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CH. 26 INVENTORY AND APPRAISEMENT**

**CHAPTER 26
INVENTORY AND APPRAISEMENT**

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§ 2601. Definition of Personal Representative.

For purposes of this Chapter, the term personal representative shall be defined as it is defined in Section 2501 of this Title.

SOURCE: Guam Law Revision Commission.

COMMENT: See Comment to § 2501, supra.

§ 2603. Time for Filing Inventory and Appraisement; Contents.

Within three (3) months after his appointment, or within such further time as the Superior Court of Guam for reasonable cause may allow, the personal representative must file with the Clerk of the Superior Court of Guam an inventory and appraisement of the estate of the decedent which has come to the personal representative's possession or

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knowledge. The inventory must include the homestead, if any, and all the estate of the decedent, real and personal, particularly specifying all debts, bonds, mortgages, deeds of trust, notes, and other securities for the payment of money belonging to the decedent, with the name of each debtor, the date, the sum originally payable, the endorsements thereon, if any, with their dates, and a statement of the interest of the decedent in any partnership of which the decedent was a member, to be appraised as single item. It must include an account of all moneys belonging to the decedent. If the whole estate consists of money in the hands of the personal representative, there need not be an appraisal, but an inventory must be made and returned as in other cases. The Superior Court of Guam may in its discretion waive the requirements of this Section where it appears that none of the heirs, devisees, legatees, or creditors will be prejudiced by such waiver.

SOURCE: Probate Code of Guam (1970), § 600.

§ 2605. Community and Separate Property.

The inventory referred to in Section 2603 of this Title must show, so far as the same can be ascertained by the personal representative, what portion of the property is community property, and what portion is separate property of the decedent.

SOURCE: Probate Code of Guam (1970), § 601.

§ 2607. Testator's Claims Against Executor.

The naming of a person as executor does not thereby discharge such person from any just claim which the testator has against him, but the claim must be included in the inventory referred to in Section 2603 of this Title, and the executor is liable for the same as for so much money in his hands, when the debt or demand becomes due.

SOURCE: Probate Code of Guam (1970), § 602.

§ 2609. Testator's Claims Against Executor; Bequest to Executor; Nature and Effect.

The discharge or bequest in a will of any debt or demand of the testator against the executor or any other person is not valid against the creditors of the decedent, but is a specific bequest of the debt or demand. It must be included in the inventory referred to in Section 2603 of this Title and, if necessary, applied in the payment of the debts. If not

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necessary for that purpose, it must be paid in the same manner and proportion as other specific legacies.

SOURCE: Probate Code of Guam (1970), § 603.

COMMENT: In § 603 of the Probate Code of Guam (1970), the phrase "...against the executor of any other person..." (emphasis added) appears in the first sentence. This was apparently a typographical error, as the corresponding California section reads like § 2609 in every respect. The Commission is of the opinion that the California version is correct, in that it makes considerably more sense in context than the version appearing in the Probate Code of Guam (1970).

§ 2611. Oath.

The personal representative must take and subscribe an oath that the inventory referred to in Section 2603 of this Title contains a true statement of all of the estate of the decedent which has come to the personal representative's possession or knowledge, and particularly of all money belonging to the decedent, and of all just claims of the decedent against the affiant. The oath must be endorsed upon or annexed to the inventory.

SOURCE: Probate Code of Guam (1970), § 604.

§ 2613. Appraisement: Personalty to be Appraised, or its Value Estimated, by Personal Representative; Court has Discretion to Order Professional Appraisement of Personalty; Real Property to be Appraised by Court-Appointed Appraiser; Procedure.

(a) (1) The personal representative shall appraise at fair market value moneys, currency, cash items, bank accounts and amounts on deposit with any financial institution, and the proceeds of life and accident insurance policies and retirement plans payable upon death in lump sum amounts, excepting therefrom such items whose fair market value is, in the personal representative's opinion, an amount different from the ostensible value or specified amount. As used herein, "financial institution" means a bank, trust company, federal savings and loan association, savings institution chartered and supervised as a savings and loan or similar institution under federal law or the laws of the territory of Guam, federal credit union, or credit union chartered and supervised under the laws of the territory of Guam.

