

TX Special Collections - Selected Laws

FAMILY CODE

Sections 157.311. DEFINITIONS.

(1) "Account" means:

(A) any type of a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, [~~money market~~] mutual fund account, certificate of deposit, or any other instrument of deposit in which an individual has a beneficial ownership either in its entirety or on a shared or multiple party basis, including any accrued interest and dividends; and

(B) an [a life] insurance policy, including a life insurance policy or annuity contract, in which an individual has a beneficial ownership or [~~liability insurance~~] against which an individual may file [has filed] a claim or counterclaim.

...

(4) "Financial institution" has the meaning assigned by 42 U.S.C. Section 669a(d)(1) and includes a depository institution, depository institution holding company as defined by 12 U.S.C. Section 1813(w), credit union, benefit association, [~~liability or life~~] insurance company, [~~money market~~] mutual fund, and any similar entity authorized to do business in this state.

Section 157.317. PROPERTY TO WHICH LIEN ATTACHES.

(a) A child support lien attaches to all real and personal property not exempt under the Texas Constitution or other law, including:

- (1) an account in a financial institution;
- (2) a retirement plan, including an individual retirement account; ~~and~~
- (3) the proceeds of an [a life] insurance policy, including the proceeds from a life insurance policy or annuity contract and the proceeds from the sale or assignment of life insurance or annuity benefits, a claim for compensation [negligence or personal injury], or a [an insurance] settlement or award for the claim for compensation, due to or owned by the obligor; and
- (4) property seized and subject to forfeiture under Chapter 59, Code of Criminal Procedure.

Sec. 157.3271. LEVY ON FINANCIAL INSTITUTION ACCOUNT OF DECEASED OBLIGOR.

(a) Subject to Subsection (b), the Title IV-D agency may, not earlier than the 90th day after the date of death of an obligor in a Title IV-D case, deliver a notice of levy to a financial institution in which the obligor was the sole owner of an account, regardless of whether the Title IV-D agency has issued a child support lien notice regarding the account.

(b) The Title IV-D agency may not deliver a notice of levy under this section if probate proceedings relating to the obligor's estate have commenced.

(c) The notice of levy must:

- (1) identify the amount of child support arrearages determined by the Title IV-D agency to be owing and unpaid by the obligor on the date of the obligor's death; and
- (2) direct the financial institution to pay to the Title IV-D agency, not earlier than the 45th day or later than the 60th day after the date of delivery of the notice, an amount from the assets of the obligor or from funds due to the obligor that are held or controlled by the institution, not to exceed the amount of the child support arrearages identified in the notice.

(d) Not later than the 35th day after the date of delivery of the notice, the financial institution must notify any other person asserting a claim against the account that:

(1) the account has been levied on for child support arrearages in the amount shown on the notice of levy; and

(2) the person may contest the levy by filing suit and requesting a court hearing in the same manner that a person may challenge a child support lien under Section 157.323.

(e) A person who contests a levy under this section, as authorized by Subsection (d)(2), may bring the suit in:

- (1) the district court of the county in which the property is located or in which the obligor

resided; or

(2) the court of continuing jurisdiction.

(f) The notice of levy may be delivered to a financial institution as provided by Section 59.008, Finance Code, if the institution is subject to that law or may be delivered to the registered agent, the institution's main business office in this state, or another address provided by the institution under Section 231.307.

(g) A financial institution may deduct its fees and costs, including any costs for complying with this section, from the deceased obligor's assets before paying the appropriate amount to the Title IV-D agency.

Sec. 231.015. INSURANCE REPORTING PROGRAM.

(a) In consultation with the Texas Department of Insurance and representatives of the insurance industry in this state, including insurance trade associations, the Title IV-D agency by rule shall operate a program under which insurers shall cooperate with the Title IV-D agency in identifying obligors who owe child support arrearages and are subject to liens for child support arrearages to intercept certain insurance settlements or awards for claims in satisfaction of the arrearage amounts.

(b) An insurer that provides information or responds to a notice of child support lien or levy under Subchapter G, Chapter 157, or acts in good faith to comply with procedures established by the Title IV-D agency under this section is not liable for those acts under any law to any person.

(c) An insurer may not be required to report or identify the following types of claims:

(1) a first-party property damage claim under:

(A) a personal automobile insurance policy for actual repair, replacement, or loss of use of an insured vehicle; or

(B) a residential or tenant property insurance policy for actual repair, replacement, or loss of use of an insured dwelling and contents, including additional living expenses actually incurred; or

(2) a third-party property damage claim:

(A) that will be paid to a vendor or repair facility for the actual repair, replacement, or loss of use of:

(i) a dwelling, condominium, or other improvements on real property;

(ii) a vehicle, including a motor vehicle, motorcycle, or recreational vehicle; or

(iii) other tangible personal property that has sustained actual damage or loss; or

(B) for the reimbursement to a claimant for payments made by the claimant to a vendor or repair facility for the actual repair, replacement, or loss of use of:

(i) a dwelling, condominium, or other improvements on real property;

(ii) a vehicle, including a motor vehicle, motorcycle, or recreational vehicle; or

(iii) other tangible personal property that has sustained actual damage or loss.

