

CHAPTER 23
PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

- § 2301. Definition of Personal Representative.
- § 2303. Dealings in General: Payment of Debts, Expenses, and Family Allowance of Testate Decedent; Provision by Will; Order of Resort to Estate Assets for Such Purposes.
- § 2305. Dealings in General: Order of Resort to Property for Payment of Legacies.
- § 2307. Dealings in General: Order of Abatement of Legacies.
- § 2309. Sales in General: Sale of Property Devised or Bequeathed; Contribution Between Devisees and Legatees.
- § 2311. Sales in General: Sale to Pay Debts, Legacies, Family Allowance or Expenses; Selection of Property; Manner of Sale; Interest Which May be Sold.
- § 2313. Sales in General: Manner of Sale and Minimum Price of Property Sold as a Unit; Manner of Sale of Leasehold Interests.
- § 2315. Sales in General: Report of Sale; Confirmation; Petition; Notice of Hearing; Vacation of Confirmation Order on Default of Purchaser; Resale; Procedure.
- § 2317. Sales in General: Hearing on Confirmation; Objections to Confirmation; Proof of Notice; New Offer for Personal Property; Acceptance of Offer or Order of New Sale; Exceptions.
- § 2319. Sales in General: Sales Under Direction of Will; Procedure.
- § 2321. Sales in General: Petition for Order Requiring Sale; Setting; Citation to Personal Representative.
- § 2323. Sales in General: Neglect or Misconduct of Personal Representative; Action.
- § 2325. Sales in General: Contracts to Find Purchaser; Commission; Exclusive Right to Sell; Effect of Confirmation; Liability on Contract; Sales on Increased Bid at Confirmation Hearing; Commission.
- § 2327. Sales in General: Sales of Encumbered Property; Application of Purchase Money; Discharge of Encumbrance; Disposal of Surplus; Purchase by Mortgage or Lien Holder; Procedure; Expenses.
- § 2329. Sales in General: Limitation of Actions; Minors and Others Under Legal Disability.

15 GCA ESTATES AND PROBATE
CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

- § 2331. Sales of Personal Property: Perishable and Depreciating Property; Sale Without Notice or Confirmation.
- § 2333. Sales of Personal Property: Stocks, Bonds and Other Securities: Sale Without Confirmation; Notice Shortened or Dispensed With by Order; Completion of Incomplete Short Sale; Sale of Subscription Rights.
- § 2335. Sales of Personal Property: Notice; Place of Sale; Presence of Property; Postponement; When Title Passes.
- § 2337. Sales of Personal Property: Terms of Sale; Confirmation of Sale; Procedure.
- § 2339. Sales of Personal Property: Partnership Interests; Inquiry by Court at Confirmation Hearing.
- § 2341. Sales of Real Property: Posting and Publication of Notice of Sale; Contents of Notice.
- § 2343. Sales of Real Property: Public Auction or Private Sale; Procedure for Public Auctions; Procedure for Private Sales; Postponement of Sales.
- § 2345. Sales of Real Property: Property Sold by Private Sale: Confirmation; Minimum Price; Reappraisal; New Appraiser.
- § 2347. Sales of Real Property: Confirmation Hearing on Private Sale; Increased Bids; Agent's Commission; Determination of Bid Amount.
- § 2349. Sales of Real Property: Confirmation of Private Sales; Credit Terms; Consideration of Higher Offers.
- § 2351. Sales of Real Property: Conveyances After Confirmation; Contents; Recording; Effect.
- § 2353. Sales of Real Property: Credit Sales; Secured Notes; Sale of Joint Interests.
- § 2355. Sales of Real Property: Double Liability for Fraudulent Sale.
- § 2357. Sale of Contract to Purchase: Method of Sale.
- § 2359. Sale of Contract to Purchase: Sale Subject to Payments Due and to Become Due; Purchaser's Bond.
- § 2361. Sale of Contract to Purchase: Assignment After Confirmation; Nature and Scope.
- § 2363. Borrowing Money and Mortgaging Estate Property: Authorization; Security; Procedure on Estate Less Than Entire Ownership.
- § 2365. Borrowing Money and Mortgaging Estate Property: Petition; Filing; Contents; Notice and Hearing.

15 GCA ESTATES AND PROBATE
CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

- § 2367. Borrowing Money and Mortgaging Estate Property: Hearing; Order; Recordation.
- § 2369. Borrowing Money and Mortgaging Estate Property: Execution of Notes and Instruments of Security.
- § 2371. Borrowing Money and Mortgaging Estate Property: Effectiveness of Encumbrance; Jurisdiction; Effect of Errors or Irregularities; Deficiencies.
- § 2373. Leasing Estate Property: Authorization.
- § 2375. Leasing Estate Property: Petition; Filing; Contents; Setting and Notice.
- § 2377. Leasing Estate Property: Hearing; Order, Conditions; Duration; Partial Interests; Recording.
- § 2379. Leasing Estate Property: Leases Over Ten Years; Hearing.
- § 2381. Leasing Estate Property: Execution of Lease; Contents; Effect; Jurisdiction; Effect of Errors or Irregularities.
- § 2383. Leasing Estate Property: Lease Without Court Order.
- § 2385. Conveyance to Complete Contract: Authorization.
- § 2387. Conveyance to Complete Contract: Petition; Filing; Setting; Notice.
- § 2389. Conveyance to Complete Contract: Hearing and Order.
- § 2391. Conveyance to Complete Contract: Effect of Order; Possession; Execution of Conveyance.
- § 2393. Exchange of Estate Property: Authorization; Petition; Notice; Hearing.

§ 2301. Definition of Personal Representative.

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

SOURCE: Guam Law Revision Commission.

COMMENT: The provisions of Chapter 23, unlike those of Chapter 22, apply equally to executors, administrators with the will annexed, administrators and special administrators.

§ 2303. Dealings in General: Payment of Debts, Expenses, and Family Allowance of Testate Decedent; Provision by Will; Order of Resort to Estate Assets for Such Purposes.

If a testator makes provision by will, or designates the estate to be appropriated, for the payment of his debts, the expenses of

15 GCA ESTATES AND PROBATE
CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

administration, or family allowance, they must be paid according to such provision or out of the estate thus appropriated, so far as the same is sufficient. If insufficient, that portion of the estate not disposed of by the will, if any, must be appropriated for that purpose; and if that is not sufficient, the property given to residuary legatees and devisees, and thereafter all other property devised and bequeathed, is liable for the same, in proportion to the value or amount of the several devises and legacies, but specific devises and legacies are exempt from such liability if it appears to the Superior Court that such exemption is necessary to carry into effect the intention of the testator, and there is other sufficient estate.

SOURCE: Probate Code of Guam (1970), § 750.

§ 2305. Dealings in General: Order of Resort to Property for Payment of Legacies.

The property of a testator, except as otherwise provided in this Chapter, must be resorted to for the payment of legacies in the following order:

- (a) The property which is expressly appropriated by the will therefor;
- (b) Property not disposed of by the will;
- (c) Property which is devised or bequeathed to a residuary legatee.

SOURCE: Probate Code of Guam (1970), § 751.

§ 2307. Dealings in General: Order of Abatement of Legacies.

Unless a different intention is expressed in a testator's will, abatement takes place in any class only as between legacies of that class, and legacies to a spouse or to kindred are chargeable only after legacies to persons not related to the testator.

SOURCE: Probate Code of Guam (1970), § 752.

§ 2309. Sales in General: Sale of Property Devised or Bequeathed; Contribution Between Devisees and Legatees.

