

7 GCA CIVIL PROCEDURE
CH. 20 PROVISIONAL REMEDIES IN CIVIL ACTIONS

CHAPTER 20
PROVISIONAL REMEDIES IN CIVIL ACTIONS

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§ 20101. Limits on Arrest.

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No person can be arrested in a civil action, except as prescribed in this Title.

SOURCE: CCP § 478.

§ 20102. Arrest of Defendant, When.

The defendant may be arrested, as hereinafter prescribed, in the following cases:

1. In an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from Guam with intent to defraud his creditors.

2. In an action for money or property embezzled, or fraudulently misapplied, or converted to his own use, by a public officer, or an officer of a corporation, in the course of his employment as such, or by any other person in a fiduciary capacity.

3. In an action to recover the possession of a personal property unjustly detained when the property, or any part thereof, has been concealed, removed, or disposed of to prevent its being found or taken by the Chief of Police.

4. When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought; or in concealing or disposing of the property for the taking, detention, or conversion of which the action is brought.

5. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

SOURCE: CCP § 479.

§ 20103. Order of Arrest, by Whom Made.

An order for the arrest of the defendant must be obtained from a judge of the court having jurisdiction.

SOURCE: CCP § 480.

§ 20104. Affidavit for Order of Arrest.

The order may be made whenever it appears to the judge, by the affidavit of the plaintiff, or some other person, that a sufficient cause of action exists, and that the case is one of those mentioned in § 20102. The affidavit must be positive and not merely upon information and belief. If an order of arrest be made, the affidavit must be filed with the clerk of the court.

SOURCE: CCP § 481.

§ 20105. Security Thereon.

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Before making the order, the judge must require a written undertaking on the part of the plaintiff, with sureties in an amount to be fixed by the judge, which must be at least five hundred dollars (\$500.00), to the effect that the plaintiff will pay all costs which may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the same be wrongful, or without sufficient cause, not exceeding the sum specified in the undertaking. The undertaking must be filed with the clerk of the court.

SOURCE: CCP § 482.

§ 20106. Order, When Made, and Its Form.

The order may be made at the time of the issuing of the summons, or at any time afterwards before judgment. It must require the Director of Public Safety forthwith to arrest him and hold him to bail in a specified sum, and to return the order at a time therein mentioned, to the clerk of court.

SOURCE: CCP § 483.

§ 20107. To Whom Affidavit and Order Must be Delivered.

The order of arrest, with a copy of the affidavit upon which it is made, must be delivered to the Chief of Police, who, upon arresting the defendant, must deliver to him a copy of the affidavit, and also, if desired, a copy of the order of arrest.

SOURCE: CCP § 484.

§ 20108. Arrest, How Made.

The Chief of Police must execute the order by arresting the defendant and keeping him in custody until discharged by law.

SOURCE: CCP § 485.

§ 20109. Defendant to be Discharged on Bail or Deposit.

The defendant, at any time before execution, must be discharged from the arrest, either upon giving bail or upon depositing the amount mentioned in the order of arrest.

SOURCE: CCP § 486.

§ 20110. Bail, How Given.

The defendant may give bail by causing a written undertaking to be executed by two or more sufficient sureties, to the effect that they are bound in the amount mentioned in the order of arrest, that the defendant will at all times render himself amenable to the process of the court, during the pendency of the action, and to such as may be issued to enforce the judgment therein, or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

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SOURCE: CCP § 487.

§ 20111. Surrender of Defendant.

At any time before judgment, or within ten (10) days thereafter, the bail may surrender the defendant in their exoneration; or he may surrender himself to the Chief of Police.

SOURCE: CCP § 488.

§ 20112. Surrender by Bail.

For the purpose of surrendering the defendant, the bail, at any time or place before they are finally charged, may themselves arrest or, by a written authority endorsed on a certified copy of the undertaking, may empower the Chief of Police to do so. Upon the arrest of defendant by the Chief of Police, or upon his delivery to the Chief of Police by the bail, or upon his own surrender, the bail are exonerated, if such arrest, delivery, or surrender take place before the expiration of ten (10) days after judgment; but if such arrest, delivery, or surrender be not made within ten (10) days after judgment, the bail are finally charged on their undertaking, and bound to pay the amount of the judgment within ten (10) days thereafter.

SOURCE: CCP § 489.

§ 20113. Bail, How Proceeded Against.

If the bail neglect or refuse to pay the judgment within ten (10) days after they are finally charged, an action may be commenced against such bail for the amount of the original judgment.

SOURCE: CCP § 490.

§ 20114. Bail, How Exonerated.

The bail are exonerated by the death of the defendant or his imprisonment in a territorial prison or by his legal discharge from the obligation to render himself amenable to the process.

SOURCE: CCP § 491.

§ 20115. Delivery of Undertaking to the Superior Court.

Within the time limited for that purpose, Chief of Police must file the order of arrest in the office of the clerk of the court in which the action is pending, with his return endorsed thereon, together with the undertaking of the bail.

SOURCE: CCP § 492.

NOTE: CCP § 493 was omitted in the original code.

§ 20116. Qualifications of Bail.

