

15 GCA ESTATES AND PROBATE
CH. 20 OATH, FORM OF LETTERS, AND SECURITY FOR
FAITHFUL PERFORMANCE OF PERSONAL REPRESENTATIVE

CHAPTER 20
OATHS, FORM OF LETTERS, AND SECURITY FOR
FAITHFUL PERFORMANCE OF PERSONAL REPRESENTATIVE

SUBCHAPTER A
OATHS AND FORM OF LETTERS

- § 2001. Oath: Taking and Subscribing; Endorsement Upon Letters; Filing.
- § 2003. Form of Letters: Signing and Sealing.
- § 2005. Letters Testamentary: General Form.
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- § 2009. Letters of Administration, General and Special: General Form.

§ 2001. Oath: Taking and Subscribing; Endorsement Upon Letters; Filing.

Before letters testamentary, letters of administration with the will annexed, or letters of administration are issued, the executor, administrator with the will annexed or administrator to whom such letters have been granted must take and subscribe an oath that he will perform, according to law, the duties of his office, which oath must be attached to or endorsed upon the letters. The oath may be taken and dated on or after the time when the petition for letters testamentary, letters of administration with the will annexed, or letters of administration is filed, and may be filed with the Clerk of the Superior Court of Guam at any time after the petition is granted by the Superior Court of Guam.

SOURCE: California Probate Code, § 540 (as amended).

§ 2003. Form of Letters: Signing and Sealing.

Letters testamentary, or of administration with the will annexed, or of administration, or of special administration, shall be signed by the Clerk of the Superior Court of Guam under the seal of the Superior Court of Guam.

SOURCE: Probate Code of Guam (1970), § 500.

§ 2005. Letters Testamentary: General Form.

Letters testamentary shall be substantially in the following form: "Territory of Guam. The last will of A.B., deceased, having been proved

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in the Superior Court of the Territory of Guam, C.D. who is named therein as such, is hereby appointed executor. Witness, G.H., Clerk of the Superior Court of Guam, with the seal of the Court affixed, the ____ day of _____, 19___. (Seal.) By order of the Court. G.H., Clerk of the Superior Court of Guam.”

SOURCE: Probate Code of Guam (1970), § 501.

§ 2007. Letters of Administration With the Will Annexed: General Form.

Letters of administration with the will annexed shall be substantially in the following form: “Territory of Guam. The last will of A.B., deceased, having been proved in the Superior Court of the Territory of Guam, and there being no executor named in the will (or as the case may be), C.D. is hereby appointed administrator with the will annexed. Witness, G.H., Clerk of the Superior Court of Guam, with the seal of the Court affixed, the ____ day of _____, 19___. (Seal.) By order of the Court. G.H., Clerk of the Superior Court of Guam.”

SOURCE: Probate Code of Guam (1970), § 501.

§ 2009. Letters of Administration, General and Special: General Form.

Letters of administration, or of special administration, shall be substantially in the following form: “Territory of Guam. C.D. is hereby appointed administrator (or special administrator, as the case may be) of the estate of A.B., deceased. Witness, G.H., Clerk of the Superior Court of Guam, with the seal of the Court affixed, the ____ day of _____, 19___. (Seal.) By order of the Court. G.H., Clerk of the Superior Court of Guam.”

SOURCE: Probate Code of Guam (1970), § 502.

SUBCHAPTER B
SECURITY FOR FAITHFUL PERFORMANCE OF
PERSONAL REPRESENTATIVE'S TRUST

§ 2011. General Requirement of Security for Faithful Performance; Alteration in Security During Pendency of Administration; Security Not Required of Executor If Waived By Will.

