

GUAM CODE ANNOTATED

TITLE 15

ESTATES AND PROBATE

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DIVISION 1
WILLS

CHAPTER 1
WHO MAY MAKE AND TAKE BY A WILL

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- § 105. Denial of Probate and Voiding of Revocation Due to Duress, Menace, Fraud or Undue Influence.
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§ 101. Disposition of Separate Property and Body by Will.

(a) Every adult person of sound mind may dispose of his separate property, real and personal, by will.

(b) Every adult person may by will dispose of the whole or any part of his body to a teaching institution, university, college, State or Territorial Director of Public Health or similar official, or any legally licensed hospital, or to or for the use of any nonprofit blood bank, artery bank, eye bank, or other similar therapeutic service operated by any agency approved by the Director of Public Health of the territory of Guam under rules and regulations established by such Director, either for use as such institution, university, college, Director or similar official, hospital or therapeutic service may see fit, or for use as expressly designated in such will, in all cases subject to the provisions of the Guam Uniform Anatomical Gifts Act.

SOURCE: Subsection (a): Probate Code of Guam (1970), § 20; Guam Law Revision Commission. Subsection (b): California Probate Code, § 20 (as amended); Guam Law Revision Commission.

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COMMENT: Subsection (a) carries over into this Title the substance of § 20 of the Probate Code of Guam (1970.) The prior section, however, began, "Every person of sound mind, over the age of eighteen (18) years...." This has been altered in subsection (a) to avoid questions about who is an "adult" for the purposes of this Section and Division, on the premise that "adult" is defined in 19 GCA § 1101-§ 1103.

As to subsection (b), the Commission believes that one of the overriding principles behind Guam's wills statutes is to allow a testator to dispose of his property as he sees fit, within reasonable constraints imposed by society in its laws. Given this principle, the Commission believes that there is no reason why a testator should not be allowed to dispose of his body, or any part thereof, if such is the testator's desire. Statutory authorization for such disposition, as provided in subsection (b) of § 101, may avoid the necessity of judicial determination of the validity of such a provision in a will. Also see 10 GCA Chapter 83 (Uniform Anatomical Gift Act).

§ 103. Disposition of Community Property by Will.

Every adult person of sound mind may dispose of his community property by will to the extent provided in Chapter 10 of this Title.

SOURCE: California Probate Code, § 21.

COMMENT: Section 21 of the Probate Code of Guam (1970) read: "The extent to which community property may be disposed of by will is provided in Chapter I of Division II of this Code." Section 103, which follows the revision that was made to § 21 of the California Probate Code in 1933, makes it clear that community property may be disposed of by will, a point which might have been arguable under the previous wording. It also sets forth exactly who may dispose of community property by will, a point which was left ambiguous under the previous wording.

§ 105. Denial of Probate and Voiding of Revocation Due to Duress, Menace, Fraud or Undue Influence.

A will or part of a will procured to be made by duress, menace, fraud or undue influence, may be denied probate; and a revocation procured by the same means may be declared void.

SOURCE: Probate Code of Guam (1970), § 22.

§ 107. Validity of Conjoint or Mutual Will; Revocation of Same.

A conjoint or mutual will is valid, but it may be revoked by any of the testators in like manner as any other will.

SOURCE: Probate Code of Guam (1970), § 23.

§ 109. Validity of Conditional Will.

A will, the validity of which is made conditional by its own terms, shall be granted or denied probate, or denied effect after probate, in conformity with the condition.

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SOURCE: Probate Code of Guam (1970), § 24.

§ 111. Codicil as Republication of Will.

The execution of a codicil referring to a previous will has the effect to republish the will as modified by the codicil.

SOURCE: Probate Code of Guam (1970), § 25.

§ 113. Validity of Foreign Wills; Special Provisions for Wills Made in the Trust Territory of the Pacific Islands.

(a) No will made out of Guam is valid as a will in Guam unless:

- (1) Executed according to the provisions of this Title; or
- (2) Executed according to the law of the State or United States territory in which it was executed; or
- (3) Valid under the laws of the State or United States territory in which the testator was domiciled at death; or
- (4) Valid under the laws of the State or United States territory in which the testator was domiciled at the time of the execution of the will.

(b) Notwithstanding the provisions of subsection (a) of this Section, no will made in the Trust Territory of the Pacific Islands is valid as a will in Guam unless:

- (1) Executed according to the provisions of this Title; or
- (2) Executed according to the written law of the Trust Territory of the Pacific Islands.

SOURCE: Subsection (a): California Probate Code, § 26 (as amended). Subsection (b): Guam Law Revision Commission.

COMMENT: Section 113 considerably liberalizes the provisions of the equivalent provision in the Probate Code of Guam (1970), in that subsection (a) makes valid as a will in Guam virtually any will made in a State or other United States territory which would be valid under the laws of the State or territory in which it was made. Given modern mobility and transient population patterns, and given that one purpose of the law of wills in Guam is to effectuate the testator's intent to the greatest extent practicable, there seems to be no reason why foreign wills, if valid in another American jurisdiction, should not be valid in Guam as well. Moreover, the determination of other American jurisdictions' law in order to determine whether a foreign will is valid thereunder, which might have been a problem at the time of the adoption of the original Probate Code of Guam, should no longer pose a great difficulty to the courts of Guam, given the widespread use of instantaneous

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electronic communications, jet transportation, etc. The same does not hold true, however, for countries other than the United States. This being the case, the Commission has purposely excluded from § 113 wills made in foreign countries.