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The qualifications of bail are as follows:

1. Each of them must be a resident and householder or freeholder within the Territory of Guam.

2. Each must be worth the amount specified in the order of the arrest or the amount to which the order is reduced, as provided in this Chapter, over and above all his debts and liabilities, exclusive of property exempt from execution; but the judge or clerk, on justification, may allow more than two sureties to justify severally in amounts less than that expressed in the order if the whole justification be equivalent to that of two sufficient bail.

SOURCE: CCP § 494.

§ 20117. Justification of Bail.

For the purpose of justification, each of the bail must attend before the judge, at the time and place mentioned in the notice, and may be examined on oath touching his sufficiency, in such manner as the judge, in his discretion, may think proper.

SOURCE: CCP § 495.

§ 20118. Allowance of Bail.

If the judge finds the bail sufficient, he must endorse his allowance thereon, and cause it to be filed.

SOURCE: CCP § 496.

§ 20119. Deposit of Money with Chief of Police.

The defendant may, at the time of his arrest, instead of giving bail, deposit with the Chief of Police the amount mentioned in the order. In case the amount of the bail be reduced, as provided in this Article, the defendant may deposit such amount instead of giving bail. In either case the Chief of Police must give the defendant a certificate of the deposit made, and the defendant must be discharged from custody.

SOURCE: CCP § 497.

§ 20120. Payment of Money into Court by Chief of Police.

The Chief of Police must immediately after the deposit pay the same into court and take from the clerk receiving the same two certificates of such payment, one of which he shall deliver to the plaintiff's attorney, and the other to the defendant.

SOURCE: CCP § 498.

§ 20121. Substituting Bail for Deposit.

If money is de-positated, as provided in the last two sections, bail may be given at any time before judgment; and on the filing of the undertaking with the clerk, the money deposited must be refunded to the defendant.

SOURCE: CCP § 499.

§ 20122. Money Deposited, How Applied or Disposed of.

Where money has been deposited, if it remains on deposit at the time of the recovery of a judgment in favor of the plaintiff, the clerk must, under the direction of the court, apply the same in satisfaction thereof; and after satisfying the judgment, refund the surplus, if any, to the defendant. If the judgment is in favor of the defendant, the clerk must, under like direction of the court, refund to him the whole sum deposited and remaining unapplied.

SOURCE: CCP § 500.

NOTE: Sections 501 and 502 were omitted in the original Code.

§ 20123. Vacation of Order of Arrest.

A defendant arrested may, at any time before the trial of the action, or if there be no trial, before the entry of judgment, apply to the judge who made the order, or the court in which the action is pending, upon reasonable notice, to vacate the order of arrest or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs, in addition to those on which the order of arrest was made.

SOURCE: CCP § 503.

§ 20124. When the Order Vacated or Bail Reduced.

If, upon such application, it appears that there was not sufficient cause for the arrest, the order must be vacated; or if it appears that the bail was fixed too high, the amount must be reduced.

SOURCE: CCP § 504.

§ 20125. When Judge is to Assess Damages to the Defendant.

If the judgment is in favor of the defendant and it appears that the arrest was wrongful or without sufficient cause, the plaintiff, upon order of the court, and in addition to the payment of all costs which may be adjudged to the defendant shall indemnify the defendant for all damages he may sustain by reason of such arrest but such damages shall not be less than one hundred dollars (\$100.00).

SOURCE: CCP § 505.1

ARTICLE 2
CLAIM AND DELIVERY OF PERSONAL PROPERTY

- § 20201. Delivery of Personal Property, When it May be Claimed.
- § 20202. Affidavit and Its Requisites.
- § 20203. Requisition to Marshal to Take and Deliver the Property.
- § 20204. Security on the Part of the Plaintiff, and Proceedings in Serving the Order.
- § 20205. Exception to Sureties: Justification.
- § 20206. Defendant, When Entitled to Redelivery.
- § 20207. Defendant's Sureties Must Justify.
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- § 20209. Property, How Taken When Concealed in Building or Enclosure.
- § 20210. Property, How Kept.
- § 20211. Claim of Property by Third Person.
- § 20212. Notice and Affidavit, When and Where to be Filed.
- § 20213. Protection of Plaintiff in Possession of Property.
- § 20201. Delivery of Personal Property, When it May be Claimed.**

The plaintiff in an action to recover the possession of personal property may at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him as provided in this Article.

SOURCE: CCP § 509.

§ 20202. Affidavit and Its Requisites.

Where a delivery is claimed, an affidavit must be made by the plaintiff, or by someone in his behalf, showing:

1. That the plaintiff is the owner of the property claimed (particularly describing it), or is entitled to the possession thereof;
2. That the property is wrongfully detained by the defendant;
3. The alleged cause of the detention thereof, according to his best knowledge, information, and belief;
4. That it has not been taken for a tax, assessment, or fine, pursuant to law; or seized, under an execution or an attachment against the property of the plaintiff; or, if so seized, that it is by law exempt from such seizure;

5. The actual value of the property.

SOURCE: CCP § 510.

§ 20203. Requisition to Marshal to Take and Deliver the Property.

The plaintiff or his attorney may obtain from the judge of the court having jurisdiction, by an endorsement in writing upon the affidavit, an order requiring the marshal to take the property from the defendant, provided an undertaking is executed as is provided in the following section.

SOURCE: CCP § 511; amended by P.L. 4-89 (7/17/58).

§ 20204. Security on the Part of the Plaintiff, and Proceedings in Serving the Order.