When property given by a will to persons other than residuary devisees or legatees is sold for the payment of debts, expenses or family allowance, all the devisees and legatees must contribute according to their respective interests to the devisee or legatee whose devise or legacy has been sold for such purpose; and the Superior Court, when distribu-

15 GCA ESTATES AND PROBATE
CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

tion is made, must settle the amount of the several liabilities and decree the amount that each such person shall contribute, and reserve the same from each such person's distributive share for the purpose of such contribution.

SOURCE: Probate Code of Guam (1970), § 753.

§ 2311. Sales in General: Sale to Pay Debts, Legacies, Family Allowance or Expenses; Selection of Property; Manner of Sale; Interest Which may be Sold.

(a) In selling property of an estate to pay debts, legacies, family allowance or expenses, there shall be no priority as between personal and real property.

(b) When a sale of property of an estate is necessary for any of the purposes set forth in subsection (a) of this Section, or when it is for the advantage, benefit and best interests of an estate and those interested therein that any property of such estate be sold, the personal representative may sell the same, either at public auction or private sale, using his discretion as to which property to sell first, subject to the provisions of Sections 2303 and 2305 of this Title.

(c) The personal representative, in making any sale under the provisions of this Section, may sell the entire interest of the estate in the property or any lesser interest or estate therein.

SOURCE: Subsections (a) and (b): Probate Code of Guam (1970), § 754.
Subsection (c): California Probate Code, § 754 (as amended in 1949).

§ 2313. Sales in General: Manner of Sale and Minimum Price of Property Sold as a Unit; Manner of Sale of Leasehold Interests.

(a) When the personal representative determines, in his discretion, that by use or relationship any assets of the estate, whether real or personal, constitute a unit for purposes of sale, the personal representative may in his discretion cause such property to be appraised, or its fair market value estimated (in either event pursuant to the applicable provisions of Chapter 26 of this Title) as a unit. Whether or not such property is appraised, or its fair market value estimated, as a unit, the personal representative may sell all of such property as a unit and under one bid, subject to the provisions of subsections (b) and (c) of this Section.

15 GCA ESTATES AND PROBATE

CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

(b) Property of an estate shall be sold as a unit and under one bid only if the Superior Court finds such a sale to be for the best interest of the estate; and no private sale of such property as a unit shall be made for less than ninety percent (90%) of the sum of the estimated fair market values of the personal property so sold plus the sum of the appraised values of the real property so sold, appraised or estimated separately, or for less than ninety percent (90%) of the appraised or estimated values of all the property so sold if appraised or estimated as a unit.

(c) If the property of an estate to be sold as a unit includes any real property, any such sale shall be made in the manner provided in this Chapter for the sale of real property of an estate, the bid and sale to be subject to the limitations and restrictions provided in this Chapter for the sale of real property of an estate; otherwise it shall be sold in the manner provided in this Chapter for the sale of personal property.

(d) When the property of an estate to be sold consists of a leasehold interest in real property with an unexpired term of ten (10) years or longer, or consists of any leasehold interest in real property together with an option to purchase the leased premises or some part thereof, the sale shall be made in the manner provided in this Chapter for the sale of real property of an estate, the bid and sale to be subject to the limitations and restrictions provided in this Chapter for the sale of real property of an estate; otherwise the leasehold interest shall be sold as personal property.

SOURCE: Subsections (a) and (b): California Probate Code, § 754.5; Guam Law Revision Commission. Subsection (c): California Probate Code, § 754.4. Subsection (d): California Probate Code, § 754.6.

COMMENT: The Commission has added, in subsections (a) and (b), the language concerning estimates -- as opposed to appraisals -- of the value of estate personalty, to cause § 2313 to comport with the applicable provisions of Chapter 26, *infra*. Also see Comment to § 2613, *infra*.

§ 2315. Sales in General: Report of Sale; Confirmation; Petition; Notice of Hearing; Vacation of Confirmation Order on Default of Purchaser; Resale; Procedure.

(a) Except as otherwise provided in Sections 2331, 2333 and 2335(c) of this Title, all sales of the property of an estate shall be reported to the Superior Court and confirmed by the Superior Court before title to the property passes. The report, which may also be referred to as a "return" or as a "return of sale," shall be verified. Such report and a petition for confirmation of the same shall be filed in the Superior

15 GCA ESTATES AND PROBATE
CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

Court within thirty (30) calendar days after each sale of the property of an estate. The Clerk of the Superior Court shall set the petition for hearing, and notice thereof shall be given in the manner provided in Section 3401 of this Title.

(b) If, after the confirmation of a sale of the property of an estate by the Superior Court, the purchaser neglects or refuses to comply with the terms of the sale, the Superior Court, on motion of the personal representative and after notice to the purchaser in the manner directed by the Superior Court, may vacate the order of confirmation and order a resale of the property. Notice of such resale shall be given, and proceedings thereafter shall be taken, in the same manner as required by this Chapter for such sale in the first instance. If the amount realized on such resale does not cover the bid and the expenses of the previous sale, the defaulting purchaser at such previous sale is liable to the estate for the deficiency.

SOURCE: Subsection (a): California Probate Code, § 755; Guam Law Revision Commission. Subsection (b): California Probate Code, § 775; Probate Code of Guam (1970), § 788.

COMMENT: The only substantive change made to § 755 of the Probate Code of Guam (1970) (subsection (a) of § 2315) is the addition of § 2333 to the exceptions to the operation of subsection (a). Subsection (b) of § 2315 brings together all necessary provisions concerning resale upon failure of the purchaser to comply with the terms of the sale. The Probate Code of Guam (1970) contained a similar provision only affecting real property (prior § 788), but there seems to be no reason why one provision should not apply to all species of estate property.

§ 2317. Sales in General: Hearing on Confirmation; Objections to Confirmation; Proof of Notice; New Offer for Personal Property; Acceptance of Offer or Order of New Sale; Exceptions.

(a) Any person interested in an estate may file written objections to the confirmation of a sale of the property of such estate, and may be heard thereon, and may produce witnesses in support of his objection. Before the Superior Court makes an order confirming such sale, it must be proved to the satisfaction of the Superior Court that such sale was necessary, or that it was of advantage or benefit to the estate or to those interested therein, and that notice of such sale was given as required by this Title; and the order of confirmation shall show that such proof was made.

(b) Upon the hearing of a petition for confirmation of the sale of personal property of an estate, where the original bid was in excess of

15 GCA ESTATES AND PROBATE
CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

two hundred and fifty dollars (\$250.00), if a written offer of at least ten percent (10%) more than the amount named in the return is made to the Superior Court by a responsible person, and if such offer complies with all applicable provisions of law contained in this Chapter, the Superior Court may in its discretion accept such offer and confirm the sale to such person, or it may order a new sale. The provisions of this subsection shall not apply to personal property of an estate sold pursuant to the provisions of Section 2329 of this Title.

(c) If, upon the hearing of a petition for confirmation of the sale of personal property of an estate, the Superior Court of Guam determines that the personal representative's estimate of the fair market value of the personal property sold (such estimate having been made pursuant to the provisions of Section 2613(a)(2) of this Title) was materially incorrect, the Superior Court of Guam may order that the fair market value of such item be appraised by a qualified, disinterested person who shall be appointed as appraiser thereof by the Superior Court of Guam, or it may order the sale vacated, or it may make such other order as shall be proper in the circumstances for the protection of the estate, of all persons interested in the estate, and of the purchaser of the item in question.

SOURCE: Subsection (a): Probate Code of Guam (1970), § 756. Subsection (b): California Probate Code, § 756.5. Subsection (c): Guam Law Revision Commission.