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- § 2013. Security May Be Provided By Bond; Requisites of Bond; Nature of Liability on Bond; Extent of Bond.
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- § 2019. Security May Be Provided By Payment of Estate Income Into Court.
- § 2021. Security May Be Provided By Deposit of Tangible Personal Property Into Safety Deposit Box.
- § 2023. Security May Be Provided By Insurance.
- § 2025. When Security Becomes Insufficient: Requirement of Further Security; May Be With or Without Hearing; Appointment of Person Next In Order; Revocation of Letters.
- § 2027. Suspension of Personal Representative's Powers Pending Hearing.
- § 2029. Further Security May Be Required On Sale of Real Property.
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- § 2033. Forms of Security Provided in Subchapter Not Exclusive.

§ 2011. General Requirement of Security for Faithful Performance; Alteration in Security During Pendency of Administration; Security Not Required of Executor If Waived By Will.

(a) Except as provided in subsections (c) and (d) of this Section, every person to whom letters testamentary, letters of administration with the will annexed or letters of administration (hereafter in this Subchapter referred to as "personal representative") are granted shall, before such letters are issued, provide security for the faithful performance of the trust. The form of the security, the amount thereof, and the terms and conditions thereof, shall be prescribed by the Superior Court at the time the letters are granted to the personal representative.

(b) The Superior Court of Guam may, at any time prior to the discharge of the personal representative, and upon such notice to the personal representative and to all persons interested in the estate as the Superior Court of Guam shall deem adequate, alter the form, amount, terms or conditions of the security provided pursuant to the provisions of subsection (a) of this Section.

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(c) Letters testamentary may be issued to the executor named in a will without his providing security for the faithful performance of his trust as required by subsection (a) of this Section, if it is clearly ascertainable from such will that it was the testator's intention that no security for faithful performance was to be required of the executor named therein; provided, that if letters testamentary have been so issued the Superior Court of Guam may nevertheless, at any time prior to the discharge of such executor, upon its own motion or upon the petition of any person interested in the estate, for good cause, require such executor to provide security for the faithful performance of his trust as in other cases.

(d) Where it appears that the only assets of an estate consist of non-income producing real property or real property in the possession of the United States of America, or of any of the military units of the United States of America for military necessity, the Superior Court may, in its discretion, waive security for the faithful performance or the personal representative's trust, as required by subsection (a) of this Section, until such time as such real property shall yield income or payment is made to the personal representative for such possession, military or otherwise.

SOURCE: Subsections (a) - (c): Guam Law Revision Commission. Subsection (d): Probate Code of Guam (1970), § 541; Guam Law Revision Commission.

COMMENT: Subchapter B of Chapter 20 provides for security for the faithful performance of the personal representative. Section 2011 is intended to give the court very broad discretion to establish the form, amount, and terms and conditions of the security to be provided by the personal representative, and to alter the security requirements during the pendency of the administration if changing circumstances so require. The succeeding Sections of Subchapter B delineate more particularly what form the security might take, although it should be noted that they are not intended to provide an exclusive list of forms of security, that matter being left to the discretion of the court by the provisions of § 2011. As to this last point, see Comment to § 2033, *infra*.

§ 2013. Security May Be Provided By Bond; Requisites of Bond; Nature of Liability on Bond; Extent of Bond.

(a) Security for the faithful performance of the personal representative's trust, as required by Section 2011 of this Title, may in the discretion of the Superior Court of Guam be, in whole or in part, in the form of a bond. Unless otherwise ordered by the Superior Court of Guam, such bond shall be executed to the Government of Guam, with two or more natural persons or a surety company as surety, conditioned

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that the personal representative shall faithfully execute the duties of his trust according to law. Such bond shall be approved by the Superior Court of Guam and filed with the Clerk of the Superior Court of Guam prior to the issue of letters to the personal representative.

(b) The liability of principal and sureties upon the bond of a personal representative is in all cases to pay in the kind of money or currency in which the principal is legally liable. The liability of the personal representative shall not be limited to the penal amount of such bond. The liability of the surety upon such bond shall be limited to its penal amount, except that if the surety fails to satisfy such liability upon demand made after the liability of the principal has become established, the surety shall also be liable for interest at the legal rate from the date of the demand on any judgment obtained against such surety in an action to recover upon such bond, and for costs incurred in obtaining such judgment. Such bond shall not be void upon the first recovery, but may be sued and recovered upon from time to time, by any person aggrieved, in his own name, until the whole penalty is exhausted.

