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Scope of this Supplement

In December of 2005, the Guam Code Annotated 2005 Edition was released, which updated the code through parts of Public Law 28-68 then in effect. This supplement updates Volume 8 of the 2005 Edition through Public Law 28-100 which was signed into law on February 7, 2006. Included in this supplement are corrections made to Volume 8. The following table identifies the updated and corrected sections.

Table of Sections Updated

Title	Section	Action	Public Law
21	60502	Amended	28-68 : IV:45
21	61103 (p)	R/R	28-68 : IV:76
21	61312	Added	28-68 : II:I:21
21	61515- 61518	Added	28-68 : IV:76
21	66409 (c)	Repealed	28-68 : II:II:9
21	75112 (a)	Amended	28-68 : IV:29
21	75112 (j)	Added	28-68 : IV:30
21	77113 (c)	Repealed	28-78 : 3
21	77203	Amended	28-68 : IV:42
22	32111	Amended	28-68 : IV:45
22	35103 (b)	Amended	28-118 : 2
22	35103 (r)	Amended	28-118 : 3
22	35103 (t)	Added	28-118 : 4
22	35103 (u)	Added	28-118 : 5
22	35104 (a)	Amended	28-118 : 6
22	35104 (d)	Amended	28-68 : IV:51
22	35104 (j)	Added	28-68 : IV:52
22	35105 (b)	Amended	28-118 : 7
22	35105 (c)	Amended	28-118 : 8
22	35105 (d)(2)	Amended	28-118 : 9
22	35105 (f)	Amended	28-118 : 10
22	35105 (g)	Amended	28-118 : 11
22	35106 (c)(1)	Amended	28-118 : 12
22	35106 (d)	Amended	28-118 : 13
22	35106 (e)	Repealed	28-118 : 14

Title	Section	Action	Public Law
22	35107 (d)(4)	Amended	28-118 : 15
22	35107 (i)(3)	Amended	28-118 : 16
22	35109	Amended	28-118 : 17
22	35109 (a)	Amended	28-118 : 18
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22	35111 (l)	Amended	28-118 : 20
22	35112 (a)	Amended	28-118 : 21
22	35113 (b)	Amended	28-118 : 22
22	35119	Amended	28-118 : 23
22	35121 (c)(2)(D)	Amended	28-118 : 24
22	35122 (a)(2)	Amended	28-118 : 25
22	35122 (d)	Amended	28-118 : 26

TITLE 21 REAL PROPERTY

21 GCA § 60502. Personnel.

The Director shall be responsible for the carrying out of the provisions of this Chapter and may appoint a Guam Chief Surveyor, a Deputy Chief Surveyor and such additional personnel as is necessary for the administration thereof. In addition, the Director shall have the authority to contract with private professional land surveyors for surveying services under such terms and conditions as *I Maga'lahaen Guåhan* may approve; provided, however, any such surveyor shall be either: (a) registered by the Guam Board of Engineering Architectural Examiners under the Professional Engineers, Architects and Land Surveyors Law, Title XLIII, Government Code of Guam, and holds a current certificate of registration issued by the Board covering the contract period, or (b) a surveyor exempted from registration under the Professional Engineers Architects and Land Surveyors Law. The Director of Land Management in conjunction with the Director of Administration shall take the necessary steps required to upgrade the salary level of the Surveyor's series of positions to those of the Engineer's series, including the creation of a classified position of Deputy Chief Surveyor..

SOURCE: GC §13801. Amended by P.L. 25-92:2. Effective January 1, 2006, reference to the "Civil Service Commission," amended to "Director of Administration" pursuant to P.L. 28-68:IV:45 (Sept. 30, 2005).

21 GCA § 61103. Definitions.

For the purpose of this Chapter, certain terms are defined as follows:

(a) *Accessory Building.* A detached subordinate building located on the same lot with a main building, the use of which is customarily secondary to that of the main building or to the use of the land.

(b) *Apartment House.* Same as *dwelling, multiple*.

(c) *Automobile Parking, Private.* An open area, located on the same lot with a dwelling or hotel, for parking automobiles of the occupants of such buildings.

(d) *Automobile Parking Area, Public.* An open area, other than a street or private automobile parking area, designed to be used for the parking of two or more automobiles.

(1) *Compact automobile.* An automobile whose gross area for parking purposes is one hundred twenty (120) square feet or less.

(2) *Standard-sized automobile.* An automobile whose gross area for parking purposes is one hundred sixty (160) square feet or less.

(e) *Building.* Any structure built for the support, shelter or enclosure of persons, animals, chattels, or property of any kind.

(f) *Building Height*. The vertical distance measured from the average level of the highest and lowest point of that portion of the lot covered by the building to a point midway between the highest and lowest point of the roof.

(g) *Compact Automobile*. An automobile whose gross area for parking purposes is one hundred sixty (160) square feet or less.

(h) *Cluster Development*. Placement of residential units in close association to each other in order to consolidate required lot area into usable open space for the benefit of those living in such residential units.

(i) *Commission*. Shall mean the Territorial Land Use Commission of Guam.

(j) *Dwelling*. A building or portion thereof designed exclusively for residential occupancy, including one-family, two-family and multiple dwellings, but not including hotels.

(k) *Dwelling Unit*. One or more rooms and a single kitchen in a dwelling, designed as a unit for occupancy by one family for living and sleeping purposes.

(l) *Dwelling, One-Family*. A detached building containing only one dwelling unit.

(m) *Dwelling, Two-Family*. A detached building containing two dwelling units.

(n) *Dwelling, Multiple*. A building containing three or more dwelling units.

(o) *Family*. An individual, or two or more persons related by blood or marriage, or a group of not more than five persons who need not be related by blood or marriage living together as a single housekeeping unit.

(p) "*Home occupation*" means any activity operated for pecuniary gain conducted in, or directed from, a residential dwelling or unit restricted to family members residing within that dwelling as a secondary use of such dwelling unit.

(q) *Hotel*. A building containing six or more rooms intended or designed to be used, or which are used, rented, or hired out to be occupied, or which are occupied for sleeping purposes.

(r) *Junk Yard*. An open area where waste, scrap metal, paper, rags, or similar materials are bought, sold, exchanged, stored, baled, packed, disassembled or handled, including the dismantling or storing of wrecked automobiles or other vehicles, and buildings. The terms dismantling or storing do not include the action of a licensed automobile repairer or garage owner in stripping an automobile or other vehicle of its usable parts as long as such action is accomplished within ten (10) days of the arrival of the motor vehicle being so stripped on the premises of the garage or automobile repair business.

(s) *Lot*. A parcel of land occupied or to be occupied by a use or building, and accessory buildings and uses, together with such yards, open spaces and lot area as are required by this Title, and having frontage on a street.

(t) *Lot Line, Front*. The line separating the lot from the street. For the purposes of yard requirements, a corner lot has two front yards and no rear yard. Within a panhandle lot, the front lot line begins at the interior end of the panhandle.

(u) *Lot Line, Rear*. The lot line which is opposite and most distant from the front lot line.

(v) *Lot Line, Side*. Any lot line not a front lot line or a rear lot line.

(w) *Lot Depth*. The horizontal distance between the front and rear lot lines, measured in the mean direction of the side lot lines.

(x) *Lot Width*. The horizontal distance between the side lot lines, measured at right angles to the lot depth at a point midway between the front and rear lot lines.

(y) *Lot Area*. The total horizontal area within the lot lines of a lot.

(z) *Nonconforming Building*. A building or structure which does not conform to the regulations of this Chapter and which lawfully existed at the time the regulations, with which it does not conform, became effective.

(aa) *Nonconforming Use*. A use of a building or land which does not conform to the regulations of this Chapter and which lawfully existed at the time the regulations, with which it does not conform, became effective.

(bb) *Planned Unit Development District*. A substantial area in which development follows an approved plan integrating a combination of uses in an appropriate and unified manner.

(cc) *Standard-sized automobile*. An automobile whose gross area for parking purposes is greater than one hundred sixty (160) square feet.

(dd) *Story*. That portion of a building between the surface of any floor and the surface of the floor or ceiling next above it.

(ee) *Structure*. Anything constructed or erected which requires location on the ground or attached to something having a location on the ground.

(ff) *Use*. The purpose of which land or a building is arranged, designed or intended or for which either land or a building is or may be occupied or maintained.

(ff) *Yard*. An open space on a lot, unoccupied and unobstructed from the ground upward, except as otherwise provided in this Chapter.

(gg) *Yard, Front.* A yard adjoining the front lot line and extending across the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and a line parallel thereto on the lot.

(hh) *Yard, Rear.* A yard extending across the full width of the lot between the most rear main building and the rear lot line. The depth of the required rear yard shall be measured horizontally from the nearest part of a main building toward the nearest point of the rear lot line.

(ii) *Yard, Side.* A yard between a main building and the side lot line, extending from the front yard or front lot line where no front yard is required to the rear yard. The width of the required side yard shall be measured horizontally from the nearest point of the side lot line toward the nearest part of the main building.

SOURCE: GC §17004; amended by P.L. 10-5 and P.L. 21-49:1. Nos. 1 and 2 of subsection (d) added by P.L. 22-123. Subsection (p) repealed and reenacted by P.L. 28-068:IV:76 (Sept. 30, 2005).

21 GCA § 61312. S-1 (School Zone).

(a) Use permitted:

(1) public schools and school related facilities.

SOURCE: § 61312 added by P.L. 28-068:II:1:21 (Sept. 30, 2005).

