

7 GCA CIVIL PROCEDURE
CH. 23 EXECUTION OF JUDGMENTS IN CIVIL ACTIONS

CHAPTER 23
EXECUTION OF JUDGMENTS IN CIVIL ACTIONS

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§ 23101. Within What Time Execution May Issue.

The party in whose favor judgment is given may, at any time within five years after the entry thereof, have a writ of execution issued for its enforcement. If, after the entry of the judgment, the issuing of execution thereon is stayed or enjoined by any judgment or order of Court, or by operation of law, the time during which it is so stayed or enjoined must be excluded from the computation of the five years within which execution may issue.

SOURCE: CCP § 681.

§ 23102. Stay of Execution.

The court or the judge thereof shall not have the power without the consent of the adverse party to stay for a longer period than thirty (30) days the execution of any judgment or order, the execution whereof would be stayed on appeal only by the execution of a stay bond, provided, that if a motion for a new trial is pending, execution may be stayed until ten (10) days after the determination thereof.

SOURCE: CCP § 681a.

§ 23103. Who May Issue the Execution.

The writ of execution must be issued in the name of the Government of Guam, sealed with the seal of the court, and subscribed by the judge, and be directed to the marshal, and it must intelligibly refer to the judgment, stating the court, and if it be for money, the amount thereof, and the amount actually due thereon, and if made payable in a specified kind of money or currency, as provided in 21601 of this Title, the execution must also state the kind of money or currency in which the judgment is payable, and must require the marshal substantially as follows:

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1. If it be against the property of the judgment debtor, it must require the marshal to satisfy the judgment, with interest, out of the personal property of such debtor, and if sufficient personal property cannot be found, then out of his real property, or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the judgment was docketed, or at any time thereafter.

2. If it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants or trustees, it must require the marshal to satisfy the judgment, with interest, out of such property.

3. If it be issued on a judgment made payable in a specified kind of money or currency, as provided in 21601 of this Title it must also require the marshal to satisfy the same in the kind of money or currency in which the judgment is made payable, and the marshal must refuse payment in any other kind of money or currency; and in case of levy and sale of the property of the judgment debtor, he must refuse payment from any purchaser at such sale in any other kind of money or currency than that specified in the execution. The marshal collecting money or currency in the manner required by this Article must pay to the plaintiff or party entitled to recover the same kind of money or currency received by him.

4. If it be for the delivery of the possession of real or personal property, it must require the marshal to deliver the possession of the same, describing it, to the party and title thereto, and may at the same time require the marshal to satisfy any costs, damages, rents or profits recovered by the same judgment, out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was rendered to be specified therein if a delivery thereof cannot be had; and if sufficient personal property cannot be found, then out of the real property as provided in the first subsection of this section.

SOURCE: CCP § 682.

§ 23104. Return of Execution.

The execution may be made returnable, at any time not less than ten (10) nor more than sixty (60) days after its receipt by the marshal, to the clerk of the court. When the execution is returned, the clerk must attach it to the judgment roll.

SOURCE: CCP § 683.

§ 23105. Enforcing Judgment.

SOURCE: CCP § 684.

NOTE: *Enforcing Judgment*, is covered by Rules 69 and 70, Guam Rules of Civil Procedure.

§ 23106. Enforcement of Judgment After Six Years.

In all cases the judgment may be enforced or carried into execution after the time lapse of six years from the date of entry, by leave of Court, upon motion, or by judgment for that purpose, founded upon supplemental pleadings; but nothing in this section shall be construed to revive a judgment for the recovery of money which shall have been barred by limitation at the time of the taking affect of this section.

SOURCE: CCP § 685 amended by P.L. 16- 120:21 (12/18/82). Amendment raised period from five to six years.

§ 23107. When Execution May Issue Against the Property of a Party After His Death.

Notwithstanding the death of a party after the judgment, execution thereon may be issued, or it may be enforced, as follows:

1. In case of the death of the judgment creditor, upon the application of his executor or administrator, or successor in interest.
2. In case of the death of the judgment debtor; if the judgment be for the recovery of real or personal property, or the enforcement of a lien thereon.

SOURCE: CCP § 686.

§ 23108. Execution - How and to Whom Issued.

SOURCE: CCP § 687.

NOTE: *Execution - How and to Whom Issued*, is covered by Rule 69 Guam Rules of Civil Procedure.

§ 23109. Property Liable to Execution: Not Affected Until Levied On.

