

15 GCA ESTATES AND PROBATE
CH. 22 POWERS AND DUTIES OF EXECUTORS, ADMINISTRATORS
WITH THE WILL ANNEXED AND ADMINISTRATORS

CHAPTER 22
POWERS AND DUTIES OF EXECUTORS, ADMINISTRATORS
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§ 2201. Definition.

The term personal representative, as used in this Chapter, shall mean the executor, the administrator with the will annexed, or the administrator of a decedent's estate, as the case may be.

SOURCE: Guam Law Revision Commission.

COMMENT: The provisions of Chapter 22 apply equally to executors, administrators with the will annexed, and administrators. This being the case, using the term personal representative in the context of Chapter 22 saves verbiage without sacrificing meaning. Note, however, that the provisions of Chapter 22 do not apply to special administrators.

§ 2203. Authority of Remaining Personal Representatives Where One or More Absent or Disqualified; Court Order; Majority Rule.

When two or more personal representatives have been appointed and one or more of them are absent from the territory of Guam, or legally disqualified from serving, the act of the other or others shall be effectual for all purposes. If it appears upon any hearing that one or more of the personal representatives were absent from the territory of Guam or legally disqualified from serving, the Superior Court of Guam may so find in its order or judgment and such finding shall be conclusive of the authority of those acting. When there are more than two personal representatives, the act of a majority of them is valid.

SOURCE: Probate Code of Guam (1970), § 570.

§ 2205. Acquisition of Decedent's Estate; Custody of Property; Limitations on Possession of Property; Interests in Actions by and Against Heirs and Devisees of Real Property; Delivery of Real Property to Heirs and Devisees.

(a) Except as otherwise provided in Section 2207 of this Title, the personal representative shall take into his possession all the estate of the decedent, real and personal, and collect all debts due to the decedent or to the estate; and the personal representative is entitled to the possession of all the real and personal property of the decedent, and to receive the rents, issues and profits thereof until the estate is settled or until

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delivered over by order of the Superior Court of Guam to the heirs, devisees or legatees.

(b) The personal representative must keep in good tenantable repair all houses, buildings and fixtures thereon which are under his control.

(c) Notwithstanding the provisions of subsection (a) of this Section, after the time to file or present claims has expired the personal representative is not entitled to recover the possession of any property of the estate from any heir who has succeeded to the property in such heir's possession, or from any devisee or legatee to whom the property has been devised or bequeathed, or from the assignee of any such heir, devisee or legatee, unless the personal representative proves that the same is necessary for the payment of debts or legacies, or of the expenses of administration already accrued, or for distribution to some other heir, devisee or legatee entitled thereto.

(d) Any of the heirs or devisees may themselves, or jointly with the personal representative, institute and maintain an action for the possession of the real property, or for the purpose of quieting title to the same, against any one except the personal representative, but they are not required to do so.

(e) When the time to file or present claims has expired, the personal representative must deliver possession of the real property to the heirs or devisees, unless the income therefrom for a longer period, or a sale thereof, is required for the payment of the debts of the decedent.

SOURCE: Subsection (a), first sentence: Probate Code of Guam (1970), § 571. Subsection (a), second sentence: Probate Code of Guam (1970), § 581. Subsection (b): Probate Code of Guam (1970), § 581. Subsection (c): Probate Code of Guam (1970), § 581. Subsection (d): Probate Code of Guam (1970), § 581. Subsection (e): Probate Code of Guam (1970), § 582.

COMMENT: Section 2205 brings together all provisions of prior law concerning the personal representative's rights and duties in terms of the decedent's property, except for the decedent's partnership property (which is covered in § 2207, *infra*.) No substantive changes have been made to the prior law.

§ 2207. Decedent's Partnership Property; Continuing Decedent's Business; Partnerships; Operation.

(a) Unless otherwise ordered by the Superior Court of Guam pursuant to subsection (b) of this Section, when a partnership existed between the decedent and any other person at the time of the decedent's

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death, the surviving partner has the right to continue in possession of the partnership, and settle its business, but the interest of the decedent in the partnership shall be included in the inventory of the property in the decedent's estate, and be appraised as other such property. The surviving partner shall settle the affairs of the partnership without delay, and account to the personal representative, and pay over to the personal representative such balances as may from time to time be payable to the personal representative, in right of the decedent. Upon application of the personal representative, the Superior Court of Guam, whenever it appears necessary, may order the surviving partner to render an account, and in case of neglect or refusal may, after notice, compel it by attachment; and the personal representative may maintain against the surviving partner any action which the decedent could have maintained.

