

15 GCA ESTATES AND PROBATE
CH. 27 ACCOUNTING AND PAYMENT OF DEBTS

CHAPTER 27
ACCOUNTING AND PAYMENT OF DEBTS

- § 2701. Liability of Personal Representative; Acts of Co-personal Representative; Personal Profits; Sales; Trust Company as Personal Representative Must Pay Interest.
- § 2703. Accounting Required by Court Enforcement.
- § 2705. Accounting After Close of Period for Filing Claims; Final Account; Enforcement of Accounting.
- § 2707. Accounting After Personal Representative's Authority Ceases.
- § 2709. Revocation of Letters for Absconding or Concealment, and Failure to Account.
- § 2711. Vouchers: Keeping and Filing; Withdrawal; Destruction or Redelivery.
- § 2713. Setting Account for Settlement; Notice; Distribution After Settlement.
- § 2715. Exceptions to Account; Hearing; Reference; Orders.
- § 2717. Trial of Contested Claims.
- § 2719. Debts Paid Without Filing or Presenting Proper Claims; Allowance on Accounting.
- § 2721. Allowance on Lost or Destroyed Vouchers; Duplicates; Allowances Without Vouchers; Restrictions.
- § 2723. Order Settling Account; Effect.
- § 2725. Account of Deceased or Incompetent Personal Representative; Accounting by Attorney; Fee for Such Accounting.
- § 2727. Expenses, Charges and Debts; Order of Payment.
- § 2729. Time for Payment of Expenses of Administration, Funeral, Last Illness, Family Allowance and Wage Claims; Payment of Other Debts and Legacies on Court Order; Funeral and Last Illness Expenses to be Debts of Decedent's Estate.
- § 2731. Order for Payment; Payment by Classes; Proration; Discharge of Personal Representative on Exhaustion of Estate.
- § 2733. Future, Contingent or Disputed Claims; Payment Into Court; Distribution; Interest Deduction from Claims Not Due; Insolvent Estates.
- § 2735. Liability on Allowed Claims; Execution.
- § 2737. Claim Omitted From Account; Creditor's Remedies.
- § 2739. Closing or Continuing Administration After First Order for Payment.

15 GCA ESTATES AND PROBATE
CH. 27 ACCOUNTING AND PAYMENT OF DEBTS

§ 2741. Liability of Estate and Surviving Spouse; Allocation; Petition; Contents; Determination; Order.

§ 2701. Liability of Personal Representative; Acts of Co-Personal Representative; Personal Profits; Sales; Trust Company as Personal Representative Must Pay Interest.

(a) Every personal representative is chargeable in his accounts with all of the estate of the decedent which comes into his possession, and with all the income, issues and profits of the estate; but the personal representative is not accountable for any debts due to the decedent which remain uncollected without the fault of the personal representative, nor is the personal representative liable for the act or negligence of a co-personal representative, except for collusion or gross negligence. The personal representative shall not make profit by the increase, nor suffer loss by the decrease or destruction without his fault, of any part of the estate. The personal representative must account for the excess when he sells any part of the estate for more than the appraisement, but is not responsible for the loss if any is sold for less than the appraisement, if the sale has been justly made.

(b) When the personal representative is a trust company, and in the exercise of reasonable judgment deposits money of the estate in any department of the corporation of which it is a part, it shall be chargeable with interest thereon at the rate of interest prevailing upon like deposits in the corporation of which it is a part.

SOURCE: Subsection (a): Probate Code of Guam (1970), § 920. Subsection (b): California Probate Code, § 920.5; Guam Law Revision Commission.

§ 2703. Accounting Required by Court; Enforcement.

Whenever required by the Superior Court, either upon its own motion or upon the application of any person interested in the estate, the personal representative must render and file with the Clerk of the Superior Court a verified account showing the amount of money received and expended by the personal representative, the claims filed or presented against the estate, giving the name of each claimant, the nature of the claim, when it became due or will become due, whether it was allowed or rejected by the personal representative, or not yet acted upon, and all other matters necessary to show the condition of the estate. If the personal representative neglects or refuses to appear and render such account, after having been duly cited, an attachment may be issued

against him and such accounting compelled, or his letters may be revoked, or both, in the discretion of the Superior Court.