(2) The personal representative shall estimate the fair market value of each item excepted from the appraisement

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referred to in subsection (a)(1) of this Section, and of each other item of personal property belonging to the estate, and enter his estimate of the value of each such item on the inventory and appraisal provided by Section 2603 of this Title in lieu of an appraisal thereof, noting thereon with respect to each such item that the value set forth on the inventory and appraisal for each such item is an estimate of such item's fair market value and not an appraisal thereof.

(3) If the Superior Court of Guam determines, either upon the hearing for confirmation of the sale of any item, whose fair market value was estimated by the personal representative pursuant to the provisions of subsection (a) of this Section, or upon the settlement of any account of the personal representative, or at any other time prior to the discharge of the personal representative, that the personal representative's estimate of the fair market value of any item made pursuant to the provisions of subsection (a)(2) of this Section 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 by the Superior Court of Guam.

(b) The appraisal of all assets belonging to the estate, other than those appraised or estimated by the personal representative pursuant to the provisions of subsection (a) of this Section, shall be made by one qualified, disinterested person who shall be appointed as appraiser by the Superior Court of Guam. The personal representative shall furnish to the appraiser such information concerning the assets appraised or estimated by the personal representative, or concerning any other assets of the estate, as the appraiser shall require, in substance and form as prescribed by the appraiser.

(c) Neither the personal representative nor the personal representative's attorney shall be entitled to receive compensation for extraordinary services by reason of appraising or estimating the fair market value of any asset pursuant to the provisions of this Section.

SOURCE: California Probate Code, § 605 (as amended); Guam Law Revision Commission.

COMMENT: Under current California law, as well as under prior Guam law, the assets of the estate are appraised by someone other than the personal representative

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(except for those assets enumerated in subsection (a)(1) of § 2613.) The Commission is of the opinion that such professional appraisal is unnecessary, in most cases, with respect to items of personal property belonging to the estate; in most cases, the personal representative's estimate of the value of such items should be sufficient. The Commission has thus added subsection (a)(2), requiring the personal representative to estimate the fair market value of estate personal property (and of those items specifically exempted from appraisal by subsection (a)(1),) and to note on the inventory and appraisal that the value set forth for such items is an estimate and not an appraisal. Recognizing that such estimates may not always be correct, however, the Commission has also incorporated into subsection (a)(2) the provision that the court has full discretion to require any such item to be appraised by a professional appraiser (as is always done with respect to real property under subsection (b) of § 2613) if the court determines that the estimate made by the personal representative is materially incorrect. The Commission is of the opinion that this scheme should be fair to all parties concerned, and should substantially decrease the estate's outlay for appraiser's fees while still ensuring that all assets of the estate will be appraised at a value very close to (if not always exactly) fair market value.

§ 2615. Competency to Act as Appraiser.

No Clerk of the Superior Court of Guam or Deputy Clerk of the Superior Court of Guam, or partner or employee of a judge of the Superior Court of Guam, or person related to a judge of the Superior Court of Guam or to his spouse within the third degree, or who is married to a relative of a judge of the Superior Court of Guam within the third degree, shall be competent to act as appraiser.

SOURCE: California Probate Code, § 606 (as amended).

§ 2617. Form of Inventory and Appraisal; Signatures; Oaths.

The inventory and appraisal shall be prepared in such form as to set down each item separately with the fair market value thereof at the time of the decedent's death in dollars and cents in figures opposite the respective items. The appraisal shall be signed by the personal representative as to those assets appraised or estimated by him, and by the appraiser as to those assets appraised by him. The personal representative and the appraiser shall each subscribe his oath or statement under penalty of perjury that all items thereof which he has appraised or estimated have been truly, honestly, and impartially appraised, or the fair market value thereof estimated, to the best of his ability.

SOURCE: First sentence: California Probate Code, § 600 (as amended); Guam Law Revision Commission. Balance: California Probate Code, § 608 (as amended); Guam Law Revision Commission.

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COMMENT: The Commission has altered the language of the California statutes to cause § 2617 to comport with § 2613, *supra*. See Comment to § 2613, *supra*.

§ 2619. Compensation of Appraiser.

