

7 GCA CIVIL PROCEDURE
CH. 24 ACTIONS IN PARTICULAR CASES

CHAPTER 24
ACTIONS IN PARTICULAR CASES

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ARTICLE 1
FORECLOSURE OF MORTGAGES

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§ 24101. Foreclosure of Mortgages.

Any action for the recovery of any debt, or the enforcement of any right secured by mortgage on real or personal property, must be in accordance with the provisions of this Chapter. All actions for the foreclosure of a mortgage or other encumbrance upon real estate must be brought in the Superior Court.

SOURCE: CCP § 726 as amended by P.L. 9-256, effective 1/8/1969.

§ 24102. The Complaint in an Action for Foreclosure of a Mortgage.

In all actions for the foreclosure of a mortgage, the complaint shall set forth the date and due execution of the mortgage; its assignments, if any; the names and residences of the mortgagor; a description of the mortgaged property; a statement of the date of the note or other obligation secured by the mortgage, and the amount claimed to be unpaid thereon; and the names

and residences of all persons having or claiming an interest in the property subordinate in right to that of a holder of the mortgage, all of whom shall be made defendants in the action. No person holding a conveyance from or under the mortgagor of property mortgaged, or having a lien thereon, which conveyance or lien does not appear of record in the Department of Land Management at the time of the commencement of the action, need be made a party to such action, and the judgment therein rendered, and the proceedings therein had, are as conclusive against the party holding such unrecorded conveyance or lien as if he had been a party to the action.

SOURCE: CCP § 726a.

§ 24103. Trial and Judgment in Foreclosure Suits.

If, upon trial in such action, the court shall find the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage debt or obligation, including interest and costs, and shall render judgment for the sum so found due, and order that the same be paid into court within a period of three (3) months in the case of real estate mortgage or other encumbrance upon real estate, or within a period of one (1) month in the case of a mortgage upon personal property, from and after the date on which the order was made.

SOURCE: CCP § 726b.

§ 24104. Sale of the Mortgaged Property.

When the defendant, after being directed to do so, as provided in the last preceding section, fails to pay the principal, interest, and costs at the time directed in the order, the court shall order the property (or so much thereof as may be necessary) to be sold in the manner and under the regulations that govern sales of real estate under execution; but such sale shall not affect the rights of persons holding prior encumbrances upon the same estate or a part thereof. The sale, when confirmed by decree of the court, shall operate to divest the rights of all the parties to the action and to vest their rights in the purchaser. Should the court decline to confirm the sale, for good cause shown, and should set it aside, it shall order a resale in accordance with law.

SOURCE: CCP § 726c.

§ 24105. Disposition of Proceeds.

The money arising from the sale of mortgaged property, under the regulations hereinbefore prescribed, shall, after deduction of costs of sale, be paid to the person foreclosing the mortgage, and when there shall be any

surplus, after paying off such mortgage or other encumbrance, the same shall be paid to junior encumbrances in the order of their priority, to be ascertained by the court, or if there be no such encumbrances, or there be a surplus after payment of such encumbrances, then to the mortgagor or his agent, or to the person entitled to it.

SOURCE: CCP § 727.

§ 24106. Disposition of Proceeds in Case the Debt is Not All Due.

If the debt for which the mortgage or encumbrance was held is not all due, so soon as sufficient of the property has been sold to pay the amount due, with costs, the sale must cease; and afterwards, as often as more becomes due for principal or interest, the court may, on motion, order more to be sold. But if the property cannot be sold in portions without injury to the parties, the whole shall be ordered to be sold in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

SOURCE: CCP § 728.

§ 24107. Judgment for Balance After Sale of Property.

Upon the sale of any real property, under a decree for a sale to satisfy a mortgage or other encumbrance thereon, if there be a balance due to the plaintiff after applying the proceeds of the sale, the court, upon motion, shall give a decree against the defendant for any such balance for which, by the record of the case, he may be personally liable to the plaintiff, upon which execution may issue immediately if the balance is all due at the time of the rendition of the decree; otherwise the plaintiff shall be entitled to execution at such time as the balance remaining would have become due by the terms of the original contract, which time shall be stated in the decree.

SOURCE: CCP § 729.

§ 24108. Final Record.

The final record in the action shall set forth, in brief, the petition and other pleadings, judgment, orders, the proceedings under the order of sale, and the decree confirming the same, and the name of the purchaser, with a description of the estate purchased by him. A certified copy of such record shall be recorded in the Department of Land Management.

SOURCE: CCP § 729a.

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ARTICLE 2
NUISANCE, WASTE & WILLFUL TRESPASS
IN CERTAIN CASES ON REAL PROPERTY

NOTE: This Article is now found in 21 GCA Chapter 23. It was placed in Title 21 as it deals with real property, the subject of that Title.

ARTICLE 3
CONFLICTING CLAIMS TO REAL PROPERTY
AND OTHER REAL ESTATE ACTIONS

NOTE: This Article 3 is now found in 21 GCA Chapter 25, as it deals with real property.

ARTICLE 4
PARTITION OF PROPERTY

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- § 24445. Costs of Partition.
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§ 24401. Who May Bring Actions for Partition.