ESTATES CODE

Sec. 122.051. FORM AND CONTENTS.

(a) A disclaimer of property receivable by a beneficiary must be evidenced by written memorandum acknowledged before:

(1) a notary public; or

(2) another person authorized to take acknowledgments of conveyances of real estate.

(b) A disclaimer of property receivable by a beneficiary must include a statement regarding whether the beneficiary is a child support obligor described by Section 122.107.

Sec. 122.107. ATTEMPTED DISCLAIMERS BY CERTAIN CHILD SUPPORT OBLIGORS INEFFECTIVE.

(a) A disclaimer made by a beneficiary who is a child support obligor of estate property that could be applied to satisfy the beneficiary's child support obligation is not effective if the beneficiary owes child support arrearages that have been:

(1) administratively determined by the Title IV-D agency as defined by Section 101.033, Family Code, in a Title IV-D case as defined by Section 101.034, Family Code; or

(2) confirmed and reduced to judgment as provided by Section 157.263, Family Code.

(b) After distribution of estate property to a beneficiary described by Subsection (a), the child support obligee to whom the child support arrearages are owed may enforce the child support obligation by a lien or by any other remedy provided by law.

Sec. 355.102. CLAIMS CLASSIFICATION; PRIORITY OF PAYMENT.

(a) Claims against an estate shall be classified and have priority of payment as provided by this section.

(b) Class 1 claims are composed of funeral expenses and expenses of the decedent's last illness for a reasonable amount approved by the court, not to exceed a total of \$15,000. Any excess shall be classified and paid as other unsecured claims.

(c) Class 2 claims are composed of expenses of administration, expenses incurred in preserving, safekeeping, and managing the estate, including fees and expenses awarded under Section 352.052, and unpaid expenses of administration awarded in a guardianship of the decedent.

(d) Class 3 claims are composed of each secured claim for money under Section 355.151(a)(1), including a tax lien, to the extent the claim can be paid out of the proceeds of the property subject to the mortgage or other lien. If more than one mortgage, lien, or security interest exists on the same property, the claims shall be paid in order of priority of the mortgage, lien, or security interest securing the debt.

(e) Class 4 claims are composed of claims:

(1) for the principal amount of and accrued interest on delinquent child support and child support arrearages that have been:

(A) confirmed as a judgment or a determination of arrearages by a court under Title 5, Family Code; or

(B) administratively determined by the Title IV-D agency, as defined by Section 101.033, Family Code, in a Title IV-D case, as defined by Section 101.034, Family Code and

(2) for unpaid child support obligations under Section 154.015, Family Code.

(f) Class 5 claims are composed of claims for taxes, penalties, and interest due under Title 2, Tax Code, Chapter 2153, Occupations Code, Section 81.111, Natural Resources Code, the Municipal Sales and Use Tax Act (Chapter 321, Tax Code), Section 451.404, Transportation Code, or Subchapter I, Chapter 452, Transportation Code.

(g) Class 6 claims are composed of claims for the cost of confinement established by the Texas Department of Criminal Justice under Section 501.017, Government Code.

(h) Class 7 claims are composed of claims for repayment of medical assistance payments made by the state under Chapter 32, Human Resources Code, to or for the benefit of the decedent.

(i) Class 8 claims are composed of any other claims not described by Subsections (b)-(h).

PROPERTY CODE

Sec. 74.501. CLAIM FILED WITH COMPTROLLER.

(a) The comptroller shall review the validity of each claim filed under this section.

(b) If the comptroller determines that a claim is valid, the comptroller or the comptroller's authorized agent shall approve the claim. If the claim is for money and has been approved under this section, the comptroller shall pay the claim. If a claim is for personal property other than money and has been approved under this section, the comptroller shall deliver the property to the claimant unless the comptroller has sold the property. If the property has been sold under

Section 74.401, the comptroller shall pay to the claimant the proceeds from the sale.

(c) All claims to which this section applies must be filed in accordance with procedures, contain the information, and be on forms prescribed by the comptroller.