COMMENT: Subsection (b) of § 2317 is new to Guam. It allows a person to submit a new bid on personal property which was sold at a private sale, provided that the new bid is at least 10% higher than the original sale price, and that the property will be sold to that person rather than to the person who was the original buyer. Note that no sale of estate property (with some exceptions appearing later in Chapter 23, but not germane to this discussion) is complete until the sale is confirmed by the Superior Court; it seems obvious that if a higher price can be brought than that which was originally agreed upon between the personal representative and buyer, such a higher price will be beneficial to the estate and those interested therein. Subsection (c) is also new: it has been added by the Commission to cause § 2317 to comport with the applicable provisions of Chapter 26, *infra*. Also see Comment to § 2613, *infra*.

§ 2319. Sales in General: Sales Under Direction of Will; Procedure.

When a testator's will directs the property of the estate to be sold, or when authority is given in a testator's will to sell the property of the estate, the executor or administrator with the will annexed may sell the same either at public auction or private sale, and with or without notice, as the executor or administrator with the will annexed may in his

15 GCA ESTATES AND PROBATE
CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

discretion determine; provided, that the executor or administrator with the will annexed shall make a return of sale and obtain confirmation thereof from the Superior Court as in other cases. No title to the property of an estate sold under the provisions of this Section passes until the sale is confirmed by the Superior Court of Guam; but the necessity of the sale, or its advantage or benefit to the estate or those interested therein, need not be shown. If directions are given in the will as to the mode of selling, or the particular property to be sold, the executor or administrator with the will annexed shall observe such directions.

SOURCE: Probate Code of Guam (1970), § 757.

§ 2321. Sales in General: Petition for Order Requiring Sale; Setting; Citation to Personal Representative.

If a personal representative neglects or refuses to sell any property of an estate when such sale is necessary or when such sale is for the advantage, benefit and best interests of the estate and those interested therein, or if an executor or administrator with the will annexed is directed by the testator's will to sell the same and he neglects or refuses to do so, any person interested may petition the Superior Court for an order requiring the personal representative to sell. The Clerk of the Superior Court shall set the petition for hearing, and notice thereof shall be given to the personal representative by citation served at least five (5) calendar days before the hearing.

SOURCE: Probate Code of Guam (1970), § 758.

§ 2323. Sales in General: Neglect or Misconduct of Personal Representative; Action.

If there is any neglect or misconduct in the proceedings of the personal representative in relation to any sale, by which any person interested in the estate suffers damage, the party aggrieved may recover the same in an action upon the bond of the personal representative, or otherwise.

SOURCE: Probate Code of Guam (1970), § 759.

§ 2325. Sales in General: Contracts to Find Purchaser; Commission; Exclusive Right to Sell; Effect of Confirmation; Liability on Contract; Sales on Increased Bid at Confirmation Hearing; Commission.

15 GCA ESTATES AND PROBATE
CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

(a) The personal representative may enter into a written contract with any bona fide agent or broker, or multiple group of bona fide agents or brokers, to secure a purchaser for any real or personal property of the estate, which contract may provide for the payment of a commission out of the proceeds of the sale. Such contract may additionally grant an exclusive right to sell property of the estate for a period not in excess of ninety (90) calendar days if, prior to the execution of the contract granting such an exclusive right to sell, the personal representative obtains the permission of the Superior Court of Guam to enter into such an agreement upon a showing of necessity and advantage to the estate and those interested therein; and such permission may be granted by the Superior Court of Guam when the personal representative is appointed or qualified, or at any subsequent time upon an ex parte application by the personal representative.

(b) When a sale secured pursuant to the provisions of subsection (a) of this Section is confirmed to the purchaser, the contract provided in subsection (a) of this Section shall be binding and valid against the estate for an amount to be allowed by the Superior Court. By the execution of any such contract no personal liability shall attach to the personal representative, and no liability of any kind shall be incurred by the estate unless an actual sale is made and confirmed by the Superior Court.

(c) In case of sale on an increased bid made at the time of the confirmation hearing to a purchaser not procured by the agent or broker holding a contract such as that provided in subsection (a) of this Section, the Superior Court shall allow a commission on the full amount for which the sale is confirmed, one-half ($\frac{1}{2}$) of such commission on the amount of the original bid to be paid to the agent or broker whose bid was returned to the Superior Court for confirmation and the balance of the commission on the amount of the purchase price to the agent or broker, if any, who procured the purchaser to whom the sale is confirmed. If, however, the successful bidder is not procured by a bona fide agent or broker, then the agent or broker holding such contract shall be allowed a full commission on the amount of the original bid returned by such agent or broker.

(d) Where an original bid is made by a purchaser directly to the personal representative, and thereafter at the confirmation hearing an increased bid is made by a bona fide agent or broker holding a contract such as that provided in subsection (a) of this Section, and such increased

15 GCA ESTATES AND PROBATE
CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

bid results in the confirmation and sale of the property at such increased bid, the Superior Court shall allow a commission to the agent or broker who procured the increased bid, which commission shall be fixed by the Superior Court at such amount as the Superior Court, in its discretion, finds will be reasonable compensation for the services of such agent or broker to the estate.

SOURCE: Subsections (a) and (b): California Probate Code, § 760 (as amended). Subsection (c): California Probate Code, § 761. Subsection (d): California Probate Code, § 761.5.

COMMENT: Section 2325 brings together all necessary provisions concerning sales of estate property under brokerage contract. Subsections (a) and (b) differ from § 760 of the Probate Code of Guam (1970) only by the addition of language concerning a multiple group of agents or brokers, and by the provision concerning 90-day exclusive listings. Subsection (c) is very much the same as § 761 of the Probate Code of Guam (1970); the only substantive difference is the addition of the last sentence, which has been added to dispel possible confusion about what should occur if the successful bidder (who submits his bid at the confirmation hearing) is not procured by an agent or broker. Subsection (d) is new to Guam; it was added to California law in 1945, and defines what will happen in a situation that is the other side of the coin from that dealt with in subsection (c).

§ 2327. Sales in General: Sales of Encumbered Property; Application of Purchase Money; Discharge of Encumbrance; Disposal of Surplus; Purchase by Mortgage or Lien Holder; Procedure; Expenses.

(a) When any property of an estate is sold which is subject to a mortgage or other lien which is a valid claim against the estate, and which has been allowed, the purchase money must be applied, after paying the necessary expenses of the sale, as follows: first, to the payment and satisfaction of the mortgage or other lien; and then the residue, if any, in due course of administration. The application of the purchase money to the satisfaction of the mortgage or other lien must be made without delay; and except as provided in subsection (b) of this Section the property sold is subject to such mortgage or other lien until the purchase money has actually been so applied.

(b) When any property of an estate is sold which is subject to a mortgage or other lien which is a valid claim against the estate, the purchase money, or so much thereof as may be sufficient to pay such mortgage or lien, may be paid to the Clerk of the Superior Court, whereupon the mortgage or other lien upon such property shall cease; and the purchase money shall be paid over by the Clerk of the Superior Court of

15 GCA ESTATES AND PROBATE
CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

Guam without delay, in payment of the expenses of sale, and in satisfaction of the obligation to secure which the mortgage or other lien was taken, and the surplus, if any, at once returned to the personal representative, unless for good cause shown, and after notice to the personal representative, the Superior Court otherwise directs.

(c) At any sale of any property of an estate upon which there is a mortgage or other lien, the holder thereof may become the purchaser, even though no claim thereon has been, or could have been, presented or allowed. If no claim thereon has been presented or allowed, the Superior Court may at the hearing on the confirmation of such sale examine the validity and enforceability of the lien or charge and the amount due thereunder and secured thereby, and may authorize the personal representative to accept his receipt for the amount due thereunder and secured thereby as payment pro tanto. If such mortgage or other lien is a valid claim against the estate and has been allowed, the receipt of such purchaser for the amount due to such purchaser from the proceeds of the sale is a payment pro tanto. If the amount for which such property is purchased, whether or not such claim was presented and allowed, is insufficient to defray the expenses and discharge the purchaser's mortgage or other lien, the purchaser must pay the Clerk of the Superior Court an amount sufficient to pay such expenses. Nothing permitted under the provisions of this subsection shall be deemed to be an allowance of a claim based upon such mortgage or other lien.