All goods, chattels, moneys or other property, both real and personal, or any interest therein, of the judgment debtor, not exempt by law, and all property and rights of property seized and held under attachment in the action, are subject to execution. Shares or interests in any corporation or company, and debts and credits, and all other property, both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery, may be levied upon or released from levy in like manner as like property may be attached or released from

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attachment, except that a copy of the complaint in the action from which the writ issued need not accompany the writ; provided, that no cause of action or judgment as such, nor license issued by the Territory to engage in any business, profession, or activity shall be subject to levy or sale on execution. Until a levy, the property is not affected by the execution, but no levy shall bind any property for a longer period than one (1) year from the date of issuance of the execution, except a levy on the interests or claims of heirs, devisees, or legatees in or to assets of deceased persons remaining in the hands of executors or administrators thereof prior to distribution and payment. However, an alias execution may be issued on said judgment and levied on any property not exempt from execution.

SOURCE: CCP § 688 amended by P.L. 15-126:1.

COMMENT: The Legislature has amended this section to conform, in substance if not in style, to California CCP § 688.

§ 23110. Indemnity Where Property Claimed by Third Party.

If the property levied on is claimed by a third person as his property, by a written claim verified by his oath or that of his agent, setting out his right to the possession thereof, and served upon the marshal, the marshal must release the property if the plaintiff or the person in whose favor the writ of execution runs fails within five (5) days after written demand to give the marshal an undertaking executed by at least two (2) good and sufficient sureties in a sum equal to double the value of the property levied on. If such undertaking be given, the marshal shall hold the property. The marshal, however, shall not be liable for damages to any such third party for the taking or keeping of such property if no claim is filed by any such third party.

Such undertaking shall be made in favor of and shall indemnify such third person against loss, liability, damages, costs and attorneys fees, by reason of such seizing, taking, withholding or sale of such property by the marshal.

Exceptions to the sufficiency of the sureties and their justification may be had and taken in the same manner as upon an undertaking on attachment. If they, or others in their place, fail to justify at the time and place appointed, the marshal must release the property, provided however, that if no exception is taken within five (5) days after notice of receipt of the undertaking, the third party shall be deemed to have waived any and all objections to the sufficiency of the sureties.

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The marshal may demand and exact the undertaking herein provided for notwithstanding any defect, informality or insufficiency of the verified claim served upon him.

Whenever a verified third party claim is served upon the marshal, upon levy of execution, the plaintiff or the person in whose favor the writ of execution runs, shall be entitled to a hearing within twenty (20) days therefrom, before the court having jurisdiction in the action, in order to determine title to the property in question, which hearing must be granted by the said court upon the filing of an application or petition therefor. Ten (10) days' notice of such hearing must be given to all parties claiming an interest in the property, or their attorneys, which notice must specify that the hearing is for the purpose of determining title to the property in question. The court may continue the hearing beyond the said twenty (20) day period, but good cause must be shown for any such continuance.

SOURCE: CCP § 689.

§ 23111. Property Exempt From Execution or Attachment; Exceptions.

The following property is exempt from execution, except as herein otherwise specially provided:

1. The debtor's homestead as provided in the Civil Code.
2. Necessary household, table and kitchen furniture belonging to the judgment debtor, including one stove, stovepipes, beds and bedding.
3. The farming utensils or implements of farming, not exceeding in value the sum of Fifty Dollars (\$50) in all.
4. One horse, or one carabao, one ox or other beast of burden with one cart for same, together not exceeding One Hundred Fifty Dollars (\$150), and necessarily used by him in his ordinary occupation, and food for such beast of burden for one month, also seed grain and vegetables actually provided, reserved, or on hand for the purpose of planting or sowing at any time within the ensuing six months, not exceeding in value the sum of Twenty-five Dollars (\$25).
5. Books and articles connected with religious worship, together not exceeding Twenty-five Dollars (\$25) in value.
6. The necessary clothing of the debtor and that of all the immediate family together not exceeding Fifty Dollars (\$50) in value and the provisions already provided for family use sufficient for three months.

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7. The tools and implements of a mechanic or artisan, necessary to carry on his trade, not exceeding Twenty-five Dollars (\$25) in value.

8. The professional libraries of lawyers, judges, clergymen, doctors, and preachers, not exceeding Two Hundred Fifty Dollars (\$250) in value.

9. One fishing boat and one net not exceeding a total value of Fifty Dollars (\$50), the property of any fisherman who uses them.

10. Gravestones lettered on in use.

11. One cow and its suckling calf, two sows and their suckling pigs, fifteen (15) hens and three roosters, and the food for such cows, hogs, and chickens for one month.