(b) After notice to all persons interested in the estate, given in such manner as may be directed by the Superior Court of Guam, the Superior Court of Guam may authorize the personal representative to do the following:

(1) To continue the operation of the decedent's business, other than a business operated by a partnership in which the decedent was a partner, to such an extent and subject to such restrictions as the Superior Court of Guam may determine to be for the best interests of the estate and those interested therein; and

(2) To continue as a partner in any partnership in which the decedent was a partner at the time of death (unless inconsistent with the terms of any written partnership agreement executed by all of the partners prior to the decedent's death), with all the rights, powers, duties and obligations provided in the written partnership agreement, subject, however, to the written approval of all the surviving partners, and to such restrictions as the Superior Court of Guam may determine to be for the best interests of the estate and those interested therein; or, in the absence of such a written partnership agreement, and subject to the written consent of all of the surviving partners, with all the rights, powers, duties and obligations which the Superior Court of Guam may specify. The personal representative may be authorized to act as a general partner only if the decedent was a general partner at the time of death, and as a limited partner where the decedent at the time of death was

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either a general partner or a limited partner, as “limited partner” is defined in 18 GCA § 27101.

SOURCE: Subsection (a): California Probate Code, § 571 (as amended).
Subsection (b): California Probate Code, § 572 (as amended).

COMMENT: Section 2207 brings together all necessary provisions concerning the personal representative's continuing the decedent's business, particularly if that business was a partnership. Prior Guam law did not allow the personal representative to continue a decedent's partnership business, except perhaps by implication from § 572 of the Probate Code of Guam (1970). The Commission is, however, of the opinion that some provision ought to be made so that partnerships will not be adversely affected by the death of one of the partners. Note that the personal representative's ability to step into the decedent's shoes as a partner is quite limited, in two ways: first, it always requires the written approval of all of the surviving partners; second, it is always under the general supervision of the Superior Court of Guam. As to the reference to § 2477 of the Civil Code (wherein “limited partner” is defined,) note that this language will have to be amended upon the passage of the “Business Regulations” Title of the revised Guam Codes Annotated, as that new Title will contain the definition now contained in Civil Code § 2477.

NOTE: Pursuant to the authority granted by 1 GCA § 1606, the reference to the Government Code was altered to reflect its codification in the GCA.

§ 2209. Actions by or Against Personal Representative; Recovery of Damages; Death of Plaintiff Before Judgment; Simultaneous Death.

(a) Except as provided in this Section, no cause of action shall be lost by reason of the death of any person but may be maintained by or against such person's personal representative.

(b) In an action brought under this Section against a personal representative, all damages may be awarded which might have been recovered against the decedent had the decedent lived, except damages awardable under 20 GCA § 2120 (Exemplary Damages) or damages imposed primarily for the sake of example and by way of punishing the defendant.

(c) When a person having a cause of action dies before judgment, the damages recoverable by the decedent's personal representative are limited to such loss or damage as the decedent sustained or incurred prior to death, including any penalties or punitive or exemplary damages that the decedent would have been entitled to recover had the decedent lived, and shall not include damages for pain, suffering or disfigurement.

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(d) This Section is applicable where a loss or damage occurs simultaneously with or after the death of a person who would have been liable therefore if such person's death had not preceded or occurred simultaneously with the loss or damage.

(e) Nothing in this Section shall be construed as making assignable things in action which are of such a nature as not to have been assignable prior to the enactment of this Section.

SOURCE: California Probate Code, § 573 (as amended).