SOURCE: Subsection (a): California Probate Code, § 762. Subsection (b): Id., § 763. Subsection (c): Id., § 764 (as amended).

COMMENT: Section 2327 brings together all necessary provisions concerning the sale of encumbered property. Similar provisions existed in §§ 789, 790 and 791 of the Probate Code of Guam (1970); the Commission, however, is of the opinion that these matters should be brought together and clarified by one statute which covers all sales of encumbered estate property, rather than only sales of real property as was the case under prior law.

§ 2329. Sales in General: Limitation of Actions; Minors and Others Under Legal Disability.

No action for the recovery of any property sold by a personal representative, on the claim that the sale is void, can be maintained by any heir or other person claiming under the decedent, unless it is commenced within three (3) years after the settlement of the final account of the personal representative, or within three (3) years after the discovery of any fraud upon which the action is based. This limitation

15 GCA ESTATES AND PROBATE
CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

shall not apply to minors or others under any legal disability to sue at the time the right of action accrues; but any such person may commence an action at any time within three (3) years after the removal of the disability.

SOURCE: Probate Code of Guam (1970), § 793.

§ 2331. Sales of Personal Property: Perishable and Depreciating Property; Sale Without Notice or Confirmation.

(a) Perishable property of an estate, and other personal property of an estate which will depreciate in value if not disposed of promptly or which will incur loss or expense by being kept, and so much other personal property of an estate as may be necessary to provide the family allowance pending the receipt of other specific funds, may be sold without notice, and title shall pass without confirmation of such sale by the Superior Court; but the personal representative is responsible for the actual value of such property unless, after making a return of sale as provided in other cases by this Chapter, and on a proper showing, the Superior Court shall approve the sale.

(b) The property of an estate referred to in subsection (a) of this Section shall include, but is not limited to, automobiles.

SOURCE: Subsection (a): Probate Code of Guam (1970), § 770. Subsection (b): Guam Law Revision Commission.

COMMENT: Subsection (a) of § 2331 merely continues the prior law as set forth in § 770 of the Probate Code of Guam (1970). Subsection (b) is new: it sets forth specifically that automobiles are included in the type of property that may be sold without notice or confirmation. This has been the case, at least de facto, for a number of years in Guam; the Commission sees no reason it should not be made statutory. Also see Comment to § 2335, *infra*.

§ 2333. Sales of Personal Property: Stocks, Bonds and Other Securities: Sale Without Confirmation; Notice Shortened or Dispensed With by Order; Completion of Incomplete Short Sale; Sale of Subscription Rights.

(a) Stocks, bonds, voting trust certificates, stock warrants or subscription rights, or any other similar securities which are the property of an estate, may be sold and title thereto passed without the necessity for confirmation of such sale by the Superior Court, if the personal representative first obtains an order of the Superior Court authorizing such sale. A petition for such an order shall be filed with the Clerk of the Superior Court, who shall set the same for hearing, and notice thereof

15 GCA ESTATES AND PROBATE
CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

shall be given in the manner provided in Section 3401 of this Title; but the Superior Court may order the notice to be given for a shorter period than that provided in Section 3401 of this Title, or dispensed with. The order referred to hereinabove shall fix the terms and conditions of sale, and when the minimum selling price is fixed or when such securities are to be sold upon an established stock or bond exchange, or surrendered for redemption or conversion, no notice of sale or of such redemption or conversion need be given.

(b) If a person dies having sold, but not delivered, securities or commodities not owned by such person, the personal representative may purchase such securities or commodities as are required to perform such incomplete contract of sale, if the personal representative first obtains an order of the Superior Court authorizing such purchase. A petition for such an order shall be filed with the Clerk of the Superior Court of Guam, who shall set the same for hearing, and notice thereof shall be given in the manner provided in Section 3401 of this Title; but the Superior Court may order the notice to be given for a shorter period than that required by Section 3401 of this Title, or dispensed with. The order referred to hereinabove shall fix the terms and conditions of purchase, and when the maximum purchase price is fixed or when such securities or commodities are to be purchased upon an established stock, bond or commodity exchange, no notice need be given.

(c) Notwithstanding the provisions of subsection (a) of this Section, in the event that an estate, by reason of its ownership of shares of stock, bonds, or other securities, shall also own or receive subscription rights for the purchase of additional securities, the personal representative may, without obtaining approval of the Superior Court, sell such subscription rights either in whole or in part.

SOURCE: Subsection (a): Probate Code of Guam (1970), § 771; California Probate Code, § 771 (as amended through 1941 and in 1951); Guam Law Revision Commission. Subsection (b): California Probate Code, § 771.3. Subsection (c): California Probate Code, § 771.5.

COMMENT: Section 2333 brings together all necessary provisions dealing with the sale (or purchase, in the event of a short sale) of stocks, bonds, commodities and other securities. The Section's provisions are grounded in common sense, given that the prices for securities and commodities are "fixed" by the market itself (i.e., there is no great likelihood that the personal representative can sell shares of stock for much more than the price at which such shares are being traded on an exchange,) and given that the personal representative should have the flexibility to

15 GCA ESTATES AND PROBATE
CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

sell or purchase such securities or commodities at the most advantageous price available through such an exchange.

§ 2335. Sales of Personal Property: Notice; Place of Sale; Presence of Property; Postponement; When Title Passes.

(a) Except as provided in Sections 2319, 2331 and 2333 of this Title, personal property of an estate may be sold only after notice published by the personal representative in a daily newspaper of general circulation in the territory of Guam for three (3) consecutive days, the last of which publications is at least seven (7) calendar days before the day on or after which the sale is to be made.

(b) The notice of sale provided in subsection (a) of this Section shall contain the time and place of sale and a brief description of the property of the estate to be sold, and shall state whether the sale is to be a private sale or a public sale. If the sale is to be a private sale, the notice shall state a physical place at which bids or offers will be received and the date on or after which such private sale will be made; and such private sale shall not be made before that date, but must be made within six (6) months after that date. Public sales shall be made on the steps of the courthouse of the Superior Court of Guam, or at some other public place, or at the residence or place of business of the decedent; but no public sale shall be made of any personal property of an estate which is not present at the time and place of sale, unless the Superior Court of Guam shall otherwise order. A public sale of personal property of an estate may be postponed from time to time if the personal representative deems it for the interests of all persons concerned, such postponement not to exceed in all three (3) months. In case of such postponement, notice thereof shall be given by public declaration of the personal representative at the time and place appointed for such public sale.

(c) Title to tangible personal property of an estate sold at public sale passes upon receipt of the purchase price and delivery of the property to the buyer, but the personal representative is responsible for the actual value of such property unless, after making a sworn return of sale, and on proper showing, the Superior Court shall approve the sale; provided, that if such property is sold to the personal representative, title thereto shall not pass unless such sale is reported to the Superior Court and confirmed by the Superior Court as provided in this Chapter.

SOURCE: California Probate Code, § 772 (as amended); Guam Law Revision Commission.

COMMENT: Subsections (a) and (b) are generally the same as § 772 of the Probate Code of Guam (1970), except that the notice requirements have been altered to cause § 2335 to comport, in general, with the other notice requirements in this Title. Subsection (c) is new to Guam; it facilitates public sales of estate personal property, by removing such sales from the requirement of court approval. It should be noted, however, that the prudent personal representative would be well advised to make a return of sale in any event, because if he does not, he remains liable for the actual value of the property sold, rather than merely for the purchase price. In this respect, subsection (c) is similar to § 2331, *supra*. The last clause of subsection (c), which has been added by the Commission, is intended to indicate that all sales of estate property to the personal representative must be confirmed by the Superior Court; in this regard, also see Comment to § 2225, *supra*.

