ESTATES CODE

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE H. CONTINUATION OF ADMINISTRATION

CHAPTER 355. PRESENTMENT AND PAYMENT OF CLAIMS

SUBCHAPTER A. PRESENTMENT OF CLAIMS AGAINST ESTATES IN GENERAL

Sec. 355.001. PRESENTMENT OF CLAIM TO PERSONAL REPRESENTATIVE. A claim may be presented to a personal representative of an estate at any time before the estate is closed if suit on the claim has not been barred by the general statutes of limitation.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.002. PRESENTMENT OF CLAIM TO CLERK. (a) A claim may also be presented by depositing the claim with the clerk with vouchers and the necessary exhibits and affidavit attached to the claim. On receiving a claim deposited under this subsection, the clerk shall advise the personal representative or the representative's attorney of the deposit of the claim by a letter mailed to the representative's last known address.

(b) A claim deposited under Subsection (a) is presumed to be rejected if the personal representative fails to act on the claim on or before the 30th day after the date the claim is deposited.

(c) Failure of the clerk to give the notice required under Subsection (a) does not affect the validity of the presentment or the presumption of rejection because the personal representative does not act on the claim within the 30-day period prescribed by Subsection (b).

(d) The clerk shall enter a claim deposited under Subsection (a) on the claim docket.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.003. INCLUSION OF ATTORNEY'S FEES IN CLAIM. If the instrument evidencing or supporting a claim provides for attorney's

fees, the claimant may include as a part of the claim the portion of attorney's fees the claimant has paid or contracted to pay to an attorney to prepare, present, and collect the claim.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.004. AFFIDAVIT AUTHENTICATING CLAIM FOR MONEY IN GENERAL. (a) Except as provided by Section 355.005, a claim for money against an estate must be supported by an affidavit that states:

(1) that the claim is just;

(2) that all legal offsets, payments, and credits known to the affiant have been allowed; and

(3) if the claim is not founded on a written instrument or account, the facts on which the claim is founded.

(b) A photostatic copy of an exhibit or voucher necessary to prove a claim may be offered with and attached to the claim instead of attaching the original.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.005. AFFIDAVIT AUTHENTICATING CLAIM OF CORPORATION OR OTHER ENTITY. (a) An authorized officer or representative of a corporation or other entity shall make the affidavit required to authenticate a claim of the corporation or entity.

(b) In an affidavit made by an officer of a corporation, or by an executor, administrator, trustee, assignee, agent, representative, or attorney, it is sufficient to state that the affiant has made diligent inquiry and examination and believes the claim is just and that all legal offsets, payments, and credits made known to the affiant have been allowed.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.006. LOST OR DESTROYED EVIDENCE CONCERNING CLAIM. If evidence of a claim is lost or destroyed, the claimant or an authorized representative or agent of the claimant may make an

affidavit to the fact of the loss or destruction. The affidavit must state:

(1) the amount, date, and nature of the claim;

(2) the due date of the claim;

(3) that the claim is just;

(4) that all legal offsets, payments, and credits known to the affiant have been allowed; and

(5) that the claimant is still the owner of the claim.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.007. WAIVER OF CERTAIN DEFECTS OF FORM OR CLAIMS OF INSUFFICIENCY. A defect of form or a claim of insufficiency of a presented exhibit or voucher is considered waived by the personal representative unless a written objection to the defect or insufficiency is made not later than the 30th day after the date the claim is presented and is filed with the county clerk.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.008. EFFECT ON STATUTES OF LIMITATION OF PRESENTMENT OF OR SUIT ON CLAIM. The general statutes of limitation are tolled on the date:

(1) a claim for money is filed or deposited with the clerk; or

(2) suit is brought against the personal representative of an estate with respect to a claim of the estate that is not required to be presented to the representative.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. ACTION ON CLAIMS

Sec. 355.051. ALLOWANCE OR REJECTION OF CLAIM. A personal representative of an estate shall, not later than the 30th day after the date an authenticated claim against the estate is presented to the representative, or deposited with the clerk as provided under

