

15 GCA ESTATES AND PROBATE
CH. 8 SUCCESSION & SECURITIES

**DIVISION 2
SUCCESSION & SIMULTANEOUS DEATH**

**CHAPTER 8
SUCCESSION & SECURITIES TRANSFER**

**SUBCHAPTER A
SUCCESSION: GENERAL PROVISIONS**

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§ 801. Applicability of Chapter.

The provisions of this Chapter shall apply, when relevant, to succession to property of all kinds, real and personal, separate and community.

SOURCE: Guam Law Revision Commission.

COMMENT: In drafting this Title, the Commission has provided a separate Chapter for each aspect of the general area of succession. Chapter 8, which incorporates §§ 250 - 258 of the Probate Code of Guam (1970), as well as § 200 of the Probate Code of Guam (1970) and the new Section set forth above, contains general provisions applicable to succession. Chapter 9 contains specific provisions covering succession to separate property, and incorporates §§ 220 - 231 of the Probate Code of Guam (1970) as well as certain provisions adopted from the California Probate Code. Chapter 10 contains specific provisions covering succession to community property, and incorporates §§ 201 - 203 of the Probate Code of Guam (1970) as well as certain provisions adopted from the California

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Probate Code. Chapter 11 contains specific provisions concerning disposition of "quasi-community" property, taken largely from the California Probate Code.

§ 803. Succession Defined.

Succession is the acquisition of title to the property of one who dies without disposing of it by will.

SOURCE: Probate Code of Guam (1970), § 200.

§ 805. Right of Representation Defined; When Posthumous Child is Considered to be Living.

Inheritance or succession by *right of representation* takes place when the descendants of a deceased person take the same share or right in the estate of another that such deceased person would have taken as an heir if living. A posthumous child is considered as living at the death of such child's parent.

SOURCE: Probate Code of Guam (1970), § 250.

§ 807. Establishment and Determination of Degree of Kindred.

The degree of kindred is established by the number of generations, and each generation is called a degree.

SOURCE: Probate Code of Guam (1970), § 251.

§ 809. Lineal Consanguinity Defined.

Lineal consanguinity, or the direct line of consanguinity, is the relationship between persons one of whom is a descendant of the other. The direct line of consanguinity is divided into a direct line descending, which connects a person with those who descend from such person, and a direct line ascending, which connects a person with those from whom such person descends. In the direct line there are as many degrees as there are generations. Thus a child is, with regard to such child's parents, in the first degree; a grandchild, with regard to such grandchild's grandparent, in the second degree; and vice-versa as to the parent and grandparent with regard to their respective children and grandchildren.

SOURCE: Probate Code of Guam (1970), § 252.

§ 811. Collateral Consanguinity Defined.

Collateral consanguinity is the relationship between people who spring from a common ancestor, but are not in a direct line. The degree is established by counting the generations from one relative up to the

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common ancestor and from the common ancestor down to the other relative. In such computation the first relative is excluded, the other included, and the common ancestor counted but once. Thus, brothers are related in the second degree, aunt and niece in the third degree, first cousins (also known as cousins german) in the fourth degree, and so on.

SOURCE: Probate Code of Guam (1970), § 253.

§ 813. When Half-Blood Kindred Inherit Equally; When Not.

Kindred of the half blood inherit equally with those of the whole blood in the same degree, unless the property which constitutes such inheritance came to the intestate decedent by descent, devise or gift of some one of such decedent's ancestors, in which case all those who are not of the blood of such ancestor must be excluded from such inheritance in favor of those who are.

SOURCE: Probate Code of Guam (1970), § 254.

§ 815. When Rights of Succession Are Dependent on Parent-Child Relationship.

(a) The rights of succession by a child, as set forth in Chapters 9 and 10 of this Title, are dependent upon the existence, prior to the death of the decedent, of a parent and child relationship between such child and the decedent.

(b) The rights of succession by issue through a deceased child of a decedent, as set forth in Chapters 9 and 10 of this Title, are dependent upon the existence, prior to the death of such deceased child, of a parent and child relationship between such issue and such deceased child, and upon the existence prior to the death of the decedent or such deceased child, of a parent and child relationship between such deceased child and the decedent.

