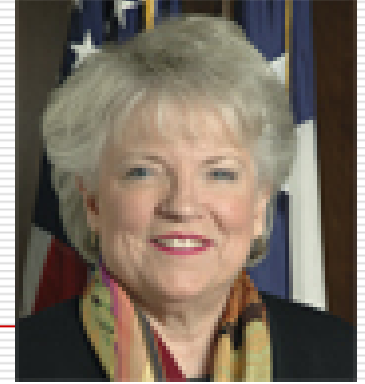


Escheating in Texas

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It Goes back to the King

- Western Civilization evolved with the nation, its people and all of the assets being owned by the King.
 - That is one of the reasons that we have inheritance taxes
 - You have to pay the King for the right to pass your assets to your wife and kids
 - The American Revolution Changed that here
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America

- Under the US theory of democracy, the people are sovereign, not the government
 - All assets of the country are owned by the people even though some are managed by national, state or local governments
 - That's why we get paid if the government seizes land for public use (eminent domain)
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Abandoned property

- When the true owner of a property is unknown, the property escheats to the government which holds it in trust until the rightful owner can be identified.
 - If the owner is identified, he gets the property back
 - If he is never identified, then the government as trustee for the people sells it to a new owner.
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Texas follows this model

- ❑ Texas follows the escheat model
 - ❑ When something has been in a 3rd party's hands for 3 years without demand by the true owner, the holder is required to send the property to the state.
 - ❑ Periodically, the state runs newspaper ad of its holdings, seeking the true owners to come forward and claim the property
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Penalties encourage compliance

- ❑ Failure to turn the money or assets over to the state can incur a penalty of the value of the asset plus 10%.
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The state will audit your files

- ❑ Periodically, the Comptroller's office will send its auditors to your office to see if you are following their rules.
 - ❑ They will ask to see all of the files where you have been holding money for more than 3 years.
 - ❑ They will ask you to justify keeping that money rather than turning in to the state.
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Filing Deadlines and Extensions

- All holder reports and payments are due November 1 of every year. The cut off date for reviewing your records is June 30. The state does not have the statutory authority to grant extensions on the payment of your report.
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Reporting Methods

- ❑ Reports with 10 or more records should be reported electronically. Texas uses the reporting format developed by the National Association of Unclaimed Property Administrators (NAUPA). Your file(s) may be submitted using any of the methods below. However, [submitting your holder report](#) via the Internet through our secured site is the preferred method.
 - ❑ Internet
 - ❑ Diskette
 - ❑ CD Rom
 - ❑ Magnetic Tape Reel
 - ❑ Magnetic Tape Cartridge (3480 or 3490)
 - ❑ Paper Report Form 53-105
 - ❑ Regardless of the method you select for sending your electronic file, it must first be created in the NAUPA format. Download our free [reporting software](#), [user guide](#), or [magnetic tape specifications](#). These products will assist you in creating a file in the NAUPA format
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Retention of Records

- All holders are required to retain records of unclaimed property for 10 years after the property has been reported.
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Delivery of Report and Payment

- All checks should be made payable to the Texas Comptroller of Public Accounts-Unclaimed Property. Securities should be registered to the Comptroller of Public Accounts, Federal Tax Identification Number 74-6000089
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What is unclaimed property?

- Unclaimed Property can be any financial asset that appears to have been abandoned by the owner for three years or more
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What is abandoned?

- the owner's whereabouts are unknown and the property has been inactive on the books of the reporting company between three and five years.
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Is there a time limit for claiming my property?

- No, the Comptroller's office acts only as custodian for the missing owners, holding the property in trust until it is claimed. Texas never takes legal ownership of the property, so there is no time limit for filing a claim
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Is there a charge for getting back my property-money?



There is no charge for the inquiry process. If your claim is approved, the Comptroller's office will deduct a handling fee from the amount returned to you. For claim payments of \$100 to \$5,000, the fee is 1%. For claims in excess of \$5,000, the fee is 1.5%. Claims for less than \$100 are not assessed a fee.