Section 355.002, endorse on the claim, attach to the claim, or file with the clerk a memorandum signed by the representative stating:

(1) the date the claim was presented or deposited; and

(2) whether the representative allows or rejects the claim, or if the representative allows or rejects a part of the claim, the portion the representative allows or rejects.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.052. FAILURE TO TIMELY ALLOW OR REJECT CLAIM. The failure of a personal representative to timely allow or reject a claim under Section 355.051 constitutes a rejection of the claim. If the claim is established by suit after that rejection:

(1) the costs shall be taxed against the representative, individually; or

(2) the representative may be removed on the written complaint of any person interested in the claim after personal service of citation, hearing, and proof, as in other cases of removal.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.053. CLAIM ENTERED ON CLAIM DOCKET. After a claim against an estate has been presented to the personal representative and allowed or rejected, wholly or partly, by the representative, the claim must be filed with the county clerk of the proper county. The clerk shall enter the claim on the claim docket.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.054. CONTEST OF CLAIM. (a) A person interested in an estate may, at any time before the court has acted on a claim, appear and object in writing to the approval of the claim or any part of the claim.

(b) If a person objects under Subsection (a):

(1) the parties are entitled to process for witnesses; and

(2) the court shall hear evidence and render judgment as in ordinary suits.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.055. COURT'S ACTION ON CLAIM. The court shall:

(1) act on each claim that has been allowed and entered on the claim docket for a period of 10 days either approving the claim wholly or partly or disapproving the claim; and

(2) concurrently classify the claim.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.056. HEARING ON CERTAIN CLAIMS. (a) If a claim is properly authenticated and allowed but the court is not satisfied that the claim is just, the court shall:

(1) examine the claimant and the personal representative under oath; and

(2) hear other evidence necessary to determine the issue.

(b) If after conducting the examination and hearing the evidence under Subsection (a) the court is not convinced that the claim is just, the court shall disapprove the claim.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.057. COURT ORDER REGARDING ACTION ON CLAIM. (a) The court acting on a claim shall state the exact action taken on the claim, whether the claim is approved or disapproved, or approved in part and disapproved in part, and the classification of the claim by endorsing on or attaching to the claim a written memorandum that is dated and officially signed.

(b) An order under Subsection (a) has the effect of a final judgment.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.058. APPEAL OF COURT'S ACTION ON CLAIM. A claimant or any person interested in an estate who is dissatisfied with the court's action on a claim may appeal the action to the court of appeals in the manner other judgments of the county court in probate matters are appealed.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.059. ALLOWANCE AND APPROVAL PROHIBITED WITHOUT AFFIDAVIT. A personal representative of an estate may not allow, and the court may not approve, a claim for money against the estate unless the claim is supported by an affidavit that meets the applicable requirements of Sections 355.004(a) and 355.005.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.060. UNSECURED CLAIMS BARRED UNDER CERTAIN CIRCUMSTANCES. If a personal representative gives a notice permitted by Section 308.054 to an unsecured creditor for money and the creditor's claim is not presented before the 121st day after the date of receipt of the notice, the claim is barred.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 45, eff. January 1, 2014.

Sec. 355.061. ALLOWING BARRED CLAIM PROHIBITED: COURT DISAPPROVAL. (a) A personal representative may not allow a claim for money against a decedent or the decedent's estate if a suit on the claim is barred:

(1) under Section 355.060, 355.064, or 355.201(b); or

(2) by an applicable general statute of limitation.

(b) A claim for money that is allowed by the personal representative shall be disapproved if the court is satisfied that the claim is barred, including because the limitation has run.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1,

eff. January 1, 2014.

Sec. 355.062. CERTAIN ACTIONS ON CLAIMS WITH LOST OR DESTROYED EVIDENCE VOID. (a) Before a claim the evidence for which is lost or destroyed is approved, the claim must be proved by disinterested testimony taken in open court or by oral or written deposition.