When several co-tenants own real property as joint tenants, or tenants in common, in which one or more of them have an estate of inheritance, or for life or lives or for years, or when real property is subject to a life estate with remainder over, an action may be brought by one or more of such persons, or, where property is subject to a life estate with remainder over, by the life tenant, for a partition thereof according to the respective rights of the persons interested therein, and for a sale of such property, or a part thereof, if it appears that a partition cannot be made without great prejudice to the owners.

SOURCE: CCP § 752.

COMMENT: See, as for partition of real property, *Tabor v. Ulloa* (1963) 323 F.2d. 823.

§ 24402. Action for Partition of Personal Property.

When several persons are co-owners of any personal property, an action may be brought by any one or more such co-owners for a partition thereof; or in case partition cannot be had without great prejudice to the owners, for the sale thereof, and partition of the proceeds according to the respective interests of the parties. In all such actions, the provisions of this Chapter shall govern wherever applicable. Real and personal property may be partitioned in the same action.

SOURCE: CCP § 752a.

§ 24403. Interest of All Parties Must be Set Forth in the Complaint.

The interests of all persons in the property, whether such persons are known or unknown, must be set forth in the complaint, as far as known to the plaintiff; and if one or more of the parties, or the share or quantity of interest of any of the parties, is unknown to the plaintiff, or is uncertain or contingent, or the ownership of the inheritance depends upon an executory devise, or the remainder is a contingent remainder, so that such parties cannot be named, that fact must be set forth in the complaint.

SOURCE: CCP § 753.

§ 24404. Lienholders Not of Record Need Not Be Made Parties.

No person having a conveyance of or claiming a lien on, the property, or some part of it, need be made a party to the action, unless such conveyance or lien appears of record.

SOURCE: CCP § 754.

§ 24405. Plaintiff Must File Notice of Lis Pendens.

Immediately after filing the complaint in the court having jurisdiction, the plaintiff must record in the Department of Land Management a notice of the pendency of the action containing the names of the parties so far as known, the object of the action, and a description of the property to be affected thereby. From the time of filing such notice for record, all persons shall be deemed to have notice of the pendency of the action.

SOURCE: CCP § 755; amended by P.L. 5-54 eff. 7/1/60.

§ 24406. Summons; to Whom Directed.

The summons must contain a description of the property sought to be partitioned, and must be directed to all of the persons named as defendants in the complaint, and when it shows that some person, whose name is unknown to the plaintiff, has or claims an interest in, or lien upon, the property, the summons must also be directed to all persons unknown who have or claim any interest in, or lien upon, the property.

SOURCE: CCP § 756.

§ 24407. Unknown Parties May be Served by Publication.

If a party having a share or interest is unknown, or any one (1) of the known parties resides outside of the Territory of Guam, or cannot be found therein, and such fact is made to appear by affidavit, the summons may be served on such absent or unknown party by publication, as in other cases when publication is made, the summons, as published, must be accompanied by a brief description of the property which is the subject of the action.

SOURCE: CCP § 757.

§ 24408. Answer of Defendant; What to Contain.

If the defendant fails to answer within the time allowed by law, he is deemed to admit and adopt the allegations of the complaint. Otherwise, he must controvert such of the allegations of the complaint as he does not wish to be taken as admitted, and must set forth his estate or interest in the property, and if he claims a lien thereon, must state the date and character of the lien and the amount remaining due, and whether he has any additional security therefor, and if so, its nature and extent, and if he fails to disclose such additional security, he must be deemed to have waived his lien on the property to be partitioned.

SOURCE: CCP § 758.

§ 24409. Rights of All Parties May be Put in Issue.

The rights of the several parties, plaintiff as well as defendant, may be put in issue, tried, and determined in such action; and when a sale of the premises is necessary, the title must be ascertained by proof to the satisfaction of the court before the sale can be ordered; except that where there are several unknown persons having an interest in the property, their rights may be considered together in the action, and not as between themselves.

SOURCE: CCP § 759.

§ 24410. Partial Partition.

Whenever from any cause it is, in the opinion of the court, impracticable or highly inconvenient to make a complete partition, in the first instance, among all the parties in interest, the court may first ascertain and determine the shares or interest respectively held by the original co-tenants, and thereupon adjudge and cause a partition to be made, as if such original co-tenants were the parties, and sole parties, in interest, and the only parties to the action, and thereafter may proceed in like manner to adjudge and make partition separately of each share or portion so ascertained and allotted as between those claiming under the original tenant to whom the same shall have been so set apart, or may allow them to remain tenants in common thereof, as they may desire.

SOURCE: CCP § 760.

§ 24411. Rights of Lienholders.

If it appears to the court that there are outstanding liens or encumbrances of record upon such real property, or any part thereof, which existed and were of record at the time of the commencement of the action, and the persons holding such liens are not made parties to the action, the court must order such persons to be made parties to the action by an amended or supplemental complaint.

SOURCE: CCP § 761.

§ 24412. Question of Sale or Partition; Appointment of a Referee.

If it appears by the evidence, whether alleged in the complaint or not, that the property or any part of it is so situated that partition cannot be made without great prejudice to the owners, or where property is subject to a life estate and the remainder is a contingent remainder, the court may, and in the latter case must, order the sale thereof; otherwise, upon the requisite proof being made, it must order a partition according to the respective rights of the

parties as ascertained by the court and may appoint a referee or referees therefor, and must designate the portion to remain undivided for the owners whose interests remain unknown, or are not ascertained.

