

**15 GCA ESTATES AND PROBATE  
CH. 24 SUPPORT OF FAMILY: HOMESTEAD AND  
EXEMPT PROPERTY, FAMILY ALLOWANCE**

**CHAPTER 24  
SUPPORT OF FAMILY: HOMESTEAD AND EXEMPT PROPERTY,  
FAMILY ALLOWANCE**

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**§ 2401. Possession Pending Inventory: Discretion to Set Apart Property Exempt From Execution; Mandatory Setting Apart of Homestead Property Previously Selected by Spouses.**

The decedent's surviving spouse and minor children are entitled to remain in possession of the homestead, the wearing apparel of the family, the household furniture, and other property of the decedent exempt from execution, until the inventory is filed in the Superior Court. Thereupon, or at any subsequent time during the administration, the Superior Court of Guam, on petition therefor, may in its discretion set apart to the surviving spouse, or, in case of the surviving spouse's death, to the minor child or children of the decedent, all or any part of the property of the decedent exempt from execution, and must set apart to such spouse or to such minor child or children the homestead selected, designated and recorded, if such homestead was selected from the community property, or from property to which Section 1101 of this

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Title is applicable, or from the separate property of the person selecting or joining in the selection of the same.

**SOURCE:** Probate Code of Guam (1970), § 660.

**COMMENT:** Chapter 24 covers two broad subject-matter areas: homestead and family allowance. Both of these areas are subsumed under the general notion of support of the family during the administration of the decedent's estate. More specific comments concerning the two types of homestead, and concerning the award of a family allowance, are contained in certain of the Comments to succeeding Sections within Chapter 24. A few general comments concerning the setting aside of the homestead to the surviving family, are, however, in order here.

Section 2401 provides that the surviving family may keep possession of the homestead, clothing, household effects and other property of the decedent exempt from execution, pending the filing of the inventory. After the inventory is filed, the Court may set aside to the family any of the decedent's property exempt from execution, and it must set aside a previously-selected homestead (unless it was selected by the surviving spouse out of the decedent's separate property, without the decedent's having joined in the selection) -- in either case, upon petition therefor. The purpose underlying the homestead legislation (both in the Civil Code and in the Probate Code) is to provide a place for the surviving family where they may dwell in peace and serenity, conscious that it cannot be taken from them by reason of their own necessity or improvidence, or from the importunity of their creditors. See *Estate of Kachigan* (1942), 20 C.2d 787, 128 P.2d 865. The policy of the law in this area is so strong that if no homestead has been declared under the provisions of the Civil Code, then upon the decedent's death the court will declare a homestead for the surviving family. These points will be addressed in more detail in the Comments to some of the subsequent Sections in this Chapter.

**§ 2403. Notice of Hearing Petition.**

When the petition referred to in Section 2401 or the petition referred to in Section 2409(a) of this Title is filed, the Clerk of the Superior Court of Guam shall set it for hearing, and notice thereof shall be given in the manner provided in Section 3401 of this Title.

**SOURCE:** Probate Code of Guam (1970), § 662.

**§ 2405. Vesting of Homestead; Exemption From Liability for Debts.**

(a) If the homestead selected by the husband and wife, or either of them, during their coverture, and recorded while both were living, was selected from the community property, or from property to which Section 1101 of this Title is applicable, or from the separate property of the person selecting or joining in the selection of the same, it vests, on the death of either spouse, absolutely in the survivor.

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(b) If the homestead was selected from the separate property of the decedent, the decedent not having joined therein, it vests, on death, in the decedent's heirs or devisees, subject to the power of the Superior Court to set it apart for a limited period to the family of the decedent, as provided in Section 2409 of this Title.

(c) No homestead referred to in subsections (a) or (b) of this Section is subject to the payment of any debt or liability existing against the spouses or either of them, at the time of the death of either, except as provided in the Civil Code of Guam.

**SOURCE:** Probate Code of Guam (1970), § 663; California Probate Code, § 663 (as amended); Guam Law Revision Commission.

**COMMENT:** Apart from minor wording changes and the use of subsections, the only substantive change to § 663 of the Probate Code of Guam (1970) is the addition of language concerning "quasi-community property" -- i.e., the language concerning § 1101. The purpose of §§ 2405 and 2407 is to grant absolute title in previously declared homesteads to the surviving family, if the homestead was selected from community property, "quasi-community" property or the separate property of the person who made the selection or joined in the selection. By the operation of these Sections, such property is not part of the probate estate; in effect, these Sections convert previously homesteaded property into something very much like property held in joint tenancy. Moreover, property so passed to surviving family is exempt from execution, unless -- as provided in the Civil Code -- the property is encumbered. If, on the other hand, previously declared homestead property was selected from the decedent's separate property without the decedent's consent, then the property vests in the decedent's heirs or devisees (depending on whether the decedent died testate or intestate), subject to the power of the court to set it aside in any event to the decedent's family for a limited period of time, as provided elsewhere in this Chapter. But in either case, where there was a previously declared homestead, where the proper person petitions for a homestead after the decedent's death and where the court grants such a homestead, the homestead property is exempt from the payment of the decedent's debts -- except, again, as provided in the Civil Code as to encumbered property.