§ 2337. Sales of Personal Property: Terms of Sale; Confirmation of Sale; Procedure.

(a) Personal property of an estate may be sold for cash, or upon credit. If a sale of personal property of an estate is made upon credit, not less than twenty-five percent (25%) of the purchase price shall be paid to the personal representative in cash at the time of sale. The personal representative shall take the promissory note of the purchaser for the balance of the purchase money, with a pledge or chattel mortgage of the personal property sold, to secure the payment of such balance, or shall enter into a conditional sales contract with the purchaser under which title to the personal property sold is retained until such balance is paid. The terms of such note and pledge or chattel mortgage, or of such conditional sales contract, shall be approved by the Superior Court at the time of the confirmation of such sale.

(b) Notwithstanding the provisions of subsection (a) of this Section, the Superior Court may authorize a sale of personal property of an estate on credit on terms providing for less than twenty-five percent (25%) of the purchase price to be paid in cash at the time of the sale, or may waive or modify the requirement that a lien or other security interest shall be retained or taken to secure payment of the balance of the purchase price, when in the opinion of the Superior Court of Guam such terms are for the best interests of the estate and those interested therein, and when the property to be sold is of such a nature that it is impracticable to sell the property for a larger cash payment at the time of sale, or to retain a lien or other security interest therein.

(c) The Superior Court may, by its order made upon proper petition therefor as hereinafter provided, fix the terms and conditions of a sale of personal property of an estate. A petition for such order may be filed by

15 GCA ESTATES AND PROBATE
CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

the personal representative with the Clerk of the Superior Court, who shall set the same for hearing, and notice thereof shall be given in the manner provided in Section 3401 of this Title.

(d) If, upon the hearing of a petition for confirmation of the sale of personal property of an estate, the Superior Court of Guam determines that the personal representative's estimate of the fair market value of the personal property sold (such estimate having been made pursuant to the provisions of Section 2613(a)(2) of this Title) was materially incorrect, the Superior Court of Guam may order that the fair market value of such item be appraised by a qualified, disinterested person who shall be appointed as appraiser thereof by the Superior Court of Guam, or it may order the sale vacated, or it may make such other order as shall be proper in the circumstances for the protection of the estate, of all persons interested in the estate, and of the purchaser of the item in question.

SOURCE: Subsections (a) - (c): California Probate Code, § 773 (as amended); Guam Law Revision Commission. Subsection (d): Guam Law Revision Commission.

COMMENT: The provisions of subsection (c) are intended to provide the personal representative with a means of obtaining pre-approval by the court of the terms and conditions of a sale of estate personal property. It is not intended to supplant the provisions of § 2515, *supra*, concerning confirmation of sales. As to the notice provisions in subsection (b), see Comment to § 1515, *supra*. In addition, the Commission has added to the California law subsection (d), to cause § 2337 to comport with the applicable provisions of Chapter 26, *infra*. Also see Comment to § 2613, *infra*.

§ 2339. Sales of Personal Property: Partnership Interests; Inquiry by Court at Confirmation Hearing. Partnership interests or interests belonging to an estate by virtue of any partnership formerly existing, an interest of the estate in personal property pledged, and chosen in action, may be sold in the same manner as provided for sales of personal property of an estate under this Chapter. Before confirming the sale of a partnership interest, whether made to the surviving partner or to any other person, the Superior Court of Guam must carefully inquire into the condition of the partnership affairs, and must examine the surviving partner, if in the territory of Guam and able to be present in court.

SOURCE: Probate Code of Guam (1970), § 774.

§ 2341. Sales of Real Property: Posting and Publication of Notice of Sale; Contents of Notice.

15 GCA ESTATES AND PROBATE
CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

(a) Real property of an estate may be sold only after notice posted by the personal representative in the office of the municipal commissioner in each municipality in which the real property is to be sold, such posting to be effected at least fourteen (14) calendar days before the date of the sale is to be made at public auction, or at least fourteen (14) calendar days before the day on or after which the sale is to be made if such sale is to be a private sale. The notice shall also be published by the personal representative in a daily newspaper of general circulation in the territory of Guam for three (3) consecutive days, the last of which publications is to be at least seven (7) calendar days before the date of the sale if such sale is to be made at public auction, or at least seven (7) calendar days before the day on or after which the sale is to be made if such sale is to be a private sale. Notice of such sale shall also be given in the manner provided in Section 3401 of this Title.

(b) The notice of sale referred to in subsection (a) of this Section shall contain the time and place of the sale if such sale is to be made at public auction, or a physical place where bids or offers will be received and the day on or after which the sale will be made if such sale is to be a private sale; and in all cases the property proposed to be sold shall be described with particularity, although a description thereof by metes and bounds shall not be required.

SOURCE: Guam Law Revision Commission; California Probate Code, § 772 (as amended); California Probate Code, § 782 (as amended).

COMMENT: The Commission has extensively redrafted § 780 of the Probate Code of Guam (1970), to bring § 2341 into greater conformity with § 2335, which sets forth the notice requirements in the case of a sale of personal property of an estate. These changes are largely procedural; the only substantive change is in the last sentence of § 2341, concerning the contents of the notice. Section 780 of the Probate Code of Guam (1970) states, in this regard, "The property proposed to be sold must be described with common certainty in the notice;" however, nowhere is it stated what the term "common certainty" means. For example, it may be that at the time of the adoption of § 780 of the Probate Code of Guam (1970), the description "place of Urunao" would have been a description "with common certainty." Today, however, that description would almost certainly fail -- unquestionably, if it were so set forth in a deed or other conveyance. For this reason, the Commission has used the term "with particularity," with the additional caveat that a metes and bounds description is not necessary. The intention is to suggest that the description set forth in a notice of sale should be as particular as that in a conveyance; e.g., "Lot No. _____, Block No. _____, Suburban, Municipality of _____, Guam," would probably be sufficient for the purpose of the notice of sale under the language of the last sentence of § 2341.

§ 2343. Sales of Real Property: Public Auction or Private Sale; Procedure for Public Auctions; Procedure for Private Sales; Postponement of Sales.

(a) Real property of an estate may be sold either at public auction or by private sale.

(b) Sales of real property of an estate at public auction shall be made in the municipality in which the real property lies, but if it lies in two or more municipalities it may be sold in any of them. Such sale shall be made between the hours of 9 o'clock in the morning and the setting of the sun on the same day, and shall be made on the day named in the notice of sale provided in Section 2341 of this Title, unless the same is postponed as provided in subsection (d) of this Section.

(c) Sales of real property of an estate by private sale shall not be made before the day on or after which such sale is to be made, as set forth in the notice of sale provided in Section 2341 of this Title, but must be made within six (6) months thereafter. The bids or offers shall be in writing, and may be left at the place designated in the notice of sale provided in Section 2341 of this Title, or delivered to the personal representative personally. Sales of real property of an estate by private sale may be postponed as provided in subsection (d) of this Section.

(d) If, at the time appointed for any sale of real property of an estate, the personal representative deems it for the interest of all persons concerned therein that the same be postponed, the personal representative may postpone it from time to time, not exceeding in all three (3) months. In the case of the postponement of a sale of real property of an estate at public auction, notice of such postponement shall be given by a public declaration at the time and place first appointed for the sale. In the case of the postponement of a sale of real property of an estate by private sale, notice of such postponement shall be given by public declaration on the day on or after which such sale was to have been made as set forth in the notice of sale provided in Section 2339 of this Title, and by publication by the personal representative in a newspaper of general circulation in the territory of Guam for three (3) consecutive days, the first of which publications shall be not more than seven (7) calendar days after the day on or after which such sale was to have been made as set forth in the notice of sale provided in Section 2339 of this Title.