SOURCE: Subsection (a): Guam Law Revision Commission. Subsection (b): California Probate Code, § 554 (as amended).

COMMENT: The Probate Code of Guam (1970) contained elaborate provisions concerning the form and amount of probate bonds, justification of sureties, etc. Such provisions were probably called for under the Probate Code of Guam (1970), as under that Code the probate bond was (with minor exceptions) the only available form of security for the faithful performance of the personal representative. The Commission notes that the bond requirements contained in the Probate Code of Guam (1970) were not often followed by the court; the reasons for this are unclear, but it may be surmised that one reason was that such bonds have long been difficult -- perhaps impossible -- to obtain in Guam. In any event, the Commission is of the opinion that under the general scheme of Subchapter B of Chapter 20 such elaborate provisions are no longer needed: as the court now has very broad discretion to set the form, amount, terms and conditions of security for the personal representative's faithful performance (see § 2011(a), *supra*.) the Commission believes that the court should have the concomitant power to make all necessary determinations as far as bonds are concerned, without legislative constraint. Nonetheless, the Commission is of the opinion that the provisions of subsection (b) are necessary, in that they clarify liability on such a bond.

§ 2015. Security May Be Provided By Deposit of Property.

(a) Security for the faithful performance of the personal representative's trust, as required by Section 2011 of this Title, may in the discretion of the Superior Court of Guam be provided, in whole or in

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part, by the deposit of money or negotiable securities of the estate which have been, or will be, deposited in a bank or banks in the territory of Guam, or in a trust company or trust companies authorized to transact business in the territory of Guam, or money which has been, or will be, invested in an account or accounts in an insured savings and loan association or associations in the territory of Guam, in either case upon condition that such money or securities will not be withdrawn except on authorization of the Superior Court of Guam.

(b) If the Superior Court of Guam orders that security for the faithful performance of the personal representative shall be, in whole or in part, as provided in subsection (a) of this Section, letters shall not issue to the personal representative until the Superior Court of Guam is satisfied that the bank or trust company into which such money or negotiable securities have been or will be deposited, or the savings and loan association in which such money has been or will be invested, has been served with a copy of such order, and agreed in writing that such money or securities will not be withdrawn except on authorization of the Superior Court of Guam, such writing to be filed with the Clerk of the Superior Court of Guam.

(c) The term “account in an insured savings and loan association,” as used in this Section, means shares issued by a federal savings and loan association doing business in the territory of Guam, or investment certificates issued by a building and loan association or savings and loan association chartered in the territory of Guam and doing business in the territory of Guam, which is an “insured institution” as defined in Title IV of the National Housing Act (Title 12, United States Code, §§ 1725 to 1730d), or shares issued by a building and loan association or savings and loan association chartered in the territory of Guam and doing business in the territory of Guam which does not issue investment certificates and which is an “insured institution” as defined in Title IV of the National Housing Act.

SOURCE: Subsections (a) and (b): Guam Law Revision Commission. Subsection (c): California Probate Code, § 1510 (as amended).

§ 2017. Security May Be Provided By Cash Bond, Assigned Interest In Bank or Savings and Loan Account or Posting of Bearer or Endorsed Bonds.

Security for the faithful performance of the personal representative's trust, as required by Section 2011 of this Title, may in the discretion of

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the Superior Court of Guam be provided, in whole or in part, by the personal representative's depositing with the Clerk of the Superior Court of Guam a cash bond or cash bonds, or an interest in account or accounts in a bank or an insured savings and loan association (as defined in Section 2015(c) of this Title), or by the posting of bearer or endorsed bonds of the United States, of any other governmental entity (subject to the approval of the Superior Court of Guam), or of a publicly held corporation (subject to the approval of the Superior Court of Guam), returnable to the personal representative upon his discharge.