**§ 2407. Appraisement of Previously Selected Homestead; Excess Over Homestead Exemption; Appraiser's Report; Appointment of New Appraiser; Notice and Hearing.**

(a) If the homestead selected, designated and recorded prior to the decedent's death is returned in the inventory appraised not over the amount of the homestead exemption as provided in the Civil Code of Guam, and in effect at the time of the decedent's death, or was previously appraised as provided in the Civil Code of Guam and such appraised value did not exceed that amount, the Superior Court shall order it set aside to the persons in whom title is vested by Section 2405 of this Title.

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(b) If the homestead selected, designated and recorded prior to the decedent's death is returned in the inventory appraised at more than the amount of the homestead exemption as provided in the Civil Code of Guam, and in effect at the time of the decedent's death, the appraiser must, before he makes his return, ascertain and appraise the value of the homestead at the time the same was selected.

(c) If the appraised value of the homestead at the time the same was selected, as referred to in subsection (b) of this Section, exceeds the amount of the homestead exemption as provided in the Civil Code of Guam, and in effect at the time of the decedent's death, the appraiser must determine whether the premises can be divided without material injury.

(1) If the appraiser finds that the premises can be thus divided, he must admeasure and set apart to the parties entitled thereto such portion of the premises, including the dwelling house, as will equal in value the amount of the homestead exemption as provided in the Civil Code of Guam, and in effect at the time of the decedent's death, and make report thereof to the Superior Court of Guam, giving an exact description of the portion set apart as a homestead.

(2) If the appraiser finds that the premises cannot be so divided without material injury, he must report such finding to the Superior Court, and thereafter the Superior Court may make an order for the sale of the premises and the distribution of the proceeds to the parties entitled thereto.

(d) When the report of the appraiser, as referred to hereinabove, is filed, the Clerk of the Superior Court shall set the same for hearing, and notice thereof shall be given in the manner provided in Section 3401 of this Title. If the Superior Court is satisfied that the report is correct, it must be confirmed, otherwise rejected. In case the report is rejected, the Superior Court may appoint a new appraiser to examine and report upon the homestead, and similar proceedings may be had for the confirmation or rejection of such new appraiser's report, as upon the first report.

**SOURCE:** Subsection (a): Probate Code of Guam (1970), § 664. Subsection (b): Id. Subsection (c): Probate Code of Guam (1970), §§ 664, 665. Subsection (d): California Probate Code, § 666 (as amended).

**COMMENT:** See Comment to § 2405, supra.

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**§ 2409. Selection and Designation of Probate Homestead; Property From Which Selected; Duration; Subjection to Administration.**

(a) If no homestead has been selected, designated and recorded, or in case the homestead was selected by the surviving spouse out of the separate property of the decedent, the decedent not having joined therein, the Superior Court of Guam, on petition therefor and in the manner hereinafter provided, must select, designate and set apart and cause to be recorded a homestead for the use of the surviving spouse and minor children, or, if there be no surviving spouse, then for the use of the minor child or children. Such homestead selected, designated and set apart and caused to be recorded by the Superior Court may be referred to as a "probate homestead."

(b) The "probate homestead" referred to in subsection (a) of this Section shall be selected, designated and set apart out of the community property, or out of property to which Section 1101 of this Title is applicable, or out of real property owned in common by the decedent and the person or persons entitled to have the homestead set apart; or, if there be no community property, or no property to which Section 1101 of this Title is applicable, or no real property owned in common by the decedent and the person or persons entitled to have the homestead set apart, then out of the separate property of the decedent.

(c) If the "probate homestead" selected, designated and set apart under the provisions of this Section is the separate property of the decedent, the Superior Court can set it apart only for a limited period, to be designated in the order, and in no case beyond the lifetime of the surviving spouse, or, as to a child, beyond its minority; and, subject to such homestead right, such property remains subject to administration.

**SOURCE:** California Probate Code, § 661 (as amended through 1957); Guam Law Revision Commission.

**COMMENT:** Sections 2409 and 2411 cover the so-called "probate homestead." Like the declared homestead, this type of homestead is purely a creature of statute, and exists for precisely the same purposes as the declared homestead. Note that, as before, the court has no discretion as to whether to grant a "probate homestead"; once the proper petition is filed, the court must select a homestead for the surviving family.