(b) The allowance or approval of a claim the evidence for which is lost or destroyed is void if the claim is:

(1) allowed or approved without the affidavit under Section 355.006; or

(2) approved without satisfactory proof.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.063. CLAIMS NOT ALLOWED AFTER ORDER FOR PARTITION AND DISTRIBUTION. After an order for final partition and distribution of an estate has been made:

(1) a claim for money against the estate may not be allowed by a personal representative;

(2) a suit may not be commenced against the representative on a claim for money against the estate; and

(3) the owner of any claim that is not barred by the laws of limitation has a right of action on the claim against the heirs, devisees, or creditors of the estate, limited to the value of the property received by those heirs, devisees, or creditors in distributions from the estate.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.064. SUIT ON REJECTED CLAIM. (a) A claim or part of a claim that has been rejected by the personal representative is barred unless not later than the 90th day after the date of rejection the claimant commences suit on the claim in the court of original probate jurisdiction in which the estate is pending.

(b) In a suit commenced on the rejected claim, the memorandum endorsed on or attached to the claim, or any other

memorandum of rejection filed with respect to the claim, is taken to be true without further proof unless denied under oath.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.065. PRESENTMENT OF CLAIM PREREQUISITE FOR JUDGMENT. A judgment may not be rendered in favor of a claimant on a claim for money that has not been:

(1) legally presented to the personal representative of an estate; and

(2) wholly or partly rejected by the representative or disapproved by the court.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.066. JUDGMENT IN SUIT ON REJECTED CLAIM. No execution may issue on a rejected claim or part of a claim that is established by suit. The judgment in the suit shall be:

(1) filed in the court in which the estate is pending;

(2) entered on the claim docket;

(3) classified by the court; and

(4) handled as if originally allowed and approved in due course of administration.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. PAYMENT OF CLAIMS, ALLOWANCES, AND EXPENSES

Sec. 355.101. APPROVAL OR ESTABLISHMENT OF CLAIM REQUIRED FOR PAYMENT. A claim or any part of a claim for money against an estate may not be paid until the claim or part of the claim has been approved by the court or established by the judgment of a court of competent jurisdiction.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

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, including claims for reimbursement of those expenses, for a reasonable amount approved by the court, not to exceed $15,000 for funeral expenses and $15,000 for expenses of the decedent's last illness. Any excess shall be classified and paid as other unsecured claims.

(c) Class 2 claims are composed of:

(1) expenses of administration;

(2) expenses incurred in preserving, safekeeping, and managing the estate, including fees and expenses awarded under Section 352.052;

(3) unpaid expenses of administration awarded in a guardianship of the decedent; and

(4) for an estate with respect to which a public probate administrator has taken any action under Chapter 455, court costs and commissions to which the administrator is entitled under Subchapter A, Chapter 352.

(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 as evidenced by a certified child support payment record produced 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, former 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).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 8.015, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 470 (S.B. 757), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 859 (S.B. 1726), Sec. 1, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1141 (H.B. 2782), Sec. 26, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 152 (S.B. 870), Sec. 1, eff. September 1, 2023.

Sec. 355.103. PRIORITY OF CERTAIN PAYMENTS. When a personal representative has estate funds in the representative's possession, the representative shall pay in the following order:

(1) funeral expenses in an amount not to exceed $15,000 and expenses of the decedent's last illness in an amount not to exceed $15,000;

(2) allowances made to the decedent's surviving spouse and children, or to either the surviving spouse or children;

(3) expenses of administration and expenses incurred in preserving, safekeeping, and managing the estate; and

(4) other claims against the estate in the order of the claims' classifications.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1141 (H.B. 2782), Sec. 27, eff. September 1, 2019.

Sec. 355.104. PAYMENT OF PROCEEDS FROM SALE OF PROPERTY SECURING DEBT. (a) If a personal representative has the proceeds of a sale made to satisfy a mortgage, lien, or security interest, and the proceeds or any part of the proceeds are not required for the payment of any debts against the estate that have a preference over the mortgage, lien, or security interest, the representative shall pay the proceeds to any holder of a mortgage, lien, or security interest. If there is more than one mortgage, lien, or security interest against the property, the representative shall pay the proceeds to the holders of the mortgages, liens, or security interests in the order of priority of the holders' mortgages, liens, or security interests.