SOURCE: Probate Code of Guam (1970), § 921.

§ 2705. Accounting After Close of Period for Filing Claims; Final Account; Enforcement of Accounting.

Within thirty (30) calendar days after the time to file or present claims against the estate has expired, the personal representative must render a full and verified account and report of his administration, which shall include all of the matters referred to in Section 2703 of this Title. The personal representative must render a final account, and pray a settlement of his administration, whenever there are sufficient funds in his hands for the payment of all debts and the estate is in a proper condition to be closed. If the personal representative fails to present his account the Superior Court must compel the accounting by attachment. Any person interested in the estate may apply for and obtain an attachment, but no attachment shall issue unless a citation has first been issued, served and returned, requiring the personal representative to appear and show cause why an attachment should not issue.

SOURCE: Probate Code of Guam (1970), § 922.

§ 2707. Accounting After Personal Representative's Authority Ceases.

When the authority of a personal representative is revoked or ceases for any reason, he may be cited to appear before the Superior Court, at the instance of the person succeeding to the administration of the estate, in like manner as he might have been cited by any person interested in the estate while he was personal representative.

SOURCE: Probate Code of Guam (1970), § 923.

§ 2709. Revocation of Letters for Absconding or Concealment, and Failure to Account.

If the personal representative absconds or conceals himself so that a citation cannot be personally served, and he neglects to render an account as prescribed in this Chapter, or if an attachment has been executed and the personal representative neglects to render an account within thirty (30) calendar days after being committed, the letters of the personal representative must be revoked.

SOURCE: Probate Code of Guam (1970), § 924.

§ 2711. Vouchers: Keeping and Filing; Withdrawal; Destruction or Redelivery.

The personal representative shall keep vouchers for all payments which he has made, and may file them with the Clerk of the Superior Court, and shall produce and file them with the Clerk of the Superior Court if so ordered by the Superior Court or if a person interested in the estate files a written request therefor with the Clerk of the Superior Court and serves a copy thereof on the personal representative or upon the personal representative's attorney at least five (5) calendar days prior to the time of the hearing. The vouchers must be retained by the personal representative or remain on file with the Clerk of the Superior Court until withdrawn, returned or destroyed as hereinafter provided in this Section. Any voucher filed with the Clerk of the Superior Court may be withdrawn by the personal representative or by the personal representative's attorney on leaving a certified copy on file with the Clerk of the Superior Court, but it must be produced on demand, unless permanently withdrawn with the permission of the Superior Court. Two (2) years from the time the decree of final distribution has become final, the personal representative or the Clerk of the Superior Court may destroy the vouchers, or the Clerk of the Superior Court may deliver them to the personal representative or to the personal representative's attorney, who may destroy them, unless a person interested in the estate has filed a written request to retain such vouchers with the Clerk of the Superior Court and has served a copy of the request on the personal representative or on the personal representative's attorney within two (2) years from the time the decree of final distribution has become final. In the event such a request has been so filed, the Clerk of the Superior Court or the personal representative or the personal representative's attorney may, unless otherwise ordered by the Superior Court, destroy the vouchers after four (4) years from the time the decree of final distribution has become final or the Clerk of the Superior Court may deliver the vouchers to the personal representative or to the personal representative's attorney, who may destroy them.

SOURCE: California Probate Code, § 925 (as amended).

§ 2713. Setting Account for Settlement; Notice; Distribution After Settlement.

When an account is rendered for settlement, the Clerk of the Superior Court shall set the same for settlement by the Superior Court,

15 GCA ESTATES AND PROBATE
CH. 27 ACCOUNTING AND PAYMENT OF DEBTS

and notice thereof shall be given in the manner provided in Section 3401 of this Title. If the account is for final settlement, and a petition for final distribution of the estate is filed with the account, the notice of settlement must so state, and on the settlement of the account, distribution of the estate to those entitled thereto may be had immediately, without further notice or proceedings.

SOURCE: Probate Code of Guam (1970), § 926.

§ 2715. Exceptions to Account; Hearing; Reference; Orders.