12. All arms, uniforms, and the accoutrements required by law to be kept for the Guam Militia.

13. (a) Except with regard to a judgment or order for child or spousal support payments, all money received by any person, a resident of the territory, as a pension, or as an annuity or qualified or non-qualified retirement plan or disability or death or other benefit, or as a return of contributions and interest thereon, from the United States Government, from the government of Guam, or from any other political subdivision of any jurisdiction of the United States, or any public trust, or public corporation, or from the governing body of any of them, or from any public board or boards, or from any retirement, life insurance, disability or annuity policy or system established by any of them pursuant to statute, whether the same shall be in the actual possession of such pensioner or beneficiary, or deposited by him.

(b) Except with regard to a judgment or order for child or spousal support payments, money held, controlled or in process of distribution by private retirement plans, life insurance policy or any profit-sharing plan designed and used for retirement purposes, or the payment of benefits and as an annuity, pension, retirement allowance, disability payment or death benefit from such retirement plans, life insurance policies, annuities, or profit-sharing plans, and all contributions and interest thereof returned to any member of any such retirement, life insurance, or profit-sharing plan, whether the same shall be in the actual possession of such pensioner or beneficiary, or deposited by him. The exemption given by this paragraph shall also apply to any money held in self-employed retirement plans and

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individual retirement annuities or accounts or the like provided for in the *Internal Revenue Code of 1954*, as amended (Territorial Income Tax Law), provided that such money does not exceed the maximum amount exempted from federal income taxation.

14. The earnings of the judgment debtor for his personal services rendered at any time within thirty days next preceding the levy of execution or attachment when it appears by the debtor's affidavit or otherwise, that such earnings are necessary for the use of his family residing in Guam, supported in whole or in part by his labor, but where debts are incurred by any such person, or his wife or family for the common necessities of life, or have been incurred at a time when the debtor had no family residing in the Territory of Guam, supported in whole or in part by his labor, or incurred for personal services rendered by any employee or former employee, the one-half (½) of such earnings above- mentioned is nevertheless subject to execution, garnishment, or attachment to satisfy debts so incurred.

15. All money received by any person as child support.

No article, however, or species or property, mentioned in this section is exempt from attachment or execution issued upon a judgment recovered for its price, or upon a judgment for foreclosure of a mortgage or other lien thereon.

SOURCE: CCP § 690; subsection (1) amended by P.L. 5-45 and P.L. 5-115. Subsection 13 amended by P.L. 17-33:1 (11/25/83). Subsection 15 added by P.L. 17-33:2 (11/25/83). Subsection 13 (a) and (b) amended by P.L. 30-031:2 (June 16, 2009).

§ 23112. Writ, By Whom and How Executed.

The marshal must execute the writ against the property of the judgment debtor, by levying on a sufficient amount of property, if there be sufficient, collecting or selling the things in action, and selling the other property and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accrued costs must be returned to the judgment debtor, unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accrued costs within the view of the marshal, he must levy only on such part of the property as the judgment debtor may indicate, if the property indicated be amply sufficient to satisfy the judgment and costs.

SOURCE: CCP § 691.

§ 23113. Notice of Sale Under Execution.

Before the sale of property on execution or under power contained in any deed of trust, notice thereof must be given as follows:

1. In case of perishable property; by posting written notice of the time and place of sale in three public places in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in three public places in the town or village in which the property is to be sold, for such time as may be reasonable, considering the character and condition of the property.

2. In case of other personal property: By posting a similar notice in three public places in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in three public places in the town or village in which the property is to be sold, for not less than five days nor more than ten days.

3. In case of real property, by posting a similar notice particularly describing the property for twenty (20) days, in three public places in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in three public places in the town or village in which the property is to be sold, and publishing a copy thereof once a week for the same period in some newspaper of general circulation printed and published in Guam, if there is one; provided that in all cases a copy of said notice shall be posted in some conspicuous place on the property to be sold at least twenty (20) days before the date of sale.

4. When the judgment under which the property is to be sold is made payable in a specified kind of money or currency, the several notices required by this section must state the kind of money or currency in which bids may be made at such sale, which must be the same as that specified in the judgment.

SOURCE: CCP § 692.

§ 23114. Penalties for Selling without Notice.

An officer selling without the notice prescribed in the last section forfeits Fifty Dollars (\$50.00) to the aggrieved party, in addition to his actual damages, and a person willfully taking down or defacing the notice posted, if done before the sale or the satisfaction of the judgment (if the judgment be satisfied before sale), forfeits Fifty Dollars (\$50.00).

SOURCE: CCP § 693.

§ 23115. Conduct of Sales.