SOURCE: Subsection (a): Guam Law Revision Commission. Subsection (b): Probate Code of Guam (1970), § 781; Guam Law Revision Commission.

15 GCA ESTATES AND PROBATE

CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

Subsection (c): California Probate Code, § 782 (as amended); Guam Law Revision Commission. Subsection (d): Probate Code of Guam (1970), § 783; Guam Law Revision Commission.

COMMENT: Section 2343 brings together all necessary procedural requirements for sales of estate real property. The only major changes from prior law are: the shortening of the time in which a private sale must be made, from one year to six months (subsection (c);) and the addition of a publication requirement for postponement of private sales (subsection (d).)

§ 2345. Sales of Real Property: Property Sold by Private Sale: Confirmation; Minimum Price; Reappraisal; New Appraiser.

No sale of the real property of an estate by private sale may be confirmed by the Superior Court unless the sum offered is at least ninety percent (90%) of the appraised value thereof, nor unless such real property has been appraised within one (1) year of the time of such private sale, which value must be the appraised value of such real property within one (1) year prior to the date of such private sale. If it has not been so appraised, or if the Superior Court is satisfied that the appraisal was too high or too low, a new appraisal must be had. Such new appraisal may be done at any time before the sale or confirmation thereof. Such new appraisal may be made by the appraiser who made the original appraisal without further order of the Superior Court of Guam or further request for the appointment of a new appraiser. In the case of the death, removal or other disability to act of the original appraiser, or if for just cause a new appraiser is to be appointed, proceedings for such new appraiser's appointment shall be had as in the case of an original appraisal of an estate.

SOURCE: California Probate Code, § 784 (as amended through 1957.)

§ 2347. Sales of Real Property: Confirmation Hearing on Private Sale; Increased Bids; Agent's Commission; Determination of Bid Amount.

Upon the hearing provided in Section 2315 of this Title, the Superior Court of Guam must examine the necessity for the private sale of the real property of the estate, or the advantage, benefit and interest of the estate in having such sale made, and the efforts of the personal representative to expose the property to the market, and must examine the return and witnesses in relation to such sale; and if it appears to the Superior Court that good reason existed for such sale, that such sale was legally made and fairly conducted, that it complied with the requirements of Section 2345 of this Title, that the sum bid is not disproportionate to

15 GCA ESTATES AND PROBATE
CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

the value, and that it does not appear that a sum exceeding such bid at least ten percent (10%), exclusive of the expenses of a new sale, may be obtained, the Superior Court shall make an order confirming such sale and directing conveyances be executed; otherwise it shall vacate such sale and direct another to be had, of which notice must be given and the sale in all respects conducted as if no previous sale had taken place. But if a written offer in an amount at least ten percent (10%) more than the sum bid is made to the Superior Court by a responsible person, and such offer complies with all provisions of law, the Superior Court shall accept such higher offer, confirm the sale to such person and fix a reasonable compensation for the services to the estate of the agent, if any, producing the successful bidder, or, in its discretion, order a new sale. If more than one written offer in an amount at least ten percent (10%) more than the sum bid is made to the Superior Court of Guam by responsible persons, and if any such increased bid complies with all the provisions of law, the Superior Court of Guam shall accept such highest increased bid, confirm the sale to the person making such highest increased bid, and fix a reasonable compensation for the services to the estate of the agent, if any, producing the successful bidder, or, in its discretion, order a new sale. The compensation of the agent producing the successful bidder shall not exceed one-half ($\frac{1}{2}$) of the difference between the amount of the bid in the original return and the amount of the successful bid, but such limitation shall not apply to any compensation of the agent holding the contract with the personal representative.

For the purposes of this Section the amount of a bid shall be determined by the Superior Court without regard to any commission on the amount of such bid to which an agent may be entitled by virtue of a contract with the personal representative. It shall be determined without regard to any condition of the bid that a certain amount thereof be paid to an agent by the personal representative, but notwithstanding that a bid contains such a condition, only such compensation to an agent as is proper under the preceding provisions of this Section shall be allowed, and acceptance of the bid by the Superior Court binds the bidder though the compensation so allowed is less than the compensation to which the agent would be entitled had the condition been observed.

Higher offers and bids are subject to the provisions of Section 2349 of this Title.

SOURCE: California Probate Code, § 785 (as amended).

§ 2349. Sales of Real Property: Confirmation of Private Sales; Credit Terms; Consideration of Higher Offers.

(a) If the private sale of real property of an estate returned for confirmation is upon a credit, a higher offer made to the Superior Court pursuant to the provisions of Section 2347 of this Title, either for cash or upon a credit, whether on the same or different credit terms, shall be considered only if the personal representative informs the Superior Court of Guam in person or by counsel that the offer is acceptable prior to confirmation of the sale.

(b) If the private sale of real property of an estate returned for confirmation is for cash and a higher offer made to the Superior Court pursuant to the provisions of Section 2347 of this Title is upon a credit, the offer shall be considered only if the personal representative informs the Superior Court in person or by counsel that the offer is acceptable prior to the confirmation of the sale.

SOURCE: California Probate Code, § 785.1.

§ 2351. Sales of Real Property: Conveyances After Confirmation; Contents; Recording; Effect.

Following confirmation of the sale of real property of the estate by the Superior Court, conveyances must thereupon be executed to the purchaser by the personal representative, and they must refer to the order confirming sale and directing conveyances to be executed, a certified copy of which order must be recorded in the Department of Land Management of the Government of Guam. Conveyances so made convey all the right, title, interest, and estate of the decedent in the premises at the time of the decedent's death; and if prior to the sale, by operation of law or otherwise, the estate has acquired any right, title or interest in the premises, other than or in addition to that of the decedent at the time of the decedent's death, such right, title or interest also passes by such conveyances.

SOURCE: Probate Code of Guam (1970), § 786.

§ 2353. Sales of Real Property: Credit Sales; Secured Notes; Sale of Joint Interests.

If the sale of real property of the estate is made upon a credit, the personal representative must take the note or notes of the purchaser for the unpaid portion of the purchase money, with a mortgage on the property to secure their payment, which mortgage shall be subject only to

15 GCA ESTATES AND PROBATE
CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

encumbrances existing at date of sale and such other encumbrances as the Superior Court of Guam shall approve. Where property sold by a personal representative for part cash and part deferred payments consists of an undivided interest in real or personal property or any other interest therein less than entire ownership, and the owner or owners of the remaining interests therein join in such sale, the note and mortgage may be made to the personal representative and such others having an interest in such property. The interest of the personal representative in such note and mortgage shall be in the same tenancy and in the same proportions as the estate's interest in the property prior to the sale.

SOURCE: California Probate Code, § 787 (as amended).

§ 2355. Sales of Real Property: Double Liability for Fraudulent Sale.

A personal representative who fraudulently sells any real property of an estate contrary to or otherwise than under the provisions of this Chapter, is liable for double the value of the real property sold, as liquidated damages, to be recovered in an action by the person having an estate of inheritance therein.

SOURCE: Probate Code of Guam (1970), § 792.

§ 2357. Sale of Contract to Purchase: Method of Sale.

If a decedent, at the time of his death, was possessed of a contract for the purchase of real property, his interest in such property and under such contract may be sold by his personal representative, in the same manner as if the decedent had died seized of such property, and the same proceedings may be had for that purpose as are prescribed in this Chapter for the sale of property of which the decedent died seized, except as provided in Sections 2359 and 2361 of this Chapter.

SOURCE: Probate Code of Guam (1970), § 800.

§ 2359. Sale of Contract to Purchase: Sale Subject to Payments Due and to Become Due; Purchaser's Bond.