(c) The rights of succession to a child's estate by a parent and all persons who would take an intestate share of the decedent's estate through such parent, as set forth in Chapters 9 and 10 of this Title, are dependent upon the existence, prior to the death of the decedent, of a parent and child relationship between the parent and the deceased child.

(d) For purposes of this Section and of Chapters 9 and 10 of this Title, a parent and child relationship exists where such relationship is (1) presumed and not rebutted pursuant to, or (2) established pursuant to, the

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applicable Guam laws concerning the existence and establishment of a parent and child relationship.

SOURCE: California Probate Code, § 255.

COMMENT: Section 815 replaces §§ 255 and 256 of the Probate Code of Guam (1970), which were titled, respectively, "Illegitimate child" and "Estate of illegitimate child." Section 255 of the California Probate Code, from which § 815 has been adapted, replaced prior §§ 255 and 256 of the California Probate Code in 1975; prior §§ 255 and 256 of the California Probate Code were essentially the same as the similarly-numbered Sections of the Probate Code of Guam (1970).

The Commission is of the opinion that § 815 deals with the issues more squarely -- and more fairly -- than did §§ 255 and 256 of the Probate Code of Guam (1970). Section 815 does not refer to illegitimate children at all; rather, it makes succession dependent on the existence of a "parent-child relationship," which can come about in a variety of ways. If such a "parent-child relationship" does not exist at the time of the decedent's death, then the child does not take by succession; this eliminates uncertainty (as the formation of a "parent-child relationship" is governed by statute, and thus its existence should not be in doubt,) and additionally eliminates possible claims of discrimination against illegitimate children.

§ 817. Inheritance Rights of Adopted Children; Restriction.

An adopted child shall be deemed a descendant of one who has adopted such child, the same as a natural child, for all purposes of succession by, from or through the adopting parent the same as a natural parent. An adopted child does not succeed to the estate of such adopted child's natural parent when the relationship between them has been severed by adoption, nor does such natural parent succeed to the estate of such adopted child, nor does such adopted child succeed to the estate of a relative of such natural parent, nor does any relative of such natural parent succeed to the estate of such adopted child.

SOURCE: California Probate Code, § 257.

COMMENT: Section 817 merely makes it clear that for purposes of succession, an adopted child is considered to be the child of its adoptive parents, and to no extent the child of its natural parents.

§ 819. No Succession By Person Convicted of Murder or Voluntary Manslaughter.

No person convicted of the murder or voluntary manslaughter of the decedent shall be entitled to succeed to any portion of such decedent's estate; but the portion thereof to which such convicted person would otherwise be entitled to succeed goes to the other persons entitled thereto under the applicable provisions of Chapters 9, 10 and 11 of this Title.

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SOURCE: California Probate Code, § 258 (prior to 1963 amendment).

COMMENT: Section 258 of the Probate Code of Guam (1970) precluded only persons convicted of the decedent's murder from succeeding to the decedent's estate. Section 819 also precludes persons convicted of the decedent's voluntary manslaughter. See § 121, supra, for a similar provision in the testate situation.

§ 821. Effect of Devise Upon Bona Fide Purchaser or Encumbrancer of Real Property From Heir.

The rights of a purchaser of encumbrancer of real property, in good faith and for value, derived from any person claiming the same by succession, are not impaired by any devise made by the decedent from whom succession is claimed, unless within four (4) years after the devisor's death the instrument containing such devise is duly proved as a will, or written notice of such devise is recorded with the Department of Land Management of the Government of Guam. This Section does not limit the finality of any decree of distribution in the estate of the decedent.

SOURCE: California Probate Code, § 322 (as amended).

COMMENT: The purpose of this rather obscure Section -- which, in its California version, has virtually no decisional law interpreting it -- appears to be to protect the rights of bona fide purchasers and encumbrancers of real property in the context of probate cases. If X, who claims to have received real property by succession from Y, sells that real property to B (a bona fide purchaser,) the fact that Y may have devised the same real property to some person other than X does not cloud B's title to the property, unless Y's will (which contains the alleged devise) is "duly proved as a will" within four years after Y's death, or unless a notice of the alleged devise is filed with the Department of Land Management within that four-year period. In short, § 821 operates as a sort of statute of limitations, reflecting the four-year statute of limitations on actions not otherwise provided for in the Code of Civil Procedure.