All sales of property under execution must be held in a city, town, or village in the district where said property or some part thereof is situated, and must be made at auction, to the highest bidder, between the hours of 9 in the morning and 5 in the afternoon. After sufficient property has been sold to satisfy the execution, no more can be sold. Neither the officer holding the execution nor his deputy can become a purchaser or be interested in any purchase at such sale. When the sale is under execution and is of personal property capable of manual delivery, it must be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, consisting of several known lots or parcels, they must be sold separately; or when a portion of said real property is claimed by a third person, and he requires it to be sold separately, such portion can be thus sold. The judgment debtor, if present at the sale, may also direct the order in which property, real property, real or personal, shall be sold, when such property consist of several known lots or parcels, or of articles which can be sold to advantage separately, and the commissioner must follow his directions.

SOURCE: CCP § 694.

§ 23116. When Purchaser Refuses to Pay.

If a purchaser refuses to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss be occasioned thereby, the officer may recover the amount of such loss, with costs, from the bidder so refusing, in court of competent jurisdiction.

SOURCE: CCP § 695.

§ 23117. Rejecting Subsequent Bids.

When a purchaser refuses to pay, the officer may, in his discretion, thereafter reject any subsequent bid of such person.

SOURCE: CCP § 696.

§ 23118. Officer Not Liable Beyond a Certain Amount.

The two preceding sections must not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser, and the amount collected from the purchaser refusing to pay.

SOURCE: CCP § 697.

§ 23119. Personal Property Capable of Manual Delivery.

When the purchaser of any personal property capable of manual delivery pays the purchase money, the officer making the sale must deliver to the purchaser the property, and, if desired, execute and deliver to him a certificate of the sale. Such certificate conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied.

SOURCE: CCP § 698.

§ 23120. Personal Property Not Capable of Manual Delivery.

When the purchaser of any personal property not capable of manual delivery pays the purchase money, the officer making the sale must execute and deliver to the purchaser a certificate of sale. Such certificate conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied.

SOURCE: CCP § 699.

§ 23121. Sale of Real Property.

What Purchaser Acquires. Upon a sale of real property, the purchaser is substituted to and acquires all the right, title, interest and claim of the judgment debtor thereto on the date of the levy of the execution thereon, where such judgment is not a lien upon such property; if the judgment is a lien upon the real property the purchaser is substituted to and acquires all the right, title, interest and claim of the judgment debtor on or at anytime after the day such judgment became a lien on such property; and in case property, real or personal, has been attached in the action, the purchaser is substituted to and acquires all right, title, interest and claim of the judgment debtor on or at any time after the day the attachment was levied upon such property.

SOURCE: CCP § 700.

§ 23122. When Sales are Absolute.

Sales of personal property, and of real property, when the estate therein is less than a leasehold of two (2) years unexpired term, are absolute. In all other cases the property is subject to redemption as provided in this Article. The officer must give to the purchaser a certificate of sale, and file a duplicate thereof for record in the Department of Land Management, which certificate must state the date of the judgment under which the sale was made and the names of the parties therein and contain:

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1. a particular description of the real property sold;
2. the price bid for each distinct lot or parcel;
3. the whole price paid;
4. if the property is subject to redemption, the certificate must so declare, and if the redemption can be affected only in a particular kind of money or currency, that fact must be stated.

SOURCE: CCP § 700a. Guam CCP omits Subsection (b) of Calif. § 700a, dealing with service of notice to the judgment debtor and the liability of the officer for such failure.

§ 23123. Real Property so Sold, by Whom it May be Redeemed.

Property sold subject to redemption, as provided in the last section, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons or their successors in interest:

1. the judgment debtor, or his successor in interest, in the whole or any part of the property;
2. a creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold. The persons mentioned in the second subsection of this Section are, in this Article, termed *redemptioners*.

SOURCE: CCP 701.

§ 23124. Redemption of Property, How and When.

The judgment debtor, or redemptioner, may redeem the property from the purchaser any time within twelve (12) months after the sale on paying the purchaser the amount of purchase, with one percent (1%) per month thereon in addition, up to the time of redemption, together with the amount of any assessment or taxes and any reasonable sum for insurance, maintenance, upkeep, repair or rehabilitation or improvements upon the property, and any amount necessarily paid for land rental if a leasehold interest was purchased, which the purchaser may have paid thereon after purchase, and interest on such amount, and if the purchaser be also a creditor, having a prior lien to that of the redemptioner, other than the judgment under which said purchase was made, the amount of such lien with interest.

SOURCE: CCP § 702.