(d) On receipt of a claim form and all necessary documentation and as may be appropriate under the circumstances, the comptroller may approve the claim of:

- (1) the reported owner of the property;
- (2) if the reported owner died testate:
 - (A) the appropriate legal beneficiaries of the owner as provided by the last will and testament of the owner that has been accepted into probate or filed as a muniment of title; or
 - (B) the executor of the owner's last will and testament who holds current letters testamentary;
- (3) if the reported owner died intestate:
 - (A) the legal heirs of the owner as provided by Section 38, Texas Probate Code; or
 - (B) the court-appointed administrator of the owner's estate;
- (4) the legal heirs of the reported owner as established by an affidavit of heirship order signed by a judge of the county probate court or by a county judge;
- (5) if the reported owner is a minor child or an adult who has been adjudged incompetent by a court of law, the parent or legal guardian of the child or adult;
- (6) if the reported owner is a corporation:
 - (A) the president or chair of the board of directors of the corporation, on behalf of the corporation; or
 - (B) any person who has legal authority to act on behalf of the corporation;
- (7) if the reported owner is a corporation that has been dissolved or liquidated:
 - (A) the sole surviving shareholder of the corporation, if there is only one surviving shareholder;
 - (B) the surviving shareholders of the corporation in proportion to their ownership of the corporation, if there is more than one surviving shareholder;
 - (C) the corporation's bankruptcy trustee; or
 - (D) the court-ordered receiver for the corporation; or
- (8) any other person that is entitled to receive the unclaimed property under other law or comptroller policy.

(e) Except as provided by Subsection (f), the comptroller may not pay to the following persons a claim to which this section applies:

- (1) a creditor, a judgment creditor, a lienholder, or an assignee of the reported owner or of the owner's heirs; or
- (2) a person holding a power of attorney from the reported owner or the owner's heirs.

(f) The comptroller may approve a claim for child support arrearages owed by the reported owner of the property and reflected in a child support lien notice that complies with Section 157.313, Family Code. A claim under this subsection may be submitted by the lienholder or the attorney general on behalf of the lienholder.

INSURANCE CODE

Section 1108.101. BENEFITS EXEMPT FROM SEIZURE.

(a) This chapter does not prevent an insured, owner, or annuitant from assigning, in accordance with the terms of the policy or contract:

- (1) any benefits to be provided under an insurance policy or annuity contract to which this chapter applies; or
- (2) any other rights under the policy or contract.

(b) A benefit or right described by Subsection (a) assigned by an insured, owner, or annuitant after a child support lien notice has been filed against the insured, owner, or annuitant by the Title IV-D agency continues to be subject to the child support lien after the date of assignment. The lien continues to secure payment of all child support arrearages owed by the insured, owner, or annuitant under the underlying child support order, including arrearages that accrue after the date of assignment.

TAX CODE

Section 34.03. DISPOSITION OF EXCESS PROCEEDS.

(a) The clerk of the court shall:

(1) if the amount of excess proceeds is more than \$25, before the 31st day after the date the excess proceeds are received by the clerk, send by certified mail, return receipt requested, a written notice to the former owner of the property, at the former owner's last known address according to the records of the court or any other source reasonably available to the court, that:

(A) states the amount of the excess proceeds;

(B) informs the former owner of that owner's rights to claim the excess proceeds under Section 34.04; and

(C) includes a copy or the complete text of this section and Section 34.04; ~~and~~

(2) regardless of the amount, keep the excess proceeds paid into court as provided by Section 34.02(d) for a period of two years after the date of the sale unless otherwise ordered by the court; ~~and~~

(3) regardless of the amount, send to the attorney general notice of the deposit and amount of excess proceeds if the attorney general or a state agency represented by the attorney general is named as an in rem defendant in the underlying suit for seizure of the property or foreclosure of a tax lien on the property.

Section 34.04. CLAIMS FOR EXCESS PROCEEDS.

(a) A person, including a taxing unit and the Title IV-D agency, may file a petition in the court that ordered the seizure or sale setting forth a claim to the excess proceeds. The petition must be filed before the second anniversary of the date of the sale of the property. The petition is not required to be filed as an original suit separate from the underlying suit for seizure of the property or foreclosure of a tax lien on the property but may be filed under the cause number of the underlying suit.

CODE OF CRIMINAL PROCEDURE

Article 59.06(a) is amended to read as follows:

(a) Except as provided by Subsection (k), all forfeited property shall be administered by the attorney representing the state, acting as the agent of the state, in accordance with accepted accounting practices and with the provisions of any local agreement entered into between the attorney representing the state and law enforcement agencies. If a local agreement has not been executed, the property shall be sold on the 75th day after the date of the final judgment of forfeiture at public auction under the direction of the county sheriff, after notice of public auction as provided by law for other sheriff's sales. The proceeds of the sale shall be distributed as follows:

(1) to any interest holder to the extent of the interest holder's nonforfeitable interest; ~~and~~

(2) after any distributions under Subdivision (1), if the Title IV-D agency has filed a child support lien in the forfeiture proceeding, to the Title IV-D agency in an amount not to exceed the amount of child support arrearages identified in the lien; and

(3) the balance, if any, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f) and, after that deduction, the deduction of storage and disposal costs, to be deposited not later than the 30th day after the date of the sale in the state treasury to the credit of the general revenue fund.

CIVIL PRACTICES AND REMEDIES CODE

Sec. 71.011. DAMAGES NOT SUBJECT TO DEBTS. Damages recovered in an action under this subchapter [Wrongful Death] are not subject to the debts of the deceased.