The appraiser is entitled to receive, from the estate he appraises, his actual and necessary expenses and reasonable compensation for his services, to be allowed by the Superior Court of Guam; and the appraiser must file, with the inventory and appraisal, a verified account of his services and disbursements.

SOURCE: Probate Code of Guam (1970), § 609.

§ 2621. Failure to File Inventory; Revocation of Letters; Liability of Personal Representative.

If the personal representative neglects or refuses to file the inventory and appraisal within the time prescribed, the Superior Court of Guam, upon notice, may revoke the personal representative's letters, and the personal representative shall be liable for any injury to the estate or any person interested therein, arising from such failure. Any damages awarded pursuant to this Section shall be a charge upon the bond of the personal representative, if there be a bond. If the bond is insufficient, or if there is no bond and the security provided by the personal representative for the faithful performance of his trust is insufficient, then the damages shall be charge against the personal assets of the personal representative.

SOURCE: California Probate Code, § 610 (as amended).

§ 2623. Inventory and Appraisal of Newly Discovered Property.

Whenever property not included in the inventory referred to in Section 2603 of this Title comes to the possession or knowledge of the personal representative, the personal representative must cause an inventory and appraisal thereof to be made and filed in the manner prescribed in this Chapter for making and filing the original inventory and appraisal. Such new inventory and appraisal shall be filed within two (2) months after the discovery, and the making and filing thereof may be enforced, after notice, by attachment or removal from office.

SOURCE: California Probate Code, § 611 (as amended).

§ 2625. Penalty for Embezzlement of Decedent's Property.

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If any person embezzles, conceals, smuggles, or fraudulently disposes of any property of a decedent, he is chargeable therewith, and liable to an action by the personal representative of the estate for double the value of the property, to be recovered for the benefit of the estate.

SOURCE: Probate Code of Guam (1970), § 612.

§ 2627. Procedure Against Embezzler of Decedent's Property.

Upon complaint made under oath by a personal representative or other person interested in the estate of a decedent, that any person is suspected of having embezzled, concealed, smuggled, or fraudulently disposed of any property of the decedent, or has in his possession or has knowledge of any deed, conveyance, bond, contract, or other writing, which contains evidence of or tends to disclose the right, title, interest or claim of the decedent to any real or personal property, or any claim or demand, or any lost will, the Superior Court of Guam may cite the suspected person to appear before the Superior Court of Guam, and may examine the suspected person on oath upon the matter of such complaint. If the suspected person is found innocent, his necessary expenses must be allowed him out of the estate.

SOURCE: Probate Code of Guam (1970), § 613.

§ 2629. Enforcement of Examination of Person Suspected of Embezzlement of Decedent's Property.

If the person cited pursuant to the provisions of Section 2627 of this Title refuses to appear and submit to an examination, or to answer such interrogatories as may be put to him, touching the matters of the complaint made pursuant to the provisions of Section 2627 of this Title, the Superior Court of Guam, by warrant for that purpose, may commit such person to the jail, there to remain until he submits to the order of the Superior Court of Guam or is discharged according to law. If, upon such examination, it appears that he has embezzled, concealed, smuggled, or fraudulently disposed of any property of the decedent, or that he has in his possession or knowledge any of the papers or documents mentioned in Section 2627 of this Title, the Superior Court of Guam may make an order requiring him to disclose his knowledge thereof to the personal representative, and may commit him to the jail, there to remain until the order is complied with or he is discharged according to law. All such interrogatories and answers must be in writing, signed by the party examined, and filed in the Superior Court of Guam. In addition to the

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examination of the party, witnesses may be produced and examined on either side.

SOURCE: Probate Code of Guam (1970), § 614.

§ 2631. Examination of Person Entrusted With Part of Estate.

The Superior Court of Guam, upon the complaint, on oath, of any personal representative, may cite any person who has been entrusted with any part of the estate of the decedent to appear before the Superior Court of Guam and require such person to render a full account, on oath, of any moneys, accounts, or other property or papers belonging to the estate, which have come such person's possession, and of such person's proceedings thereon; and if the person so cited refuses to appear and render such account, the Superior Court of Guam may proceed against him as provided in Section 2629 of this Title.

SOURCE: Probate Code of Guam (1970), § 615.