21 GCA § 66409. Contractual Review of Plans & Permits.

(a) Legislative findings and intent. The Legislature finds that the Building Permits and Design Analysis Section of the Department of Public Works is currently backlogged with plan reviews and building inspections, which backlog causes developers many problems with their loans and building plans because of the time involved in drawing plans and getting the plans approved by the various agencies of the government of Guam. The backlog also causes contractors problems with long periods of no work until the plans are approved and permitted, and with long delays waiting for inspections during the construction phase. It is the intent of the Legislature that the government of Guam encourage more construction in all areas by eliminating such a backlog and such long waiting periods. In order to alleviate some of the backlog in required plan reviews and phase inspections by the Building Permits and Design Section, the Legislature finds it appropriate to allow the Section to contract for professional architects and engineers to conduct such plan reviews and inspections.

(b) Outside architects and engineers. Notwithstanding any other provision of law, the Building Permits and Design Analysis Section of the Department of Public Works, acting through the building official, is authorized to contract for plan reviews and building inspection services using licensed Guam architects and engineers.

(c) **[Repealed.]**

(d) Commencement of contracted services. To ensure that there is no impact on the General Fund for such plan reviews and building inspections, no funds may be used from the General Fund to pay therefor. Plan reviews and inspections may be contracted out when adequate funds have accumulated in the DPW Building & Design Fee Account to defray the costs of such contractual services.

(e) List of approved architects and engineers. To ensure a fair and equitable distribution of contracts among available architects and engineers, the building official shall establish a list of approved architects and engineers which shall be used on a rotating basis to solicit proposals for contracts to provide plan reviews and inspections. All architects and engineers on such list must be licensed on Guam.

(f) Fees. Fees charged for plan reviews and inspections that are contracted out shall be determined by soliciting proposals with the fees to be the lowest accepted by the architects and engineers on the approved list.

(g) Quarterly reports. The building official shall submit a quarterly report to the Speaker of the Legislature detailing the number of plan reviews and building inspections that have been conducted under this section.

SOURCE: Added by P.L. 22-110:1. Subsection (c) repealed by P.L. 28-068:II:II:9 (Sept. 30, 2005).

21 GCA § 75112. Chamorro Home Loan Fund; Chamorro Home Development Fund; Chamorro Educational Fund; Chamorro Commercial Loan Fund; Chamorro Home Repair Loan Fund; and the Chamorro Loan Guarantee Fund.

(a) There are hereby established three (3) revolving funds to be known as the Chamorro Home Loan Fund, the Chamorro Commercial Loan Fund and the Chamorro Home Repair Fund and four (4) special funds to be known as the Chamorro Home Development Fund, the Chamorro Educational Assistance Fund, Chamorro Land Trust Operations Fund and the Chamorro Loan Guarantee Fund.

(b) Chamorro Home Loan Fund. There is hereby authorized to be appropriated from the Unappropriated Surplus of the General Fund the sum of One Million Dollars (\$1,000,000) as initial capital to said Fund. In furtherance of the purposes herein, the Commission may do any one or more of the following with moneys from this Fund and any borrowed moneys under (6) herein below.

(1) The Commission may extend the benefits of the Fund only to native Chamorros as defined in this Chapter.

(2) The Commission may loan, or guarantee the repayment of or otherwise underwrite any authorized loan, up to a maximum amount not to

exceed the financial ability of the borrower to satisfy the indebtedness as approved by the lender; provided, that where, upon the death of a lessee living on Chamorro homelands who leaves no relatives qualified to be a lessee of Chamorro homelands, or in the event of the cancellation of a lease by the lessee or by the Commission for cause, then the Commission shall be authorized to make payment and to permit assumption of loans, subject to the provisions of § 75113(b).

(3) Where the dwelling is on Chamorro homelands, anything in the Chapter to the contrary notwithstanding, either the Commission or other governmental agencies may make loans, and the loans made in connection with the repair or maintenance or purchase or erection or improvement of dwellings shall be subject to, all applicable provisions of the Chapter, including but not limited to the provisions of §§ 75107, 75108, 75109, 75110, 75113, 75114 and 75116, and to such legislative amendments of the Chapter herein or thereafter enacted, provided such amendments do not change the qualifications of lessees or constitute a reduction or impairment of the Chamorros Home Loan Fund, or Chamorro Home Development Fund or otherwise required the consent of the United States. Loans made to lessees by governmental agencies shall be approved by the Commission, and the Commission may assure the payment of such loans, provided that the Commission shall reserve the following rights, among others: the right of succession to the lessee's interest and assumption of the contract of loan; right to require that written notice be given to the Commission immediately upon default or delinquency of the lessee; and any other rights necessary to protect the monetary and other interests of the Commission.

(4) Where the dwelling is on non-Chamorro homelands, anything in the Chapter to the contrary notwithstanding, either the Commission or financial institutions may make loans, and in connection with such loans, the Commission shall be governed by, and the loans made in connection with the repair or maintenance or purchase or erection or improvement of dwellings shall be subject to, such terms and conditions as the Commission may, by rules and regulations promulgate, provided, the Commission shall require any loan made or guaranteed or otherwise underwritten to be secured adequately and suitably by a first or second mortgage or other securities;

(5) The Commission shall establish interest rate or rates at two and one-half per cent (2-1/2%) a year or higher, in connection with authorized loans on Chamorro homelands or non-Chamorro homelands, and where the going rate of interest on loans made by financial institutions to native Chamorros is higher, pay from the Fund or the moneys borrowed, the difference in interest rates;

(6) The Commission may borrow and deposit funds into a special revolving account for the purposes of repairing, maintaining, purchasing, erecting or improving dwellings on Chamorro homelands and non-Chamorro homelands and related purposes from financial institutions, governmental, or private;

The Commission may purchase or otherwise acquire, or agree so to do, before or after default, any notes and mortgages or other securities, covering loans under this program made by financial institutions, and guarantee the repayment of or otherwise underwrite the loans, and accept the assignment of any notes and mortgages or other securities in connection therewith;

(7) The Commission may exercise the functions and reserved rights of a lender of money or mortgagee of residential property in all loans by financial institutions made to Chamorros under this program. The functions and reserved rights shall include but not be limited to, the purchasing, repurchasing, servicing, selling, foreclosing, buying upon foreclosure, guaranteeing the repayment or otherwise underwriting, of any loan, protecting of security interest, and after foreclosure, the repairing, renovating or modernization and sale of the property covered by the loan and mortgage, to achieve the purposes of this program while protecting the monetary and other interests of the Commission.

(c) Chamorro Home Development Fund. Twenty-five percent (25%) of the amount of moneys covered into the Chamorro Home Loan Fund annually shall be transferred into the Chamorro Home Development Fund. The moneys in said development fund shall be available, with the prior written approval of the Governor for construction of sanitary sewage facilities for the construction of roads through and over Chamorro homelands, and for other non-revenue producing improvements.

(d) Match moneys. The Commission is authorized and empowered to use moneys in the development fund, with the prior written approval of the Governor, to match Federal funds available for the same purposes and to that end is authorized to enter into such undertakings, agree to such conditions, transfer funds therein available for such expenditures and to perform such other acts and things, as may be necessary or required, as a condition to securing match funds for such projects or works.

(e) Chamorro Education Assistance Fund. Ten percent (10%) of the amount of moneys covered into the Chamorro Home Loan Fund annually shall be transferred into the Chamorro Educational Assistance Fund. The Guam Public School System shall establish and direct educational projects after consultation with the University of Guam and the Commission which shall be directed primarily for the educational improvement of the children of lessees, which shall be funded with this Fund with prior written approval of the Governor.

(f) Chamorro Commercial Loan Fund. The Commission is authorized to create a Fund out of which loans may be made to those holding leases issued under § 75107 of this Chapter. The loans shall be for theaters, garages, service stations, markets, stores, and other mercantile establishments and these shall all be owned by lessees or by organizations formed and controlled by said lessees. The amount and duration of loans from this Fund at any one time to any lessee, or successor or successors in interest, shall be determined by the Commission on the basis of the proposed operations of lessee(s) and the security available, provided that where, upon the death of a lessee leaving no relative qualified to be a lessee of Chamorro homelands, or the cancellation of a lease by the Commission, or the surrender of a lease by the lessee, the Commission shall make the payment provided for by § 75109(a). The amount of any such payment made to the legal representative of the deceased lessee, or to the previous lessee, as the case may be, shall be considered as part or all, of any such loan to the successor or successors, without limitations as to any pre-established maximum amount but subject to provisions of Paragraph (b) of § 75113.

(g) Chamorro Home Repair Loan Fund. There is hereby authorized to be appropriated from the Unappropriated Surplus of the General Fund the sum of One Hundred Thousand Dollars (\$100,000) for the Chamorro Home Repair Loan Fund. The moneys in this Fund shall be used to make loans in amounts not in excess of Five Thousand Dollars (\$5,000) to lessees for repairs to their existing homes and for necessary additions to such homes due to increase in family size. Such loans may be made for periods not to exceed five (5) years.

(h) The Chamorro Loan Guarantee Fund. The Commission is authorized to create a Fund out of which loans made by governmental agencies or lending institutions to those holding leases or licenses issued under § 75107 of this Chapter may be guaranteed. This guarantee may be for home or commercial loan purposes. The loan guarantees shall be subject to the restrictions imposed by '§ 75108 and 75113 of this Act.

The Commission's guarantee of repayment shall be adequate security for a loan under any Guam law prescribing the nature, amount, or form of security, or requiring security upon which loans may be made. This guarantee shall include, but not be limited to, loans secured or obtained through the CIP and other programs of the Federal Home Loan Bank of Seattle, United States Federal agencies and instrumentalities, or any other public or private lending institution or program duly authorized to do business on Guam.

(1) Loan Default Remedy. In the event of a loan default, the Commission shall offer and reassign to the next qualified applicant the opportunity to assume any loan in default guaranteed by the Chamorro Loan Guarantee Fund. The Commission shall pursue this remedy to avert a loan

default prior to making any direct repayment of a loan and accrued interest with funds from the Chamorro Loan Guarantee Fund.