SOURCE: CCP § 763. There was no Guam CCP § 762.

§ 24413. Death or Insanity of Party.

If, during the pendency of the action, any of the parties die, or become insane, or otherwise incompetent, the proceedings shall not for that cause be delayed or suspended, but the attorney who has appeared for such party may continue to represent such interest; and in case any such party has not appeared by an attorney, the court must appoint an attorney to represent the interest which was held by such party until his heirs or legal representatives or successors in interest shall have appeared in the action; and an attorney so appointed must be allowed by the court a reasonable compensation for his services, which may be taxed as costs against the share or interest represented by such attorney, and may be adjudged a lien thereon in the discretion of the court.

SOURCE: CCP § 763a.

§ 24414. Partition Must be According to Rights of Parties. Sale of Undivided Interests. Allotment of Shares to Each Party.

In making partition, the referees must divide the property, and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, pursuant to the provisions of this Chapter, designating the several portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid them, if the surveyors of the government of Guam are not available upon request. Before making partition or sale, the referees may, whenever it will be for the advantage of those interested, set apart a portion of the property for a way, road, or street, and the portion so set apart must not be assigned to any of the parties or sold, but must remain an open and public way, road, or street, unless the referees shall set the same apart as a private way for the use of the parties interested, or some of them, their heirs and assigns, in which case it shall remain such private way whenever the referees have laid out on any tract of land roads sufficient in the judgment of said referees to accommodate the public and private wants, they must report that fact to the court, and upon the confirmation of their report, all other roads on said tract cease to be public highways. Whenever it appears, in an action for partition of lands, that one or more of the tenants in common, being the owner of an undivided interest

in the tract of land sought to be partitioned, has sold to another person a specific tract by metes and bounds out of the common land, and executed to the purchaser a deed of conveyance, purporting to convey the whole title to such specific tract to the purchaser in fee and in severalty, the land described in such deed shall be allotted and set apart in partition to such purchaser, his heirs, or assigns, or in such other manner as shall make such deed effectual as a conveyance of the whole title to such segregated parcel, if such tract or tracts of land can be so allotted or set apart without material injury to the rights and interests of the other co-tenants who may not have joined in such conveyance. In all cases it is the duty of the referees, in making partition of land, to allot the share of each of the parties owning an interest in the whole or in any part of the premises sought to be partitioned, and to locate the share of each co-tenant, so as to embrace as far as practicable the improvements made by such co-tenant upon the property, and the value of the improvements made by the tenants in common must be excluded from the valuation in making the allotments, and the land must be valued without regard to such improvements, in case the same can be done without material injury to the rights and interests of the other tenants in common owning such land.

SOURCE: CCP § 764.

§ 24415. Report of Referees.

The referees must make a report of their proceedings, specifying therein the manner in which they executed their trust, and describing the property divided, and the shares allotted to each party, with a particular description of each share. Any party to the action, after giving at least ten (10) days' notice in writing to the other parties who have appeared therein of his intention to do so, may move the court to confirm, change, modify, or set aside such report.

SOURCE: CCP § 765.

§ 24416. Court May Confirm, etc., the Report; Judgment Binding on Whom.

The court may confirm, change, modify, or set aside the report, and, if necessary, appoint new referees. Upon the report being confirmed, judgment must be rendered that such partition be effectual forever, which judgment is binding and conclusive:

1. On all persons named as parties to the action, and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee or as tenants for life or for

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years, or as entitled to the reversion, remainder, or the inheritance of such property, or any part thereof, after the determination of a particular estate therein, and who by any contingency may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof as tenants for years or for life;

2. On all persons not in being at the time said judgment is entered, who have any interest in the property divided, or any part thereof, as entitled to the reversion, remainder, or the inheritance of such property, or any part thereof, after the determination of a particular estate therein, and who by any contingency may be entitled to a beneficial interest in the property, provided, that in case sale has been made under the provisions of this Chapter, the judgment shall provide for keeping intact the share of the proceeds of said sale to which said party or parties not in being at the time are or may be entitled until such time as such party or parties may take possession thereof;

3. On all persons interested in the property, who may be unknown, to whom notice has been given of the action for partition by publication;

4. On all other persons claiming from such parties or persons, or any of them.

And no judgment is invalidated by reason of the death of any party before final judgment or decree; but such judgment or decree is as conclusive against the heirs, legal representatives, or assigns of such decedent as if it had been entered before his death. If during the pendency of the action, and before final judgment therein, any of the co-tenants have conveyed to another person his interest, or any part of his interest, such conveyance, whatever its form, shall be deemed to have passed to the grantee any lands which, after its execution, may have been set aside to the grantor in severalty, or such proportionate interest in such lands as the interest so conveyed bears to the whole interest of the grantor.

SOURCE: CCP § 766.

§ 24417. Judgment Not to Affect Tenants for Years to the Whole Property.

The judgment does not affect tenants for years less than ten (10) to the whole of the property which is the subject of the partition.

SOURCE: CCP § 767.