Upon a receipt of the affidavit and notice, with a written undertaking, executed by two or more sufficient sureties, approved by the court, to the effect that they are bound to the defendant in double the value of the property as stated in the affidavit for the prosecution of the action, for the return of the property to the defendants, if return thereof be adjudged, and for the payment to him of such sum as may from any cause be recovered against the plaintiff, the marshal must forthwith take the property described in the affidavit, if it be in the possession of the defendants or his agent, and retain it in his custody. He must, without delay, serve on the defendant a copy of the affidavit, notice and undertaking, by delivering the same to him personally, if he can be found, or to his agent from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion, or the commissioner of the district.

SOURCE: CCP § 512; amended by P.L. 4-89.

§ 20205. Exception to Sureties: Justification.

The defendant may, within two (2) days after the service of a copy of the affidavit, notice and undertaking, give notice to the officer making the service that he excepts to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them. When the defendant excepts, the sureties must justify on notice in like manner as upon bail on arrest. If the defendant excepts to the sureties, he cannot reclaim the property as provided in the next section.

SOURCE: CCP § 513 added by P.L. 4-89.

§ 20206. Defendant, When Entitled to Redelivery.

At any time before the delivery of the property to the plaintiff, the defendant may, if he does not except to the sureties of the plaintiff, require

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the return thereof, upon giving to the marshal a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required within five (5) days after the taking and service of notice to the defendant, it must be delivered to the plaintiff, except as provided in § 20205.

SOURCE: CCP § 514; amended by P.L. 4-89.

§ 20207. Defendant's Sureties Must Justify.

The defendant's sureties, upon notice to the plaintiff of not less than two (2) nor more than five (5) days, must justify before a judge, or the clerk, of the court in which the action is pending in the same manner as upon bail on arrest; and upon such justification the officer taking the property must deliver the property to the defendant. Such officer is responsible for the defendant's sureties until they justify, or until the justification is completed or waived, and may retain the property until that time. If they, or others in their place, fail to justify at the time and place appointed, he must deliver the property to the plaintiff.

SOURCE: CCP § 515; Added by P.L. 4-89.

§ 20208. Qualification of Sureties.

The qualification of sureties must be as follows:

1. Each of them must be a resident and householder, or freeholder within the Territory of Guam.
2. Each must be worth the amount specified in the affidavit as the value of the property in question, over and above all his debts and liabilities, exclusive of property exempt from execution; but the judge may allow more than two sureties to justify severally in amounts less than the value of the property claimed; if the whole undertaking be equivalent to twice the value of the property claimed.

SOURCE: CCP § 516.

§ 20209. Property, How Taken When Concealed in Building or Enclosure.

If the property, or any part thereof, be concealed in a building or enclosure, the marshal must publicly demand its delivery. If it be not delivered, he must cause the building or enclosure to be broken open, and take the property into his possession.

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SOURCE: CCP § 517; amended by P.L. 4-89.

§ 20210. Property, How Kept.

When the marshal has taken property, as in this Article provided, he must keep it in a secure place, and deliver it to the party entitled thereto, upon payment of the expenses for keeping the same.

SOURCE: CCP § 518; amended by P.L. 4-89.

§ 20211. Claim of Property by Third Person.

If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or right to the possession thereof, stating the grounds of such title or right, and serve the same upon the marshal, the latter is not bound to keep the property or deliver it to the plaintiff, unless the plaintiff indemnify the marshal against such claim, by undertaking by two sufficient sureties; and no claim to such property by any other person than the defendant or his agent is valid unless so made.

SOURCE: CCP § 519; amended by P.L. 4-89.

§ 20212. Notice and Affidavit, When and Where to be Filed.

The marshal must file the notice, undertaking, and affidavit, with his proceedings thereon, with the clerk of the court within five (5) days after taking the property mentioned therein.

SOURCE: CCP § 520; amended by P.L. 4-89.

§ 20213. Protection of Plaintiff in Possession of Property.

After the property has been delivered to the plaintiff as in this Chapter provided, the court shall, by appropriate order, protect the plaintiff in the possession of said property until the final determination of the action.

SOURCE: CCP § 521.

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**ARTICLE 3
INJUNCTIONS**

- § 20301. Injunction: What is, and Who May Grant it.
- § 20302. When Injunction May or May Not Be Granted.
- § 20303. Injunction After Answer.
- § 20304. Injunction to Suspend Business of a Corporation.
- § 20305. When to be Vacated or Modified.

§ 20301. Injunction: What is, and Who May Grant it.

An injunction is a writ or order requiring a person to refrain from a particular act it may be granted by the court in which the action is brought or by a judge thereof, and when granted by the judge it may be enforced as an order of the court.

SOURCE: CCP § 525.

§ 20302. When Injunction May or May Not Be Granted.

An injunction may be granted in the following cases:

1. When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;
2. When it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action;
3. When it appears during the litigation that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual;
4. When pecuniary compensation would not afford adequate relief;
5. Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief;
6. Where the restraint is necessary to prevent a multiplicity of judicial proceedings;
7. Where the obligation arises from a trust.

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8. Against any officer of the Executive Branch of the government of Guam in his official capacity for the purpose of enjoining such officer from failing to take such action as is necessary to provide an adequate public education to a public school student.

