

**15 GCA ESTATES AND PROBATE
CH. 6 INTERPRETATION OF WILLS**

**CHAPTER 6
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§ 601. Law Governing Interpretation; Testator's Intention Always Paramount.

The interpretation of wills, wherever made, is governed, when relating to property within the territory of Guam, by the laws of the territory of Guam, and the rules prescribed in this Chapter are to be observed, unless an intention to the contrary clearly appears; provided, that the provisions of this Chapter are in all cases to be interpreted in light of a testator's express intention.

SOURCE: All prior to semicolon: Probate Code of Guam (1970); § 100. All after semicolon: Probate Code of Guam (1970), § 162.

§ 603. Several Testamentary Instruments to be Construed as One; Testator's Intention to be Given Fullest Effect Possible.

Several testamentary instruments executed by the same testator are to be taken and construed together as one instrument. A will is to be construed according to the intention of the testator. Where the testator's intention cannot have effect to its full extent, it must have effect as far as possible.

SOURCE: Probate Code of Guam (1970), § 101.

§ 605. Every Expression Given Some Effect; Preference for Avoiding Total Intestacy.

The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which will render any of the expressions inoperative; and of two modes of interpreting a will, that is to be preferred which will prevent a total intestacy.

SOURCE: Probate Code of Guam (1970), § 102.

§ 607. Explanation of Ambiguities and Doubts; Wills to be Construed as a Whole; Construction of Irreconcilable Parts.

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Where the meaning of any part of a will is ambiguous or doubtful, it may be explained by any reference thereto, or recital thereof, in another part of the will. All the parts of a will are to be construed in relation to each other, and so as, if possible, to form one consistent whole; but where several parts are absolutely irreconcilable, the latter must prevail.

SOURCE: Probate Code of Guam (1970), § 103.

§ 609. Clear Devises or Bequests Not Affected by Reasons Set Forth, Other Words in Will, Inferences, Arguments, and Inaccurate Recitals.

A clear and distinct devise or bequest can not be affected by any reasons assigned therefor, or by any other words not equally clear and distinct, or by inference or argument from other parts of the will, or by an inaccurate recital of or reference to its contents in another part of the will.

SOURCE: Probate Code of Guam (1970), § 104.

§ 611. Correction of Mistakes and Omissions; Use of Extrinsic Evidence to Arrive at Testamentary Intent.

When there is an imperfect description in a will, or no person or property exactly answers the description in a will, mistakes and omissions must be corrected, if such error appears from the context of the will or from extrinsic evidence. When an uncertainty arises upon the face of a will, as to the application of any of its provisions, the testator's intention is to be ascertained from the words of the will or from extrinsic evidence, taking into view the circumstances under which the will was made. "Extrinsic evidence," as used in this Section, may include the oral declarations of the testator as to his testamentary intent, but such oral declarations may be considered only when no other evidence is available apart from the words of the will.

SOURCE: Guam Law Revision Commission.

COMMENT: Section 105 of the Probate Code of Guam (1970), like § 611, set out certain rules of construction for the interpretation of wills. The Commission is of the opinion that § 105 of the Probate Code of Guam (1970) was too restrictive as to what evidence the Court might consider, in that it prohibited the consideration of the testator's oral statements concerning his intentions. Similar concerns are voiced by Professor Lowell Turrentine in his "Introduction to the California Probate Code," which appears in 52 West's Annotated California Codes, Probate Code, §§ 1 - 399, at p. 1 et seq. The Commission has thus drafted § 611, which allows the Court to consider a testator's declarations as to his intent, but only if that is the only

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evidence available going to that issue. That is, the Court must exhaust all other avenues and find them completely lacking before it may consider extrinsic evidence consisting of the testator's own declarations as to his intent.

§ 613. Words of Will to be Taken in Ordinary and Grammatical Sense; Construction of Technical Words.

