

## Part II

### Forcing The Sale Of A Beneficiary's Interest In Non-Exempt Real Property For Non-Payment of Ad Valorem Taxes

#### I. INTRODUCTION

The 74<sup>th</sup> Legislature added Chapter 29, Texas Property Code, in 1995 under the radar screen of most probate practitioners. The chapter consists of five (5) succinctly worded sections, i.e. §§29.001-29.004, whose collective impact far exceed its statutory brevity. Simply stated, this chapter allows an estate beneficiary to force another beneficiary to sell their interest in non-exempt realty when they fail or refuse to pay their proportional share of the ad valorem taxes thereon.

#### II. TO WHAT AND WHOM TEXAS PROPERTY CODE, CHAPTER 29 APPLIES

##### A. Non-Exempt Realty

This chapter applies only to real property that is not exempt from forced sale under the constitution or laws of this state.<sup>1</sup> Hence, the decedent's homestead is not affected by this chapter.

##### B. Heirs, Devisees And Joint Tenants With Right Of Survivorship

This chapter applies to any person who received an interest in non-exempt real property by inheritance, i.e. heir by intestate succession; or, pursuant to the terms of a will, i.e. a devisee; or, through a joint tenancy deed.<sup>2</sup> The chapter specifically excludes a survivorship agreement between spouses for community property.

#### III. THE PETITION FOR FORCED SALE

##### A. Where Instituted

The plaintiff *may* file his suit in the district court in *a* county in which the property is located.<sup>3</sup> Hence, it appears a plaintiff may elect jurisdiction when a tract of land is located in multiple counties. The precatory

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<sup>1</sup> Tex. Prop. Code Ann. §29.001 (Vernon Supp. 2002)

<sup>2</sup> Tex. Prop. Code Ann. §29.001(1)(A-D)(Vernon Supp. 2002); Tex. Prop. Code §29.001 was amended effective Sept. 1, 2001 to include realty owned in part by a nonprofit organization exempt from federal income tax. This amendment found at Tex. Prop. Code §29.001 (2)(A-D)(Vernon Supp. 2002)

<sup>3</sup> Tex. Prop. Code Ann. §29.002(a)(Vernon Supp. 2002)

language “*may file in the district court*” supports the petition’s filing in a statutory probate court in the event the estate is pending therein.<sup>4</sup> However, if the estate has been partitioned, distributed and closed, it is doubtful an action to force the sale of a co-owner’s interest would be considered appertaining to or incident to an estate.

#### B. The Grounds Thereof

The petition should request the court to require a co-owner to sell his interest to the plaintiff when the plaintiff has paid the defendant’s share of ad valorem taxes imposed on the property for any three (3) years in a five (5) year period.<sup>5</sup> Also, the plaintiff must allege and prove that the defendant, i.e. co-owner, has not reimbursed him for more than half of the total amount of taxes paid on defendant’s behalf.<sup>6</sup>

#### C. Required Contents

The petition must contain the property description; the name of each known owner and their respective ownership interest; the total amount paid for ad valorem taxes on behalf of defendant(s); and, if applicable the amount of defendant’s reimbursement.<sup>7</sup>

### IV. THE COURT’S HEARING

#### A. Burden of Proof

The plaintiff’s burden of proof is by clear and convincing evidence.<sup>8</sup> Clear and Convincing evidence means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.<sup>9</sup>

#### B. Required Proof

The plaintiff must prove that he paid the defendant’s share of ad valorem taxes imposed on the property for *any three (3) years* in a five (5) year period; that demand was made upon defendant to reimburse plaintiff before suit was filed; and, the defendant has not reimbursed plaintiff for more than half of the amount of money paid on his behalf.<sup>10</sup>

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<sup>4</sup> Tex. Prob. Code §§5(e), 5A(b)

<sup>5</sup> Tex. Prop. Code Ann. §29.002(a)(1)(Vernon Supp. 2002)

<sup>6</sup> Tex. Prop. Code Ann. §29.002(a)(2)(Vernon Supp. 2002)

<sup>7</sup> Tex. Prop. Code Ann. §29.002(b)(Vernon Supp. 2002)

<sup>8</sup> Tex. Prop. Code Ann. §29.003(Vernon Supp. 2002)

<sup>9</sup> Tex. Pattern Jury Charges, §4.2B, 1996 ed.

<sup>10</sup> Tex. Prop. Code Ann. §29.003 (Vernon Supp. 2002)

V. HOW TO MAKE DEMAND FOR REIMBURSEMENT OF TAXES PAID

A. Upon An Unknown Defendant

The plaintiff may make demand for reimbursement upon an unknown defendant by publication in a newspaper in the county wherein the land is located. The publication may be made each week for four (4) consecutive weeks with the final publication occurring not later than the 30<sup>th</sup> day before the date of the petition's filing.<sup>11</sup>

B. Upon A Defendant With An Unknown Address

The plaintiff may make demand for reimbursement upon a defendant with an unknown address in the same manner as demand is made upon an unknown defendant.<sup>12</sup>

C. Requirements Of Demand By Publication

The publication must contain the demand for reimbursement and a general description of the realty; the lot and block description, survey, or other plat description of record if the property is located in a municipality; the county wherein the property is located; the defendant's interest; and, the plaintiff's name and address.<sup>13</sup>

VI. THE COURT'S ORDER

A. Divesture Of Defendant's Interest

The court shall enter an order, if satisfied, that plaintiff has carried his burden of proof and made the requisite proof necessary to prevail, that divests the defendant's interest in the realty.<sup>14</sup>

B. Computation Of Damages

The court's order shall compute the damages by ordering the plaintiff to pay the defendant an amount of money owed by defendant from the fair market value of defendant's interest in the property.<sup>15</sup>

C. Appointment Of Appraiser

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<sup>11</sup> Tex. Prop. Code Ann. §29.0035; Added by Acts 2001, 77<sup>th</sup> Leg., eff. Sept. 1, 2001(Vernon Supp. 2002)

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Tex. Prop. Code Ann. §29.004(Vernon Supp. 2002)

<sup>15</sup> Id.

The fair market value of a defendant's interest in the real property shall be determined by an independent appraiser appointed by the court.<sup>16</sup>

D. Execution Of Deed To Plaintiff

The court's order may also require the defendant to execute and deliver a special warranty deed conveying his interest to the plaintiff.<sup>17</sup>

VII. CONCLUSION

The Texas Legislature has established an expeditious process through which an estate beneficiary can force another beneficiary to sell their interest in non-exempt realty when they fail or refuse to pay their proportional share of the ad valorem taxes thereon. Unfortunately, there exists no case law interpreting any section of Chapter 29 and the brevity of its language clearly allows for multiple interpretations of its meaning. This author looks forward to your respective interpretation of its applicability and enforcement.

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<sup>16</sup> Id.

<sup>17</sup> Id.

Evicting Heirs, Devisees & Legatees  
Where Does Jurisdiction Lie?

And

Forcing The Sale Of A Beneficiary's  
Interest In Non Exempt Real Property  
For Non Payment Of Ad Valorem Taxes

Judge Russell Austin  
Probate Court No. One

And

Jason B. Ostrom, Esq.  
Cenatiempo & Ditta, L.L.P.

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Attorneys In Tax & Probate  
Houston, Texas