COMMENT: Section 2209 represents a complete revision of § 573 of the Probate Code of Guam (1970) (including, by necessary implication, the provisions of prior § 574, which Section has been eliminated.) It sets out, in broad terms, the rules for survival of actions of all kinds (except those actions related specifically to the estate or its property, which are covered later in Chapter 22), and for the measure of recovery in cases wherein the decedent was or would have been a party. Section 2209 contains subject matter which was previously contained in § 574 of the Probate Code of Guam (1970), as well as in § 956 of the Civil Code of Guam (i.e., the material contained in subsection (d).) Thus, § 2209 is not a great departure from previous law; rather, it brings together various facets of prior law in a manner that is more sensible, and somewhat more general, than prior law.

§ 2211. Specific Actions Authorized: For Partition; on Bond of Former Personal Representative; to Recover Fraudulently Conveyed Property; Procedure and Distribution of Latter.

(a) When a decedent leaves an undivided interest in any property, an action for the partition thereof may be instituted and maintained against such decedent's personal representative; and a decedent's personal representative may institute and maintain an action against the other cotenants for the partition of any property in which such decedent left an undivided interest.

(b) A personal representative, as such, may institute and maintain an action on the bond of any former personal representative of the same estate, for the use and benefit of all parties interested in the estate.

(c) If a decedent, in his lifetime, conveyed any real or personal property, or any interest therein, with intent to defraud his creditors, or to avoid any obligation due another, or made a conveyance that by law is void as against creditors, or made a gift of property in view of death, and there is a deficiency of assets in the hands of the personal representative, the personal representative must, on the application of any creditor, commence and prosecute to final judgment an action for the recovery of

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the same for the benefit of the creditors. A creditor making such application must pay such part of the cost and expenses of the suit, or give such security to the personal representative therefor, as the Superior Court of Guam shall direct. All property recovered in an action brought under the provisions of this subsection must be sold for the payment of debts, in the same manner as if the decedent had died seised or possessed thereof, and the proceeds of such sale must be appropriated in payment of the debts of the decedent in the same manner as other property in the hands of the personal representative. The remainder of the proceeds, after all the debts of the decedent have been paid, must be paid to the person from whom such property was recovered.

SOURCE: Subsection (a): California Probate Code, § 575 (as amended). Subsection (b): Id., § 576. Subsection (c): Id., §§ 579, 580.

COMMENT: The only substantive change made to prior Guam law is that subsection (a) of § 2211 allows an action against the personal representative, as well as one by such representative, for the partition of property.

§ 2213. Parties to Actions; Personal Representatives Who Have Not Qualified.

In actions by or against personal representatives, it is not necessary to join those as parties to whom letters were granted but not issued.

SOURCE: Probate Code of Guam (1970), § 577; Guam Law Revision Commission.

COMMENT: Section 577 of the Probate Code of Guam read, in applicable part, "... to whom letters were ordered issued but who have not qualified." The Commission has altered this language to cause § 2213 to comport with other Sections of this Title.

§ 2215. Obligations Due Decedent; Discharge and Compromise; Renewal and Modification; Wrongful Death or Personal Injury of Decedent; Compromise and Settlement of Claims; Procedure.

(a) If a debtor of the decedent is unable to pay all his debts, the personal representative may, with the approval of the Superior Court of Guam obtained pursuant to the provisions of subsection (c) of this Section, give such debtor a discharge, upon such terms as may appear to the Superior Court of Guam to be for the best interest of the estate. A compromise, including the compromise of any claim of the estate against the United States or the territory of Guam, or any agency or instrumentality of either, may also be authorized by the Superior Court of

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Guam when it appears to be just and for the best interest of the estate; provided, that such authorization must be obtained pursuant to the provisions of subsection (c) of this Section. The Superior Court of Guam may also authorize the personal representative, on such terms and conditions as may be approved by the Superior Court of Guam, to extend or renew, or in any manner modify the terms of, any obligation running in favor of the decedent or the decedent's estate, provided, that such authorization and approval must be obtained pursuant to the provisions of subsection (c) of this Section.

(b) A personal representative shall have power, with the approval of the Superior Court of Guam obtained pursuant to the provisions of subsection (c) of this Section, to compromise and settle all claims or rights of action given to such personal representative by any law for the wrongful death or injury of the decedent, including any action brought by such personal representative in attempting enforcement thereof. Such power shall include the giving of a covenant not to sue.