(b) A holder of a mortgage, lien, or security interest, on proof of a personal representative's failure to pay proceeds under this section, may obtain an order from the court directing the payment to be made.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.105. CLAIMANT'S PETITION FOR ALLOWANCE AND PAYMENT OF CLAIM. A claimant whose claim has not been paid may:

(1) petition the court for determination of the claim at any time before the claim is barred by an applicable statute of limitations; and

(2) procure on due proof an order for the claim's allowance and payment from the estate.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1,

eff. January 1, 2014.

Sec. 355.106. ORDER FOR PAYMENT OF CLAIM OBTAINED BY PERSONAL REPRESENTATIVE. After the sixth month after the date letters testamentary or of administration are granted, the court may order a personal representative to pay any claim that is allowed and approved on application by the representative stating that the representative has no actual knowledge of any outstanding enforceable claim against the estate other than the claims already approved and classified by the court.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.107. ORDER FOR PAYMENT OF CLAIM OBTAINED BY CREDITOR. (a) At any time after the first anniversary of the date letters testamentary are granted for an estate, a creditor of the estate whose claim or part of a claim has been approved by the court or established by suit may obtain an order directing that payment of the claim or part of the claim be made on written application and proof, except as provided by Subsection (b), showing that the estate has sufficient available funds.

(b) If the estate does not have available funds to pay a claim or part of a claim described by Subsection (a) and waiting for the estate to receive funds from other sources would unreasonably delay the payment, the court shall order the sale of estate property sufficient to make the payment.

(c) The personal representative of the estate must first be cited on a written application under Subsection (a) to appear and show cause why the order should not be made.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.108. PAYMENT WHEN ASSETS INSUFFICIENT TO PAY CLAIMS OF SAME CLASS. (a) If there are insufficient assets to pay all claims of the same class, other than secured claims for money, the claims in that class shall be paid pro rata, as directed by the court, and in the order directed.

(b) A personal representative may not be allowed to pay a claim under Subsection (a) other than with the pro rata amount of the estate funds that have come into the representative's possession, regardless of whether the estate is solvent or insolvent.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.109. ABATEMENT OF BEQUESTS. (a) Except as provided by Subsections (b), (c), and (d), a decedent's property is liable for debts and expenses of administration other than estate taxes, and bequests abate in the following order:

(1) property not disposed of by will, but passing by intestacy;

(2) personal property of the residuary estate;

(3) real property of the residuary estate;

(4) general bequests of personal property;

(5) general devises of real property;

(6) specific bequests of personal property; and

(7) specific devises of real property.

(b) This section does not affect the requirements for payment of a claim of a secured creditor who elects to have the claim continued as a preferred debt and lien against specific property under Subchapter D.

(c) A decedent's intent expressed in a will controls over the abatement of bequests provided by this section.

(d) This section does not apply to the payment of estate taxes under Subchapter A, Chapter 124.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.110. ALLOCATION OF FUNERAL EXPENSES. A personal representative paying a claim for funeral expenses and for items incident to the funeral, such as a tombstone, grave marker, crypt, or burial plot:

(1) shall charge all of the claim to the decedent's estate; and

(2) may not charge any part of the claim to the community share of a surviving spouse.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.111. PAYMENT OF COURT COSTS RELATING TO CLAIM. All costs incurred in the probate court with respect to a claim shall be taxed as follows:

(1) if the claim is allowed and approved, the estate shall pay the costs;

(2) if the claim is allowed but disapproved, the claimant shall pay the costs;

(3) if the claim is rejected but established by suit, the estate shall pay the costs;

(4) if the claim is rejected and not established by suit, the claimant shall pay the costs, except as provided by Section 355.052; and