COMMENT: The Guam CCP § has copied the California CCP as far as substance is concerned. The Guam CCP left out the procedural matters contained in California CCP § 702.

§ 23125. Another Redemptioner May Redeem.

If property be so redeemed by a redemptioner, another redemptioner may, within sixty (60) days after the last redemptioner, again redeem it from the last redemptioner on paying the sum paid on such last redemption, with two percent (2%) thereon in addition, and the amount of any assessment or taxes and any reasonable sum for insurance, maintenance, upkeep, repair or rehabilitation of improvements upon the property, and any amount necessarily paid for land rental if a leasehold interest was purchased, which the last redemptioner may have paid thereon after the redemption by him, with interest on such amount, and, in addition, the amount of any liens held by said last redemptioner prior to his own, with interest; but the judgment under which the property was sold need not be so paid as a lien. The property may be again, and as often as redemptioner is so disposed, redeemed from any previous redemptioner within sixty (60) days after the last redemption on paying sum paid on the last previous redemption, with two percent (2%) thereon in addition, and the amount of any assessments or taxes and any reasonable sum for insurance, maintenance, upkeep, repair or rehabilitation of improvements upon the property, and any amount necessarily paid for land rental if a leasehold interest was purchased, which the last previous redemptioner paid after the redemption by him, with interest thereon, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner, previous to his own with interest. Written notice of redemption must be given to the marshal who made the sale and a duplicate filed with the Director of Land Management, and if any taxes or assessments are paid by the redemptioner, or if he has or acquired any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the commissioner and filed with the Director of Land Management, and if such notice be not filed, the property may be redeemed without paying such tax, assessment or lien.

SOURCE: CCP § 703 amended by P.L. 3-101.

§ 23126. Deed to be Given at Expiration of Redemption.

If no redemption be made within twelve (12) months after the sale, the purchaser is entitled to a conveyance; or, if so redeemed, whenever sixty (60) days have elapsed, and no other redemption has been made and notice thereof given and the time for redemption has expired, the last redemptioner, or his assignee, is entitled to a deed and to a Certificate of Title from the government of Guam, but, in all cases, the judgment debtor shall have the entire period of twelve (12) from the date of the sale to

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redeem the property. If the judgment debtor redeem, he must make the same payments as are required to affect a redemption by a redemptioner. If the debtor redeemed, the affect of the sale is terminated, and he is restored to his estate. Upon a redemption by the debtor, the person to whom the payment is made must execute and deliver to him a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the Department of Land Management and the Director of Land Management must note the record thereof in the margin of the record of the certificate of sale.

SOURCE: CCP § 703a.

§ 23127. To Whom Payments Made in Cases of Redemption.

The payments mentioned in the last two sections may be made to the purchaser or redemptioner, or for him, to the officer who made the sale. When the judgment under which the sale has been made is payable in a specified kind of money or currency, payments must be made in the same kind of money or currency, and a tender of the money is equivalent to payment.

SOURCE: CCP § 704.

§ 23128. What a Redemptioner Must Produce to Officer.

A redemptioner must produce to the officer or person from whom he seeks to redeem and serve with his notice to the commissioner making the sale, or his successor in office:

1. A copy of the docket of the judgment under which he claimed the right to redeem, certified by the clerk of the court, or, if he redeem upon a mortgage or other lien, a note of record thereof, certified by the Director of Land Management;
2. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself, or of a subscribing witness thereto;
3. An affidavit by himself or his agent showing the amount then actually due on the lien.

SOURCE: CCP § 705.

§ 23129. When Court May Restrain Waste on the Property.

Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or the judgment creditor. But it is not waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use it in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or to use wood or timber on the property therefor; or for the repair of fences; or for fuel for his family, while he occupies the property.

SOURCE: CCP § 706.

§ 23130. Rents and Profits.

The purchaser, from the time of the sale until the redemption, and a redemptioner, from the time of his redemption until another redemption, are entitled to receive from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof. But when any rents or profits have been received by the judgment creditor or purchaser, or his or their assigns, from the property thus sold preceding such redemption, the amounts of such rents and profits less the costs of operation and maintenance of the property shall be a credit upon the redemption money to be paid; and if the redemptioner or judgment debtor, before the expiration of the time allowed for such redemption, demands in writing of such purchaser or creditor, or his assigns, a written and verified statement of the amounts of such rents and profits thus received, and the costs of maintenance and operation of the property, the period for redemption is extended five (5) days after such sworn statement is given by such purchaser or his assigns to such redemptioner or debtor. If such purchaser or his assigns shall, for a period of one (1) month and after such demand, fail or refuse to give such statement, such redemptioner or debtor may bring action in any court of competent jurisdiction to compel an accounting and disclosure of such rents and profits and until fifteen (15) days from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor.