SOURCE: Guam Law Revision Commission.

§ 2019. Security May Be Provided By Payment of Estate Income Into Court.

Security for the faithful performance of the personal representative's trust, as required by Section 2011 of this Title, may in the discretion of the Superior Court of Guam be provided, in whole or in part, by the payment of regularly-received income of the estate to the Clerk of the Superior Court of Guam, who shall deposit the same into one or more interest-bearing accounts upon receipt thereof; provided, that if the Superior Court of Guam orders that security for the faithful performance of the personal representative shall be provided, in whole or in part, as set forth hereinabove in this Section, letters shall not issue to the personal representative until the Superior Court of Guam is satisfied that each person who pays such regular income to the estate and who is affected by such order has been served with a copy of such order, and agreed in writing that such money will be paid to the Clerk of the Superior Court of Guam, such writing to be filed with the Clerk of the Superior Court of Guam.

SOURCE: Guam Law Revision Commission.

§ 2021. Security May Be Provided By Deposit of Tangible Personal Property Into Safety Deposit Box.

Security for the faithful performance of the personal representative's trust, as required by Section 2011 of this Title, may in the discretion of the Superior Court of Guam be provided, in whole or in part, by the deposit of tangible personal property of the estate in a safety deposit box regularly maintained by a bank, trust company or savings and loan association in the territory of Guam, such that access to such safety deposit box be limited to the personal representative and the Clerk of the

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Superior Court of Guam (or some person other than the Clerk of the Superior Court of Guam, in the discretion of the Superior Court of Guam) acting simultaneously; provided, that if the Superior Court of Guam orders that security for the faithful performance of the personal representative shall be, in whole or in part, as set forth hereinabove in this Section, letters shall not issue to the personal representative until the Superior Court of Guam is satisfied that the bank, trust company or savings and loan association maintaining the safety deposit box into which such property is to be deposited has been served with a copy of such order, and agreed in writing that access to such safety deposit box be limited as set forth in such order, such writing to be filed with the Clerk of the Superior Court of Guam.

SOURCE: Guam Law Revision Commission.

§ 2023. Security May Be Provided By Insurance.

Security for the faithful performance of the personal representative's trust, as required by Section 2011 of this Title, may in the discretion of the Superior Court of Guam be provided, in whole or in part, by the procurement and maintenance by the personal representative of a policy or policies of insurance sufficient to indemnify the estate for the loss of or damage to the property of the estate which is the subject-matter of such policy or policies; provided, that in such case such policy or policies shall clearly provide that the loss beneficiary thereunder shall be the estate, and not the personal representative in his individual capacity; and provided further, that if the Superior Court of Guam orders that security for the faithful performance of the personal representative shall be provided, in whole or in part, as set forth hereinabove in this Section, letters shall not issue to the personal representative until the Superior Court of Guam is satisfied that each insurance company providing such policy or policies of insurance has been served with a copy of such order, that such policy or policies are in effect, and that a certified copy of such policy or policies has been filed with the Clerk of the Superior Court of Guam.

SOURCE: Guam Law Revision Commission.

§ 2025. When Security Becomes Insufficient: Requirement of Further Security; May Be With or Without Hearing; Appointment of Person Next In Order; Revocation of Letters.

(a) Any person interested in an estate may, at any time prior to the

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discharge of the personal representative, represent to the Superior Court of Guam, by verified petition, that the security provided by the personal representative for the faithful performance of his trust has become insufficient, and ask that further security be required; or, if it comes to the knowledge of the Superior Court of Guam that the security provided by the personal representative for the faithful performance of his trust is from any cause insufficient, the Superior Court of Guam may, of its own motion, require further security.