(2) For purposes of this Section, a mortgage is considered in default when payments due upon the mortgage have not been satisfactorily tendered for a period of one hundred twenty (120) calendar days. The lending institutions shall provide to the Commission advance notice of a potential default in instances where payments due upon a mortgage have not been satisfactorily tendered for a period of sixty (60) calendar days. In cases where the mortgage or loan is obtained through the lending programs of United States agencies and instrumentalities, the period a loan is deemed to be in default if payments due upon the mortgage have not been satisfactorily tendered are determined by the applicable laws, rules and regulations of the respective programs.

(3) Upon notification of the default of a loan guaranteed by the Chamorro Loan Guarantee Fund, the Commission shall, during the period pending reassignment of the loan or the determination of the Commission to directly repay the loan and accrued interest due, bring current the payments due the lender with funds so reserved for such purposes in the Chamorro Loan Guarantee Fund. The aggregate amount of the payments made by the Commission to bring the loan current may be recovered by the Commission by adding such amount to the principal amount of the loan being reassigned to and assumed by a qualified Chamorro. All funds so expended and subsequently recovered shall be deposited in the Chamorro Loan Guarantee Fund.

(i) Applicable Taxes on Improvements to Chamorro Homelands, and Payment in Lieu of Taxes. Notwithstanding any other provision of law:

(1) Taxes on Improvements to Chamorro Land Trust Land. The holder of any lease or license for the occupation or beneficial use of Chamorro Homelands shall be subject to all applicable taxes on any improvements to any tract so leased or licensed. Taxes assessed for improvements shall be collected by the Department of Revenue and Taxation, which shall maintain a separate record for all such taxes collected.

(2) Payment in Lieu of Real Property Taxes on Chamorro Land Trust Land. In lieu of payment of real property taxes, the holder of any lease or license for the occupation or beneficial use of Chamorro Homelands shall pay to the Department of Revenue and Taxation the equivalent sum which would otherwise be paid to the government of Guam in real property taxes, as if the tract or tracts were taxable private real property. For the purpose of accessing payment in lieu of taxes, the Department of Revenue and Taxation shall determine and collect an assessment in a manner consistent with the assessment of real property taxes for privately owned real property. The

Department of Revenue and Taxation shall maintain a separate record of all payments in lieu of taxes collected.

(3) Deposit and Earmarking of Funds Collected. All taxes on improvements or payments in lieu of taxes identified in Items 1 and 2 of Subsection (i) of this Section shall be deposited in the Chamorro Loan Guarantee Fund, and is earmarked to carry out the purposes set forth pursuant to this Chapter.

(j) The Chamorro Land Trust Operations Fund. The Commission shall create a Fund called the Chamorro Land Trust Operations Fund (Fund), which shall be maintained separate and apart from any other funds and is subject to *I Liheslaturan Guåhan's* appropriation beginning in Fiscal Year 2006. Notwithstanding any other provision requiring the deposit of proceeds to other funds, the Fund shall receive the proceeds of all land use permits, monetary contributions and fees. The Commission shall create, within thirty (30) days of enactment, a reconciliation of all accounts in which such proceeds were deposited and shall transfer the remaining balances to the Fund. The Fund shall be used for the operational expenses of the Chamorro Land Trust Commission.

The Commission shall report on a quarterly basis to the Speaker of *I Liheslaturan Guåhan* the revenues collected and expended from the Fund and post the same on the Commission's website. The Fund shall be subject to audit by the Guam Public Auditor.

SOURCE: GC §13511 repealed and reenacted by P.L. 12-226. Subsection (h) amended by P.L. 24-168:8. Subsection (i) added by P.L. 24-168:9. Subsection (b)(2) amended by P.L. 24-168:11. Subsection (a) amended by P.L. 28-068:IV:29 (Sept. 30, 2005). Subsection (j) added by P.L. 28-068:IV:30 (Sept. 30, 2005).

COMMENT: Reference to "Department of Education" in subsection (e) changed to "Guam Public School System" pursuant to P.L. 28-045:10 (June 6, 2005).

21 GCA § 77113. Parks Division: Duties.

The Parks Division shall have the following duties:

(a) To control, manage, develop and maintain all areas of the Guam Territorial Park System except as provided in § 77112; and

(b) To keep a listing of all areas of the Guam Territorial Park System according to classification, with current, accurate descriptions thereof as determined by the Director in accordance with § 77108.

(c) **[Repealed]**.

SOURCE: GC § 26011 repealed and reenacted by P.L. 12-209; subsection (c) added by P.L. 16-105:6, repealed by P.L. 28-078:3 (Dec. 5, 2005).

21 GCA § 77203. Creation: Park Protection Service.

There is hereby established within the Department a Park Protection Section which shall be responsible for the effective and specialized protection of the Park System. The Director shall select persons based on qualifications prescribed by the Director of Administration as employees of the Section's Territorial Park Patrol. The Park Protection Section shall be under the Parks Division of the Department, and it shall coordinate its functions and activities with other government of Guam agencies, particularly law enforcement agencies.

SOURCE: Amended by P.L. 28-068:IV:42 and 47 (Sept. 30, 2005), effective January 1, 2006; reference to Civil Service Commission changed to Director of Administration.

21 GCA § 61515. Title.

This subdivision of the "*The Zoning Law of the Territory of Guam*" shall be known and may be cited as the "*Family Home Occupation Act.*"

21 GCA § 61516. Purpose.

The purpose of this subdivision of "*The Zoning Law of the Territory of Guam*" is to permit family home occupations in residential dwelling units as an accessory use without a use variance through the establishment of certain minimum regulations for the protection of the community.

21 GCA § 61517. Family Home Occupation Requirements.

Notwithstanding any zoning law to the contrary, a family home occupation shall be an accessory use to a residential dwelling or unit within any zone, and shall not require a use variance provided that:

- a. the activity does not create a consternation with the residential use of the property and surrounding residential uses;
- b. the activity employs no employees other than family members residing in the dwelling or unit;
- c. there is no outside appearance of a family home occupation including, but not limited to, parking, signs or lights;
- d. the volume of deliveries and other vehicular traffic is not in excess of what is normally associated with residential use in the neighborhood;
- e. the activity uses no equipment or process that creates noise, vibration, glare, fumes, odors or electrical or electronic interference, including interference with radio or television reception, that would create a consternation to adjacent neighbors;
- f. the activity does not generate solid waste or sewage discharge, in volume or type, which is not normally associated with a residential use in the neighborhood; and
- g. the activity does not involve any illegal activity.

21 GCA § 61517.1. Exceptions Where not Allowed.

1. In the case of a dwelling that is a part of a horizontal and community property regime or a common interest ownership community in which at least some of the property is owned in common by all of the residents; or, in the case of a dwelling unit that is part of a planned unit development or subdivision to which a covenant or condition is attached upon the purchase of the property, this section shall not supersede any deed restriction, covenant, agreement, master deed, master lease, declaration, by-laws or other documents which prohibit a family home occupation within a dwelling unit.

2. A community created through a property regime shall not be required to amend or modify an existing rule or regulation pertaining to family home occupations so long as no conflicts occur with the provisions of this Article.

21 GCA § 61517.2. Community Property Regime Restrictions.

1. A Community Property Regime (herein after referred to as ‘Regime’) may establish limitations for, or prohibit entirely, any family home occupation which it deems incompatible with the character of the residential community in which it is located.

2. After the effective date of this Article, any Regime may ban any or all family home occupations by the lawful adoption of rules.

21 GCA § 61517.3. Community Regime May Establish Standards.

In accordance with the purpose of this Article, a Regime may establish, through rule, regulation, by-law, covenant, agreement, condition or other documents:

1. standards for delivery or truck traffic;
2. standards concerning the acceptable volume of invitees or guests to a family home occupation;
3. Any standards established pursuant to this Section shall apply to all residences within the Regime.

21 GCA § 61518. Saving Clause.

This Article shall not limit the power of the government to protect the health, safety and welfare of its residents, including the investigation and elimination of nuisances.

TITLE 22 BUSINESS REGULATIONS

22 GCA § 32111. Receipts and Disbursements.

(a) Notwithstanding the Central Accounting Act, all fees and money collected under the provisions of this Title shall be deposited in a special fund

known as the *Professional Engineers, Architects and Land Surveyors Fund*. This fund shall be kept in a bank licensed to do business on Guam and funds shall be paid out only upon a request for payment or requisition submitted by the Secretary/Treasurer or its personnel and countersigned by the Chairman of the Board. All monies in this fund are hereby specifically appropriated only for the use of the Board in pursuit of its authority.

(b) The Board shall provide surety bonds in the name of Guam on behalf of the Chairman, the Secretary/Treasurer and the Administrator, in the sum of Thirty Thousand Dollars (\$30,000.00) each. The premium of said bonds shall be regarded as proper and necessary expenses of the Board.

(c) Upon an appropriation by *I Liheslaturan Guahan* and subject to any limitations which may be contained therein, the Board shall make expenditures from this fund for any purpose which is approved by the Board as reasonable and necessary for the proper performance of its duties under this Title, including the expenses of the Board delegates to meetings of and the membership fees to the National Council of Examiners for Engineering and Surveying and any of its subdivisions and the National Council of Architectural Registration Boards and any of its subdivisions.

(d) The Board shall employ in the classified positions a Board Administrator, Administrative Assistant, Board Investigator and other administrative staff as are necessary for the proper performance for its work. Salaries and other terms of compensation for each Board staff position shall be determined by the Director of Administration. Payments of expenses and salaries pursuant to the administration of this Act may not exceed available funds of the Board.

(e) The Chairman of the Board is designated the certifying officer and all expenditures from the fund shall be certified by the Chairman of the Board. Under no circumstance shall the amount of warrants issued in payment of the expenses and compensation provided for in this Title exceed the amount of money collected.

(f) The Board shall adopt rules or by-laws to provide for an annual budget, an accounting procedure, and the fees for application, registration, examination, reexamination, reciprocity, renewal of registration, temporary permits, corporation permits, replacement of certificates, reconsideration of application, and other services.