(c) To obtain the approval or authorization referred to hereinabove in this Section, the personal representative shall file in the Superior Court of Guam a verified petition, showing the advantage of the settlement, compromise, extension, renewal or modification (in the case of an approval or authorization required by the provisions of subsection (a) of this Section), or showing the amount of money proposed to be paid (in the case of an approval required by the provisions of subsection (b) of this Section.) The Clerk of the Superior Court of Guam shall set the petition for hearing, and notice thereof shall be given in the manner provided in Section 3401 of this Title.

SOURCE: Subsection (a): California Probate Code, § 578 (as amended). Subsection (b): California Probate Code, § 578a. Subsection (c): Id.; Guam Law Revision Commission.

COMMENT: See Comment to § 1515, supra, concerning the revised notice provisions contained in this Title.

§ 2217. Deposit of Estate Funds in Bank or Savings and Loan Association.

A personal representative may deposit any money belonging to the estate with one or more banks licensed to do business in the Territory of Guam, or invest any such money in an account or accounts in one or more insured savings and loan associations licensed to do business in the

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Territory of Guam, whereupon the personal representative shall be discharged from further care or responsibility therefor until the money is withdrawn by the personal representative. Unless such money is so deposited or invested pursuant to an order by the Superior Court of Guam, under the provisions of Subchapter B of Chapter 20 of this Title or otherwise, it may be withdrawn without order of the Superior Court of Guam. The term "account or accounts in one or more insured savings and loan associations," as used in this Section, shall have the same meaning as the term "account in an insured savings and loan association" in Section 2009(c) of this Title.

SOURCE: Probate Code of Guam (1970), § 585; California Probate Code, § 585.

COMMENT: The only substantive change made to § 585 of the Probate Code of Guam (1970) is the addition of savings and loan associations; the prior statute allowed deposit of estate funds only into banks. It should be noted that § 2217 is intended to apply to funds coming to the estate after the court has made its order for security for the faithful performance of the personal representative's trust -- i.e., to funds not covered by such order -- as funds already in the estate at the time of such order will presumably have been covered by such order, and thus will not be in the purview of § 2217.

§ 2219. Investment of Estate Funds: Pending Settlement of Estate; Pending or at Time of Settlement of Estate; Procedure.

(a) Pending the settlement of an estate, the personal representative may, in his discretion and without prior authorization by the Superior Court of Guam, invest any money in the hands of the personal representative in direct obligations of the United States maturing not later than one (1) year from the date of making the investment or reinvestment.

(b) Pending the settlement of an estate, or at the time of settlement of an estate, on the petition of the personal representative or of any person interested in the estate, and upon good cause shown therefor, the Superior Court of Guam may order any money in the hands of the personal representative to be invested for the benefit of the estate in securities of the United States, or to be used for the purchase from an insurer admitted to do business in the Territory of Guam and for any legatee named in the decedent's will of an annuity expressly granted to such legatee by such will. The Clerk of the Superior Court of Guam shall set such petition for hearing, and notice thereof shall be given in the manner provided in Section 3401 of this Title.

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SOURCE: Subsection (a): California Probate Code, § 584.1. Subsection (b): California Probate Code, § 584 (as amended); Guam Law Revision Commission.

§ 2221. Personal Representative May Seek Guidance From Court on Investment, etc., of Estate Funds; Petition; Procedure.

Notwithstanding the provisions of Sections 2217 and 2219 of this Title, the Superior Court of Guam on the petition of the personal representative may from time to time instruct and direct the personal representative as to the administration of the estate and the disposition, management, operation, investment, care, protection or preservation of the estate or any property thereof. The Clerk of the Superior Court of Guam shall set such petition for hearing, and notice thereof shall be given in the manner provided in Section 3401 of this Title.

SOURCE: California Probate Code, § 588; Guam Law Revision Commission.

COMMENT: The California Probate Code contains a number of provisions touching the personal representative's powers to invest the estate's property, give options, pick up options, etc., which the Commission does not feel are appropriate or necessary in Guam. Under §§ 2217 and 2219, supra, the personal representative may deposit estate funds in a bank or savings and loan association (§ 2217), or invest estate funds in United States securities (§ 2219); the Commission feels that these options should be sufficient in the great majority of cases. Section 2221 merely gives the personal representative the flexibility to petition the Superior Court for further guidance and direction as to what might be done with the estate's property. The Superior Court of Guam, in its role as the overseer of all estates, retains the power to approve or deny any such plan of the personal representative, while maintaining firm control over the estate and its property.

