

15 GCA ESTATES AND PROBATE  
CH. 16 WILL CONTESTS

**CHAPTER 16**  
**WILL CONTESTS**

**SUBCHAPTER A**  
**CONTESTS BEFORE PROBATE**

- § 1601. Filing Opposition to Probate; Service; Pre-trial Procedures.
- § 1603. Trial of Contest.
- § 1605. Subscribing Witnesses to Testify; Other Evidence Permitted Where Subscribing Witnesses are Unavailable.
- § 1607. Judgment.
- § 1609. Subscribing Witnesses' Testimony to be Perpetuated; Uses of Such Perpetuated Testimony in Subsequent Contest.

**§ 1601. Filing Opposition to Probate; Service; Pre-trial Procedures.**

At any time before the hearing of a petition for probate and for the grant of letters testamentary, or of letters of administration with the will annexed in the first instance, any person interested may contest the will by filing written grounds of opposition to the probate thereof. Following such filing, a citation shall be issued by the Superior Court of Guam, directed to the petitioner, to the heirs of the decedent and to all persons interested in the will, including minors and incompetents, wherever residing, directing them to plead to the contest within thirty (30) calendar days after service of such citation. Service of such citation shall be made in the manner provided by law for the service of a summons in a civil action. Any person so served may move for the dismissal of the contest upon any of the grounds available for such motion in civil actions under the Rules of Civil Procedure for the Superior Court of Guam. If the Superior Court of Guam grants such motion without prejudice, it may allow the contestant a reasonable amount of time, not exceeding ten (10) calendar days, within which to amend his contest. If the Superior Court of Guam denies such motion, the petitioner and others interested, within ten (10) calendar days after the receipt of written notice of such denial, may jointly or separately answer the contest.

**SOURCE:** California Probate Code, § 370 (as amended); Guam Law Revision Commission.

**COMMENT:** The only substantive changes from § 370 of the Probate Code of Guam (1970) are the elimination of specific authorization for service of the citation by publication (although such service may still be possible if publication is one of

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the manners of service "...provided by law for the service of a summons in a civil action"); and the substitution of a motion to dismiss under the Rules of Civil Procedure -- i.e., Rule 12(b) -- for the demurrer which was provided for in § 370 of the Probate Code of Guam (1970).

**§ 1603. Trial of Contest.**

In the trial of a contest filed before the hearing of a petition for probate and for the grant of letters testamentary or of letters of administration with the will annexed, as provided in Section 1601 of this Title, the contestant is the plaintiff and the petitioner is defendant. The Superior Court of Guam shall determine the issues joined and try any issue of facts involving the competency of the decedent to make a will, the freedom of the decedent at the time of the execution of the will from duress, menace, fraud or undue influence, the due execution and attestation of the will, and any other issue substantially affecting the validity of the will.

**SOURCE:** Probate Code of Guam (1970), § 371.

**§ 1605. Subscribing Witnesses to Testify; Other Evidence Permitted Where Subscribing Witnesses are Unavailable.**

(a) At the trial of a contest filed before the hearing of a petition for probate and for the grant of letters testamentary or of letters of administration with the will annexed, as provided in Section 1601 of this Title, all of the subscribing witnesses who are present in Guam, and who are of sound mind as determined by the Superior Court of Guam at such trial, shall be produced and examined in open court; and the death, absence or insanity of any of them must be satisfactorily shown to the Superior Court of Guam.

(b) If none of the subscribing witnesses resides in Guam, and the evidence of none of them can be produced by sworn testimony in open court, the Superior Court of Guam may admit the evidence of other witnesses to prove the due execution of the will; and, as evidence of its execution, the Superior Court of Guam may admit proof of the handwriting of the testator and of any of the subscribing witnesses.

**SOURCE:** Probate Code of Guam (1970), § 372.

**§ 1607. Judgment.**

Upon trial of the issues joined in a contest which was filed before the hearing of a petition for probate and for the grant of letters testamentary or of letters of administration with the will annexed, as

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provided in Section 1601 of this Title, the Superior Court of Guam shall render judgment, either admitting the will to probate or rejecting it.

**SOURCE:** Probate Code of Guam (1970), § 373.

**NOTE:** See Official Form No. 4, Appendix "A".

**§ 1609. Subscribing Witnesses' Testimony to be Perpetuated; Uses of Such Perpetuated Testimony in Subsequent Contest.**

The testimony of each subscribing witness who has testified at the trial of a contest which was filed before the hearing of a petition for probate and for the grant of letters testamentary or of letters of administration with the will annexed, as provided in Section 1601 of this Title, shall be reduced to writing, signed by such subscribing witness and filed in the permanent records of the Superior Court of Guam, and shall be admissible in evidence in any subsequent contest of the same will if such witness has died or has permanently removed from the territory of Guam.

**SOURCE:** Probate Code of Guam (1970), § 374.

**COMMENT:** In § 374 of the Probate Code of Guam (1970), reference was made to the "official" records of the Superior Court of Guam. The Commission has changed this to the "permanent" records of the Superior Court of Guam, in keeping with the language of other revised Sections. See Comments to §§ 1527 and 1529, supra.