The Trust Territory of the Pacific Islands (T.T.P.I.), which is covered in subsection (b), constitutes something of a special situation. The Commission notes that Guam has a substantial population originally from the T.T.P.I., and that the written law of the T.T.P.I. - unlike the law of other foreign countries - is not difficult to determine from Guam. At the same time, the Commission felt it unwise to validate as Guam wills any wills made in the T.T.P.I., because certain districts of the T.T.P.I. may have customary law concerning wills (e.g., permitting oral wills under some circumstances,) and such customary law is often extraordinarily difficult to prove. The Commission has thus provided subsection (b) as a middle ground: wills made in the T.T.P.I. under written T.T.P.I. law, and those made according to the provisions of this Title, are valid as wills in Guam, but no others.

As of October 1, 1994, the Trust Territory of the Pacific Islands ceased to exist. The Republic of Palau was that last TTPI entity to gain its new status of Free Association with the United States. Such status means that the entire TTPI is now recognized as independent in domestic affairs, and in most international affairs, as well.

§ 115. Persons and Entities to Whom Disposition May be Made by Will.

A testamentary disposition may be made to the United States, to any instrumentality of the United States, to any of the States or organized territories of the United States, to counties of any of the States or of organized territories of the United States, to municipal corporations of any of the States or of organized territories of the United States, to the Government of Guam, to natural persons capable by law of taking the property, to unincorporated societies or associations or lodges or branches thereof, or to corporations.

SOURCE: Probate Code of Guam (1970), § 27; California Probate Code, § 27 (as amended.)

COMMENT: Section 27 of the Probate Code of Guam (1970) was considerably more restrictive than § 115. It included no provisions for testamentary disposition to the United States or any State, county or municipal corporation thereof; nor did it provide for testamentary disposition to any organized territory of the United States other than the Government of Guam. Moreover, it severely limited testamentary dispositions. The Commission feels that an important element of the philosophy underlying Guam's wills statutes is that of effectuating the testator's intent to the greatest extent practicable. This being the case, there appears to be no good reason to deny testators the privilege of disposing of their property to anyone - whether to natural persons, municipal corporations or other corporations.

§ 117. Time of Making and Vesting of Testamentary Dispositions.

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A testamentary disposition is made upon the valid making of the will in which such testamentary disposition is included, as provided in Chapter 2 of this Title. Testamentary dispositions, including devises and bequests to a person on attaining majority, are presumed to vest at the testator's death.

SOURCE: First sentence: Guam Law Revision Commission. Second sentence: Probate Code of Guam (1970), § 28.

COMMENT: Section 28 of the Probate Code of Guam (1970) consisted only of the second sentence of § 117. The Commission has added the first sentence to dispel possible confusion over the definition of "testamentary disposition." Such confusion might, for example, have arisen in the context of § 407, *infra*: If the time of making a testamentary disposition were not defined, as it is in the first sentence of § 117, then it might be argued that for purposes of § 407, no testamentary disposition would be "made" until it vested - i.e., upon the testator's death, as set forth in the second sentence of § 117. Under this interpretation § 407 would be rendered meaningless, because if it be assumed that a testamentary disposition is "made" only when it vests then it would of course be impossible for the testator subsequently to execute an instrument which would alter his interest in the property which was the subject of the testamentary disposition.

§ 119. Plural devisees or legatees take as owners in common.

A devise or legacy given to more than one person vests in them as owners in common, unless the will otherwise provides.

SOURCE: Probate Code of Guam (1970), § 29.

§ 121. No person convicted of testator's murder or manslaughter to be devisee or legatee; Exception.

No person convicted of the murder or voluntary manslaughter of a decedent shall be entitled to take under any will of the decedent which was executed prior to the infliction of the injury which was the cause of the decedent's death; but the portion of the decedent's estate to which he would otherwise be entitled under the decedent's will goes to the other persons entitled thereto under such will or under the applicable provisions of Chapters 9, 10 and 11 of this Title: Provided, that a person convicted of the murder or voluntary manslaughter of a decedent may be entitled to take under a will of the decedent which was executed after the infliction of the injury which was the cause of the decedent's death, if the Superior Court of Guam specifically finds that such was the decedent's intention.

SOURCE: All before colon: Probate Code of Guam (1970), § 258; Guam Law Revision Commission. All after colon: Guam Law Revision Commission.

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COMMENT: Although the Probate Code of Guam (1970) contained a provision similar to the above in the intestacy context (see § 819, *infra*,) it did not contain a provision regarding testators' killers' inability to take under such testators' wills. The Commission is of the opinion that such a provision is necessary in Chapter 1 of this Title, in order that the two situations be parallel. The Commission recognizes, however, that there may be decedents who desire that their killers take under their wills in spite of the infliction of an injury that ultimately leads to death; thus, the Commission has added the portion following the colon, to cover that situation.