An injunction cannot be granted:

1. To stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded, unless such restraint is necessary to prevent a multiplicity of such proceedings;

2. To stay proceedings in a court of the United States;

3. To stay proceedings in any state of the United States upon a judgment of a court of that state;

4. To prevent the execution of a public law by officers of the law for the public benefit;

5. To prevent the breach of a contract (other than a contract in writing for the rendition or furnishing of personal service from one to another where the minimum compensation for such service is at the rate of *not less than* Three Thousand Dollars (\$3,000.00) per annum, and where the promised service is of a special, unique, unusual, extraordinary, or intellectual character which gives it peculiar value the loss of which cannot be reasonably or adequately compensated in damages in an action at law) the performance of which would not be specifically enforced; provided, however, that an injunction may be granted to prevent the breach of a contract entered into between any nonprofit cooperative corporation or association and a member or stockholder thereof, in respect to any provision regarding the sale or delivery to the corporation or association of the products produced or acquired by such member or stockholder;

6. To prevent the exercise of a public or private office, in a lawful manner, by the person in possession;

7. To prevent an executive act or action by an authorized person;

8. Where a condition upon which a claim made pursuant to 7 GCA §12108.1(a) was based has been corrected;

9. Where another action based on the same claim arising under 7 GCA §12108.1(a) pends before the court.

SOURCE: CCP § 526. Amended by P.L. 28-045:17, effective, October 1, 2007, in accordance with P.L.28-045:23.

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NOTE: CCP § 527, dealing with the procedure for obtaining an injunction, has been replaced by GRCP Rule 65. See GRCP Rule 89.

§ 20303. Injunction After Answer.

An injunction cannot be allowed after the defendant has answered, unless upon notice, or upon an order to show cause; but in such case the defendant may be restrained until the decision of the court or judge granting or refusing the injunction.

SOURCE: CCP § 528.

NOTE: CP § 529, *Undertaking Required*, has been replaced by Rule 65 of the GRCP.

§ 20304. Injunction to Suspend Business of a Corporation.

An injunction to suspend the general and ordinary business of a corporation cannot be granted without due notice of the application therefor to the proper officers or managing agent of the corporation, except when the government of Guam is a party to the proceeding.

SOURCE: CCP § 531.

NOTE: CCP § 532, *Motion to modify or vacate*, has been replaced by Rule 65(b) of the GRCP.

§ 20305. When to be Vacated or Modified.

If upon such application it satisfactorily appears that there is not sufficient ground for the injunction, it must be dissolved; or if it satisfactorily appears that the extent of the injunction is too great, it must be modified.

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ARTICLE 4
ATTACHMENT

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§ 20401. When Attachment May be Issued.

The plaintiff, at the time of issuing the summons, or at any time afterward, may have the property of the defendant attached, as security, for the satisfaction of any judgment that may be recovered, unless the defendant gives security to pay such judgment, as in this Article provided, in the following cases:

1. In an action upon a contract, express or implied, for the direct payment of money, where the contract is made or is payable in the Territory of Guam, and is not secured by any mortgage or lien upon real or personal property, or any pledge of personal property, or, if originally so secured, such security has, without any act of the plaintiff, or the person to whom the security was given, becomes valueless; provided, that an action upon any liability, existing under the laws of Guam, of a spouse, relative or kindred, for the support, maintenance, care or necessities furnished to the other spouse, or other relatives or kindred, shall be deemed to be an action upon an implied contract within the term as used throughout all subdivisions of this section.

2. In an action upon a contract, express or implied, against a defendant not residing in the Territory of Guam, or who has departed from Guam, or who cannot after due diligence be found within Guam, or who conceals himself to avoid service of summons.

3. In an action against a defendant, not residing in the Territory of Guam, or who has departed from Guam, or who cannot after due diligence be found within Guam, or who conceals himself to avoid service of summons, to recover a sum of money as damages, arising from an injury to property in Guam, in consequence of negligence, fraud, or other wrongful act.

SOURCE: CCP § 537.

§ 20402. Affidavit for Attachment.

The clerk of the court must issue the writ of attachment upon receiving an affidavit by or on behalf of plaintiff showing:

1. The facts specified in § 20401 which entitle him to the writ;
2. The amount of the indebtedness claimed, over and above all legal set-offs or counterclaims, or the amount claimed as damages; and,

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3. That the attachment is not sought, and the action is not prosecuted, to hinder, delay, or defraud any creditor of the defendant.

In all cases where the earnings of the judgment debtor which would be exempt under the provisions of subdivision of § 23111 of this Title are sought to be attached on the ground that the action is brought to collect a debt incurred for the common necessities of life, the affidavit must contain a statement to that effect, and must specify the character or nature of the items constituting the alleged necessities.

SOURCE: CCP § 538.

§ 20403. Undertaking on Attachment; Exceptions to Sureties.

Before issuing the writ, the clerk of the court must require a written undertaking on the part of the plaintiff, in the sum not less than two hundred dollars (\$200.00) and not exceeding the amount claimed by the plaintiff, with sufficient sureties, to the effect that if the defendant recovers judgment, the plaintiff will pay all costs that may be awarded to the defendant and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking, and that if the attachment is discharged on the ground that the plaintiff was not entitled thereto under § 20401, the plaintiff will pay all damages which the defendant may have sustained by reason of the attachment, not exceeding the sum specified in the undertaking.

