

## 2016 TALHI REGULATORY ROUNDTABLE

### SUMMARY OF TEXAS LAW ON ESCHEAT, UNCLAIMED PROPERTY & UNCLAIMED LIFE INSURANCE

**TEX. PROP. CODE, CHAPTER 71. ESCHEAT.** Escheat involves the vesting of title to property in the state in an escheat proceeding if an individual dies intestate and without heirs, the real and personal property of that individual is subject to escheat. 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 is absent from the individual's place of residence for seven years or longer; and is not known to exist. 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.

**TEX. PROP. CODE, CHAPTER 72. UNCLAIMED OR ABANDONED PROPERTY.** Unclaimed or abandoned personal property is addressed in TEX. PROP. CODE, Ch. 72. This chapter applies to tangible or intangible personal property.

Chapter 72 applies to property held by life insurance companies with the exception of unclaimed proceeds to which Chapter 1109, Insurance Code, applies and that are held by those companies that are subject to Chapter 1109, Insurance Code. TEX. PROP. CODE §72.001(c). Thus, this provision would encompass property held by insurers in a retained asset account.

Life insurers are specifically designated in Chapter 72 as holders of property subject to the general presumptions of abandonment in Chapter 72 and require to report this under the procedures set forth in Chapter 74. TEX. PROP. CODE §72.001(c).

TEX. PROP. CODE §72.001(e) defines a holder as a person, wherever organized or domiciled, who is:

- “(1) in possession of property that belongs to another;
- (2) a trustee; or
- (3) indebted to another on an obligation.”

Personal property is presumed abandoned if, for longer than three years:

- (1) the existence and location of the owner of the property is unknown to the holder of the property; and
- (2) according to the knowledge and records of the holder of the property, a claim to the property has not been asserted or an act of ownership of the property has not been exercised. TEX. PROP. CODE § Sec. 72.101.”

The above presumption does not apply to unclaimed wages, stored value cards, and travelers and cashier's checks which are governed by separate sections in Chapter 72. Monies in a retained asset account would be personal property and would be subject to the provisions of Chapter 72, TEX. PROP. CODE.

**TEX. PROP. CODE, CHAPTER 73. PROPERTY HELD BY FINANCIAL INSTITUTIONS.** This chapter has special provisions relating to funds deposited in a depository in an interest-bearing account, checking or savings account. A depository is defined as “a bank, savings and loan association, credit union, or other banking organization that receives and holds a deposit of money or the equivalent of money in banking practice or other personal property in this state; or receives and holds such a deposit or other personal property in another state for a person whose last known residence is in this state.”

**TEX. INS. CODE, CHAPTER 1109. UNCLAIMED LIFE AND ANNUITY CONTRACT PROCEEDS.** This chapter applies to proceeds *held and owing* by a life insurance company *if the person entitled to the proceeds is located in Texas* and proceeds have been unclaimed and unpaid for at least three (3) years, according to the life insurance company’s records, after the *proceeds became due and payable* under a life insurance policy or annuity that has matured or terminated. A policy is considered to be held and owing even if not surrendered as required. Reports are required to be made on unclaimed proceeds as required by Ch. 74, Tex. Prop. Code.

**TEX. INS. CODE §1101.011. LIFE POLICY SETTLEMENT PROVISIONS.** This section requires a life policy to provide that settlement after the death of an insured will be made two months after the receipt of:

- Proof of Death and
- Right to the claimant of the proceeds.

All life insurance policies issued in Texas contain language similar to this requirement.

Unclaimed property is collected by the Texas Comptroller, not the Texas Department of Insurance. Any audits relating to whether life insurance policies are subject to unclaimed property laws are determined through Texas laws and procedures used by the Texas Comptroller’s office.

#### **CONCLUSIONS**

- Be Prepared for Audits or Market Conduct Examinations.
- Examine Your Current Procedures to update information on location of Beneficiaries and owners or Retained Asset Accounts
- Understand the law and Reporting Requirements
- Evaluate processes concerning escheatment and unclaimed property
- Know how you use the SSDMF in your business and evaluate your processes
- Possible legislation in 2017.

For questions or additional information, please contact:

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