§ 24418. Expense of Partition Must be Apportioned Among the Parties.

The expenses of the referees, including those of a surveyor and his assistants, when employed, must be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by the court, in its discretion, to the referees, must be apportioned equitably among the different parties to the action.

SOURCE: CCP § 768.

§ 24419. A Lien on an Undivided Interest of Any Party is a Charge Only on the Share Assigned to Such Party.

When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall thenceforth be a charge only on the share assigned to such party; but such share must first be charged with its just proportion of the costs of the partition in preference to such lien.

SOURCE: CCP § 769.

§ 24420. Estate for Life or Years May be Set Off in a Part of the Property not Sold, When Not all Sold.

When a part of the property only is ordered to be sold, if there be an estate for life or years, in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

SOURCE: CCP § 770.

§ 24421. Application of Proceeds of Sale of Encumbered Property.

The proceeds of the sale of encumbered property must be applied under the direction of the court, as follows:

1. To pay its just proportion of the general costs of the action;
2. To pay the costs of the reference;
3. To satisfy and cancel of record the several liens in their order of priority, by payment of the sums due and to become due; the amount due to be verified by affidavit at the time of payment;
4. The residue among the owners of the property sold, according to their respective shares therein.

SOURCE: CCP § 771.

§ 24422. Party Holding Other Securities May be Required First to Exhaust Them.

Whenever any party to an action, who holds a lien upon the property or any part thereof, has other securities for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property, on account thereof.

SOURCE: CCP § 772.

§ 24423. Disposition of Sale Proceeds.

The proceeds of sale and the securities taken by the referees, or any part thereof, must be distributed by them to the persons entitled thereto, whenever the court so directs. But in case no direction be given, all of such proceeds and securities must be paid into court, or deposited therein, or as directed by the court.

SOURCE: CCP § 773.

§ 24424. When Proceeds of Sale are Paid Into Court.

When the proceeds of the sale of any share or parcel belonging to persons who are parties to the action, whether known or unknown, are paid into the court, the action may be continued as between such parties for the determination of their respective claims thereto, which must be ascertained and adjudged by the court. Further testimony may be taken in court, and the court may, if necessary, require such parties to present the facts or law in controversy, by pleadings, as in an original action.

SOURCE: CCP § 774.

§ 24425. Referee's Sales May be Public or Private.

All sales of real property made by referees, under this Article, must be made at public auction to the highest bidder, upon notice given in the manner required for the sale of real property on execution unless in the opinion of the court it would be more beneficial to the parties interested to sell the whole or some part thereof at private sale; the court may order or direct such real property, or any part thereof, to be sold at either public auction or private sale as the referee shall judge to be most beneficial to all parties interested. If sold at public auction, the notice must state the terms of sale and if the property or any part thereof is to be sold subject to a prior estate, charge or lien, that must be stated in the notice. If the sale is ordered made at either public auction or private sale, the sale at private sale shall be

conducted in the manner required in private sales of real property of estates of deceased persons.

SOURCE: CCP § 775.

§ 24426. Court Must Direct Terms of Sale or Credit.

The court must, in the order for sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit, and for that portion of which the purchase money is required, by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants, or parties out of Guam.

SOURCE: CCP § 776.

§ 24427. Referees may Take Securities for Purchase Money.

The referees may take separate mortgages and other securities for the whole, or convenient portions of the purchase money, of such parts of the property as are directed by the court to be sold on credit, for the shares of any known owner or full age, in the name of such owner; and for the shares of an infant, in the name of the guardian of such infant; and for other shares, in the name of the Director of Administration.

SOURCE: CCP § 777; *Director of Finance* changed to *Director of Administration* pursuant to P.L. 9-239.

§ 24428. Tenants Whose Estate has been Sold Shall Receive Compensation.

The person entitled to a tenancy for life, or years, whose estate has been sold, is entitled to receive such sum as may be deemed a reasonable satisfaction for such estate, and which the person so entitled may consent to accept instead thereof, by an instrument in writing, filed with the clerk of the court. Upon the filing of such consent, the clerk must enter the same in the minutes of the court.

SOURCE: CCP § 778.

§ 24429. Court May Fix Such Compensation.

If such consent be not given, filed, and entered as provided in the last section, at or before a judgment of sale is rendered, the court must ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of such estate, and must order the same to be paid to such party, or deposited in court for him, as the case may require.

SOURCE: CCP § 779.

§ 24430. Court Must Protect Unknown Tenants.

If the persons entitled to such estate for life, or years, be unknown, the court must provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

SOURCE: CCP § 780.

§ 24431. Securing Value of Contingent Future Rights or Estates or Life Estates.

In all cases of sales, when it appears that any person has a vested or contingent future right or estate in any of the property sold, the court must ascertain and settle the proportional value of such contingent or vested right or estate, and must direct such proportion of the proceeds of the sale to be invested, secured or paid over, in such manner as to protect the rights and interests of the parties; or where property is subject to a life estate with remainder over, the court may direct the entire proceeds of the sale of such interests to be paid to a trustee to be appointed by the court, to be invested and reinvested, the income thereof to be paid to the life tenant and the corpus of the trust estate, upon the termination of the life estate, to be delivered or paid to the remaindermen as in the decree determined; and the court shall retain jurisdiction for the settlement of the accounts of such trustee and in all matters necessary for the proper administration of such trust and final distribution of the trust fund.