The sale referred to in Section 2357 of this Title must be made subject to all payments which are due at the time of sale or which may thereafter become due on such contract, and if there are any such, the sale must not be confirmed by the Superior Court until the purchaser executes a bond to the personal representative for the benefit and indemnity of the personal representative and of the persons entitled to the interest of the decedent in the lands so contracted for, in an amount equal

15 GCA ESTATES AND PROBATE
CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

to the amount of payments then due and thereafter to become due on such contract, with such sureties as the Superior Court shall approve. The bond must be conditioned that the purchaser will make all payments on such property which are then due or which become due after the date of the sale, and will fully indemnify the personal representative and the persons so entitled against all demands, costs, charges and expenses, by reason of any covenant or agreement contained in such contract. Such bond need not be given when no claim has been made against the estate upon the contract and the time for filing or presenting claims has expired, nor need such bond be given if the person entitled to payment under such contract waives all recourse to the assets of the estate for such payment and releases the estate and the personal representative from liability thereunder.

SOURCE: California Probate Code, § 801 (as amended)

§ 2361. Sale of Contract to Purchase: Assignment After Confirmation; Nature and Scope.

Upon the confirmation of the sale referred to in Section 2357 of this Title, the personal representative must execute to the purchaser an assignment of the contract, which vests in the purchaser, his heirs and assigns, all the right, title, and interest of the estate, or of the persons entitled to the interest of the decedent, in the property sold at the time of the sale, and the purchaser has the same rights and remedies against the vendor of such land as the decedent would have had if he were living.

SOURCE: Probate Code of Guam (1970), § 802.

§ 2363. Borrowing Money and Mortgaging Estate Property: Authorization; Security; Procedure on Estate Less Than Entire Ownership.

(a) Whenever it shall appear to be to the advantage of the estate to borrow money upon a note or notes, either unsecured, or to be secured by a chattel mortgage upon the personal property of the decedent, or any part thereof, or to be secured by a mortgage upon the real property of the decedent, or any part thereof, or to mortgage or to pledge or give other lien upon such property or any part thereof, in order to pay the debts of the decedent, or legacies, or expenses or charges of administration, or to pay, reduce, extend or renew some lien or mortgage already subsisting upon property of the estate, and as often as occasion thereafter shall arise in the administration of the estate, the Superior Court may authorize, em-

15 GCA ESTATES AND PROBATE
CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

power and direct the personal representative to borrow the money and to execute such note or notes, and, in a proper case, to execute such mortgage, or to give other security by way of pledge or other lien, or may authorize in a proper case the execution of an extension agreement.

(b) When property of the estate consists of an undivided interest in real or personal property or any other interest therein less than the entire ownership, and it shall appear to be to the advantage of the estate to borrow money in order to improve, utilize, operate or preserve such property jointly with the owner or owners of the other interests therein, or in order to pay, reduce, extend or renew some pledge, lien or mortgage already subsisting upon all such property, including the other interest or interests therein, the Superior Court may authorize, empower and direct the personal representative to borrow the money required for such purposes and to join with the owner or owners of said other interest or interests in the property, in the execution of such pledge, lien or mortgage as may be required to secure the payment of such note or notes.

(c) To obtain any order referred to in subsections (a) and (b) of this Section, the proceedings to be taken and the effect thereof shall be as provided in Sections 2365 through 2371, inclusive, of this Title.

SOURCE: California Probate Code, § 830 (as amended).

§ 2365. Borrowing Money and Mortgaging Estate Property: Petition; Filing; Contents; Notice and Hearing.

The personal representative, or any person interested in the estate, shall file in the Superior Court a verified petition showing the particular purpose for which the order referred to in Section 2363 of this Title is sought, the necessity of or the advantage to accrue from such order, the amount of money proposed to be raised, if any, the rate of interest to be paid, the length of time the note or notes are to run, and a general description of the property proposed to be mortgaged or subjected to other lien. 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: Probate Code of Guam (1970), § 831.

§ 2367. Borrowing Money and Mortgaging Estate Property: Hearing; Order; Recordation.

At the time appointed pursuant to the provisions of Section 2365 of this Title, the Superior Court, upon proof that due notice of the hearing

15 GCA ESTATES AND PROBATE
CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

has been given, shall proceed to hear the petition referred to in Section 2365 of this Title and any objection thereto that may have been filed or presented; and if, after a full hearing, the Superior Court is satisfied that it will be to the advantage of the estate, the Superior Court of Guam shall make an order authorizing and directing the personal representative to borrow the money and to execute such note or notes, and, in a proper case, to execute such mortgage or to give such other security by way of pledge or other lien. The Superior Court may direct that a lesser amount than that named in the petition be borrowed, and may prescribe the maximum rate of interest and the period of the loan, and may direct in what coin or currency it shall be paid, and require that the interest and the whole or any part of the principal be paid, from time to time, out of the whole estate or any part thereof, and that the personal property to be mortgaged or subjected to the lien, or any buildings on the premises to be mortgaged, shall be insured for the further security of the lender, and the premiums paid from such income. A certified copy of the order referred to in this Section shall be recorded in the Department of Land Management of the Government of Guam.

SOURCE: California Probate Code, § 832.

§ 2369. Borrowing Money and Mortgaging Estate Property: Execution of Notes and Instruments of Security.

The personal representative shall execute, acknowledge and deliver the mortgage, pledge or other lien as directed by the order referred to in Section 2367 of this Title, setting forth therein that it is made by authority of such order. The note or notes and mortgage, pledge or other lien shall be signed by the personal representative as such, and shall create no personal liability against the person so signing.

SOURCE: Probate Code of Guam (1970), § 833.

§ 2371. Borrowing Money and Mortgaging Estate Property: Effectiveness of Encumbrance; Jurisdiction; Effect of Error or Irregularities; Deficiencies.

Every mortgage, pledge or other lien made pursuant to the provisions of Sections 2363 through 2369, inclusive, of this Title shall be effectual to mortgage, pledge or subject to such other lien all right, title, interest and estate which the decedent had in the property described therein at the time of the decedent's death or prior thereto, and any right, title or interest in said property acquired by the estate of such decedent

15 GCA ESTATES AND PROBATE
CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

by operation of law or otherwise, since the time of the decedent's death. Jurisdiction of the Superior Court to administer the estate of such decedent shall be effectual to vest the Superior Court with jurisdiction to make the order for the note or notes, and mortgage, pledge or other lien, and such jurisdiction shall conclusively inure to the benefit of the mortgagee named in the mortgage, the pledgee, or the holder of other lien, his heirs and assigns. No omission, error or irregularity in the proceedings shall impair or invalidate the same or the note or notes, mortgage, pledge or other lien given in pursuance thereof, and the mortgagee, pledgee or holder of other lien, his heirs and assigns, shall have and possess the same rights and remedies on the notes or notes and mortgage, pledge or other lien as if it had been made by the decedent prior to the decedent's death, except that upon any foreclosure, or sale under the pledge or other lien, if the proceeds of the sale of the encumbered property are insufficient to pay the note or notes, the mortgage, pledge or other lien, and the costs or expenses of sale, no judgment or claim for any deficiency, shall be had or allowed, except in cases where the note or notes, mortgage, pledge or other lien were given to pay, reduce, extend or renew a mortgage, pledge or other lien subsisting at the time of the decedent's death and the indebtedness secured thereby was an allowed and approved claim against the estate, in which case the part of the indebtedness remaining unsatisfied must be classed and paid with other allowed claims against the estate.

SOURCE: Probate Code of Guam (1970), § 834.

§ 2373. Leasing Estate Property: Authorization.