At any time after the issuing of the attachment, but not later than two (2) days after the actual notice of the levy thereof, the defendant may except to the sufficiency of the sureties. If he fails to do so he is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of less than one (1) day nor more than three (3) days, must justify before a judge or the clerk; and upon failure to justify, or if others in their place fail to justify, at the time and place appointed, the judge or the clerk, must issue an order vacating the writ of attachment.

SOURCE: CCP § 539.

§ 20404. Writ: To Whom Directed and What to State; If More Than One Defendant; Several Writs May be Issued at Same Time.

The writ must be directed to the marshal of the court, and must require him to attach and safely keep all the property of such defendant, within his district, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand against such defendant, the amount of which must be stated in conformity with the complaint, unless such defendant gives him security by the undertaking of at least two sufficient

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sureties which must first be approved by a judge of the court issuing the writ, or unless the defendant deposits a sum of money with the commissioner in an amount sufficient to satisfy such demand against such defendant, besides costs, or in an amount equal to the value of the property of such defendant which has been or is about to be attached.

In the event that the action is against more than one defendant, any defendant whose property has been or is about to be attached in such action may give the marshal such under-taking or deposit such sum of money, and the marshal shall take the same, and such undertaking or the deposit of such sum of money shall not subject such defendant to or be answerable for any demand against any other defendant, nor shall the marshal thereby be prevented from attaching or be obliged to release from attachment, any property of any other defendant, provided, however, that such defendant, at the time of giving such undertaking to or depositing such sum of money with the marshal, shall file with the marshal a statement, duly verified under oath, wherein such defendant shall aver or declare that the other defendant or defendants in the action in which said undertaking was given, or such sum of money was deposited, has or have not any interest or claim of any nature whatsoever in or to said property.

Such statement must further contain the character of such defendant's title and the manner in which he acquired title to such attached property, provided further, that before said attachment shall be released, the undertaking required by this section must be approved by the judge of the court ordering the issue of the writ of attachment.

SOURCE: CCP § 540.

§ 20405. Shares of Stock and Debts Due Defendant, How Attached and Disposed of.

The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profit thereon, and all debts due such defendant, and all other property in the Territory of Guam of such defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

SOURCE: CCP § 541.

§ 20406. Attachment of Real and Personal Property: Real Property: Personal Property; Corporate Stock: Expense of Taking and Keeping; Debts and Credits.

The marshal to whom the writ is directed and delivered must, upon receipt of instructions in writing, signed by the judgment creditor, or his

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attorney of record, and containing a description of the property, and in the case of real property a statement as to whether or not it is registered, execute the same without delay, and if the undertaking mentioned in § 20404 of this Article be not given, as follows:

1. Real property, standing upon the records of the Director of Land Management in the name of the defendant, must be attached, by filing with the Director of Land Management a copy of the writ, together with a description of the property attached, and a notice that it is attached, and by leaving a similar copy of the writ, description, and notice with an occupant of the property, if there is one; if not, then by posting the same in a conspicuous place on the property attached.

2. Real property, or an interest therein, belonging to the defendant, and held by any other person, or standing on the records of the government in the name of any other person, must be attached by filing with the Director of Land Management a copy of the writ, together with a description of the property, and a notice that such real property, and any interest of the defendant therein, held by or standing in the name of such other person (naming him) are attached; and by leaving with the occupant, if any, and with such other person, or his agent, if known and within the Territory of Guam, or at the residence of either, if within Guam, a copy of the writ with a similar description and notice. If there is no occupant of the property, a copy of the writ, together with such description and notice, must be posted in a conspicuous place upon the property. The Director of Land Management must index such statement when filed, in the names both of the defendant and of the person by whom the property is held or in which name it stands on the records.

3. Personal property, capable of manual delivery, must be attached by taking it into custody.

4. Stocks or shares, or interest in stocks or shares, of any corporation or company, must be attached by leaving with the president or other head of the same, or the secretary, cashier, or other managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached, in pursuance of such writ.

5. In all cases where the marshal is instructed to take into possession personal property capable of manual delivery, whether the same is to be placed in a warehouse or in custody of a keeper, the marshal may require, as a prerequisite to the taking of such property,

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that in addition to written instructions the attaching party or judgment creditor, or the attorney of record of each, deposit with said marshal a sum of money sufficient to pay the expense of taking and keeping safely said property for a period of not to exceed five (5) days, and that in the event that a further detention of said property is ordered after the period for which the fees have been deposited, the marshal may, from time to time make a written demand upon the plaintiff or his attorney for further deposits to cover estimated expenses for periods not to exceed five (5) days each. The demand above provided to be given to his attorney may be given by serving the same as provided in the Rules of Civil Procedure of the Superior Court. In the event that the money so demanded is not paid within five (5) days after service of said demand given as herein provided, the marshal may release the property to the person or persons from whom the same was taken. There shall be no liability upon the part of the marshal to take or hold personal property unless the provisions of this section shall have been fully complied with.

6. Debts and credits and other personal property, not capable of manual delivery, must be attached by leaving the person owing such debts, or having in his possession, or under the control, such credits and other personal property, or with his agent, or in the case of a corporation, with the president of the corporation, vice president, secretary, assistant secretary, cashier, or managing agent thereof, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession, or under his control, belonging to the defendant, are attached in pursuance of such writ, except in the case of attachment of growing crops, a copy of the writ, together with a description of the property attached, and a notice that it is attached shall be recorded or registered the same as in the attachment of real property.