§ 2223. Dedication for Streets or Highways, Easements, Access Rights; Petition; Notice; Order.

Whenever it is for the advantage, benefit and best interest of the estate and those interested therein, the personal representative may, either with or without consideration, dedicate or convey any real property of the estate or interest therein to the territory of Guam, or to the United States of America, or to any agency or instrumentality of either, for street or highway purposes or for any other purpose; or dedicate or convey an easement over any real property of the estate to the territory of Guam or any agency or instrumentality thereof, or to any person, firm, association, or public or private corporation, or to the United States of America or any agency or instrumentality thereof; or convey, release or relinquish to the territory of Guam or any agency or instrumentality thereof any access rights to any street or highway from any real property of the estate. Any

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such act of the personal representative shall be based upon the petition of the personal representative or any person interested in the estate. The Clerk of the Superior Court of Guam shall set such petition for hearing, and notice thereof shall be given in the manner provided in Section 3401 of this Title.

SOURCE: California Probate Code, § 587 (as amended); Guam Law Revision Commission.

§ 2225. Personal Representative Not to Purchase Claims Against Estate; All Sales of Estate Property to Personal Representative Subject to Confirmation; Credit in Accounts for Claims Paid for Less Than Full Amount.

(a) No personal representative may purchase any claim against the estate, directly or indirectly, or be interested in any such purchase.

(b) The personal representative may purchase property of the estate; provided, that all applicable provisions of Chapter 23 of this Title, except the exemption set forth in the first sentence of Section 2315(a) of this Title, shall apply to sales of estate property to the personal representative.

(c) If the personal representative pays any claim for less than its full amount he may have credit in his accounts only for the amount actually paid.

SOURCE: Subsections (a) and (c): Probate Code of Guam (1970), § 583. Subsection (b): Guam Law Revision Commission.

COMMENT: Section 583 of the Probate Code of Guam (1970) prohibited the personal representative from purchasing any property of the estate. The Commission is of the opinion that there is no legitimate reason for this absolute prohibition, so long as the Superior Court of Guam must confirm all such sales. The Commission has thus added subsection (b), which provides that every sale of estate property to the personal representative -- even of property whose sale would not require confirmation by the court under Chapter 23 -- must be confirmed by the Superior Court of Guam.

§ 2227. Proxies to Vote Corporate Shares; Waiver of Notice and Consent to Shareholders' Meetings, etc.

A personal representative may give proxies to vote any shares of stock of any corporation held in the estate, or to exercise any voting rights attaching to or arising from property held in the estate. The personal representative may waive notice of and consent to any meeting

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of shareholders or property owners, or authorize by a writing any action which could have been taken by shareholders.

SOURCE: California Probate Code, § 589.

§ 2228. Electronically Stored Documents of Deceased.

(a) As used in this Section, custodian means any person who electronically stores the documents or information of another person.

(b) A custodian shall provide to the personal representative of the estate of a deceased person, who was domiciled in Guam at the time of the person's death, access to or copies of any documents or information of the deceased person stored electronically by the custodian upon receipt by the custodian of:

(1) a written request for access or copies made by the personal representative, accompanied by a copy of the death certificate and a certified copy of the personal representative's letters testamentary; or

(2) an order of a court having probate jurisdiction of the deceased person's estate.

(c) A custodian may not destroy or dispose of the electronically stored documents or information of the deceased person for two (2) years after the custodian receives a request or order under Subsection (b).

(d) Nothing in this Section shall be construed to require a custodian to disclose any information:

(1) in violation of any applicable federal law; or

(2) to which the deceased person would not have been permitted access in the ordinary course of business by the custodian.

SOURCE: Added by P.L. 32-033:1 (May 10, 2013).

§ 2229. Digital Accounts, Inter-alia.

The personal representative of an estate shall have the power, where otherwise authorized, to take control of, conduct, continue, or terminate any accounts of a deceased person on any social networking website, any blogging or short message service website, or any e-mail service websites.

SOURCE: Added by P.L. 32-033:2 (May 10, 2013).

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