SOURCE: GC § 47009.1. Added by P.L. 14-135:6. Repealed and reenacted by P.L. 18-43:14. Subsection (a) amended by P.L. 24-263:34; subsection (b) amended by P.L.24-263:35; subsection (c) amended by P.L. 24-263:36; subsection (f) repealed by P.L. 24-263:37; subsection(d) renumbered to (e) by P.L. 24-263:38; subsection (d) added by P.L. 24-263:39; subsection (e) renumbered to (f) by P.L. 24-263:40. Effective January 1, 2006, reference to the “Civil Service Commission,” amended to “Director of Administration” pursuant to P.L. 28-68:IV:45 (Sept. 30, 2005).

22 GCA § 35103. Definitions.

When used in this Act, the following terms have the meanings indicated:

(a) *'AICPA'* means the American Institute of Certified Public Accountants.

(b) *'Attest'* means providing the following financial statement services:

(1) any audit or other engagement to be performed in accordance with the Statements on Auditing Standards ('SAS');

(2) any review of a financial statement to be performed in accordance with the Statements on Standards for Accounting and Review Services ('SSARS'); and

(3) any examination of prospective financial information to be performed in accordance with the Statements on Standards for Attestation Engagements ('SSAE').

The statements on standards specified in this definition shall be adopted by reference by the Board pursuant to rulemaking and shall be those developed for general application by recognized national accountancy organizations such as the AICPA and the PCAOB.

(c) *'Board'* means the Guam Board of Accountancy established under § 35104 of this Chapter or its predecessor under prior law.

(d) *'Certificate'* means a certificate as certified public accountant issued under § 35105 of this Chapter or corresponding provisions of prior law, or a corresponding certificate as certified public accountant issued after examination under the law of any other state.

(e) *'Client'* means a person or entity that agrees with a licensee, or licensee's employer, to receive any professional service.

(f) *'Compilation'* means providing a service to be performed in accordance with Statements on Standards for Accounting and Review Services ('SSARS') that is presenting in the form of financial statements, information that is the representation of management (owners) without undertaking to express any assurance on the statements.

(g) *'CPA Firm'* means a sole proprietorship, a corporation, a partnership, a limited liability partnership, a professional limited liability company, or any other form of organization issued a permit under § 35107 of this Chapter.

(h) *'License'* means a license issued under § 35106 of this Chapter; or an individual permit to practice or Firm Permit to Practice issued under corresponding provisions of prior law.

(i) *'Licensee'* means the holder of a license as defined in § 35103(h).

(j) *'Manager'* means a manager of a limited liability company.

(k) *'Member'* means a member of a limited liability company.

(l) *'NASBA'* means the National Association of State Boards of Accountancy.

(m) *'Peer Review'* means a study, appraisal, or review of one (1) or more aspects of the professional work of a certificate holder, licensee, or CPA firm that issues attest or compilation reports, by a person or persons who hold licenses and who are not affiliated with the license holder or CPA firm being reviewed.

(n) *'Permit'* means a Firm Permit to Practice as a CPA firm issued under § 35107 of this Chapter, or corresponding provisions of prior law, or under corresponding provisions of the laws of other states.

(o) *'Professional'* means arising out of or related to the specialized knowledge or skills associated with CPAs.

(p) *'Report,'* when used with reference to financial statements, means an opinion, report, or other form of language that states or implies assurance as to the reliability of any financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is an accountant or auditor, or from the language of the report itself. The term "report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements referred to and/or special competence on the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance and/or such special knowledge or competence.

(q) *'Rule'* means any rule, regulation, or other written directive of general application duly adopted by the Board.

(r) *'State'* means any state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands.

(s) *'Substantial Equivalency'* is a determination by the board of accountancy or its designee that the education, examination and experience requirements contained in the statutes and administrative rules of another jurisdiction are comparable to, or exceed the education, examination and experience requirements contained in the Uniform Accountancy Act or that an individual CPA's education, examination and experience qualifications

are comparable to or exceed the education, examination and experience requirements contained in the Uniform Accountancy Act.

(t) '*PCAOB*' means the Public Company Accounting Oversight Board.

(u) '*Principal place of business*' means the office location designated by the licensee for purposes of substantial equivalency and reciprocity.

SOURCE: Subsections (b) amended by P.L. 28-118:2 (Apr. 26, 2006). Subsection (r) amended by P.L. 28-118:3 (Apr. 26, 2006). Subsection (t) added P.L. 28-118:4 (Apr. 26, 2006). Subsection (u) added by P.L. 28-118:5 (Apr. 26, 2006).

22 GCA § 35104. Guam Board of Accountancy.

(a) There is hereby created the Guam Board of Accountancy, which shall have responsibility for the administration and enforcement of this Chapter. The Board shall consist of five (5) members appointed by *I Maga'lahi*, all of whom shall be residents of Guam and holders of licenses currently valid under § 35105 of this Chapter. The term of each member of the Board shall be four (4) years. Vacancies occurring during a term shall be filled by appointment by *I Maga'lahi* for the unexpired remaining term, provided that all appointments first occurring after this Act becomes law, whether due to term expiration or otherwise, shall be for terms of the following lengths: the first two (2) appointments for two (2) year terms, the second two (2) appointments for three (3) year terms and a third single appointment for a four (4) year term, until the Board shall have no more than two (2) terms expiring in any one (1) year. Thereafter, all appointments shall be for four (4) year terms. Upon the expiration of a member's term of office, such member shall continue to serve until a successor shall have been appointed and takes office. Any member of the Board whose certificate under § 35105 of this Chapter is revoked, or suspended, shall automatically cease to be a member of the Board. *I Maga'lahi* may, after a hearing pursuant to the Administration Adjudication Law, remove any member of the Board for neglect of duty or other cause.

(b) The Board shall elect annually from among its members a chairman and such other officers as the Board may determine to be appropriate. The Board shall meet at such times and places as may be fixed by the Board. Meetings of the Board shall be open to the public except insofar as they are concerned with investigations under § 35110 of this Chapter and except as may be necessary to protect information that is required to be kept confidential by Board rules or by the laws of Guam. A majority of the Board members then in office shall constitute a quorum at any meeting duly called. The Board shall have a seal which shall be judicially noticed. The Board shall retain or arrange for the retention of all applications and all documents under oath that are filed with the Board and also records of its proceedings, and it shall maintain a registry of the names and addresses of all licensees under this Chapter. In any proceeding in court, civil or criminal, arising out of or founded upon any provision of this

Chapter, copies of any of said records certified as true copies under the seal of the Board shall be admissible in evidence as tending to prove the contents of said records.

(c) Each member of the Board shall be reimbursed for the member's actual and necessary expenses incurred in the discharge of the member's official duties.

(d) All fees and money collected by the Board under this Chapter shall be received and accounted for by the Board and deposited in the General Fund. All funds shall be appropriated to the Board by *I Liheslaturan Guåhan*, for the use of the Board in the pursuit of its authority. No disbursement of funds appropriated shall be made unless the same has been approved, authorized and ordered by the Board. Such monies shall be utilized solely for the expenses of administering the provisions of this Chapter, which may include, but shall not be limited to, the costs of conducting investigations and of taking testimony and procuring the attendance of witnesses before the Board or its committees; all legal proceedings taken under this Chapter for the enforcement thereof; and educational programs for the benefit of the public and licensees and their employees. On or before March 30, 2006 for Fiscal Year 2007 and January 30th for each fiscal year thereafter, the Board shall approve and submit to *I Liheslaturan Guåhan* its annual budget for the following fiscal year. If the Board fails to submit a budget for the next fiscal year, or if *I Liheslaturan Guåhan* fails to approve the annual budget before the next fiscal year, the current fiscal year's budget shall become law for the next fiscal year, subject to legislative modification.

(e) The Board shall file an annual report of its activities with *I Maga'lahi, I Liheslatura*, [the Governor, the Legislature] and the Public Auditor, which report shall include a listing of all current licensees under this Chapter. The Board shall mail a copy of the annual report to any person requesting it and paying a reasonable charge therefor.

(f) The Board may employ or contract for the services of an executive director and such other personnel as it deems necessary in its administration and enforcement of this Chapter. It may appoint such committees or persons, to advise or assist it in such administration and enforcement, as it may see fit. It may retain its own counsel to advise and assist it in addition to such advice and assistance as is provided by the Attorney General of Guam.

(g) The Board shall have the power to take all action that is necessary and proper to effectuate the purposes of this Chapter, including the power to sue and be sued in its official name. The Board shall also have the power to issue subpoenas to compel the attendance of witnesses and the production of documents; to administer oaths; to take testimony, to cooperate with the appropriate authorities in other states in investigation and enforcement concerning violations of this Chapter and comparable acts of other states; and to receive evidence concerning all matters within the scope of this Chapter. In case

of disobedience of a subpoena, the Board may invoke the aid of any court in requiring the attendance and testimony of witnesses and the production of documentary evidence. The Board, its members, and its agents shall be immune from personal liability for actions taken in good faith in the discharge of the Board's responsibilities, and the government of Guam shall hold the Board, its members, and its agents harmless from all costs, damages, and attorneys' fees arising from claims and suits against them with respect to matters to which such immunity applies.

(h) The Board may adopt rules governing its administration and enforcement of this Chapter and the conduct of licensees, including but not limited to:

(1) Rules governing the Board's meetings and the conduct of its business;

(2) Rules of procedure governing the conduct of investigations and hearings by the Board;

(3) Rules specifying the educational and experience qualifications required for the issuance of certificates under § 35105 of this Chapter and the continuing professional education required for renewal of licenses under § 35106 of this Chapter;

(4) Rules of professional conduct directed to controlling the quality and probity of services by licensees, and dealing among other things with independence, integrity, and objectivity; competence and technical standards; responsibilities to the public; and responsibilities to clients;

(5) Rules governing the professional standards applicable to licensees;

(6) Rules governing the manner and circumstances of use of the titles 'certified public accountant' and 'CPA';

(7) Rules regarding peer review that may be required to be performed under provisions of this Chapter;

(8) Rules on substantial equivalence to implement § 35122; and

(9) Such other rules as the Board may deem necessary or appropriate for implementing the provisions and the purposes of this Chapter.