SOURCE: CCP § 707.

§ 23131. If Purchaser is Evicted; How He May Recover.

If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in consequence of irregularities in the

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proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the purchaser of property at an execution sale, or his successor in interest, fails to recover possession in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the court having jurisdiction thereof must, after notice and on motion of such party in interest, or his attorney, revive the original judgment in the name of the petitioner for the amount paid by such purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore; and the judgment so revived has the same force and effect as would an original judgment of the date of the revival, and no more.

SOURCE: CCP § 708.

§ 23132. Party Who Pays More Than His Share May Compel Contribution.

When property, liable to an execution against several persons, is sold thereon, and more than a due proportion of the judgment is satisfied out of the proceeds of the sale of the property of one of them, or one of them pays, without a sale, more than his proportion, he may compel contribution from the others; and when a judgment is against several, and is upon an obligation of one of them, as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal. In such case the person so paying or contributing is entitled to the benefits of the judgment, to enforce contribution or repayment, if within ten (10) days after his payment, he files with the clerk of the court notice of his payment and claim to contribution or repayment. Upon a filing of such notice, the clerk make must an entry thereof in the margin of the docket.

SOURCE: CCP § 709.

§ 23133. Release of Property Held Under Execution.

Where property levied upon, under execution to satisfy a judgment for the payment of money, is claimed, in whole or in part, by a person, corporation, partnership or association, other than the judgment debtor, such claimant may give an undertaking as herein provided, which undertaking shall release the property in the undertaking described from the lien and levy of such execution.

SOURCE: CCP § 710.

§ 23134. Undertaking by Party Claiming Property.

Such undertaking, with two (2) sureties, shall be executed by the person, corporation, partnership or association claiming in whole or in part the property upon which execution is levied in double the estimated value of the property claimed by the person, corporation, partnership or association; provided, in no case need such undertaking be for a greater sum than double the amount for which the execution is levied; and where the estimated value of the property so claimed by the person, corporation, partnership or association is less than the sum for which such attachment is levied, such estimated value shall be stated in the undertaking, such undertaking shall be conditioned that if the property claimed by the person, corporation, partnership or association is finally adjudged to be the property of the judgment debtor, said person, corporation, partnership or association will pay of said judgment, upon which execution has issued, a sum equal to the value, as estimated in said undertaking, of said property claimed by said person, corporation, partnership or association, and said property claimed shall be described in said undertaking.

SOURCE: CCP § 710a.

§ 23135. Service of Copy of Undertaking.

Said undertaking shall be filed in the action in which said execution issued, and a copy thereof served upon the judgment creditor or his attorney in said action.

SOURCE: CCP § 711.

§ 23136. Objections to Sureties.

Within ten (10) days after the service of a copy of undertaking, the judgment creditor may object to such undertaking on the ground of inability of the sureties, or either of them, to pay the sum for which they became bound in said undertaking, and upon the ground that the estimated value of the property therein is less than the market value of the property claimed. Such objection to the undertaking shall be made in writing, specifying the ground or grounds of objection, and if the objection is made to the undertaking that the estimated value therein is less than the market value of the property claimed, such objection shall specify the judgment creditor's estimate of the market value of the property claimed. Such written objections shall be served upon the person, partnership, corporation or association giving such undertaking and claiming the property therein described.

SOURCE: CCP § 711a.

§ 23137. Justification of Sureties.

When the sureties, or either of them, are objected to, the surety or sureties so objected shall justify before the court out of which the execution issued, upon ten days' notice of the time so justify being given to the judgment creditor or his attorney. Upon the hearing and examination into the sufficiency of a surety, witnesses may be required to attend and evidence may be procured and introduced in the same manner as in trial of civil cases. Upon such hearing and examination, the court shall make its order, in writing, approving or disapproving the sufficiency of the surety or sureties on such undertaking. In case the court disapproves of the surety on any undertaking, a new undertaking may be filed and served, and to any undertaking given under the provisions of this Article, the same objection to the sureties may be made, and the same proceedings had as in case of the first undertaking filed and served.

SOURCE: CCP § 712.

§ 23138. New Undertaking.