(5) if the claim is rejected in part and the claimant fails, in a suit to establish the claim, to recover a judgment for a greater amount than was allowed or approved for the claim, the claimant shall pay all costs in the suit.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.112. JOINT OBLIGATION FOR PAYMENT OF CERTAIN DEBTS. On the death of a person jointly bound with one or more other persons for the payment of a debt or for any other purpose, the decedent's estate shall be charged by virtue of the obligation in the same manner as if the obligors had been bound severally as well as jointly.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.113. LIABILITY FOR NONPAYMENT OF CLAIM. (a) A person or claimant, except the state treasury, entitled to payment from an estate of money the court orders to be paid is authorized to have execution issued against the estate property for the amount

due, with interest and costs, if:

(1) the personal representative fails to pay the money on demand;

(2) estate funds are available to make the payment; and

(3) the person or claimant makes an affidavit of the demand for payment and the representative's failure to pay.

(b) The court may cite the personal representative and the sureties on the representative's bond to show cause why the representative and sureties should not be held liable under Subsection (a) for the debt, interest, costs, and damages:

(1) on return of the execution not satisfied; or

(2) on the affidavit of demand and failure to pay under Subsection (a).

(c) On the return of citation served under Subsection (b), the court shall render judgment against the cited personal representative and sureties, in favor of the claim holder, if good cause why the representative and sureties should not be held liable is not shown. The judgment must be for:

(1) the amount previously ordered to be paid or established by suit that remains unpaid, together with interest and costs; and

(2) damages on the amount neglected to be paid at the rate of five percent per month for each month, or fraction of a month, that the payment was neglected to be paid after demand was made.

(d) Damages ordered under Subsection (c)(2) may be collected in any court of competent jurisdiction.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. PRESENTMENT AND PAYMENT OF SECURED CLAIMS FOR MONEY

Sec. 355.151. OPTION TO TREAT CLAIM AS MATURED SECURED CLAIM OR PREFERRED DEBT AND LIEN. (a) If a secured claim for money against an estate is presented, the claimant shall specify in the claim, in addition to all other matters required to be specified in

the claim, whether the claimant desires to have the claim:

(1) allowed and approved as a matured secured claim to be paid in due course of administration, in which case the claim shall be paid in that manner if allowed and approved; or

(2) allowed, approved, and fixed as a preferred debt and lien against the specific property securing the indebtedness and paid according to the terms of the contract that secured the lien, in which case the claim shall be so allowed and approved if it is a valid lien.

(b) Notwithstanding Subsection (a)(2), the personal representative may pay a claim that the claimant desired to have allowed, approved, and fixed as a preferred debt and lien as described by Subsection (a)(2) before maturity if that payment is in the best interest of the estate.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.152. PERIOD FOR SPECIFYING TREATMENT OF SECURED CLAIM. (a) A secured creditor may present the creditor's claim for money and shall specify within the later of six months after the date letters testamentary or of administration are granted, or four months after the date notice required to be given under Section 308.053 is received, whether the claim is to be allowed and approved under Section 355.151(a)(1) or (2).

(b) A secured claim for money that is not presented within the period prescribed by Subsection (a) or that is presented without specifying how the claim is to be paid under Section 355.151 shall be treated as a claim to be paid in accordance with Section 355.151(a)(2).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.153. PAYMENT OF MATURED SECURED CLAIM. (a) A claim allowed and approved as a matured secured claim under Section 355.151(a)(1) shall be paid in due course of administration, and the secured creditor is not entitled to exercise any other remedy in a manner that prevents the preferential payment of claims and

allowances described by Sections 355.103(1), (2), and (3).

(b) If a claim is allowed and approved as a matured secured claim under Section 355.151(a)(1) for a debt that would otherwise pass with the property securing the debt to one or more devisees in accordance with Section 255.301, the personal representative shall:

(1) collect from the devisees the amount of the debt; and

(2) pay that amount to the claimant in satisfaction of the claim.

(c) Each devisee's share of the debt under Subsection (b) is an amount equal to a fraction representing the devisee's ownership interest in the property securing the debt, multiplied by the amount of the debt.