(i) All rules or amendments thereto as promulgated under Subsection (h) of this § 35104, or under any other provision of this Chapter shall be adopted pursuant to the rule making procedures set forth in the Administrative Adjudication Law.

(j) Transfer of Funds, Appropriations and Obligations. Beginning in Fiscal Year 2007, all funds, balances and unreserved fund balances of the Guam Board of Accountancy Fund shall be transferred to the General Fund. Any past

appropriation, outstanding obligation or encumbrances remaining with the Guam Board of Accountancy Fund shall be assumed and obligated by the General Fund beginning in Fiscal Year 2007.

SOURCE: Subsection (a) amended by P.L. 27-104:5, P.L. 28-118:6 (Apr. 26, 2006). Subsection (d) amended by P.L. 28-068:IV:51 (Sept. 30, 2005). Subsection (j) added by P.L. 28-068:IV:52 (Sept. 30, 2005) as subsection (i); relettered to (j) by the Compiler.

22 GCA § 35105. Qualifications for a Certificate as a Certified Public Accountant.

(a) The certificate of 'certified public accountant' shall be granted to persons of good moral character who meet the education, experience and examination requirements of the following Subsections of this § 35105 and rules adopted thereunder and who make application therefor pursuant to § 35106 of this Act.

(b) Good moral character for purposes of this § 35105 means the propensity to provide professional services in a fair, honest, and open manner and a lack of a history of dishonest or felonious acts. The Board may refuse to grant a certificate or license on the ground of failure to satisfy this requirement only *if* there is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a licensee and *if* the finding by the Board of lack of good moral character is supported by clear and convincing evidence. When an applicant is found to be unqualified for a certificate or license because of a lack of good moral character, the Board shall furnish the applicant a statement containing the findings of the Board, a complete record of the evidence upon which the determination was based, and a notice of the applicant's right of appeal.

(c) The education requirement for a certificate shall be at least a college education including a baccalaureate, or higher degree, conferred by a college or university acceptable to the Board, the total educational program to include an accounting concentration, or equivalent, as determined by Board rule to be appropriate.

(d) Examination and Education.

(1) The examination required to be passed as a condition for the granting of a certificate shall be held at least twice a year, and shall test the applicant's knowledge of the subjects of accounting and auditing, and such other related subjects as the Board may specify by rule, including but not limited to business law and taxation. The time for holding such examination shall be determined by the Board and may be changed from time to time. The Board shall prescribe by rule the methods of applying for and conducting the examination, including methods for grading and determining a passing grade required of an applicant for a certificate provided, however, that the Board shall to the extent possible see to it that the examination itself, grading of the

examination, and the passing grades, are uniform with those applicable in all other states. The Board may make such use of all or any part of the Uniform Certified Public Accountant Examination and Advisory Grading Service of the American Institute of Certified Public Accountants and may contract with third parties to perform such administrative services with respect to the examination as it deems appropriate to assist it in performing its duties hereunder.

(2) Notwithstanding Title 22 GCA § 35105(c), the educational requirement, which must be met *before* an applicant is qualified to take the examination prescribed in Subsection (d)(1), shall be the completion of a baccalaureate degree, or its equivalent, conferred by a college or university acceptable to the Board, with an accounting and business concentration, or equivalent, as determined by Board rule to be appropriate, within one hundred fifty (150) days following the examination. No credit for the examination shall be granted if the education requirement is not completed within such time.

(e) The Board may charge, or provide for a third party administering the examination to charge, each applicant a fee, in an amount prescribed by the Board by rule.

(f) An applicant for initial issuance of a certificate and inactive license under this § 35105 shall show that the applicant has met the education and examination requirements as defined herein and as prescribed by the Board by rule.

An applicant for initial issuance of a certificate and active license under this § 35105 shall show that the applicant has met the education and examination requirements and has had two (2) years of experience as defined herein as prescribed by the Board by rule; or *if* the applicant's educational qualifications comprise a baccalaureate degree with an accounting concentration, or equivalent, as determined by the Board to be appropriate, and not less than thirty (30) semester hours of additional study in the field of business or related subjects, then that such applicant shall have had one (1) year of experience as defined herein and as prescribed by the Board by rule. This experience shall include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills, all of which must be verified by an active licensee. Experience shall be acceptable if it was gained through employment in government, industry, academia or public practice, meeting all requirements prescribed by the Board by rule. To be authorized to sign reports on attest engagements, an applicant shall show that the applicant has had experience in attest services as prescribed by the Board by rule. The type of experience now acceptable can be applied retroactively.

An applicant for initial licensure, or initial certification, who first sat for the

exam as a Guam candidate in May 2000 or *prior*, shall have had two (2) years of experience in the practice of public accountancy, meeting requirements prescribed by the Board by rule; or, *if* the applicant's educational qualifications comprise a baccalaureate degree with an accounting concentration, or equivalent, as determined by the Board to be appropriate, and not less than thirty (30) semester hours of additional study in the field of business or related subjects, then that applicant shall have had one (1) year of experience in such practice.

An applicant for initial licensure, or initial certification, who first sat for the exam as a Guam candidate in November 2000, or *after, but before October 2005*, shall have had one (1) year of experience in the practice of public accountancy, meeting requirements prescribed by the Board by rule.

An applicant for initial certification and active licensure who first sat for the exam as other than a Guam candidate and did *not* meet a one hundred fifty (150) hour educational requirement at the time of first sitting shall have had two (2) years of experience in the practice of public accountancy, meeting requirements prescribed by the Board by rule.

An applicant for initial certification and active licensure who first sat for the exam as other than a Guam candidate and did meet a one hundred fifty (150) hour educational requirement at the time of first sitting shall have had one (1) year of experience in the practice of public accountancy, meeting requirements prescribed by the Board by rule.

(g) Upon the effective date of this Chapter, any person holding a valid certificate issued under *prior* Guam law shall be deemed to have met the requirements for certification set out in this § 35105. Individuals who held certificates issued prior to the effective date of this law will be marked 'inactive' unless they are issued licenses pursuant to and in accordance with § 35106.

SOURCE: Subsection (b) amended by P.L. 28-118:7 (Apr. 26, 2006). Subsection (c) amended by P.L. 28-118:8 (Apr. 26, 2006). Subsection (d)(2) amended by P.L. 28-118:9 (Apr. 26, 2006). Subsection (f) amended by P.L. 28-118:10 (Apr. 26, 2006). Subsection (g) amended P.L. 28-118:11 (Apr. 26, 2006).

22 GCA § 35106. Issuance and Renewal of Licenses, and Maintenance of Competency.

(a) The Board shall grant or renew licenses to persons who make application and demonstrate:

(1) that their qualifications, including where applicable, the qualifications prescribed by § 35105, are in accordance with the following Subsections of this Section, *or*

(2) that they are eligible under the substantial equivalency standard set out in § 35122 of the Act which requires licensure for those CPAs that establish their principal place of business in another state. The holder of a

license issued under this Section may only provide attest services, as defined, in a CPA firm that holds a permit issued under § 35107 of this Law.

(b) Licenses shall be initially issued, and renewed, for periods of not more than three (3) years but in any event shall expire on the last day of June.

(1) Applications for such licenses shall be made in such form, and in the case of applications for renewal, between such dates, as the Board shall by rule specify, and the Board shall grant or deny any such application no later than sixty (60) days after the application is filed in proper form.

(2) In any case where the applicant seeks the opportunity to show that issuance or renewal of a license was mistakenly denied, or where the Board is not able to determine whether it should be granted or denied, the Board may issue to the applicant a provisional license, which shall expire ninety (90) days *after* its issuance or when the Board determines whether or not to issue or renew the license for which application was made, whichever shall first occur.

(c) Non-substantial equivalency reciprocity.

(1) With regard to applicants that do not qualify for reciprocity under the substantial equivalency standard set out in § 35122 of this Chapter, the Board shall issue a license to a holder of a certificate, license, or permit issued by another state upon a showing that:

(A) The applicant passed the uniform CPA examination;

(B) The applicant had four (4) years of experience outside of Guam of the type described in § 35105(f) or meets comparable requirements prescribed by the Board by rule, after passing the examination upon which the applicant's certificate was based and within the ten (10) years immediately preceding the application; and

(C) If the applicant's certificate, license, or permit was issued more than four (4) years prior to the application for issuance of an initial license under this Section, that the applicant has fulfilled the requirements of continuing professional education that would have been applicable under Subsection (d) of this Section.

(2) As an alternative to the requirements of § 35106(c)(1) of this Act, a certificate holder licensed by another state who establishes their principal place of business in Guam shall request the issuance of a license and Guam CPA Firm Permit to Practice from the Board prior to establishing such principal place of business. The Board shall issue a certificate and license to such person who obtains from the NASBA National Qualification Appraisal Service verification that such individual's CPA qualifications are substantially equivalent to the CPA licensure requirements of the

AICPA/NASBA Uniform Accountancy Act. Such person must also apply for and receive a Guam CPA Firm Permit to Practice prior to conducting business.

(3) An application under this Section may be made through the NASBA Qualification Appraisal Service.

(d) For renewal of a license under this § 35106 each licensee shall participate in a program of learning designed to maintain professional competency. Such program of learning must comply with rules adopted by the Board. The Board may by rule create an exception to this requirement for certificate holders who do not perform or offer to perform for the public one (1) or more kinds of services involving the use of accounting or auditing skills, including issuance of reports on financial statements, or of one (1) or more kinds of management advisory, financial advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters. Licensees granted such an exception by the Board must place the word 'inactive', or such other indicative wording as the Board may prescribe by rule, adjacent to their CPA title on any business card, letterhead or any other document or device, with the exception of their CPA certificate, on which their CPA title appears.