**SUBCHAPTER B
UNIFORM TRANSFER ON DEATH SECURITY REGISTRATION ACT**

SOURCE: This Subchapter was enacted as "Subchapter A" first by P.L. 25-32 and then repealed/reenacted by P.L. 25-60 due to errors in the first enactment which made it unenforceable. The Compiler of Laws rearranged the subchapter and section numberings because what is now Subchapter A, Succession, is referenced throughout this Title and so should not be moved.

- § 851. Short Title: Rules of Construction.
- § 852. Definitions.

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- § 853. Registration in Beneficiary Form; Sole or Joint Tenancy Ownership.
- § 854. Registration in Beneficiary Form; Applicable Law.
- § 855. Origination of Registration in Beneficiary Form.
- § 856. Form of Registration in Beneficiary Form.
- § 857. Effect of Registration in Beneficiary Form.
- § 858. Ownership on Death of Owner.
- § 859. Protection of Registering Entity.
- § 860. Nontestamentary Transfer on Death.
- § 861. Rights of Creditor on Registration.
- § 862. Terms, Conditions and Forms for Registration.
- § 863. Notice of Effect of Registration.

§ 851. Short Title: Rules of Construction.

(a) This Chapter may be cited as the '*Uniform Transfer on Death Security Registration Act.*'

(b) This Chapter shall be liberally construed and applied to promote its underlying purposes and policy and to make uniform the laws with respect to the subject of this part within Guam.

§ 852. Definitions.

For the purposes of this Chapter:

(1) *Beneficiary form* means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security on the death of the owner.

(2) *Devisee* means a person designated in a will to receive a disposition of property.

(3) *Heirs* means those persons, including the surviving spouse, who are entitled to the property of a decedent.

(4) *Person* means an individual, corporation, organization and any other legal entity.

(5) *POD* means 'pay on death.'

(6) *Register*, including its derivatives, means to issue a certificate showing the ownership of a certified security or, in the

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case of an uncertified security, to initiate or transfer an account showing ownership of securities.

(7) *Registering entity* means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(8) *Security* means a share, participation or other interest in property, in a business, or in an obligation of an enterprise or other issuer and includes a certificated security, an uncertificated security and a security account.

(9) *Security account* means:

(a) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; *or*

(b) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(10) *State*, when referring to a part of the United States, includes any state, district, commonwealth, territory and insular possession of the United States, and any area subject to the legislative authority of the United States of America.

§ 853. Registration in Beneficiary Form; Sole or Joint Tenancy Ownership.

Only individuals whose registration of a security shows sole ownership by one (1) individual or multiple ownership by two (2) or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form, and *not* as tenants in common.

§ 854. Registration in Beneficiary Form; Applicable Law.

A security may be registered in beneficiary form *if* the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is *not* in force or was *not* in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

§ 855. Origination of Registration in Beneficiary Form.

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

§ 856. Form of Registration in Beneficiary Form.

Registration in beneficiary form may be shown by the words '*transfer on death*' or the abbreviation '*TOD*,' or by the words '*pay on death*,' or the abbreviation '*POD*,' after the name of the registered owner and before the name of a beneficiary.

§ 857. Effect of Registration in Beneficiary Form.

The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be cancelled or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary.

§ 858. Ownership on Death of Owner.

On the death of a sole owner, or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary, or beneficiaries, who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death

of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

§ 859. Protection of Registering Entity.

(a) A registering entity is *not* required to offer or to accept a request for security registration in beneficiary form. *If* a registration in beneficiary form is offered by a registering entity, the owner requesting registration, in beneficiary form assents to the protections given to the registering entity by this Chapter.

(b) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this Chapter.

(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs or devisees of a deceased owner *if* it registers a transfer of the security in accordance with § 808, and does so in good faith reliance on the registration, on this part, and on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity.

(d) The protections of this Chapter do *not* extend to a re-registration or payment made *after* a registering entity has received written notice from any claimant to any interest in the security objecting implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this Chapter. The protection provided by this Chapter to the registering entity of a security does *not* affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

§ 860. Nontestamentary Transfer on Death.

(a) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this Chapter, and is *not* testamentary.