(d) If the personal representative is unable to collect from the devisees an amount sufficient to pay the debt under Subsection (b), the representative shall, subject to Chapter 356, sell the property securing the debt. The representative shall:

(1) use the sale proceeds to pay the debt and any expenses associated with the sale; and

(2) distribute the remaining sale proceeds to each devisee in an amount equal to a fraction representing the devisee's ownership interest in the property, multiplied by the amount of the remaining sale proceeds.

(e) If the sale proceeds under Subsection (d) are insufficient to pay the debt and any expenses associated with the sale, the difference between the sale proceeds and the sum of the amount of the debt and the expenses associated with the sale shall be paid in the manner prescribed by Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.154. PREFERRED DEBT AND LIEN. When a claim for a debt is allowed and approved under Section 355.151(a)(2):

(1) a further claim for the debt may not be made against other estate assets;

(2) the debt thereafter remains a preferred lien

against the property securing the debt; and

(3) the property remains security for the debt in any distribution or sale of the property before final maturity and payment of the debt.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.155. PAYMENT OF MATURITIES ON PREFERRED DEBT AND LIEN. (a) If property securing a debt for which a claim is allowed, approved, and fixed under Section 355.151(a)(2) is not sold or distributed within six months from the date letters testamentary or of administration are granted, the personal representative of the estate shall:

(1) promptly pay all maturities that have accrued on the debt according to the terms of the debt; and

(2) perform all the terms of any contract securing the debt.

(b) If the personal representative defaults in payment or performance under Subsection (a), on application of the claim holder, the court shall:

(1) require the sale of the property subject to the unmatured part of the debt and apply the proceeds of the sale to the liquidation of the maturities;

(2) require the sale of the property free of the lien and apply the proceeds to the payment of the whole debt; or

(3) authorize foreclosure by the claim holder as provided by this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.1551. CLAIM HOLDER DUTY TO POSSESS OR SELL WITHIN REASONABLE TIME. (a) A holder of a claim allowed and approved under Section 355.151(a)(2) who elects to take possession or sell the property securing the debt before final maturity in satisfaction of the holder's claim must do so within a reasonable time, as determined by the court.

(b) If the claim holder fails to take possession or sell

secured property within the time determined by the court under Subsection (a), on application by the personal representative, the court may require the sale of the property free of the lien and apply the proceeds to the payment of the whole debt in full satisfaction of the claim.

(c) This section does not apply to an estate administered as an independent administration under Subtitle I.

Added by Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 39, eff. September 1, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1141 (H.B. 2782), Sec. 28, eff. September 1, 2019.

Sec. 355.156. AFFIDAVIT REQUIRED FOR FORECLOSURE. An application by a claim holder under Section 355.155(b)(3) to foreclose the claim holder's mortgage, lien, or security interest on property securing a claim allowed, approved, and fixed under Section 355.151(a)(2) must be supported by the claim holder's affidavit that:

(1) describes the property or part of the property to be sold by foreclosure;

(2) describes the amounts of the claim holder's outstanding debt;

(3) describes the maturities that have accrued on the debt according to the terms of the debt;

(4) describes any other debts secured by a mortgage, lien, or security interest against the property that are known by the claim holder;

(5) contains a statement that the claim holder has no knowledge of the existence of any debt secured by the property other than those described by the application; and

(6) requests permission for the claim holder to foreclose the claim holder's mortgage, lien, or security interest.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.157. CITATION ON APPLICATION. (a) The clerk shall

issue citation on the filing of an application by:

(1) personal service to:

(A) the personal representative; and

(B) any person described by the application as having other debts secured by a mortgage, lien, or security interest against the property; and

(2) posting to any other person interested in the estate.

(b) A citation issued under Subsection (a) must require the person cited to appear and show cause why foreclosure should or should not be permitted.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.158. HEARING ON APPLICATION. (a) The clerk shall immediately notify the judge when an application is filed. The judge shall schedule in writing a date for a hearing on the application.