(e) **[Repealed]**.

(f) The Board shall charge a fee for each application for initial issuance, or renewal, of a license under this Section in an amount prescribed by the Board by rule.

(g) Applicants for initial issuance, or renewal, of licenses under this Section shall in their applications list all states in which they have applied for or hold certificates, licenses, or permits and list any past denial, revocation or suspension of a certificate, license or permit, and each holder of or applicant for a license under this § 35106 shall notify the Board in writing, within thirty (30) days after its occurrence, of any issuance, denial, revocation, or suspension of a certificate, license or permit by another state.

(h) The Board shall issue a license to a holder of a substantially equivalent foreign designation, provided that:

(1) The foreign authority which granted the designation makes similar provision to allow a person who holds a valid license issued by Guam to obtain such foreign authority's comparable designation; and

(2) The foreign designation was:

(A) duly issued by a foreign authority that regulates the practice of public accountancy and the foreign designation has not expired or been revoked or suspended;

(B) entitles the holder to issue reports upon financial statements;
and

(C) was issued upon the basis of educational, examination, and
experience requirements established by the foreign authority or by law;
and

(3) The applicant:

(A) received the designation, based on educational and
examination standards substantially equivalent to those in effect in
Guam, at the time the foreign designation was granted;

(B) completed an experience requirement, substantially equivalent
to the requirement set out in § 35105(f), in the jurisdiction which
granted the foreign designation or has completed four (4) years of
professional experience in Guam; or meets equivalent requirements
prescribed by the Board by rule, within the (10) ten years immediately
preceding the application; and

(C) passed a uniform qualifying examination in national standards
and, if the Board requires in its rules, an examination on the laws,
regulations and code of ethical conduct in effect in Guam.

(i) An applicant under § 35106(h) shall in the application list all
jurisdictions, foreign and domestic, in which the applicant has applied for or
holds a designation to practice public accountancy, and each holder of a license
issued under this Subsection shall notify the Board in writing, within thirty (30)
days after its occurrence, of any issuance, denial, revocation or suspension of a
designation or commencement of a disciplinary or enforcement action by any
jurisdiction.

(j) The Board has the sole authority to interpret the application of the
provisions of § 35106(h) and (i).

(k) Upon the effective date of this Chapter, any person holding a currently
valid Individual Permit to Practice issued under prior Guam law shall be
automatically issued a License.

SOURCE: Subsection (c)(1) amended by P.L. 28-118:12 (Apr. 26, 2006). Subsection (d)
amended by P.L. 28-118:13 (Apr. 26, 2006). Subsection (e) repealed by P.L.28-118:14 (Apr.
26, 2006).

22 GCA § 35107. Firm Permits to Practice, Attest and Compilation Competency and Peer Review.

(a) The Board shall grant or renew Firm Permits to Practice as a CPA firm
to entities that make application and demonstrate their qualifications therefor in
accordance with the following Subsections of this Section or to CPA firms
originally licensed in another state that establish an office in Guam. A CPA firm

must hold a Firm Permit to Practice issued under this Section in order to provide attest services as defined or to use the title 'CPAs' or 'CPA firm'.

(b) Firm Permits to Practice shall be initially issued and renewed for periods of not more than three years but in any event expiring on the last day of June in the year of expiration. Applications for Firm Permits to Practice shall be made in such form, and in the case of applications for renewal, between such dates as the Board may by rule specify, and the Board shall grant or deny any such application no later than sixty (60) days after the application is filed in proper form.

(c) In any case where the applicant seeks the opportunity to show that issuance or renewal of a Firm Permit to Practice was mistakenly denied or where the Board is not able to determine whether it should be granted or denied, the Board may issue to the applicant a provisional Firm Permit to Practice, which shall expire ninety (90) days after its issuance or when the Board determines whether or not to issue or renew the Firm Permit to Practice for which application was made, whichever shall first occur.

(d) An applicant for initial issuance or renewal of a Firm Permit to Practice under this Section shall be required to show that:

(1) Notwithstanding any other provision of law, a simple majority of the ownership of the CPA firm, in terms of financial interests and voting rights of all partners, officers, shareholders, members or managers, belongs to holders of a certificate who are licensed in some state, and such partners, officers, shareholders, members or managers, whose principal place of business is in Guam, and who perform professional services in Guam hold a valid license issued under § 35106 or the corresponding provision of prior law. Although CPA firms may include non-licensee owners, the CPA firm and its ownership must comply with rules promulgated by the Board.

(2) Any CPA firm as defined in this Act may include non-licensee owners provided that:

(A) The CPA firm designates a licensee of Guam, who is responsible for the proper registration of the firm and identifies that individual to the Board.

(B) All non-licensee owners are active individual participants in the CPA firm or affiliated entities.

(C) The CPA firm complies with such other requirements as the Board may impose by rule.

(3) Any individual licensee who is responsible for supervising attest or compilation services and signs or authorizes someone to sign the report on the financial statements on behalf of the CPA firm, shall meet the

competency requirements set out in the professional standards for such services as prescribed by the Board by rule.

(4) Any individual licensee who signs or authorizes someone to sign the report on the financial statements on behalf of the CPA firm shall meet the competency requirement of § 35107(d)(3).

(e) An applicant for initial issuance or renewal of a Firm Permit to Practice under this Section shall be required to register each office of the firm within Guam with the Board and to show that all attest and compilation services as defined herein rendered in Guam are under the charge of a person holding a valid license issued under either § 35106, a corresponding provision of prior Guam law, or the law of another state.

(f) The Board shall charge a fee for each application for initial issuance, or renewal, of a permit under § 35107 in an amount prescribed by the Board by rule.

(g) Applicants for initial issuance or renewal of Firm Permits to Practice under § 35107 shall in their applications list all states in which they have applied for or hold permits as CPA firms and list any past denial, revocation or suspension of a permit by any other state, and each holder of or applicant for a Firm Permit to Practice under § 35107 shall notify the Board in writing, within thirty (30) days after its occurrence, of any change in the identities of owners, partners, officers, shareholders, members or managers whose principal place of business is in Guam, any change in the number or location of offices within Guam, any change in the identity of the persons in charge of such offices, and any issuance, denial, revocation, or suspension of a license or permit by any other state.

(h) CPA Firms which fall out of compliance with the provisions of § 35107 due to changes in CPA firm ownership or personnel, after receiving or renewing a Firm Permit to Practice, shall take corrective action to bring the CPA firm back into compliance as quickly as possible. The Board may grant a reasonable period of time for a CPA firm to take such corrective action. Failure to bring the CPA firm back into compliance within a reasonable period as defined by the Board will result in the suspension or revocation of the Firm Permit to Practice.

(i) The Board shall by rule require, as a condition to renewal of Firm Permits to Practice under § 35107, that applicants undergo, no more frequently than once every three (3) years, peer reviews conducted in such manner as the Board shall specify, and such review shall include a verification that individuals in the CPA firm who are responsible for supervising attest and compilation services and sign or authorize someone to sign the report on the financial statements on behalf of the CPA firm meet the competency requirements set out in the professional standards for such services, provided that any such rule:

(1) shall be promulgated reasonably in advance of the time when it first becomes effective;

(2) shall include reasonable provision for compliance by an applicant showing that it has, within the preceding three (3) years, undergone a peer review that is a satisfactory equivalent to peer review generally required pursuant to this § 35107(i);

(3) may require, with respect to peer reviews contemplated by § 35107(i)(2), that they be subject to oversight by the Board or an oversight body established or sanctioned by Board rule, which body shall periodically report to the Board on the effectiveness of the review program under its charge, and provide to the Board a listing of CPA firms that have participated in a peer review program that is satisfactory to the Board; and

(4) shall require, with respect to peer reviews contemplated by § 35107(i)(2), that the peer review processes be operated and documents maintained in a manner designed to preserve confidentiality, and that neither the Board nor any third party (other than the oversight body) shall have access to documents furnished or generated in the course of the review.

SOURCE: Subsection (d)(4) amended by P.L. 28-118:15 (Apr. 26, 2006). Subsection (i)(3) amended by P.L.28-118:16 (Apr. 26, 2006).

22 GCA § 35109. Enforcement and Grounds for Discipline.

(a) After notice and hearing pursuant to § 35111 of this Chapter, the Board may revoke any certificate, licenses, or Firm Permit to Practice issued under § 35105, § 35106, or § 35107 or corresponding provisions of prior law, or revoke or limit privileges under § 35122; suspend any such certificate, license or Firm Permit to Practice or refuse to renew any such certificate, license, or Firm Permit to Practice for a period of not more than five (5) years; reprimand, censure, or limit the scope of practice of any licensee; impose an administrative fine not exceeding Five Thousand Dollars (\$5,000), or place any licensee on probation, all with or without terms, conditions, and limitations, for any one (1) or more of the following reasons:

(1) Dishonesty, fraud or deceit in obtaining a license;

(2) Cancellation, revocation, suspension, or refusal to renew a license or privileges under § 35122 for disciplinary reasons in any other state for any cause;

(3) Failure, on the part of a licensee under § 35106 or Firm Permit to Practice under § 35107, to maintain compliance with the requirements for issuance, or renewal of such license or Firm Permit to Practice, or to report changes to the Board under § 35106(g) or § 35107(g);

(4) Revocation or suspension of the right to practice before any state

or Federal agency;

(5) Dishonesty, fraud, deceit or gross negligence in the performance of services as a licensee or individual granted privileges under § 35122, or in the filing or failure to file one's own income tax returns, or other required tax filings;

(6) Violation of any provision of this Chapter, or rule promulgated by the Board under this Chapter, or violation of professional standards;

(7) Violation of any rule of professional conduct promulgated by the Board under § 35104(h)(4) of this Chapter;

(8) Conviction of a felony, or of any other crime an element of which is dishonesty, deceit or fraud, under the laws of the United States, of Guam, or of any other state, *if* the acts involved would have constituted a crime under the laws of Guam;

(9) Performance of any fraudulent act while holding a certificate, license, Firm Permit to Practice, or § 35122 privilege issued under this Chapter, or prior law;

(10) Any conduct reflecting adversely upon the licensee's fitness to perform services while a licensee, or individual granted privileges under § 35122;

(11) Making any false or misleading statement or verification, in support of an application for a certificate or Firm Permit to Practice filed by another; and

(12) Failure to pay child support as determined by the Child Support Enforcement Division of the Office of the Attorney General of Guam.