28 TAC§ 25.90. **Escheat** Account



An **escheat** or unclaimed property account shall be established as required by the Property Code, Chapters 72 and 74, for monies due an insured who cannot be located. These monies must remain in an account for three years and then be reported to the Texas Department of Treasury. Copies of the **escheat** account reports shall be placed in an examination file to be available at the time of the insurance premium finance company's examination by the Department

7 TAC § 1.837 (applies to banks and other financial institutions)

- Evidence of a bona fide attempt to pay a refund to a borrower must be kept in the records of the borrower. The minimum acceptable evidence of a bona fide attempt must be a registered or certified letter sent to the last known address of the borrower. The licensee must place with the records of the borrower any information that indicates the borrower has died leaving no will or heirs, or has left the community and the borrower's whereabouts are unknown.
 - This is a good example for us to go by.
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Tex. Prop. Code § 72.101

- 2) The running of the three-year period of abandonment ceases immediately on the **exercise of an act of ownership interest** or sum payable or a communication with the association as evidenced by a memorandum or other record on file with the association or its agents
 - Again, doesn't apply directly to us but is a good indication
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So, what is an act of ownership?

- Sending a demand letter claiming the money
 - Showing up at your door demanding the money
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Why do we fight so hard to keep the money?

- ❑ I suppose it is because we take our fiduciary responsibility very seriously.
 - ❑ Giving money to the wrong person is a serious breach of our duties.
 - ❑ Giving money to the wrong person means we give OUR money to the right person
 - ❑ But, it isn't our money.
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How a deal becomes an escheat

- ❑ In 2001, A&B enter into an earnest money contract.
 - ❑ For some reason, the deal goes bad.
 - ❑ Each person claims the earnest money.
 - ❑ Title Company refuses to pick the winner.
 - ❑ A takes the deal to another title company and closes. A moves to Maine.
 - ❑ B has lost his job and moves to Dime Box from Houston.
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How a deal becomes an escheat p2

- ❑ Neither A nor B have thought another time about the \$500 sitting at Mega Title.
 - ❑ In 2002, Mega Title sends a certified letter to both A&B at the addresses shown on the contract. Of course, both are returned unclaimed.
 - ❑ It is now 2005, should the money be escheated?
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How a deal becomes an escheat p3

- Has anyone asserted an act of ownership in the past 3 years?
 - NO.
 - They did ask for it once but that was 4 years ago. No one has asked again.
 - We sent a letter that got no response.
 - So we should consider the money abandoned and send to the state the next November (2005).
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So we are safe if:

- ❑ **Tex. Prop. Code § 74.304**
 - ❑ Although this applies to the comptroller directly, it is good guidance for us, too
 - ❑ payment or delivery is made in good faith if:
 - (1) payment or delivery was made in a reasonable attempt to comply with this chapter;
 - (2) the holder delivering the property was not a fiduciary then in breach of trust with respect to the property and had a reasonable basis for believing based on the facts then known to the holder that the property was abandoned or inactive for purposes of this chapter; and
 - (3) there is no showing that the records under which the delivery was made did not meet reasonable commercial standards of practice in the industry.
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Proper Handling of Escheat funds required by TDI

- Funds which remain in an account in a dormant condition for a long period of time need to be closely scrutinized. Funds that are being misappropriated often find their way to these accounts in some manner, so appropriate auditing procedures shall be performed on these accounts. Current state law specifies certain criteria that may require dormant funds held longer than three years to escheat to the state treasurer. All credit balances open three years or longer must be explained in detail on Exhibit E-1.
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TDI regs from Audit Standards/Minimum Escrow Standards

- **Exhibit E-1.** This exhibit requires detailed information regarding guaranty files which have been open for three years or longer. This information must include the reason the file is still open, such as "disputed earnest money," "funds escrowed for repairs," "error at closing," etc. The information must indicate if a file is active or inactive. If a file is inactive or has been dormant for more than three years, the escrow agent should consider clearing the file via escheat or through the interpleading process. Individual guaranty files with dormant balances of \$200 or less may be reported in the aggregate for each specific reason the balances remain in the files.
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STG Bulletin 16