SOURCE: CCP § 542.

COMMENT: For an interpretation of subpart 3, see *Koster and Wythe v. Massey* (1958) 262 F.2d. 60.

§ 20407. Attachment Liens on Real Property; Expiration; Extension.

The lien of the attachment on real property attaches and becomes effective upon the recording of a copy of the writ, together with a description of the property attached, and a notice that it is attached with the Director of Land Management; provided, however, that in the event that the marshal does not complete the execution of said writ in the manner

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prescribed in § 20406 of this Article within a period of fifteen (15) days next following said recording in the Department of Land Management, then said lien shall cease at the expiration of said period of fifteen (15) days.

The attachment whether heretofore levied or hereafter to be levied, shall be a lien upon all real property attached for a period of one (1) year after the date of levy unless sooner released or discharged either as provided in this Chapter or by dismissal of the action; or by the filing with the Director of Land Management of an abstract of the judgment in the action. At the expiration of one (1) year the lien shall cease and any proceeding or proceedings against the property under the attachment shall be barred; provided, that upon motion of a party to the action, made not less than five (5) nor more than (60) days before the expiration of said period of one (1) year, the court in which the action is pending may extend the time of said lien for a period not exceeding one (1) year from the date on which the original lien would expire, and the lien shall be extended for the period specified in the order upon the recording, before the expiration of the existing lien, of a certified copy of the order with the Director of Land Management. The lien may be extended from time to time in the manner herein prescribed.

SOURCE: CCP § 542a.

§ 20408. Release of Attachments and Garnishments.

An attachment or garnishment on personal property, whether heretofore levied or hereafter to be levied shall, unless sooner released or discharged, cease to be of any force or effect, and the property levied on be released from the operation of such attachment or garnishment, at the expiration of one (1) year after the issuance of the writ of attachment under which said levy was made; and the property levied on shall be delivered to the defendant or his order, or to his assignee or executor or administrator.

SOURCE: CCP § 542b.

COMMENT: See *Koster and Wythe v. Massey*, (1958) 262 F.2d 60.

§ 20409. Attorney to Give Written Instruction to Marshal on What to Attach.

Upon receiving information in writing from the plaintiff or his attorney that any person has in his possession, or under his control, any credits or other personal property belonging to the defendant, or owes any debt to the defendant, the marshal must serve upon such person a copy of the writ, and a notice that such credits, or other property or debts as the case may be are attached in pursuance of such writ.

SOURCE: CCP § 543.

§ 20410. Garnishment, When Garnishee Liable to Plaintiff.

All persons having in their possession or under their control any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice, as provided in this Chapter, shall be, unless such property be delivered up or transferred, or such debts be paid to the commissioner, liable to the plaintiff for the amount of such credits, property, or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

SOURCE: CCP § 544.

§ 20411. Citation to Garnishee to Appear Before a Court or Judge.

Any person owing debts to the defendant, or having in his possession or under his control any credits or other personal property belonging to the defendant, may be required to attend before the court or judge, or a referee appointed by the court or judge, and be examined on oath respecting the same. The defendant may also be required to attend, for the purpose of giving information respecting his property, and may be examined on oath. The court, judge, or referee may, after such examination, order personal property, capable of manual delivery, to be delivered to the marshal on such terms as may be just, having reference to any liens thereon or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

SOURCE: CCP § 545.

§ 20412. Inventory, How Made. Party Refusing to Give Memorandum May be Compelled to Pay Costs.

The marshal must make a full inventory of the property attached, and return the same with the writ. To enable him to make such return as to debts and credits attached, he must request at the time of service the party owing the debt or having the credit to give him a memorandum, stating the amount and description of each and if such memorandum be refused he must return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceedings taken for the purpose of obtaining information respecting the amounts and description of such debt or credit.

SOURCE: CCP § 546.

§ 20413. Perishable Property, How Sold.

Accounts Without Suit to be Collected. If any of the property attached be perishable, the marshal must sell the same in the manner in which such property is sold on execution. The proceeds, and other property attached by him, must be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment Debts and credits attached may be collected by him, if the same can be done without suit. The marshal's receipt is a sufficient discharge for the amount paid.

SOURCE: CCP § 547.

§ 20414. Sale as Under Execution When Advisable.

Whenever property has been taken by an officer under a writ of attachment and it is made to appear satisfactorily to the court or a judge thereof that the interest of the parties to the actions will be subserved by a sale thereof, the court or judge may order such property to be sold in the same manner as property is sold under an execution, and the proceeds to be deposited in the court, to abide the judgment in the action. Such order can be made only (1) after notice to the adverse party or his attorney in case such party has been personally served with a summons in the action or, (2) after an order of service of summons by publication has been made.

SOURCE: CCP § 548.

§ 20415. Personal Property.

If any personal property attached be claimed by a third person as his property, the same rules shall prevail as to the contents and making of said claim, and as to the holding of said property, as in case of a claim after levy upon execution, as provided for in § 23110 of this Title.

SOURCE: CCP § 549.

§ 20416. If Plaintiff Obtains Judgment, How Satisfied.

If judgment be recovered by the plaintiff, the marshal must satisfy the same out of the property attached by him which has not been delivered to the defendant, or a claimant as hereinbefore provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose:

1. By paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment;

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2. If any balance remains due, and an execution shall have been issued on the judgment, he must sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remains in his hands. Notices of the sales must be given, and the sales conducted as in other cases of sales on execution.