When objection is made to the undertaking upon the ground that the estimated value of the property claimed, as stated in the undertaking, is less than the market value of the property claimed, the person, corporation, partnership or association may accept the estimated value stated by the judgment creditor in said objection, and a new undertaking may be at once filed with the judgment creditor's estimate stated therein as the estimated value and no objection shall thereafter be made upon that ground; if the judgment creditor's estimate of the market value is not accepted, the person, corporation, partnership or association giving the undertaking shall move the court in which the execution issued, upon ten days' notice to the judgment creditor, to estimate the market value of the property claimed and described in the undertaking, and upon the hearing of such motion witnesses may be required to attend and testify, and evidence be produced in the same manner as in the trial of civil actions. Upon the hearing of such motion, the court shall estimate the market value of the property described in the undertaking, and if the estimated value made by the court exceeds the estimated value as stated in the undertaking, a new undertaking shall be filed and served, with the market value determined by the court stated therein as the estimated value.

SOURCE: CCP § 712a.

NOTE: Guam CCP § 713, *Requisites of Undertaking*, is omitted by Compiler. This Section is identical to Calif. § 713. However, Guam does not have in the Code of Civil

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Procedure any § 1057 to which both the California and Guam sections refer. Other than referring to the nonexistent CCP § 1057, there is nothing of substance in § 713.

§ 23139. When Undertaking Becomes Effective.

The under-taking shall become effective for purpose herein specified ten (10) days after service of a copy thereof on the judgment debtor, unless objection to such undertaking is made as herein provided, and in case objection is made to the undertaking filed and served, then the undertaking shall become effective for such purposes when an undertaking is given as herein provided.

SOURCE: CCP § 713a.

**ARTICLE 2
PROCEEDINGS SUPPLEMENTAL TO EXECUTION**

NOTE: Guam and California add Chapter 2 to their Title 9 dealing with Proceedings Supplemental to Execution. The matters covered in this Chapter are covered generally by Rule 69 of the Guam Rules of Civil Procedure. Article 2 contains matters of substance not covered in the Rules of the Court.

- § 23201. Debtor Required to Answer Concerning His Property.
- § 23202. Proceedings in Aid of Execution; Examination; Arrest of Debtor; Undertaking or Imprisonment.
- § 23203. Payment by Debtor of Judgment Debtor.
- § 23204. Order Applying Property Toward Satisfaction of Judgment.
- § 23205. Proceedings Upon Claim of Another Party.
- § 23206. Disobedience of Referee's Order.
- § 23207. Installment Payment Order.

§ 23201. Debtor Required to Answer Concerning His Property.

When an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, issued to the marshal, is returned unsatisfied in whole or in part the judgment creditor, at any time after such return is made, is entitled to an order from a judge of the court requiring such judgment to appear and answer concerning his property before such judge, or a referee appointed by him, at a time and place specified in the order.

SOURCE: CCP § 714.

§ 23202. Proceedings in Aid of Execution; Examination; Arrest of Debtor; Undertaking or Imprisonment.

After the issuing of an execution against property, and upon proof, by affidavit of a party or otherwise, to the satisfaction of a judge of the court, that any judgment debtor has property which he unjustly refuses to apply toward the satisfaction of the judgment, such judge may, by an order, require the judgment debtor to appear, at a specified time and place, before such judge, or a referee appointed by him, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment as are provided upon the return of an execution. Instead of the order requiring the attendance of the judgment debtor, the judge may, upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the Director of Public Safety to arrest the debtor and bring him before such judge. Upon being brought before the judge, he may be ordered to enter to an undertaking, with sufficient sureties, that he will attend from time to time before the judge or referee, as may be directed during the pendency of proceedings and until the final determination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking he may be committed to prison.

SOURCE: CCP § 715.

§ 23203. Payment by Debtor of Judgment Debtor.

After the issuing of an execution against property and before its return, any person indebted to the judgment debtor may pay to the marshal the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the marshal's receipt is a sufficient discharge for the amount so paid.

SOURCE: CCP § 716.

NOTE: CCP § 717, *Examination of Judgment Debtor*, has been superseded by Rule 69 of the GRCP and so is omitted here.

CCP § 718, *Witnesses Required to Testify*, has been superseded by Rule 69 of the GRCP and has been omitted here.

§ 23204. Order Applying Property Toward Satisfaction of Judgment.

The judge or referee may order any property of the judgment debtor, not exempt from execution, in the hands of such debtor, or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment; but no such order can be made as to money or property in the hands of any other person or claimed to be due from him to the judgment debtor, if such person claims an interest in the property adverse to the judgment or denies the debt.

SOURCE: CCP § 719.

§ 23205. Proceedings Upon Claim of Another Party.

