 68th Leg., p. 3590, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER D. RECOVERY OF ESCHEATED PROPERTY

Sec. 71.301. SUIT FOR ESCHEATED PERSONAL PROPERTY. (a) If personal property of a deceased owner escheats to the state under this chapter and is delivered to the state, a person who claims the property as an heir, devisee, or legatee of the deceased may file suit against the state in a district court of Travis County, Texas. The suit must be filed on or before the fourth anniversary of the date of the final judgment of the escheat proceeding.

(b) The petition must state the nature of the claim and request that the money be paid to the claimant.

(c) A copy of the petition shall be served on the comptroller, who shall represent the interests of the state. 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.

Acts 1983, 68th Leg., p. 3590, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 3, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 6, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.03, eff. Sept. 1, 1997.

Sec. 71.302. RECOVERY OF PERSONAL PROPERTY. (a) If in a suit filed under Section 71.301 the court finds that a claimant is entitled to recover personal property, the court shall order the comptroller to issue a warrant for payment of the claim without interest or costs.

(b) A copy of the order under seal of the court is sufficient voucher for issuing the warrant.

Acts 1983, 68th Leg., p. 3590, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.303. SUIT FOR ESCHEATED REAL PROPERTY. (a) If real property escheats to the state under this chapter, a person who was not personally served with citation in the escheat proceedings may file suit in the district court of Travis County for all or a part of the property. The suit must be filed not later than the second anniversary of the date of the final judgment in the escheat proceedings.

(b) A copy of the petition must be served on the attorney general, who shall represent the interests of the state.

(c) To the extent the claimant is adjudged to be the owner of all or a part of the property, the state is divested of the property.

Acts 1983, 68th Leg., p. 3590, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 4, eff. Sept. 1, 1991.

Sec. 71.304. STATE AS PARTY IN SUIT FOR ASSETS. (a) A suit brought for the collection of personal property delivered to the comptroller under this chapter must be brought in the name of this state.

(b) A suit brought for the possession of real property held in trust by the Commissioner of the General Land Office under this chapter must be brought in the name of this state.

Acts 1983, 68th Leg., p. 3591, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 4, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.04, eff. Sept. 1, 1997.