SOURCE: CCP § 781.

§ 24432. Terms of Sale Must Be Made Known at the Time; Lots Must be Sold Separately.

In all cases of sales of property, the terms must be made known at the time; and if the premises consist of distinct farms or lots, they must be sold separately.

SOURCE: CCP § 782.

§ 24433. Who May Not be Purchasers.

Neither of the referees, nor any person for the benefit of either of them, can be interested in any purchase; nor can a guardian of an infant party be interested in the purchase of any real property being the subject of the action, except for the benefit of the infant. All sales contrary to the provisions of this section are void.

SOURCE: CCP § 783.

§ 24434. Referees Must Report Sale to Court. Court may Vacate Sale.

After completing a sale of property, or any part thereof ordered to be sold, the referees must report the same to the court, with a description of the different parcels of land sold to each purchaser; the name of the purchaser; the price paid or secured; the terms and conditions of the sale, and the securities, if any, taken. The report must be filed in the office of the clerk of the court. Thereafter, any purchaser, or any party to the action, may, upon ten (10) days' notice to the other parties who have appeared therein, and also to the purchaser if he be not the moving party, may move the court to confirm or set aside any sale or sales so reported. Upon the hearing, the court must examine the return and report the witnesses in relation to the same, and if the proceedings were unfair, or the sum bid disproportionate to the value, and if it appears that a sum exceeding such bid [by] at least ten percent (10%), exclusive of a new sale, may be obtained, the court may vacate the sale and direct another to be had, of which notice must be given, and the sale conducted in all respects as if no previous sale had taken place. If an offer of ten percent (10%) more in amount than that named in the return be made to the court, in writing, by a responsible party, it is in the discretion of the court to accept such offer and confirm the sale to such person, or to order a new sale.

SOURCE: CCP § 784.

§ 24435. Referees to Execute Conveyances.

If the sale is confirmed by the court, and order must be entered directing the referees to execute conveyances and take securities pursuant to such sale, which they are hereby authorized to do. Such order may also give directions to them respecting the disposition of the proceeds of the sale. If the purchaser, after the confirmation of the sale, refuses to pay the amount of his bid, the referees may again sell the property at any time to the highest bidder, and if any loss is occasioned thereby, the referees may recover the amount of such loss and the cost from the bidder so refusing, or the referees, without making a resale, may maintain an action against the purchaser for the amount of his bid.

SOURCE: CCP § 785.

§ 24436. Proceeding if Lienholder Becomes a Purchaser.

When a part entitled to a share of the property or an encumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

SOURCE: CCP § 786.

§ 24437. Conveyances Must be Recorded, and Shall be a Bar Against Parties.

The conveyance must be recorded, and shall be a bar against all persons interested in the property in any way who shall have been named as parties in the action, and against all such parties and persons as were unknown, if the summons was served by publication, and against all persons claiming under them, or either of them, and against all persons having unrecorded deeds or liens at the commencement of the action.

SOURCE: CCP § 787.

§ 24438. Proceeds of Unknown Parties - How Invested.

Where there are proceeds of a sale belonging to an unknown owner, or to a person outside of Guam, who has no legal representative within it, the same must be deposited in the savings account of any bank duly licensed to do business on Guam, for the benefit of the persons entitled thereto.

SOURCE: CCP § 788.

§ 24439. Investment in Then Name of the Director of Administration.

When the security of the proceeds of sale is taken, or when an investment of any such proceeds is made, it must be done, except as herein otherwise provided, in the name of the Director of Administration as trustee, who must hold the same for the use and benefit of the parties interested, subject to the order of the court.

SOURCE: CCP § 789 as amended by P.L. 5-54. *Director of Finance* changed to *Director of Administration* pursuant to P.L. 9-239.

§ 24440. When Parties' Interests Ascertained, Securities to Be in Their Names.

When security is taken by referees on a sale, and the parties interested in such security, by an instrument in writing, under their hands, delivered to the referees, agree upon the shares and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the court, such securities must be taken in the names of, and payable to, the parties upon their receipt therefor. Such agreement and receipt must be returned and filed with the clerk of the court.

SOURCE: CCP § 790.

§ 24441. Duties of the Director of Administration in Making Investments.

The Director of Administration in whose name a security is taken, or by whom an investment is made, must receive the interest and principal as it becomes due, and apply and invest the same as the court may direct, and keep an account in a book provided and kept for that purpose, free for inspection by all persons, of investments and moneys received by it, and the disposition thereof.

SOURCE: CCP § 791; amended by P.L. 5-54. *Director of Finance* changed to *Director of Administration* pursuant to P.L. 9-239.

§ 24442. When Unequal Partition is Ordered, Compensation may be Adjudged in Certain Cases.

When it appears that partition cannot be made equal between the parties, according to their respective rights, without prejudice to the rights and interests of some of them, and a partition be ordered, the court may adjudge compensation to be made by one party to another on account of the inequality; but such compensation shall not be required to be made to others by owners unknown, nor by an infant, unless it appears that such infant has personal property sufficient for that purpose, and that his interest will be promoted thereby. And in all cases the court has power to make compensatory adjustment between the respective parties, according to the ordinary principles of equity.