(b) If the Superior Court of Guam is satisfied from the petition provided for in subsection (a) of this Section, or from its own information, that the matter requires investigation, a citation shall be issued to the personal representative, requiring him to appear before the Superior Court of Guam at a designated time to show cause why he should not provide further security for the faithful performance of his trust. The citation shall be personally served on the personal representative by the office of the Marshal of the Superior Court of Guam, at least five (5) calendar days before the return day. If the personal representative has absconded, or cannot be found, the citation may be served by leaving a copy thereof at his residence, or by such publication as the Superior Court of Guam may order. On the return of the citation, or at such other time as the Superior Court of Guam may appoint, it shall proceed to hear the matter, and if it satisfactorily appears that the security, from any cause, is insufficient, the Superior Court of Guam shall order the personal representative to provide further security, in such form and amount and subject to such terms and conditions as may be prescribed by the Superior Court of Guam, within five (5) calendar days after the date of the entry of the order.

(c) If sufficient further security is not provided within the time fixed by the order of the Superior Court of Guam, as provided in subsection (b) of this Section, the right of the personal representative shall cease, and the person next entitled to administer the estate, who will give sufficient security for the faithful performance of this trust pursuant to the provisions of this Subchapter, shall be appointed. If letters have already issued to the personal representative, the same shall be revoked and his authority shall thereupon cease.

SOURCE: Subsection (a): Probate Code of Guam (1970), § 547; Guam Law Revision Commission. Subsection (b): Probate Code of Guam (1970), § 548; Guam Law Revision Commission. Subsection (c): Probate Code of Guam (1970), § 549;

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Guam Law Revision Commission.

§ 2027. Suspension of Personal Representative's Powers Pending Hearing.

When a petition is presented to the Superior Court of Guam, praying that a personal representative be required to provide further security for the faithful performance of his trust, and it is alleged therein on oath that such personal representative is wasting the property of the estate, the Superior Court of Guam may, by its order, suspend the powers of such personal representative until the matter can be heard and determined. Such hearing shall be held, and such determination made, substantially pursuant to the provisions of Section 2025(b) of this Title.

SOURCE: First sentence: California Probate Code, § 550 (as amended); Guam Law Revision Commission. Second sentence: Guam Law Revision Commission.

§ 2029. Further Security May Be Required On Sale of Real Property.

Before any sale of the real property of an estate is confirmed, the Superior Court of Guam may require the personal representative to provide further security for the faithful performance of his trust in light of the increased value of the personal property of the estate, treating the expected proceeds of the sale as personal property.

SOURCE: Probate Code of Guam (1970), § 542; Guam Law Revision Commission.

§ 2031. Reduction of Security Upon Petition of Personal Representative.

If a personal representative desires a reduction in the amount of security provided for the faithful performance of his trust, or an alteration in the form, terms or conditions thereof, he may apply to the Superior Court of Guam for such relief by filing therein a verified petition setting forth the condition of the estate. Such petition shall be set for hearing by the Clerk of the Superior Court of Guam and notice given in the manner provided in Section 3401 of this Title. Upon the hearing of such petition, and upon proof that due notice of the hearing has been given, the Superior Court of Guam may reduce the amount of security required for the faithful performance of the personal representative's trust to any amount or sum which in the discretion of the Superior Court of Guam may seem proper under the circumstances, or it may in its discretion alter the form, terms or conditions of such security in any manner which may seem proper in the circumstances.

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SOURCE: California Probate Code, § 553.3 (as amended); Guam Law Revision Commission.

§ 2033. Forms of Security Provided in Subchapter Not Exclusive.

Nothing contained in this Subchapter shall be construed to mean that the forms of security for the faithful performance of the personal representative's trust as set forth in this Subchapter, or any of them, are the only forms of security for such faithful performance that may be ordered by the Superior Court of Guam, that matter being left to the discretion of the Superior Court of Guam in all cases.

SOURCE: Guam Law Revision Commission.