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**SUBCHAPTER B  
CONTESTS AFTER PROBATE**

- § 1611. Who May Contest; Contents of Petition; Limitation of Time to File.
- § 1613. Citation to Personal Representative, Devisees, Legatees and Heirs.
- § 1615. Service of Citation; Trial of Contest; Revocation of Probate Upon Successful Contest.
- § 1617. Liability for Costs of Trial.
- § 1619. Probate Conclusive if Uncontested Within Limit of Time; Exceptions.

**§ 1611. Who May Contest; Contents of Petition; Limitation of Time to File.**

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When a will has been admitted to probate, any interested person, other than a party to a contest before probate and other than a person who had actual notice of such previous contest in time to have joined therein, may, within one hundred eighty (180) calendar days after the Superior Court of Guam admits such will to probate as recorded in the permanent records of the Superior Court of Guam by the Clerk of the Superior Court of Guam pursuant to the provisions of Section 1527(a) of this Title, contest the same or the validity of such will. For that purpose, such interested person must file in the Superior Court of Guam a petition in writing, containing such interested person's allegations against the validity of such will or against the sufficiency of the proof, and praying that the probate be revoked.

**SOURCE:** Probate Code of Guam (1970), § 380; Guam Law Revision Commission.

**COMMENT:** See Comment to § 1527, *supra*, concerning the change from “the minutes” to “the permanent records of the Superior Court of Guam.”

**§ 1613. Citation to Personal Representative, devisees, Legatees and Heirs.**

Within ten (10) calendar days following the timely filing of the petition provided in Section 1611 of this Title, the Clerk of the Superior Court of Guam shall issue a citation directed to the executor of the will or to the administrator with the will annexed, and to all the devisees or legatees mentioned in the will, and to the heirs named in the petition for the probate of the will and for the grant of letters testamentary or of letters of administration with the will annexed which was filed in the first instance, including minors and incompetents, or to the personal representative of any such person who is dead, directing them to plead to the contest within thirty (30) calendar days after service of the citation.

**SOURCE:** Probate Code of Guam (1970), § 381.

**§ 1615. Service of Citation; Trial of Contest; Revocation of Probate Upon Successful Contest.**

The citation provided in Section 1613 of this Title shall be served in the manner provided by law for service of a summons in a civil action, and proceedings thereunder shall be had as in the case of a contest before probate under the provisions of Subchapter A of this Chapter. If the will was originally admitted to probate, and letters testamentary or letters of administration with the will annexed were originally granted without a

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contest under the provisions of Subchapter A of this Chapter, a trial must be had, as in the case of a contest before probate. If the Superior Court of Guam decides upon such trial that the will is invalid or is not the last will of the testator, the probate shall be revoked. Thereupon the letters of the executor or of the administrator with the will annexed shall be revoked; but such executor or administrator with the will annexed shall not be liable for any act done in good faith prior to such revocation.

**SOURCE:** Probate Code of Guam (1970), § 382.

**§ 1617. Liability for Costs of Trial.**

If, following the filing of the petition provided in Section 1611 of this Title, the probate is not revoked, all costs of trial, including the prevailing party's costs and reasonable attorney's fees incurred for the contest, shall be paid by the contestant. If the probate is revoked, the costs of trial shall be paid by the party who resisted the revocation or out of the property of the decedent, as the Superior Court of Guam directs; provided, that if the probate is revoked, the contestant shall nonetheless bear his own attorney's fees.

**SOURCE:** Probate Code of Guam (1970), § 383; Guam Law Revision Commission.

**COMMENT:** The Commission has added to Section 383 of the Probate Code of Guam (1970) provisions for attorney's fees: under § 1617, the contestant in a contest after probate will always bear his own attorney's fees, no matter what the outcome of the trial of the contest. This inclusion should put prospective contestants on notice that there is a burden to be borne, and should have the effect on cutting down the number of spurious contests.

**§ 1619. Probate Conclusive if Uncontested Within Limit of Time; Exceptions.**

If no person contests the validity of a will or of the probate thereof within the time specified in Section 1611 of this Title, the probate of such will is conclusive; saving to infants and persons of unsound mind who were not made parties to the contest after probate a like period of one hundred eighty (180) calendar days after their respective disabilities are removed.

**SOURCE:** Probate Code of Guam (1970), § 384.

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**SUBCHAPTER C  
GENERAL PROVISIONS**

§ 1621. Effect of Will Contest on Probate of Other Will of Testator.

**§ 1621. Effect of Will Contest on Probate of Other Will of Testator.**

Failure to contest a will under the provisions of this Chapter does not preclude the subsequent probate of another will of the same decedent.

**SOURCE:** Probate Code of Guam (1970), § 385.

**COMMENT:** The premise underlying § 1621 is that the offer of another will to probate is not a contest of a will previously admitted, and thus should not come under the provisions of Chapter 16. Section 385 of the California Probate Code (which is identical to § 385 of the Probate Code of Guam (1970), on which § 1621 is based) was added to the California Probate Code in 1931, apparently to codify the decision made in *In re Moore's Estate* (1919), 182 P. 285, 180 C. 570. The *Moore* decision is encapsulated as follows in the following comment by Perry Evans, at 19 C.L.R. 602, 607 (1931): "When a will has been admitted to probate and the time to contest the same has passed, may another document be offered for probate and established as the true will? It was so held in Estate of Moore [citations], and it is so stated in this new section."

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