SOURCE: CCP § 792.

§ 24443. Infant's Share May be Paid to Guardian.

When the share of an infant is sold, the proceeds of the sale may be paid by the referee making the sale to the general guardian, or the special guardian appointed for him in the action, upon giving the security required by law or directed by order of the court.

SOURCE: CCP § 793.

§ 24444. Insane Person's Guardian May Receive That Party's Interest.

The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property has been sold, may receive on behalf of such person his share of the proceeds of such real property from the referees on executing with sufficient sureties an undertaking, approved by a judge of the court, that he will faithfully

discharge the trust reposed in him, and will render a true and just account to the person entitled or to his legal representative.

SOURCE: CCP § 794.

§ 24445. Costs of Partition.

The costs of partition, including reasonable counsel fees, expended by the plaintiff or any of the defendants, for the common benefit, fees of referees, and other disbursements, must be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case they shall be a lien on the several shares, and the judgment may be enforced by execution against such shares, and against other property held by the respective parties. When, however, litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties thereto, or any of them. The fees of referees shall be at the rate of Two Dollars (\$2.00) per day.

SOURCE: CCP § 796.

§ 24446. Apportionment of Litigation Expenses.

If it appears that other actions or proceedings have been necessarily prosecuted or defended by any one of the tenants in common for the protection, confirmation, or perfecting of the title, or setting the boundaries, or making a survey or surveys of the estate partitioned, the court shall allow to the parties to the action, who have paid the expenses of such litigation or other proceedings, all the expenses necessarily incurred therein, except counsel fees, which shall have accrued to the common benefit of the other tenants in common, with interest thereon from the date of making the said expenditures, and in the same kind of money expended or paid, and the same must be pleaded and allowed by the court, and included in the final judgment, and shall be a lien upon the share of each tenant respectively, in proportion to his interest, and shall be enforced in the same manner as taxable costs of partition are taxed and collected.

SOURCE: CCP § 798.

ARTICLE 5
ACTIONS AGAINST STEAMERS, VESSELS AND BOATS

§ 24501. When Vessels, etc., are Liable; Their Liabilities Constitute Liens.

§ 24502. Actions, How Brought.

§ 24503. Complaint Must be Verified.

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- § 24504. Summons May be Served on Owners, etc., of Vessels.
- § 24505. Attaching Vessels, etc.
- § 24506. Writ When Issued.
- § 24507. Contents of Writ.
- § 24508. Execution of Writ.
- § 24509. Who May Defend.
- § 24510. Discharge of Attachment.
- § 24511. Additional Means of Discharge.
- § 24512. Sale and Application of Proceeds.
- § 24513. Mariners and Others may Assert their Claims for Wages, Notwithstanding Prior Attachment; How Enforced.
- § 24514. Proof of the Claims.
- § 24515. Notice of Sale to Contain Measurement, Tonnage, etc.

NOTE: There are no CCP §§ 799-812.

§ 24501. When Vessels, etc., are Liable; Their Liabilities Constitute Liens.

All steamers, vessels, and boats are liable:

1. For services rendered on board at the request of, or on contract with, their respective owners, masters, agents, or consignees.
2. For supplies furnished in Guam for their use, at the request of their respective owners, masters, agents, or consignees.
3. For work done or materials furnished in Guam for their construction, repair, or equipment.
4. For their wharfage and anchorage within Guam.
5. For nonperformance, or malperformance, of any contract for the transportation of persons or property between places within Guam, made by their respective owners, masters, agents, or consignees.
6. For injuries committed by them to persons or property, in Guam.

Demands for these several causes constitute liens upon all steamers, vessels, and boats, and have priority in their order herein enumerated, and have preference over all other demands; but such liens only continue in force for the period of one (1) year from the time the cause of action accrued.

SOURCE: CCP § 813.

§ 24502. Actions, How Brought.

Actions for any of the causes specified in the preceding section must be brought against the owners by name if known, but if not known, that fact shall be stated in the complaint, and the defendants shall be designated as unknown owners. Other persons having a lien upon the vessel may be made defendants to the action, the nature and amount of such lien being stated in the complaint.

SOURCE: CCP § 814.

§ 24503. Complaint Must Be Verified.

The complaint must designate the steamer, vessel, or boat by name, and must be verified by the oath of the plaintiff or some one on his behalf.

SOURCE: CCP § 815.

§ 24504. Summons May be Served on Owners, etc., of Vessels.

The summons and copy of the complaint must be served on the owners if they can be found; otherwise, they may be served on the master, mate, or person having charge of the steamer, vessel, or boat.

SOURCE: CCP § 816.

§ 24505. Attaching Vessels, etc.

The plaintiff, at the time of issuing the summons, or at any time afterwards, may have the steamer, vessel, or boat, with its tackle, apparel, and furniture, attached as security for the satisfaction of any judgment that may be recovered in the action.

SOURCE: CCP § 817.

§ 24506. Writ When Issued.