Whenever it shall appear to be to the advantage of the estate to lease any real property of the decedent, and as often as occasion therefor shall arise in the administration of the estate, the Superior Court may authorize and direct the personal representative to execute such leases. To obtain such order, the proceedings to be taken and the effect thereof shall be as provided in Sections 2375 through 2381, inclusive, of this Title.

SOURCE: First sentence: Probate Code of Guam (1970), § 840. Second sentence: Guam Law Revision Commission.

§ 2375. Leasing Estate Property: Petition; Filing; Contents; Setting and Notice.

To obtain the order referred to in Section 2373 of this Title, the personal representative, or any person interested in the estate, shall file in the Superior Court a verified petition showing the advantage to accrue

15 GCA ESTATES AND PROBATE
CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

from giving the lease, a general description of the property to be leased, and the term, rental and general conditions of the proposed lease. The Clerk of the Superior Court shall set the petition for hearing, and notice thereof shall be give in the manner provided in Section 3401 of this Title.

SOURCE: California Probate Code, § 841 (as amended); Guam Law Revision Commission.

§ 2377. Leasing Estate Property: Hearing; Order, Conditions; Duration; Partial Interests; Recording.

At the time appointed pursuant to the provisions of Section 2375 of this Title, the Superior Court, upon proof that due notice of the hearing has been given, shall hear the petition referred to in Section 2375 of this Title and any objection that might have been filed or presented, and shall entertain and consider any other offer made, in good faith, at the hearing, to lease the same property on more favorable terms; and, if the Superior Court is satisfied that it will be to the advantage of the estate, it shall make an order authorizing the personal representative to make such lease to the person and on the terms stated in the order; provided, however, that the Superior Court shall not make an order authorizing the personal representative to make such lease to any person other than the lessee named in the petition, unless the offer made at the hearing is acceptable to the personal representative. The order shall set forth the minimum rental and the period of the lease, which must not be longer than ten (10) years, except as otherwise provided in Section 2379 of this Title. If the lease covers additional property owned by other persons or an undivided interest of the decedent, or other interest of the decedent less than the entire ownership of the property, it may provide for division of rental in the proportion that the land or interest of each owner bears to the total area of the land or total interest covered by such lease. A certified copy of the order referred to in this Section shall be recorded in the Department of Land Management of the Government of Guam.

SOURCE: California Probate Code, § 842 (as amended, omitting provisions covering oil, gas and petrochemical leases and leases for asparagus growing.)

§ 2379. Leasing Estate Property: Leases Over Ten Years; Hearing.

The Superior Court may authorize the giving of a lease for longer than ten (10) years when the verified petition referred to in Section 2375 of this Title alleges facts showing the need for such longer lease and its advantage to the estate and the persons interested therein. In such case the petitioner shall give such further notice, if any, as the Superior Court

15 GCA ESTATES AND PROBATE
CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

of Guam may direct, which notice shall be in addition to the notice provided in Section 3401 of this Title. The Superior Court of Guam shall not authorize the giving of a lease for longer than ten (10) years if any heir, devisee or legatee who has an interest in the property to be leased objects at the hearing.

SOURCE: California Probate Code, § 842.1 (as amended); Guam Law Revision Commission.

§ 2381. Leasing Estate Property: Execution of Lease; Contents; Effect; Jurisdiction; Effect of Errors or Irregularities.

The personal representative shall execute, acknowledge and deliver the lease as directed by the order referred to in Section 2377 or Section 2379 of this Title, setting forth therein that it is made by authority of such order, and giving the date of such order. Every lease so made shall be effectual to demise and let the premises described, at the rent, for the term and upon the conditions therein prescribed. Jurisdiction of the Superior Court to administer the estate of the decedent shall be effectual to vest the Superior Court with jurisdiction to make the order for the lease, and such jurisdiction shall conclusively inure to the benefit of the lessee, his heirs and assigns. No omission, error or irregularity in the proceedings shall impair or invalidate the same or the lease made in pursuance thereof.

SOURCE: Probate Code of Guam (1970), § 843.

§ 2383. Leasing Estate Property: Lease Without Court Order.

Notwithstanding any other provision of law, the personal representative may lease real property of the estate without an order of the Superior Court when the rental does not exceed two hundred fifty dollars (\$250.00) per month and the term does not exceed one (1) year, or, regardless of the amount of rental, when the lease is from month to month.

SOURCE: California Probate Code, § 844 (as amended).

§ 2385. Conveyance to Complete Contract: Authorization.

If a person who is bound by a contract in writing to convey any real property or to transfer any personal property dies before making conveyance or transfer, and the decedent, if living, might have been compelled to make such conveyance or transfer, or if a person binds himself or his personal representative by contract in writing to convey any real property or to transfer any personal property upon or after his

15 GCA ESTATES AND PROBATE
CH. 23 PERSONAL REPRESENTATIVE'S DEALINGS WITH ESTATE PROPERTY

death, and the contract is one which can be specifically enforced, the Superior Court may make an order authorizing and directing the personal representative to convey or transfer the property to the person entitled thereto. To obtain such order, the proceedings to be taken and the effect thereof shall be as provided in Sections 2387 through 2391, inclusive, of this Title.

SOURCE: First sentence: California Probate Code, § 850 (as amended). Second sentence: Guam Law Revision Commission.

§ 2387. Conveyance to Complete Contract: Petition; Filing; Setting; Notice.

The personal representative or any person claiming to be entitled to the conveyance or transfer referred to in Section 2385 of this Title may file with the Clerk of the Superior Court of Guam a verified petition, setting forth the facts upon which the claim is predicated. Thereupon 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, and a copy of the notice shall be served personally upon the personal representative if the personal representative is not the petitioner.

SOURCE: Probate Code of Guam (1970), § 851; Guam Law Revision Commission.

COMMENT: Section 851 of the Probate Code of Guam (1970) contained more onerous notice requirements, which requirements the Commission feels are unnecessary in light of the revised notice provisions throughout this Title. Also see Comment to § 1515, *supra*.

§ 2389. Conveyance to Complete Contract: Hearing and Order.

At the time appointed pursuant to the provisions of Section 2387 of this Title, the Superior Court, upon proof that due notice of the hearing has been given, shall proceed to hear the petition referred to in Section 2387 of this Title and any objections thereto that may have been filed or presented; and if the Superior Court is satisfied that the conveyance or transfer should be made, it shall make an order authorizing and directing the personal representative to execute the same to the party entitled thereto. If the transaction relates to real property, a certified copy of the order referred to in this Section shall be recorded with the deed in the Department of Land Management of the Government of Guam.

SOURCE: Probate Code of Guam (1970), § 852.

§ 2391. Conveyance to Complete Contract: Effect of Order; Possession; Execution of Conveyance.

The order referred to in Section 2389 of this Title shall be prima facie evidence of the correctness of the proceedings and of the authority of the personal representative to make the conveyance or transfer; and after its entry the person entitled thereunder has a right to the possession of the property, and to hold the same according to the terms of the order as if the same had been conveyed or transferred in accordance with the terms of the order. The personal representative must nevertheless execute the conveyance or transfer according to the directions of the order, and the Superior Court may enforce its execution by process. The conveyance or transfer of the personal representative shall pass title to the property as fully as if the decedent had executed it while living.

SOURCE: California Probate Code, § 853 (as amended).

§ 2393. Exchange of Estate Property: Authorization; Petition; Notice; Hearing.

Whenever it shall appear to be to the advantage or best interests of the estate to exchange any property of the decedent for other property, the Superior Court may authorize such exchange, upon such terms and conditions as it may prescribe, which may include the payment or receipt of part cash by the personal representative, upon the petition of the personal representative or of any person interested in the estate, and after notice of the hearing has been given in the manner provided in Section 3401 of this Title.

SOURCE: California Probate Code, § 860 (as amended through 1939).