(b) In lieu of, or in addition to any remedy specifically provided in § 35109(a), the Board may require of a licensee or the holder of a certificate under § 35105, or prior law:

(1) A peer review conducted in such fashion as the Board may specify; and/or

(2) Satisfactory completion of such continuing professional education programs as the Board may specify; or both.

(c) In any proceeding in which a sanction provided by § 35109(a) or § 35109(b) is imposed, the Board may also require the respondent licensee to pay the costs of the investigation, the proceeding and other related costs, including reasonable attorneys fees, incurred by the Board.

SOURCE: Section title amended by P.L. 28-118:17 (Apr. 26, 2006). Subsection (a) amended by P.L. 28-118:18 (Apr. 26, 2006). Subsection (c) amended by P.L. 28-118:19 (Apr. 26, 2006).

22 GCA § 35111. Enforcement Procedures Hearings by the Board.

(a) In any case where probable cause with respect to a violation by a licensee, holder of a certificate, or an individual with privileges granted under § 35122 of this Chapter has been determined by the Board, whether following an investigation under § 35110 of this Chapter, or upon receipt of a written complaint furnishing grounds for a determination of such probable cause, or upon receipt of notice of a decision by the Board of Accountancy of another state furnishing such grounds, the Board shall issue a complaint setting forth appropriate charges and set a date for hearing before the Board on such charges. The Board shall, not less than thirty (30) days prior to the date of the hearing, serve a copy of the complaint and notice of the time and place of the hearing upon the licensee, holder of a certificate, or an individual with privileges granted under § 35122 of this Chapter, together with a copy of the Board's rules governing proceedings under this Section, either by personal delivery, or by mailing a copy thereof by registered mail to the licensee or holder of a certificate at the licensee's or certificate holder's address last known to the Board. In the case of an individual exercising privileges under § 35122, service shall be by registered mail to the address last known to the Board, or pursuant to § 35122(a)(3)(c).

(b) A licensee, a holder of a certificate, or an individual with privileges under § 35122, against whom a complaint has been issued under this § 35111 shall have the right, reasonably in advance of the hearing, to examine and copy the report of investigation, *if any*, and any documentary or testimonial evidence and summaries of anticipated evidence in the Board's possession relating to the subject matter of the complaint. The Board's rules governing proceedings under this Section shall specify the manner in which such right may be exercised.

(c) In a hearing under this § 35111 the respondent licensee, holder of a certificate, or an individual with privileges granted under § 35122 may appear in person (or, in the case of a firm, through a partner, officer, director, shareholder, member or manager) and/or by counsel, examine witnesses and evidence presented in support of the complaint, and present evidence and witnesses on the licensee's or an individual's own behalf. The licensee, holder of a certificate, or an individual granted privileges under § 35122 shall be entitled, on application to the Board, to the issuance of subpoenas to compel the attendance of witnesses and the production of documentary evidence.

(d) The evidence supporting the complaint shall be presented by the investigating officer, by a Board member designated for that purpose, or by counsel. A Board member who presents the evidence, or who has conducted the investigation of the matter under § 35110 of this Chapter, shall not participate in the Board's decision of the matter.

(e) In a hearing under this § 35111, the Board may be advised by counsel, who shall not be the same counsel who presents, or assists, in presenting the evidence supporting the complaint under Subsection (d) of this § 35111.

(f) In a hearing under this § 35111, the Board shall not be bound by technical rules of evidence.

(g) In a hearing under this § 35111, a stenographic or electronic record, shall be made and filed with the Board. A transcript need *not* be prepared unless review is sought under Subsection (j) of this § 35111, or the Board determines that there is other good cause for its preparation.

(h) In a hearing under this § 35111, a recorded vote of a majority of all members of the Board then in office (excluding members disqualified by reason of Subsection (d) of this § 35111) shall be required to sustain any charge and to impose any penalty with respect thereto.

(i) *If*, after service of a complaint and notice of hearing as provided in Subsection (a) of this § 35111, the respondent licensee, holder of a certificate, or individual granted privileges under § 35122, fails to appear at the hearing, the Board may proceed to hear evidence against the licensee, holder of a certificate, or an individual granted privileges under § 35122, and may enter such order as it deems warranted by the evidence, which order shall be final *unless* the licensee, holder of a certificate, or an individual granted privileges under § 35122 petitions for review thereof under Subsection (j) of this § 35111, provided, however, that within thirty (30) days from the date of any such order, upon a showing of good cause for the licensee's, certificate holder's, or an individual's failure to appear and defend, the Board may set aside the order and schedule a new hearing on the complaint, to be conducted in accordance with applicable Subsections of this § 35111.

(j) Any person or firm adversely affected by any order of the Board entered after a hearing under this § 35111 may obtain review thereof by filing a written petition for review with the Superior Court of Guam within thirty (30) days after the entry of said order. The procedures for review and the scope of the review shall be as specified in the Administrative Adjudication Law. However all hearings conducted pursuant to this Section shall be conducted in accordance with the procedures specified in this Section rather than those under the Administrative Adjudication Law.

(k) In any case where the Board renders a decision imposing discipline under § 35109, § 35111, or § 35122, against a licensee, a holder of a certificate, or an individual granted privileges under § 35122, the Board shall examine its records to determine whether the licensee, holder of a certificate, or individual holds a certificate or a permit in any other state; and if so, the Board shall notify the Board of Accountancy of such other state of its decision, by mail, within forty-five (45) days of rendering the decision. The Board may also furnish

information relating to proceedings resulting in disciplinary action to other public authorities and to private professional organizations having a disciplinary interest in the licensee. Where a petition for review has been filed pursuant to § 35111(j), the notification and furnishing of information provided for in this Subsection shall await the resolution of such review and, if resolution is in favor of the licensee, a holder of a certificate, or an individual granted privileges under § 35122 of this Chapter, no such notification or furnishing of information shall be made.

(l) A licensee, a holder of a certificate, or an individual with privileges under § 35122 against whom a complaint has been issued under this § 35111 may waive in writing his right to a hearing before the Board on such charge(s), thus sustaining the charge(s), and accepting such penalty as may be imposed by the Board with respect thereto.

SOURCE: Subsection (l) added by P.L. 28-118:20 (Apr. 26, 2006).

22 GCA § 35112. Reinstatement.

(a) In any case where the Board has suspended or revoked or refused to renew a certificate, license, a Firm Permit to Practice, or privileges under § 35122, the Board may, upon application in writing by the person or firm affected and for good cause shown, modify the suspension, or reissue the certificate, license, or Firm Permit to Practice, or remove the limitation or revocation of privileges under § 35122.

(b) The Board shall by rule specify the manner in which such applications shall be made, the times within which they shall be made, and the circumstances in which hearings will be held thereon.

(c) Before reissuing, or terminating the suspension of, a certificate, license, or Firm Permit to Practice under this § 35112 or of privileges under § 35122, and as a condition thereto, the Board may require the applicant therefor to show successful completion of specified continuing professional education; and the Board may make the reinstatement of a certificate, license, or Firm Permit to Practice or of privileges under § 35122 conditional and subject to satisfactory completion of a peer review conducted in such fashion as the Board may specify.

SOURCE: Subsection (a) amended by P.L. 28-118:21 (Apr. 26, 2006).

22 GCA § 35113. Unlawful Acts.

(a) Only licensees may issue a report on financial statements of any person, firm, organization, or governmental unit or offer to render or render any attest or compilation service, as defined herein. This restriction does not prohibit any act of a public official or public employee in the performance of that person's duties as such; or prohibit the performance by any non-licensee of other services involving the use of accounting skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements

without the issuance of reports thereon. Non-licensees may prepare financial statements and issue non-attest transmittals or information thereon which do not purport to be in compliance with the Statements on Standards for Accounting and Review Services (SSARS).

(b) Licensees performing attest or compilation services must provide those services in accordance with applicable professional standards.

(c) No person not holding a valid license in accordance with § 35106 shall use or assume the title 'certified public accountant,' or the abbreviation 'CPA' or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant.

(d) No firm shall provide attest services or assume or use the title 'certified public accountants,' or the abbreviation 'CPAs,' or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such firm is a CPA firm unless (1) the firm holds a valid permit issued under § 35107 of this Chapter, and (2) ownership of the firm is in accord with this Chapter and rules promulgated by the Board. No individual or firm shall provide or offer professional CPA services in Guam via a Web site, or represent via a Web site that such firm or individual has an office in Guam or is authorized to practice as a CPA in Guam, unless such individual or firm is licensed to practice in accordance with 22 GCA § 35107.

(e) No firm not holding a valid permit issued under § 35107 of this Chapter shall provide attest services or assume or use the title '*public accountant*,' the abbreviation '*PA*,' or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such firm is composed of public accountants.