(b) This Chapter does *not* limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of Guam.

§ 861. Rights of Creditor on Registration.

(a) A security registered in beneficiary form is *not* effective against an estate of a deceased party to transfer to a survivor sums that are otherwise needed to pay debts, taxes and expenses of administration, including statutory allowances to the surviving spouse and minor children, *if* other assets of the estate are insufficient.

(b) A party, POD or TOD payee, or beneficiary who receives a payment from or transfer of a security registered in beneficiary form after the death of a deceased party is liable to account to the deceased party's personal representative for amounts the decedent owned beneficially immediately before the decedent's death to the extent necessary to discharge the claims and charges described by Subsection (a) of this Section remaining unpaid after application of the decedent's estate, but is *not* liable in an amount greater than the amount that the party, POD or TOD payee, or beneficiary received from the security.

(c) A proceeding to assert the liability provided by Subsection (b) of this Section may *not* be commenced, *unless* the personal representative has received a written demand by a surviving spouse, a creditor, or one acting for a minor child of the decedent, and a proceeding may *not* be commenced later than two (2) years after the date of the death of the decedent. Sums recovered by the personal representative under this Section shall be administered as part of the decedent's estate.

(d) This Section does *not* affect the right of a financial institution, a securities issuer, or a securities broker to make a payment from or transfer of a security registered in beneficiary form according to the terms of the security, or impose liability on the institution, issuer or broker to the estate of a deceased party, *unless* before the payment or transfer the institution, issuer or broker received written notice from the personal representative stating the sums needed to pay debts, taxes and expenses of administration.

§ 862. Terms, Conditions and Forms for Registration.

(a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests: (i) for registration in beneficiary form, and (ii) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and

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requests for re-registration to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the prime beneficiary the letters '*LDPS*' ('lineal descendants per stripes'). This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to survive the owner, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one (1) or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(b) The following are illustrations of registrations in beneficiary form that a registering entity may authorize:

(i) sole owner-sole beneficiary: John S Brown TOD or (POD) John S Brown Jr.;

(ii) multiple owner-sole beneficiary: John S Brown Mary B Brown JT TEN TOD John S Brown Jr.; *or*

(iii) multiple owners-primary and secondary (substituted) beneficiaries: John S Brown Mary B Brown JT TEN TOD John S Brown Jr. SUB BENE Peter Q Brown; *or* John S Brown Mary B Brown JT TEN TOD John S Brown Jr. LDPS.

§ 863. Notice of Effect of Registration.

A registering entity shall provide to an owner requesting registration of a security in beneficiary form a written statement describing the legal effects of the registration *not* later than the date on which the owner registers the security. The statement shall be printed in all capital twelve (12) point boldfaced type, and shall be signed by the registering owner at the time of registration. The following statement will suffice *if* signed by the registering owner:

‘IMPORTANT NOTICE REGARDING YOUR RIGHTS

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‘ON PROOF OF DEATH, YOUR SECURITY IN BENEFICIARY FORM WILL BE TRANSFERRED TO YOUR NAMED BENEFICIARY, OR BENEFICIARIES, WITHOUT BEING PART OF YOUR ESTATE UNDER YOUR WILL OR BY INTESTACY. YOU SHOULD MAKE SURE BEFORE YOU REGISTER YOUR SECURITY IN BENEFICIARY FORM THAT THE REGISTRATION DOES NOT CONFLICT WITH ANY OTHER PROVISION IN A DOCUMENT THAT YOU HAVE AUTHORIZED AND SIGNED, INCLUDING A WILL OR TRUST AGREEMENT. IF YOU HAVE ANY DOUBT ABOUT WHETHER A CONFLICT EXISTS, YOU SHOULD ALSO NOTE THAT REGISTERING YOUR SECURITY IN BENEFICIARY FORM MAY NOT AFFECT A CREDITOR’S CLAIM AGAINST YOUR ESTATE OR AFFECT THE ESTATE OR INHERITANCE TAX LIABILITY OF YOUR ESTATE OR OF YOUR BENEFICIARY OF BENEFICIARIES.’

‘I HAVE READ THE ABOVE NOTICE AND UNDERSTAND ITS CONTENTS.

(signature of registering owner)’”