The words of a will are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be collected, and that other use can be ascertained. Technical words are not necessary to give effect to any species of disposition by a will; but technical words in a will are to be taken in their technical sense, unless the context clearly indicates a contrary intention, or unless it satisfactorily appears that the will was drawn solely by the testator, and that he was unacquainted with such technical sense.

SOURCE: Probate Code of Guam (1970), § 106.

§ 615. Word “Heirs” or Other Words of Inheritance Not Necessary to Devise Fee; Effect of Devise of Realty.

The term “heirs,” or other words of inheritance, are not requisite to devise a fee, and a devise of real property passes all of the estate of the testator, unless otherwise limited.

SOURCE: Probate Code of Guam (1970), § 107.

§ 617. Effect of Disposition to “Heirs,” etc.; Distinction Between Words of Donation and Words of Limitation.

A testamentary disposition to “heirs,” “relations,” “representatives,” “legal representatives,” “personal representatives,” “family,” “nearest of kin” or “next of kin” of any person, without other words of qualification, and when the terms are used as words of donation and not of limitation, vests the property in those who would be entitled to succeed to the property of the testator and in the same shares, as if the testator had died intestate. Such terms are used as words of donation, and not of limitation, when the property is given to the person so designated directly, and not as a qualification of an estate given to the ancestor of such person.

SOURCE: Probate Code of Guam (1970), § 108.

§ 619. Rule of Worthier Title Abolished; Construction of Devise or Bequest to Testator's Own Heirs or Next of Kin.

The law of the territory of Guam does not include either

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(1) the common law rule of worthier title, that a testator cannot devise an interest to his own heirs; or

(2) a presumption or rule of interpretation that a testator does not intend, by a devise or bequest to his own heirs or next of kin, to transfer an interest to them. The meaning of a devise or bequest of a legal or equitable interest to a testator's own heirs or next of kin, however designated, shall be determined by the general rules applicable to the interpretation of wills, as set forth in this Chapter. This Section shall be applied in all cases in which final judgment has not been entered on the effective date of this Section.

SOURCE: California Probate Code, § 109.

COMMENT: The common law *rule of worthier title* dates back to the very old English common law. It arose at a time when wills were very much distrusted by the English courts of law, for a number of reasons which may be of historical significance but which no longer have validity in a nonfeudal system of land tenure. Although the rule has largely been abolished, by statute or court interpretation in virtually every American jurisdiction, it is conceivable that without a statute such as § 619, the argument might be pressed upon the courts of Guam that it should remain in effect in Guam. Although § 617, *supra*, makes it relatively clear that the rule does not apply in Guam, the Commission believes that Guam should follow the lead of other jurisdictions which have eliminated the rule by statute and write the rule out of Guam's law once and for all.

§ 621. Effect of Devise of Land.

A devise of land conveys all the estate of the testator therein which he could lawfully devise, unless it clearly appear by the will that the testator intended to convey a less estate.

SOURCE: Probate Code of Guam (1970), § 120.

§ 623. When After-Acquired Interests are Passed by Devise of Land; When Not.

Any estate, right, or interest in lands acquired by the testator after the making of his will, passes thereby and in like manner as if title thereto had been vested in the testator at the time he made the will, unless the contrary manifestly appears by the will to have been the intention of the testator.

SOURCE: Probate Code of Guam (1970), § 121.

§ 625. Construction of References to Death or Survivorship.

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Words in a will referring to death or survivorship, simply, relate to the time of the testator's death, unless possession is actually postponed, in which event they must be referred to the time of possession.

SOURCE: Probate Code of Guam (1970), § 122.

§ 627. Scope of Disposition to a Class; When Afterborn Child Takes.

A testamentary disposition to a class includes every person answering to the description at the testator's death; but when the possession is postponed to a future period, it includes also all persons coming within the description before the time to which possession is postponed, unless in either case the contrary manifestly appears by the will to have been the intention of the testator. A child conceived before but born after a testator's death, or any other period when a disposition to a class vests in right or in possession, takes, if answering to the description of the class.