(b) The judge may, by entry on the docket or otherwise, continue a hearing on an application for a reasonable time to allow an interested person to obtain an appraisal or other evidence concerning the fair market value of the property that is the subject of the application. If the interested person requests an unreasonable time for a continuance, the interested person must show good cause for the continuance.

(c) If the court finds at the hearing that there is a default in payment of maturities that have accrued on a debt described by Section 355.155(a) or performance under the contract securing the debt, the court shall:

(1) require the sale of the property subject to the unmatured part of the debt and apply the proceeds of the sale to the liquidation of the maturities;

(2) require the sale of the property free of the lien and apply the proceeds to the payment of the whole debt; or

(3) authorize foreclosure by the claim holder as provided by Section 355.156.

(d) A person interested in the estate may appeal an order

issued under Subsection (c)(3).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.159. MANNER OF FORECLOSURE; MINIMUM PRICE. (a) When the court grants a claim holder the right of foreclosure at a hearing under Section 355.158, the court shall authorize the claim holder to foreclose the claim holder's mortgage, lien, or security interest:

(1) in accordance with the provisions of the document creating the mortgage, lien, or security interest; or

(2) in any other manner allowed by law.

(b) Based on the evidence presented at the hearing, the court may set a minimum price for the property to be sold by foreclosure that does not exceed the fair market value of the property. If the court sets a minimum price, the property may not be sold at the foreclosure sale for a lower price.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.160. UNSUCCESSFUL FORECLOSURE; SUBSEQUENT APPLICATION. If property that is the subject of a foreclosure sale authorized and conducted under this subchapter is not sold because no bid at the sale met the minimum price set by the court, the claim holder may file a subsequent application for foreclosure under Section 355.155(b)(3). The court may eliminate or modify the minimum price requirement and grant permission for another foreclosure sale.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER E. CLAIMS INVOLVING PERSONAL REPRESENTATIVES

Sec. 355.201. CLAIM BY PERSONAL REPRESENTATIVE. (a) The provisions of this chapter regarding the presentment of claims against a decedent's estate may not be construed to apply to any claim of a personal representative against the decedent.

(b) A personal representative holding a claim against the decedent shall file the claim in the court granting the letters testamentary or of administration, verified by affidavit as required in other cases, within six months after the date the representative qualifies, or the claim is barred.

(c) A claim by a personal representative that has been filed with the court within the required period shall be entered on the claim docket and acted on by the court in the same manner as in other cases.

(d) A personal representative may appeal a judgment of the court acting on a claim under this section as in other cases.

(e) The previous provisions regarding the presentment of claims may not be construed to apply to a claim:

(1) of any heir or devisee who claims in that capacity;

(2) that accrues against the estate after the granting of letters testamentary or of administration and for which the personal representative has contracted; or

(3) for delinquent ad valorem taxes against a decedent's estate that is being administered in probate in:

(A) a county other than the county in which the taxes were imposed; or

(B) the same county in which the taxes were imposed, if the probate proceedings have been pending for more than four years.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.202. CLAIMS AGAINST PERSONAL REPRESENTATIVES. (a) The naming of an executor in a will does not extinguish a just claim that the decedent had against the person named as executor.

(b) If a personal representative is indebted to the decedent, the representative shall account for the debt in the same manner as if the debt were cash in the representative's possession.

(c) Notwithstanding Subsection (b), a personal representative is required to account for the debt only from the date the debt becomes due if the debt was not due at the time the representative received letters testamentary or of administration.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 355.203. PURCHASE OF CLAIM BY PERSONAL REPRESENTATIVE PROHIBITED. (a) It is unlawful, and cause for removal, for a personal representative, whether acting under appointment by will or court orders, to purchase a claim against the estate the representative represents for the representative's own use or any other purpose.

(b) On written complaint by a person interested in the estate and on satisfactory proof of a violation of Subsection (a), the court after citation and hearing:

(1) shall enter an order canceling the claim described by Subsection (a); and

(2) may remove the personal representative who is found to have violated Subsection (a).

(c) No part of a claim canceled under Subsection (b) may be paid out of the estate.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.