The clerk of the court must issue a writ of attachment, on the application of the plaintiff, upon receiving a written undertaking on behalf of the plaintiff, executed by two or more sufficient sureties, to the effect that if the judgment be rendered in favor of the owner of the steamer, vessel, or boat, as the case may be, he will pay all costs and damages that may be awarded against him, and all damages that may be sustained by him from the attachment, not exceeding the sum specified in the undertaking, which shall in no case be less than five hundred dollars (\$500.00)

SOURCE: CCP § 818.

§ 24507. Contents of Writ.

The writ must be directed to the Chief of Police of Guam and direct him to attach such steamer, vessel, or boat, with its tackle, apparel, and furniture, and keep the same in his custody until discharged in due course of law.

SOURCE: CCP § 819.

§ 24508. Execution of Writ.

The Chief of Police to whom the writ is directed and delivered must execute it without delay, and must attach and keep in his custody the steamer, vessel, or boat named therein, with its tackle, apparel, and furniture, until discharged in due course of law; but he is not authorized by any such writ to interfere with the discharge of any merchandise on board such steamer, vessel, or boat, or with the removal of any trunks or other property of passengers, or of the captain, mate, seamen, steward, cook, or other persons employed on board.

SOURCE: CCP § 820.

§ 24509. Who May Defend.

The owner, or the master, agent, or consignee of the steamer, vessel, or boat, may, on behalf of the owner, appear and answer, or plead to the action; and may except to the sufficiency of the sureties on the undertaking filed on behalf of the plaintiff, and may require sureties to justify, as upon bail on arrest.

SOURCE: CCP § 821.

§ 24510. Discharge of Attachment.

After the attachment is levied, the owner, or the master, agent, or consignee of the steamer, vessel, or boat, may, in behalf of the owner, have the attachment discharged, upon giving to the Chief of Police an undertaking of at least two sufficient sureties in an amount sufficient to satisfy the demand in suit, besides costs, or depositing that amount with the Chief of Police. Upon receiving such undertaking or amount, the Chief of Police must restore to the owner, or the master, agent, or consignee of the owner, the steamer, vessel, or boat attached.

SOURCE: CCP § 822.

§ 24511. Additional Means of Discharge.

After the appearance in the action of the owner, the attachment may, on motion, also be discharged in the same manner, and on like terms and

conditions, as attachments in other cases, subject to the provisions of § 24513 of this Article.

SOURCE: CCP § 823.

§ 24512. Sale and Application of Proceeds.

If the attachment be not discharged, and a judgment be recovered in the action in favor of the plaintiff, and an execution be issued thereon, the Chief of Police must sell at public auction, after publication of notice of such sale for ten (10) days, the steamer, vessel, or boat, with its tackle, apparel, and furniture, or such interest therein as may be necessary, and must apply the proceeds of the sale as follows:

1. When the action is brought for demands other than the wages of mariners, boatmen, and others employed in the service of the steamer, vessel, or boat sold, to the payment of the amount of such wages, as specified in the execution.
2. To the payment of the judgment and costs, including his fees.
3. He must pay any balance remaining to the owner, or to the master, agent, or consignee who may have appeared on behalf of the owner, or if there be no appearance, then into court, subject to the claim of any party or parties legally entitled thereto.

SOURCE: CCP § 824.

§ 24513. Mariners and Others May Assert Their Claims for Wages, Notwithstanding Prior Attachment; How Enforced.

Any mariner, boatman, or other person employed in the service of the steamer, vessel, or boat attached, who may wish to assert his claim for wages against the same, the attachments being issued for other demands than such wages, may file an affidavit of his claim, setting forth the amount and the particular service rendered, with the clerk of the court; and thereafter no attachment can be discharged upon filing an undertaking, unless the amount of such claim, or the amount determined as provided in the next section, be covered thereby in addition to the other requirements; and any execution issued against such steamer, vessel, or boat, upon judgment recovered thereafter, must direct the application of the proceeds of any sale:

1. To the payment of the amount of such claims filed, or the amount determined, as provided in the next section, which amount the clerk must insert in the writ;

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2. To the payment of the judgment and costs, and officer's fees, and must direct the payment of any balance to the owner, master, or consignee who may have appeared in the action; but if no appearance by them be made therein, it must direct a deposit of the balance in court.

SOURCE: CCP § 825.

§ 24514. Proof of the Claims of Mariners and Others.

If the claim of the mariner, boatman, or other person filed with the clerk of the court, as provided in the last section, be not contested within five (5) days after notice of the filing thereof by the owner, master, agent, or consignee of the steamer, vessel, or boat against which the claim is filed, or by any creditor, it shall be deemed admitted; but if contested, the clerk must endorse upon the affidavit thereof a statement of what is contested, and the grounds of the contest, and must immediately thereafter order the matter to a single referee for his determination, or he may hear the proofs and determine the matter himself. The judgment of the clerk or referee may be reviewed by a court in which the action is pending or a judge thereof, immediately after the same is given, and the judgment of the court or judge shall be final. On the review, the court or judge may use the minutes of the proofs taken by the clerk or referee, or may take the proofs anew.

SOURCE: CCP § 826.

§ 24515. Notice of Sale to Contain Measurement, Tonnage, etc.

The notice of sale published by the Chief of Police must contain a statement of the measurement and tonnage of the steamer, vessel, or boat, and a general description of her condition.