SOURCE: Probate Code of Guam (1970), § 123; Guam Law Revision Commission.

COMMENT: Section 123 of the Probate Code of Guam (1970) did not contain the words, "...unless in either case the contrary manifestly appears by the will to have been the intention of the testator." They have been added to ensure that the court will interpret a will according to the testator's intention, to the greatest extent practicable.

§ 629. Effect of Provision Directing Conversion of Real Property.

When a will directs the conversion of real property into money, such property and all its proceeds shall be deemed personal property from the time of the testator's death.

SOURCE: Probate Code of Guam (1970), § 124.

§ 631. What is Included in Devise or Bequest of All Real or Personal Property.

A devise or bequest of all the testator's real or personal property, in express terms, or in any other terms denoting the testator's intent to dispose of all his real or personal property, passes all the real or personal property which the testator was entitled to dispose of by will at the time of death, including property embraced in a power to devise.

SOURCE: Probate Code of Guam (1970), § 125.

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COMMENT: Section 125 of the Probate Code of Guam (1970) was the same as § 125 of the California Probate Code prior to its amendment in 1970. The California statute now reads as follows:

"Except as provided by Sections 1386.1 and 1386.2 of the Civil Code relating to powers of appointment, a devise or bequest of all the testator's real or personal property, in express terms, or in any other terms denoting his intent to dispose of all his real or personal property, passes all the real or personal property which he was entitled to dispose of by will at the time of his death."

As Guam has no statutes similar to §§ 1386.1 and 1386.2 of the California Civil Code, there is no reason for altering prior § 125. Should Guam adopt statutes similar to the California statutes dealing with powers of appointment, however, § 631 should be amended to comport with those statutes.

§ 633. Effect of Disposition of Residue.

A devise of the residue of a testator's real property, or a bequest of the residue of a testator's personal property, passes all the real or personal property, as the case may be, which the testator was entitled to devise or bequeath at the time of death, not otherwise effectually devised or bequeathed by the testator's will.

SOURCE: Probate Code of Guam (1970), § 126.

COMMENT: See Comment to § 631, *supra*, which Comment is also applicable to § 633.

§ 635. Death of Devisee of Limited Interest; Effect Upon Persons in Remainder.

The death of a devisee or legatee of a limited interest before the testator's death does not defeat the interest of persons in remainder who survive the testator.

SOURCE: Probate Code of Guam (1970), § 140.

§ 637. Conditional Disposition Defined.

A *conditional disposition* is one which depends upon the occurrence of some uncertain event, by which it is either to take effect or be defeated.

SOURCE: Probate Code of Guam (1970), § 141.

§ 639. Condition Precedent: Definition; Construction; Operation.

A condition precedent in a will is one which is required to be fulfilled before a particular disposition takes effect. It is to be deemed performed when the testator's intention has been substantially, though not

literally, complied with. Nothing vests until such condition is fulfilled, except where fulfillment is impossible, in which case the disposition vests, unless the condition was the sole motive for the disposition and the impossibility was unknown to the testator or arose from an unavoidable event subsequent to the execution of the will.

SOURCE: Probate Code of Guam (1970), § 142.

§ 641. Condition Subsequent: Definition; Operation.

A condition subsequent is a condition under which an estate or interest is so given as to vest immediately, subject only to be divested by some subsequent act or event. A testamentary disposition, when vested, can not be divested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose.

SOURCE: Probate Code of Guam (1970), § 143.

§ 643. Bequest of Interest or Income Accrues From Time of Death.

In case of a bequest of the interest or income of a certain sum or fund, the income accrues from the testator's death.

SOURCE: Probate Code of Guam (1970), § 160.

§ 645. Legacies: Distinctions, Definitions and Designations.

Legacies are distinguished, defined and designated, according to their nature, as follows:

(a) *Specific:* A legacy of a particular thing, specified and distinguished from all others of the same kind belonging to the testator, is specific; if such legacy fails, resort can not be had to the other property of the testator.