**§ 2411. Ownership of Property Set Aside.**

When property other than a homestead selected and recorded during the lifetime of the decedent, is set apart to the use of the decedent's

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family, in accordance with the provisions of this Chapter, such property, if the decedent left a surviving spouse and no minor child, is the property of such surviving spouse; if the decedent left also a minor child or children, one-half (1/2) of such property belongs to the surviving spouse and the remainder to the child or in equal shares to the children; if there is no surviving spouse, the whole belongs to the minor child or children.

**SOURCE:** Probate Code of Guam (1970), § 667.

**COMMENT:** See Comment to § 2409, supra.

**§ 2413. Successor to Holder of Homestead Right.**

A person succeeding, by purchase or otherwise, to the interest of a surviving spouse in a homestead which has been declared in the lifetime of the decedent, shall have the same right to apply to the Superior Court for an order setting aside the homestead to him as is conferred by law on the person whose interest he has acquired.

**SOURCE:** Probate Code of Guam (1970), § 668.

**§ 2415. Family Allowance: Right to Allowance; Preference in Payment; Time of Commencement.**

The decedent's surviving spouse, minor children, and adult children who are physically or mentally incapacitated from earning a living and were actually dependent in whole or in part upon the decedent for support, are entitled to such reasonable allowance out of the estate as shall be necessary for their maintenance according to their circumstances, during the progress of the settlement of the estate, which, in case of an insolvent estate, must not continue longer than one (1) year after granting letters. Such allowance must be paid in preference to all other charges, except funeral charges, expenses of the last illness and expenses of administration, and may, in the discretion of the Superior Court, take effect from the time of the decedent's death.

**SOURCE:** California Probate Code, § 680 (as amended).

**COMMENT:** The only difference between § 680 of the Probate Code of Guam and the amended version of § 680 of the California Probate Code is that the California version adds decedent's adult children who are incapable of earning a living and were dependent on the decedent, as people who are entitled to a family allowance. Given the underlying purpose of Chapter 24 -- to allow the family unit to continue to function as normally as possible after the decedent's death -- such a provision seems only fair.

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**§ 2417. Family Allowance: When May be Granted; Continuance; Modification; No Stay on Appeal.**

(a) The allowance provided in Section 2415 of this Title may be granted by the Superior Court before the inventory is filed, in which case it shall continue until modified by the Superior Court. After the inventory is filed the Superior Court may grant such allowance, or may modify any allowance made before the filing of the inventory, upon the petition of any person interested, and a hearing after notice is given in the manner provided in Section 3401 of this Title.

(b) Notwithstanding any other provision of law, no stay shall be had of the payment of any allowance provided in Section 2415 of this Title, or of any installment thereof, pending appeal from an order relating thereto. If the Superior Court of Guam, acting under the provisions of Section 942 of the Code of Civil Procedure, dispenses with or limits the security required of the person who appeals such order, it may in its discretion require that the person in whose favor the allowance provided in Section 2415 of this Title was made provide security such as that required of a personal representative under the provisions of Subchapter B of Chapter 20 of this Title, to the effect that if the order appealed from, or any part thereof, be so modified or reversed that such allowance, or any part thereof, proves to be unwarranted, the same shall, unless deducted from any final or partial distribution ordered in favor of the person in whose favor such allowance was awarded, be repaid and refunded into said estate, and, if not so repaid and refunded within thirty (30) calendar days after the Superior Court shall so order following such modification or reversal, judgment may be entered therefor, on the motion of the personal representative of said estate, in favor of such personal representative and against the person in whose favor such allowance was made and the sureties, if any, on his undertaking or other form of security as provided in this subsection, for such amount, together with interest and costs.

**SOURCE:** Subsection (a): Probate Code of Guam (1970), § 681. Subsection (b): California Probate Code, § 684 (as amended); Guam Law Revision Commission.

**COMMENT:** The Probate Code of Guam (1970) contained no provision concerning stays of family allowance upon appeal. The Commission has thus added subsection (b), which is based on a similar provision of California law (although it is somewhat less complex than the California version), to fill that void.

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**§ 2419. Family Allowance: Where Persons Entitled Have Other Support.**

If any person otherwise eligible for the allowance provided in Section 2415 of this Title has a reasonable maintenance derived from other sources, and there are other persons entitled to such allowance, the allowance shall be granted only to those who have not such maintenance.

**SOURCE:** California Probate Code, § 682 (as amended).

**COMMENT:** The equivalent section of the Probate Code of Guam (1970) has been altered in order that it comport with the revised provisions of § 2415. If, for example, a mentally incapacitated adult child of the decedent lives in a public institution and is reasonably provided for by that institution, then the provisions of § 2419 allow the court to grant a family allowance only to such other eligible persons -- e.g., the surviving spouse, minor children -- as might need it.

**§ 2421. Costs.**

The costs of all proceedings provided for in this Chapter must be paid by the estate as expenses of administration.

**SOURCE:** Probate Code of Guam (1970), § 683.

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