If it appears that a person or corporation, alleged to have property of the judgment debtor, or to be indebted to him, claims an interest in the property adverse to him, or denies the debt, the judgment creditor may maintain an action against such person or corporation for the recovery of such interest or debt, and the judge or referee may, by order, forbid a transfer or other disposition of such interest or debt, until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the judge or referee granting the same, or the court in which the action is brought, at any time, upon such terms as may be just.

SOURCE: CCP § 720.

§ 23206. Disobedience of Referee's Order.

If any person, party or witness disobeys an order of the referee, properly made, in the proceedings before him under this Article, they may be punished by the court or judge ordering the reference, for a contempt.

SOURCE: CCP § 721.

§ 23207. Installment Payment Order.

Upon motion of the judgment creditor, upon notice to the judgment debtor, where it is shown that the judgment debtor is receiving or will receive money from any source, or is attempting to impede the judgment creditor by rendering services without adequate compensation, the court shall order that the judgment debtor make specific installment payments to the judgment creditor. Notice of the motion shall be served on the judgment debtor in the same manner as a summons, or by registered or certified mail, return receipt requested. In fixing the amount of the payments, the court shall take into consideration the reasonable requirements of the judgment debtor and his dependents, any payments required to be made by him or deducted from the money he would otherwise receive in satisfaction of other judgments and wage assignments, the amount due on the judgment, and the amount being or to be received, or, if the judgment debtor is attempting to impede the judgment creditor by rendering services without adequate compensation, the reasonable value of the services rendered.

SOURCE: CCP § 722, added by P.L. 9-194 (1968).

ARTICLE 3

SALE OF FRANCHISES

- § 23301. Franchise Subject to Levy and Sale.
- § 23302. Purchases to Transact Business of Corporation.
- § 23303. Recovery of Penalties and Damages for Injury to Franchise or Property.
- § 23304. Corporation to Retain Powers after Sale.
- § 23305. Place of Sale.
- § 23306. Infringement of Franchise Prohibited.

§ 23301. Franchise Subject to Levy and Sale.

For the satisfaction of any judgment against any person, company or corporation having any franchise other than the franchise of being a corporation, such franchise, and all the rights and privileges thereof, may be levied upon and sold under execution, in the same manner, and with the same effect, as any other property.

SOURCE: CCP § 724a.

§ 23302. Purchases to Transact Business of Corporation.

The purchaser at the sale must receive a certificate of purchase of the franchise, and be immediately let into the possession of all property necessary for the exercise of the powers and the receipt of the proceeds thereof, and must thereafter conduct the business of such corporation, with all its powers and privileges, and subject to all its liabilities, until the redemption of the same, which redemption may be had as provided in this Title in the case of redemption from sales of real estate on execution.

SOURCE: CCP § 724b.

§ 23303. Recovery of Penalties and Damages for Injury to Franchise or Property.

The purchaser or his assignee is entitled to recover any penalties imposed by law and recoverable by the corporation for an injury to the franchise or property thereof, or for any damages or other causes, occurring during the time he holds the same, and may use the name of the corporation for the purchase of any action necessary to recover the same. A recovery for damages, or any penalties thus had, is a bar to any subsequent action by or on behalf of the corporation for the same.

SOURCE: CCP § 724c.

§ 23304. Corporation to Retain Powers after Sale.

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The person, company, or corporation whose franchise is sold, as in this Article provided, in all other respects retains the same powers, is bound to the discharge of the same duties, and is liable to the same penalties and forfeitures, as before such sale.

SOURCE: CCP § 724d.

§ 23305. Place of Sale.

The sale of any franchise under execution must be made in the district in which the corporation has its principal place of business, or in which the property, or some portion thereof is situated.

SOURCE: CCP § 724e.

§ 23306. Infringement of Franchise Prohibited.

It shall be unlawful for any person to operate, directly or indirectly, a common carrier other than a passenger car, upon any route over which any other person shall hold a transportation franchise. However, the foregoing shall not be construed to restrict the right of any person to employ his own, or hired vehicles for pleasure, or in the conduct of his own business, other than that of acting as a common carrier.

SOURCE: CCP § 725.

NOTE: Guam CCP § 725, relative to infringement of vehicular common carrier franchises is probably superfluous. Those common carriers which are permitted on Guam, taxis and mass transit common carriers, are completely regulated in Title 11 of the GCA (Taxis) and Title 12 (Mass Transit Authority). Now (1992), no common passenger carriers can operate on Guam's roads other than the Mass Transit Authority. No counterpart of this section exists in California. It appears that this Section was added in 1953 when there was no general regulation of common carrier franchises in other parts of the laws. At this time, (2000) Guam has not regulated freight or cargo carriers.