SOURCE: CCP § 550.

§ 20417. When There Remains a Balance Due, How Collected.

If, after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the marshal must proceed to collect such balance, as upon an execution in other cases. Whenever the judgment shall have been paid, the marshal, upon reasonable demand, must deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

SOURCE: CCP § 551.

§ 20418. When Suits May Be Commenced on the Undertaking.

If the execution be returned, unsatisfied, in whole or in part, the plaintiff may prosecute any undertaking given pursuant to § 540 or § 555, or he may proceed, as in other cases, upon the return of execution.

SOURCE: CCP § 552.

§ 20419. If Defendant Recovers Judgment, Duty of Marshal.

If the defendant recovers judgment against the plaintiff, and no appeal is perfected and undertaking executed and filed any undertaking received in the action, all the proceeds of sales and money collected by the marshal, and all the property attached remaining in the commissioner's hands, must be delivered to the defendant or his agent, the order of attachment be discharged, and the property released therefrom.

SOURCE: CCP § 553.

NOTE: The Compiler has removed the phrase *as provided in § 946 of this Code* from § 20419 because there was no § 946 in the Civil Procedure Code of Guam.

§ 20420. Proceedings to Release Attachments.

Whenever any defendant has appeared in the action, such defendant may, upon reasonable notice to the plaintiff, apply to the court in which the action is pending, or to the judge thereof, for an order to discharge the attachment wholly, or in part; and, upon the execution of the undertaking

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mentioned in the next section, an order may be made releasing from the operation of the attachment any or all of the property of such defendant attached; and all of the property so released, and all of the proceeds of the sales thereof, must be delivered to such defendant upon the justification of the sureties on the undertaking, if required by the plaintiff. Such justification must take place within five (5) days after the notice of the filing of such undertaking.

SOURCE: CCP § 554.

§ 20421. Requirements by Court for Release from Attachment.

Before making such order, the court or judge must require an undertaking on behalf of such defendant by at least two sureties, residents and freeholders or householders in Guam, to the effect that in case the plaintiff recovers judgment in the action against the defendant, by whom or in whose behalf such undertaking shall be given, such defendant will on demand redeliver the attached property so released to the proper officer to be applied to the payment of any judgment in such action against said defendant, or in default thereof, that such defendant and sureties will on demand pay to the plaintiff the full value of the property released not exceeding the amount of such judgment against such defendant. The court or judge making such order may fix the sum for which the undertaking must be executed and, if necessary in fixing such sum to know the value of the property released, the same may be appraised by one or more disinterested persons to be appointed for that purpose. The sureties may be required to justify before the court or judge, and the property attached cannot be released from the attachment without their justification if the same is required.

SOURCE: CCP § 555.

§ 20422. When a Motion to Discharge Attachment May be Made.

The defendant may also at any time, either before or after the release of the attached property, or before any attachment shall have been actually levied, apply, on motion, upon reasonable notice to the plaintiff, to the court in which the action is brought, or to a judge thereof, that the writ of attachment be discharged on the ground that the same was improperly or irregularly issued.

SOURCE: CCP § 556.

§ 20423. When Motion Made on Affidavit it May be Opposed by Affidavit.

If the motion be made upon affidavit on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavit or other evidence in addition to those on which the attachment was made.

SOURCE: CCP § 557.

§ 20424. Discharge of Attachment.

If, upon such application, it satisfactorily appears that the writ of attachment was improperly or irregularly issued, it must be discharged; provided, that such attachment shall not be discharged if, at or before the hearing of such application, the writ of attachment or the affidavit or undertaking upon which such attachment was based shall be amended and made to conform to the provisions of this Article.

SOURCE: CCP § 558.

§ 20425. Return of Writ of Attachment.

The marshal must return the writ of attachment with the summons if issued at the same time; otherwise within twenty (20) days after its receipt, with a certificate of his proceedings endorsed thereon or attached thereto; and whenever an order has been made discharging or releasing an attachment upon real property, a certified copy of such order must be filed in the Department of Land Management.

SOURCE: CCP § 559.

§ 20426. Alias Writs.

After the return and filing of the writ of attachment, or upon filing by the plaintiff of a verified affidavit setting forth the loss of the writ of attachment, the clerk of the court, upon demand of the plaintiff, may issue an alias writ which shall be in the same form as the original.

SOURCE: CCP § 559a.

§ 20427. Release of Real Property From Attachment.

An attachment as to any real property may be released by a writing signed by the plaintiff, or his attorney, or the officer.

SOURCE: CCP § 560; amended by P.L. 5-54 effective July 1, 1960.

§ 20428. Attachment of Interest of Defendant in Estate of Decedent.

The interest of a defendant in personal property belonging to the estate of a decedent, whether as heir, legatee, or devisee, may be attached by

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serving the personal representative of the decedent with a copy of the writ and a notice that said interest is attached. Such attachment shall not impair the powers of the representatives over the property for the purpose of administration. A copy of said writ of attachment and of said notice shall also be filed in the office of the clerk of the court in which said estate is being administered and the personal representative shall report such attachment to the court when any petition for distribution is filed, and in the decree made upon such petition, distribution shall be ordered to such heir, legatee, or devisee, but delivery of such property shall be ordered to the officer making the levy subject to the claim of such heir, legatee, or devisee, or any person claiming under him. The property shall not be delivered to the officer making the levy until the decree distributing such interest has become final.