(b) *Demonstrative:* A legacy is demonstrative when the particular fund or personal property is pointed out from which it is to be taken or paid.

(c) *Annuity:* An annuity is a bequest of certain specified sums periodically; if the fund or property out of which a demonstrative legacy or an annuity is payable fails, in whole or in part, resort may be had to the general assets of the testator's estate, as in case of a general legacy.

(d) *Residuary:* A residuary legacy embraces only that which remains after all the bequests of the will are discharged.

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(e) *General*: All other legacies are general legacies.

SOURCE: Probate Code of Guam (1970), § 161.

§ 647. Unpaid Legacies to Bear Interest; Commencement of Annuities; Unpaid Accumulations to Bear Interest.

General pecuniary legacies, including general pecuniary legacies in trust, if not paid prior to the first anniversary of the testator's death, bear annual interest thereafter at the rate prescribed by law for interest on civil judgments. Annuities commence at the testator's death and are due at the end of the annual, monthly or other specified period. Whenever an annuitant, legatee of a legacy for maintenance or beneficiary of a trust may be entitled to periodic payments or trust income commencing at the testator's death, he shall be entitled to annual interest, at the rate prescribed by law for interest on civil judgments, on the amount of any unpaid accumulations of such payments or income held by the personal representative on each anniversary of the testator's death, computed from the date of such anniversary.

SOURCE: California Probate Code, § 162.

COMMENT: The Probate Code of Guam, as originally enacted, contained no provision for interest on legacies, etc., as provided in § 647. The Commission is of the opinion that such a provision is necessary, in order to be certain that legatees receive everything due to them and to help protect legatees against overly long delays in administration of estates. Moreover, the provisions concerning time of payment statutorize common law rules which do not have application in Guam under the Codes of Guam. Also see Comment to § 649, *infra*.

§ 649. Distribution of Net Income From Property Sold During Administration.

Unless otherwise specifically provided by the will of the testator,

(a) all net income received during the period of administration from real or personal property not specifically or demonstrably devised or bequeathed, including net income from property sold during such period, shall be distributed pro rata as income to any trust of all or any part of the residuary estate, and to any tenant or tenants for life or for a term of years of all or any part of the residuary estate, and to any person entitled absolutely or free of trust to all or any part of the residuary estate; but

(b) no such income shall be distributed as income of a general pecuniary legacy in trust, except that the interest on a pecuniary

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legacy in trust provided for in Section 647 of this Title shall be distributed as income to said trust.

SOURCE: California Probate Code, § 162.5.

COMMENT: The Probate Code of Guam (1970) contained no provision similar to § 649. Addition of such a Section is, however, necessary to clarify the distribution of income earned by an estate during the course of its administration. The operation of the California version of § 649 is described as follows:

Until the amendment of Probate Code § 162 [which made it read similarly to § 647, *supra*] and the addition of Probate Code § 162.5 [which reads similarly to § 649] in 1959, the following questions were unsettled in California:

(a) Is the income beneficiary of a residuary trust entitled to income earned during probate upon assets which are sold prior to distribution of the probate estate? (Probate Code § 162.5 now so provides.)

(b) Is the beneficiary of a trust established by a general pecuniary legacy, rather than a residuary bequest, entitled to receive income from the date of the testator's death or only from the date when the fund is distributed by the executor to the trustee? (Probate Code §§ 162 and 162.5 provide for income from the date of distribution.)

(c) Where a portion of the residue is bequeathed in trust and the balance outright, how is the probate income to be divided? (Probate Code § 162.5 provides for *pro rata* distribution.) For example, if half the estate is bequeathed in trust and half outright, the income beneficiary of the residuary trust should receive half the income and the other half should be added to the share of the outright residuary legatee. California Continuing Education of the Bar, California Estate Administration, § 37.23.

Also see Comment to § 647, *supra*.