- Dear Associates:
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The State Treasury Department says that earnest money is subject to escheat unless both the buyer and the seller communicate (e.g., letter or phone call) with Stewart within the last three years. The state says property is presumed abandoned on June 1 if there has been no communication from all claimants within the last three years as of June 1 of that year. You must file a report on or before November 1 of that year and you must deliver the unclaimed property to the state. Communication can be by phone conversation or correspondence. The state says that the account is "unclaimed" if only one party communicates with the title company within the last three years.
- If a contract (e.g., indemnity) has a definite term between the title company and another party, the state says the escheat period begins on this date.
- While we do not agree that the Treasury position correctly interprets the law in all cases, we recommend compliance with the Treasury position where possible.
- Recommendations:

STG Tx-16

- ❑ **1.**When holding money for repairs or an indemnity, consult with your attorney or Stewart underwriting personnel. The agreement should have a time limit for return of the funds.
 - ❑ **2.**Diary (or tickler) your earnest money files for six months after receipt of the earnest money. We recommend that you then mail a letter and earnest money release to the seller and buyer unless you know a closing will occur. The current TREC contract provides in the broker's paragraph (paragraph 8) that Escrow Agent is directed to pay Listing Broker one-half of the earnest money the seller receives on default. If you hold this or a similar contract, also send the release to the broker. The broker should then sign the release if the buyer does not receive all the money. We recommend that the letter state that you may tender the money to the State Treasury, Unclaimed Property Division, if the seller and buyer do not respond and if the funds are not interpled.
 - ❑ **3.**We recommend that you re-diary the files for March 1 of the year that constitutes the third year as of June 30 of that year (**note: the law has been changed so that this is only a go by date**) following the most recent communication by both seller and buyer. If you are holding a large amount, we suggest you send a second letter to the parties.
 - ❑ Examples based on state position:
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STG 16

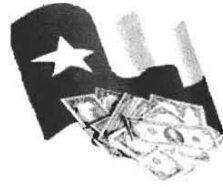
- Example: The title company received \$500 earnest money under a TREC contract and opened the file October 30, 1992. The title company sent releases of earnest money to the buyer, seller and broker on April 30, 1993. There was no subsequent communication by the seller, but there was subsequent communication (letter or call) by the buyer. On or before November 1, 1996, you should deliver the money to the state.
 - Example: The title company received \$20,000 earnest money under a TREC contract and opened a file on October 30, 1992. The title company sent releases of earnest money to the seller, buyer and broker on April 30, 1993. On June 15, 1993, the title company received correspondence (letter or call) from the buyer. On March 15, 1993, the seller claimed the earnest money by telephone conversation that you noted in the file. We recommend you send a second letter on March 1, 1996. We recommend you tender the funds to the state on November 1, 1996 (if you do not receive instructions from the buyer and seller).
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Tx-16

- Example: The title company received \$4,000 earnest money on a commercial contract and opened a file on October 30, 1992. The title company sent releases of earnest money to the seller and buyer on April 30, 1993. On June 15, 1995, the title company received correspondence (letter or call) from the buyer. The title company has not received communication from the seller. The title company should tender the money to the state on or before November 1, 1996.
 - The letter should request instruction by the parties as to release of the earnest money and should include a Release of Earnest Money form. It should say the title company may interplead the funds or tender the funds to the state as unclaimed funds if it does not receive instructions from all parties.
 - If you decide to interplead, you must interplead funds before the funds are subject to escheat (the third June first anniversary since communication from all parties).
 - **4.** If you are an independent agent, we recommend you contact your attorney or accountant and establish your own procedures
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What about little checks?

- ❑ TDI won't give a straight answer! Duh?!
 - ❑ Any amounts under \$50 each can be aggregated and sent to the State. We identify the owner as Unknown.
 - ❑ Amount \$50 you need to make at least a little effort to determine the last person with whom you had contact, and send it in under their name.
 - ❑ If you haven't had contact with either, send it in in both names.
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FORGOTTEN

BUT

NOT GONE!!