**ARTICLE 5
RECEIVERS**

- § 20501. Appointment of Receivers.
- § 24502. Appointment of Receiver Upon Dissolution of Corporations.
- § 24503. Receiver, Restrictions on Appointment; Ex Parte Application, Undertaking on.
- § 20504. Oath and Undertaking of Receiver.
- § 20505. Powers of Receivers.
- § 20506. Investment of Funds.
- § 20507. Notice of Unclaimed Funds in Receiver's Hands; Disposition of.
- § 20508. Bank May Be Appointed Receiver.

§ 20501. Appointment of Receivers.

A receiver may be appointed by the court in which an action is pending, or by the judge thereof:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured;

2. In an action by a mortgagee for the foreclosure of his

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mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured; or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt;

3. After judgment, to carry the judgment into effect;

4. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment;

5. In the cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights;

6. In an action of unlawful detainer.

7. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

SOURCE: CCP § 564,

NOTE: See GRCP Rule 66. This rule differs from the federal rule in that Guam refers to local practices and, by inference, to this Title. No specific procedures dealing with Receivers are found in the Guam rules.

§ 24502. Appointment of Receiver Upon Dissolution of Corporations.

Upon the dissolution of any corporation, the court having jurisdiction on application of any creditor of the corporation, or of any stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over among the stockholders or members.

SOURCE: CCP § 565.

§ 24503. Receiver, Restrictions on Appointment; Ex Parte Application, Undertaking On.

No party or attorney of a party, or person interested in an action, or related to any judge of the court by consanguinity or affinity within the third degree, can be appointed receiver therein without the written consent of the parties, filed with the clerk. If a receiver is appointed upon an ex parte application, the court, before making the order, must require from the

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applicant an undertaking, with sufficient sureties, in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages he may sustain by reason of the appointment of such receiver and the entry by him upon his duties, in case the applicant shall have procured such appointment wrongfully, maliciously, or without sufficient cause; and the court may, in its discretion, at any time after said appointment, require an additional undertaking.

SOURCE: CCP § 566.

§ 20504. Oath and Undertaking of Receiver.

Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with two or more sureties, approved by the court or judge, execute an undertaking to the government of Guam in such sum as the court or judge may direct, to the effect that he will faithfully discharge the duties of the receiver in the action and obey the orders of the court therein.

SOURCE: CCP § 567.

§ 20505. Powers of Receivers.

The receiver has, under the control of the court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the court may authorize.

SOURCE: CCP § 568.

§ 20506. Investment of Funds.

Funds in the hands of a receiver may be invested upon interest, by order of the court; but no such order can be made, except upon the consent of all the parties to the action.

SOURCE: CCP § 569.

§ 20507. Notice of Unclaimed Funds in Receiver's Hands; Disposition of.

A receiver having any funds in his hands belonging to a person whose whereabouts are unknown to him shall, before receiving his discharge as such receiver, publish a notice for one (1) month on one or more public bulletin boards in Agana and in the district where the owner of any unclaimed funds is last known to have lived, setting forth the name of the owner of any unclaimed funds, the last known place of residence or post office address of such owner, and the amount of such unclaimed funds. Any

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funds remaining in his hands unclaimed for thirty (30) days after the date of the last publication of such notice shall be reported to the court, and upon order of the court all such funds must be paid into the treasury of the government of Guam with a copy of the order, which must set forth the facts required in the notice herein provided. Such funds shall be paid out by the treasurer to the owner thereof or his order in such manner and upon such terms as are now or may hereafter be provided by law.

All cost and expense connected with such advertising shall be paid out of the funds the whereabouts of whose owners are unknown.

SOURCE: CCP § 570.

§ 20508. Bank May be Appointed Receiver.

Any bank duly licensed to do business in Guam may, where practicable, be appointed a receiver, and where so appointed shall not be required to give an undertaking or the oath prescribed in § 20504 of this Article.

SOURCE: CCP § 571.

**ARTICLE 6
DEPOSIT IN COURT**

§ 20601. Clerk To Deposit Money Received.

§ 20602. Manner of Enforcing Order.

NOTE: CCP § 572 has been replaced by Rule 67 of the GRCP, and is omitted here.

§ 20601. Clerk to Deposit Money Received.

Whenever money is paid into or deposited in court to be held in custody or trust for or on behalf of a person other than the government of Guam, the same shall be delivered to the clerk of the court in person. He thereupon must deposit it with a licensed bank in Guam in a special trust account in the name of the court which shall be drawn upon only on order of the court. All money received, to which the government of Guam is entitled such as fines, costs, filing fees, and the like, shall be deposited with the treasurer of the government of Guam.

SOURCE: CCP § 573; repealed and reenacted by P.L. 9-178, effective 3/14/68.

§ 20602. Manner of Enforcing Order.

Whenever, in the exercise of its authority, a court has ordered the

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deposit or delivery of money, or other thing, and the order is disobeyed, the court, besides punishing the disobedience, may make an order requiring the Chief of Police to take the money, or thing, and deposit or deliver it in conformity with the direction of the court.

SOURCE: CCP § 574.