(f) No person, or firm, not holding a valid license or permit issued under § 35106 and § 35107 of this Act shall assume or use the title '*certified accountant*,' '*chartered accountant*,' '*enrolled accountant*,' '*licensed accountant*,' '*registered accountant*,' '*accredited accountant*,' or any other title or designation likely to be confused with the titles 'certified public accountant' or 'public accountant,' or use any of the abbreviations '*CA*,' '*LA*,' '*RA*,' '*AA*,' or similar abbreviation likely to be confused with the abbreviations '*CPA*' or '*PA*.' The title '*Enrolled Agent*' or '*EA*' may only be used by individuals so designated by the Internal Revenue Service, or the Director of the Department of Revenue and Taxation.

(g) Non-licensees, non-firms use of titles and language.

(1) Non-licensees may *not* use language in any statement relating to the financial affairs of a person or entity which is conventionally used by licensees in reports on financial statements. In this regard, the Board shall issue safe harbor language that non-licensees may use in connection with such financial information.

(2) No person or firm not holding a valid license or Firm Permit to Practice issued under § 35106 or § 35107 of this Chapter shall assume or use any title or designation that includes the words ‘accountant,’ ‘auditor,’ or ‘accounting,’ in connection with any other language (including the language of a report) that implies that such person or firm holds such a license or Firm Permit to Practice, or has special competence as an accountant or auditor provided, however, that this Subsection does not prohibit any officer, partner, member, manager or employee of any firm or organization from affixing that person’s own signature to any statement in reference to the financial affairs of such firm or organization with any wording designating the position, title, or office that the person holds therein nor prohibit any act of a public official or employee in the performance of the person’s duties as such.

(h) No person holding a license or firm holding a Permit under this Chapter shall use a professional or firm name or designation that is misleading about the legal form of the firm, or about the persons who are partners, officers, members, managers or shareholders of the firm, or about any other matter, provided, however, that names of one (1) or more former partners, members, managers or shareholders may be included in the name of a firm, or its successor.

(i) None of the foregoing provisions of this § 35113 shall have any application to a person or firm holding a certification, designation, degree, or license granted in a foreign country entitling the holder thereof to engage in the practice of public accountancy or its equivalent in such country, whose activities in Guam, are limited to the provision of professional services to persons or firms who are residents of, governments of, or business entities of the country in which the person holds such entitlement, who performs no attest or compilation services as defined and who issues no reports with respect to the financial statements of any other persons, firms, or governmental units in Guam, and who does not use in Guam any title or designation other than the one under which the person practices in such country, followed by a translation of such title or designation into the English language, *if* it is in a different language, and by the name of such country.

(j) No holder of a license issued under § 35106 of this Chapter shall perform attest services through any business form that does not hold a valid permit issued under § 35107 of this Chapter.

(k) No individual licensee shall issue a report in standard form upon a compilation of financial information through any form of business that does *not* hold a valid permit issued under § 35107 of this Chapter unless the report discloses the name of the business through which the individual is issuing the report, and the individual:

(1) signs the compilation report identifying the individual as a CPA,

(2) meets the competency requirement provided in applicable standards, and

(3) undergoes no less frequently than once every three years, a peer review conducted in such manner as the Board shall by rule specify, and such review shall include verification that such individual has met the competency requirements set out in professional standards for such services.

(l) Nothing herein shall prohibit a practicing attorney or firm of attorneys from preparing or presenting records or documents customarily prepared by an attorney or firm of attorneys in connection with the attorney's professional work in the practice of law.

(m) Commissions and referral fees.

(1) A licensee shall *not*, for a commission, recommend or refer to a client any product or service, or for a commission, recommend or refer any product or service to be supplied by a client, or receive a commission, when the licensee also performs for that client,

(A) an audit or review of a financial statement; or

(B) a compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or

(C) an examination of prospective financial information.

This prohibition applies during the period in which the licensee is engaged to perform any of the services listed above and the period covered by any historical financial statements involved in such listed services.

(2) A licensee who is *not* prohibited by this Section from performing services for, or receiving a commission and who is paid or expects to be paid, a commission shall disclose that fact to any person or entity to whom the licensee recommends, or refers, a product or service to which the commission relates.

(3) Any licensee who accepts a referral fee for recommending or referring any service of a licensee to any person or entity, or who pays a referral fee to obtain a client shall disclose such acceptance or payment to the client.

(n) Contingent fees.

(1) A licensee shall not:

(A) perform for a contingent fee any professional services for, or receive such a fee from a client for whom the licensee or the licensee's firm performs,

(i) an audit or review of a financial statement; or

(ii) a compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or

(iii) an examination of prospective financial information; or

(B) Prepare an original or amended tax return or claim for a tax refund for a contingent fee for any client.

(2) The prohibition in (1) above applies during the period in which the licensee is engaged to perform any of the services listed above and the period covered by any historical financial statements involved in any such listed services.

(3) Except as stated in the next sentence, a contingent fee is a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged *unless* a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. Solely for purposes of this Section, fees are not regarded as being contingent *if* fixed by courts or other public authorities, or, in tax matters, *if* determined based on the results of judicial proceedings or the findings of governmental agencies. A licensee's fees may vary depending, for example, on the complexity of services rendered.

SOURCE: Subsection (b) amended by P.L. 28-118:22 (Apr. 26, 2006).

22 GCA § 35121. Proportionate Liability.

(a) This Section applies to all causes of action of the type specified herein filed on or after the effective date of the enactment of this section.

(b) This Section governs any claim for money damages brought against any licensee or any CPA firm registered, licensed, or practicing in Guam; or any employee or principal of such firm by any person or entity claiming to have been injured by the defendant licensee or other person or entity.

(c) No judgment for money damages may be entered against any licensee, firm, employee, or principal described in Subsection (b) in an action covered by this Section except in accordance with the provisions of this Subsection.

(1) *If* the party seeking a judgment for damages against the licensee proves that the licensee acted with the deliberate intent to deceive, manipulate or defraud for the licensee's own direct pecuniary benefit, the liability of the licensee shall be determined according to the principles that generally apply to such an action.

(2) *If* the licensee is *not* proven to have acted with the deliberate intent to deceive, manipulate or defraud for the accountant's own direct pecuniary benefit, the amount of the accountant's liability in damages shall be determined as follows:

(A) The trier of fact shall determine the percentage of responsibility of the plaintiff, of each of the defendants, and of each of the other persons or entities alleged by the parties to have caused or contributed to the harm alleged by the plaintiff. In determining the percentages of responsibility, the trier of fact shall consider both the nature of the conduct of each person and the nature and extent of the causal relationship between that conduct and the damage claimed by the plaintiff.

(B) The trier of fact shall next determine the total amount of damage suffered by the plaintiff caused in whole or in part by the plaintiff, the defendants, and other persons alleged to have caused or contributed to the damage.

(C) The trier of fact shall then multiply the percentage of responsibility of the licensee (determined under (A)) by the total amount of damages (determined under (B)) and shall enter a judgment or verdict against the licensee in an amount no greater than the product of those two (2) factors.

(D) In no event shall the damages awarded against or paid by a licensee exceed the amount determined under (C) or twenty (20) times the total fee paid, or to be paid, to licensee by plaintiff, whichever is less. The licensee shall not be jointly liable on any judgment entered against any other party to the action.

(E) Except where a contractual relationship permits, no defendant shall have a right to recover from a licensee any portion of the percentage of damages assessed against such other defendant.

SOURCE: Subsection (c)(2)(D) amended by P.L. 28-118:24 (Apr. 26, 2006).

22 GCA § 35122. Substantial Equivalency.

(a) An individual whose principal place of business is not in Guam.

(1) An individual whose principal place of business is not in Guam having a valid certificate or license as a Certified Public Accountant from any state which the NASBA National Qualification Appraisal Service has verified to be in substantial equivalence with the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act shall be presumed to have qualifications substantially equivalent to the requirements of Guam and shall have all the privileges of certificate holders and licensees

of Guam without the need to obtain a license under § 35106. However, such individuals shall file written notice with the Board, on such form as may be specified by the Board, of their intent to enter Guam under this provision, shall pay any fee required, and shall have received written confirmation of receipt of such notice from the Board prior to practicing as a CPA.

(2) An individual whose principal place of business is *not* in Guam having a valid certificate or license as a Certified Public Accountant from any state which the NASBA National Qualification Appraisal Service has *not* verified to be in substantial equivalence with the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act shall be presumed to have qualifications substantially equivalent to the requirements of Guam and shall have all the privileges of certificate holders and licensees of Guam without the need to obtain a certificate or license under § 35105 or § 35106, if such individual obtains from the NASBA National Qualification Appraisal Service verification that such individual's CPA qualifications are substantially equivalent to the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act. However, such individuals shall file written notice with the Board, on such form as may be specified by the Board, of their intent to enter Guam under this provision, shall pay any fee required, and shall have received written confirmation of receipt of such notice from the Board prior to practicing as a CPA.

(3) Any individual licensee of another state exercising the privilege afforded under this section hereby consents, as a condition of the grant of this privilege:

(A) to the personal and subject matter jurisdiction and disciplinary authority of the Board,

(B) to comply with this Chapter and the Board's rules; and,

(C) to the appointment of the Director of the Department of Revenue and Taxation as their agent upon whom process may be served in any action or proceeding by this Board against the licensee.

(b) A licensee of Guam offering or rendering services or using their CPA title in another state shall be subject to disciplinary action in Guam for an act committed in another state for which the licensee would be subject to discipline for an act committed in the other state. Notwithstanding § 35110(a), the Board shall be required to investigate any complaint made by the board of accountancy of another state.

(d) The provisions of this section only apply to individual licensees. No firm, as defined in § 35103(g), shall practice public accountancy in Guam without a Firm Permit to Practice issued pursuant to § 35107.

SOURCE: Subsection (a)(2) amended by P.L.28-118:25 (Apr. 26, 2006). Subsection (d) amended by P.L. 28-118:26 (Apr. 26, 2006) and relettered to (c) by the Compiler to maintain the section's outline sequence.

NOTE: At the enactment of this section by P.L. 27-058, only subsections (a), (b) and (d) existed.