SOURCE: CCP § 827.

**ARTICLE 6
CONTRIBUTION AMONG JOINT TORTFEASORS**

- § 24601. Short Title.
- § 24602. Right of Contribution.
- § 24603. Percentage Shares.
- § 24604. Enforcement.
- § 24605. Release or Covenant Not To Sue.

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§ 24606. Determination of Good Faith of Settlement with one or more Tortfeasors; Review by Writ of Mandate.

§ 24607. Retroactivity.

§ 24601. Short Title.

This Article may be cited as the *Contribution Among Joint Tortfeasors Act*.

SOURCE: CCP § 830 added by P.L. 19-5:128, enacted 8/21/87. All sections in this Article were added by the same act and section. Therefore, unless further amended, all source references will be to P.L. 19-5.

§ 24602. Right of Contribution.

(a) Except as otherwise provided in this Article, where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them.

(b) The right of contribution exists only in favor of a tortfeasor who has paid more than his percentage share of the common liability. The total recovery by the tortfeasor is limited to the amount paid by that person in excess of his percentage share. No tortfeasor is compelled to make contribution beyond his or her own percentage share of the entire liability.

(c) There is no right of contribution in favor of any tortfeasor who has intentionally, willfully or wantonly caused or contributed to the injury or wrongful death.

(d) A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement nor is the tortfeasor entitled to recover in any respect to any amount paid on a settlement which is in excess of what was reasonable.

(e) A liability insurer, who by payment has discharged in full its obligation as insurer, is subrogated to the tortfeasor's right of contribution to the extent of the amount it has paid in excess of the tortfeasor's percentage share of the common liability. This provision does not limit or impair any right of subrogation arising from any other relationship.

(f) This Article does not impair any right of indemnity under existing law. Where one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the

indemnity obligor is not entitled to contribution from the obligee for any portion of his or her indemnity obligation.

(g) This Article shall not apply to breaches of trust or of other fiduciary obligations.

SOURCE: CCP § 831.

§ 24603. Percentage Shares.

In determining the percentage shares of tortfeasors in the entire liability, their relative degrees of fault shall be considered by the trier of fact. A tortfeasor entitled to contribution shall recover from each remaining tortfeasor an amount which is based on the percentage of causal negligence attributable to each.

SOURCE: CCP § 832.

§ 24604. Enforcement.

(a) Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by a suit for contribution in the action or by a separate action for contribution.

(b) If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, any separate action by the tortfeasor to enforce contribution must be commenced within one year after the judgment has become final by lapse of time for appeal or after appellate review.

(c) If there is no judgment for the injury or wrongful death against the tortfeasor seeking contribution, any right of contribution is barred unless the tortfeasor has either:

1. Discharged by payment the common liability within the statute of limitations period applicable to the claimant's right of action against him and has commenced the action for contribution within one year after payment, or
2. Agreed while the action is pending [for] the tortfeasor to discharge the common liability and commenced the action for contribution.

(d) The recovery of a judgment for an injury or wrongful death against one tortfeasor does not of itself discharge the other tortfeasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.

(e) The judgment of the court in determining the liability of the several defendants to the claimants for the injury or wrongful death shall be binding as among such defendants in determining their right to contribution.

SOURCE: CCP § 833.

§ 24605. Release or Covenant Not To Sue.

When a release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

1. It does not discharge any of the other tortfeasors from liability from the injury or wrongful death unless its terms so provide, but it reduces the claim against the other to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is greater; and

2. It discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

SOURCE: CCP § 834.

§ 24606. Determination of Good Faith of Settlement with One or More Tortfeasors; Review by Writ of Mandate.

(a) Any party to an action wherein it is alleged that two or more parties are joint tortfeasors shall be entitled to a hearing on the issue of the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors, upon giving notice at least twenty (20) days before the hearing. In addition, the notice may be served by mail but in those cases the period of notice shall be twenty-five (25) days if the place of address is within the territory of Guam, at least thirty (30) days if the place of address is outside of the territory of Guam within the United States, and at least forty (40) days if the place of address is outside the United States. Upon a showing of good cause, the court may shorten the time for giving the required notice to permit the determination of the issue to be made before the commencement of the trial of the action, or before the verdict or judgment if settlement is made after the trial has commenced.

(b) The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counter affidavits filed in response thereto, or any evidence at the hearing.

(c) A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor from any further claims against the

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settling tortfeasor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.

(d) The party asserting the lack of good faith shall have the burden of proof on that issue, except if the issue is raised by a party to the settlement, in which case the burden of proof shall be on the proponent.

(e) A settlement shall be deemed in bad faith if it is made for significantly less than the reasonable value of the claim for which it is made taking into account the likelihood of liability, assets and insurance available to pay the claim, the cost and difficulty of pursuing the claim, the relationship between the parties to the settlement, and such other factors as the court may deem appropriate or relevant.

(f) If the court finds that a settlement was not made in good faith, the settlement agreement shall be of no force and effect as to any parties not signatory to the settlement.

SOURCE: CCP § 835.

§ 24607. Retroactivity.

This Article shall apply to all actions now pending before the courts of Guam [and] to all future actions filed in the courts of Guam.

SOURCE: CCP § 836.
