

CHAPTER 29
ADVANCEMENTS, ADEMPION, PARTITION BEFORE DISTRIBUTION

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§ 2901. Gifts Before Death as Adempions; When to be Taken as Advancements.

A gift before death shall be considered as an ademption of a bequest or devise of the property given; but such gifts shall not be taken as an advancement to an heir or as an ademption of a general legacy unless such intention is expressed by the testator in the grant or otherwise in writing, or unless the donee acknowledges it in writing to be such.

SOURCE: Probate Code of Guam (1970), § 1050.

§ 2903. Advancements: Treated as Part of Estate; Deduction From Share of Donee.

Any property, real or personal, given by the decedent in the decedent's lifetime as an advancement to an heir, is a part of the state of the decedent for the purposes of division and distribution thereof among the decedent's heirs, and must be taken by such heir toward his share of

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the estate of the decedent. If the amount of such advancement exceeds the share of the heir receiving the same, such heir must be excluded from any further portion in the division and distribution of the estate, but such heir shall not be required to refund any part of such advancement. If the amount so received is less than such heir's share, such heir is entitled to so much more as will give such heir his full share of the estate of the decedent.

SOURCE: Probate Code of Guam (1970), § 1051.

§ 2905. Advancement: Value of Property Advanced.

If the value of the property advanced as set forth in Section 2903 of this Title is expressed in the conveyance, or in the charge thereof made by the decedent, or in the acknowledgment of the party receiving it, it must be held as of the that value in the division and distribution of the estate; otherwise, it must be estimated according to its value when given, as nearly as the same can be ascertained.

SOURCE: Probate Code of Guam (1970), § 1052.

§ 2907. Advancements to Predeceased Heir.

If an heir receiving an advancement dies before the decedent, leaving heirs, the advancement must be taken into consideration in the division and distribution of the estate, and the amount thereof must be allowed accordingly by the representative or successors in interest of the heir receiving the advancement, in like manner as if the advancement had been made directly to them.

SOURCE: Probate Code of Guam (1970), § 1053.

§ 2909. Advancements: Determination of Questions.

All questions as to advancements made, or alleged to have been made, by the decedent to his heirs, may be heard and determined by the Superior Court, and must be specified in the decree assigning and distributing the estate; and the decree of the Superior Court, when it becomes final, is conclusive on all parties interested in the estate.

SOURCE: Probate Code of Guam (1970), § 1054.

§ 2911. Partition Before Distribution: Parties Entitled to Petition.

When two or more heirs, devisees or legatees are entitled to the distribution of undivided interests in any real or personal property of the decedent and they have not agreed among themselves, before distribu-

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tion, to a partition, allotment or other division thereof, any one or more of them, or the personal representative, at the request of any one or more of them, may petition the Superior Court to make such partition, allotment or division of the property as will be equitable and will avoid the distribution of undivided interests.

SOURCE: Probate Code of Guam (1970), § 1100.

COMMENT: Sections 2911 - 2929, inclusive, have been largely taken from §§ 1100 - 1106 of the Probate Code of Guam (1970). The only change made by the Commission has been a slight alteration of the wording of § 2913, following the California model; see Comment to § 2913. The other changes to §§ 2911 - 2923, inclusive, have been made merely to indicate that the provisions of those Sections cover a different subject-matter area than the provisions of §§ 2901 - 2909, inclusive. Under the Probate Code of Guam (1970) this was not a problem, because the provisions concerning partition before distribution occupied their own chapter. The Commission has conflated these provisions with the provisions concerning advancements and adempments into a single Chapter for the sake of convenience and efficiency; however, it is not the Commission's intention to alter the substantive provisions of either subject-matter area to any greater extent than might be gleaned from the texts of the Sections in Chapter 29, or from the Comments thereto.

§ 2913. Partition Before Distribution: Petition; Time for Filing; Contents; Citation.

The petition referred to in Section 2911 of this Title may be filed with the Clerk of the Superior Court at any time after the time to file or present claims has expired, and before the distribution of the property to be affected has been ordered. The petition shall describe the property and give the names of the persons having or claiming the undivided interests and shall state what those interests are, so far as known to the petitioner. Thereupon a citation shall be issued by the Clerk of the Superior Court directed to the persons, other than the petitioner, who are entitled to distribution of the undivided interests, and to the personal representative, directing them to answer the petition within thirty (30) calendar days after service of the citation. The citation shall be served in the manner provided by law for the service of a summons in a civil action. If there is unreasonable delay in serving the citation, the Superior Court may dismiss the proceeding.

SOURCE: California Probate Code, § 1101 (as amended).

COMMENT: The only alteration to § 1101 of the Probate Code of Guam (1970) is the following change in the second-to-last sentence: where it previously read, "... personally or by publication in the same manner as a summons in a civil action ...", it now reads, "... in the manner provided by law for the service of summons in a civil action."

§ 2915. Partition Before Distribution: Setting for Hearing and Notice; Parties to Proceeding.

When all the persons in interest have appeared or are in default on a proceeding for partition as described in this Chapter, the Clerk of the Superior Court shall set the matter for hearing by the Superior Court. The persons in interest who have filed written appearances shall be considered the parties to the proceeding, and each shall be entitled to five (5) calendar days' notice of the hearing. No one shall be considered as a plaintiff or as a defendant.

SOURCE: Probate Code of Guam (1970), § 1102.

§ 2917. Partition Before Distribution: Division and Allocation of Property; Sale; Acceptance of Undivided Interests.

The Superior Court, at the hearing provided for in Section 2915 of this Title, shall proceed to take evidence and to partition, allot, and divide the property so that each party shall receive property of a value proportionate to his interest in the whole, and for that purpose the Superior Court may direct the personal representative to sell any property which cannot be partitioned without great prejudice to the owners and which cannot conveniently be allotted to any one party. The sale shall be conducted and confirmed in the same manner as other probate sales. Any two or more parties may agree to accept undivided interests.

SOURCE: Probate Code of Guam (1970), § 1103.

§ 2919. Before Distribution: Reference; Appointment and Power of Referees.

In a proceeding for partition as described in this Chapter, the Superior Court may, in its discretion, appoint one or three referees to partition property capable of being divided, if requested to do so by any party in interest. The number of referees appointed must conform to the request of at least one of the parties. The referees shall have the powers and perform the duties of referees in civil actions for partition, and the Superior Court shall have the same powers with respect to their report as in such actions.

SOURCE: Probate Code of Guam (1970), § 1104.

§ 2921. Partition Before Distribution: Costs a Lien on Property; Apportionment of Expenses; Attorney's Fees.

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The expenses of a partition provided by this Chapter shall be equitably apportioned by the Superior Court among the parties, but each party must pay his own attorney's fees. The amount charged to each party shall constitute a lien on the property allotted to him.

SOURCE: Probate Code of Guam (1970), § 1105.

§ 2923. Partition Before Distribution: Allotment by Court; Effect; Review.

The allotment made by the Superior Court in a proceeding for partition as described in this Chapter shall control upon proceedings for distribution, unless modified for good cause upon reasonable notice, and the proceedings leading to such allotment may be reviewed upon appeal from the decree of distribution.

SOURCE: Probate Code of Guam (1970), § 1106.