Any person interested in the estate may appear and file written exceptions to the account, and contest the same. Upon the hearing, the personal representative may be examined on oath touching the account and the property and effects of the decedent, and the disposition thereof. All matters, including allowed claims not passed upon the settlement of any former account and not reduced to judgment, may be contested for cause shown. The Superior Court may appoint one or more referees to examine the accounts, and make report thereon, subject to confirmation; may allow a reasonable compensation to such referee or referees to be paid out of the estate; and may issue such other orders as the Superior Court may deem necessary to effect the provisions of this Section.

SOURCE: Probate Code of Guam (1970), § 927; California Probate Code, § 927 (as amended).

COMMENT: The last clause of § 2715 (“...and may issue such other orders...”, etc.) has been taken from the amended version of § 927 of the California Probate Code. Another clause, going to matters of state inheritance tax, was also added to the California version upon its amendment in 1976; as Guam has no such tax, however, that clause is unnecessary in Guam.

§ 2717. Trial of Contested Claims.

Whenever an allowed claim is contested by any person entitled to contest it, either the contestant or the claimant is entitled to a trial of the issues, both of fact and of law, presented by the contest; and the Superior Court shall hear and determine such issues and shall enter an order disposing of the contest.

SOURCE: Probate Code of Guam (1970), § 928.

§ 2719. Debts Paid Without Filing or Presenting Proper Claims; Allowance on Accounting.

If it appears that debts of the decedent have been paid without verified claims having been filed or presented and allowed and approved,

15 GCA ESTATES AND PROBATE
CH. 27 ACCOUNTING AND PAYMENT OF DEBTS

and it shall be proven that such debts were justly due, were paid in good faith, that the amount paid was the true amount of such indebtedness over and above all payments or set offs, and that the estate is solvent, the Superior Court, in settling the account, shall allow the sums so paid.

SOURCE: Probate Code of Guam (1970), § 929.

§ 2721. Allowance on Lost or Destroyed Vouchers; Duplicates; Allowances Without Vouchers; Restrictions.

If it is proven that vouchers for any disbursements have been lost or destroyed, that it is impossible to obtain duplicates, and that the items were paid in good faith and were legal charges against the estate, the personal representative shall be allowed such items. The personal representative may be allowed any item of expenditure not exceeding one hundred dollars (\$100.00), for which no voucher is produced, if it is supported by his uncontradicted oath positive to the fact of payment, specifying when, where, and to whom it was made; but the total amount of such allowances in all of the personal representative's accounts must not exceed two thousand five hundred dollars (\$2,500.00).

SOURCE: California Probate Code, § 930 (as amended).

§ 2723. Order Settling Account; Effect.

The order settling and allowing the account, when it becomes final, is conclusive against all persons interested in the estate, saving, however, to persons under legal disability, the right to move for cause to reopen and examine the account, or to proceed by action against the personal representative or his sureties, at any time before final distribution; and in any such action such order is prima facie evidence of the correctness of the account.

SOURCE: Probate Code of Guam (1970), § 931.

§ 2725. Account of Deceased or Incompetent Personal Representative; Accounting by Attorney; Fee for Such Accounting.

If the personal representative dies or becomes incompetent, his accounts may be presented by his personal representative or guardian to, and settled by, the Superior Court, and, upon petition of the successor of such deceased or incompetent personal representative, the Superior Court shall compel the personal representative or guardian of the deceased or incompetent personal representative to render an account of the administration of his testator or intestate, and must settle such account as

15 GCA ESTATES AND PROBATE
CH. 27 ACCOUNTING AND PAYMENT OF DEBTS

in other cases. In the event the personal representative dies or becomes incompetent and there is no personal representative appointed for his estate, or he absconds, then the Superior Court may compel the attorney for such absconding, deceased or incompetent personal representative or attorney of record in the estate proceeding to render an account of the administration of such absconding, deceased or incompetent personal representative to the extent that the attorney has information or records available to him for the purpose. The account of the attorney need not be verified. A reasonable fee shall be allowed to the attorney by the Superior Court for this extraordinary service.

SOURCE: California Probate Code, § 932 (as amended).

§ 2727. Expenses, Charges and Debts; Order of Payment.

The debts of the decedent, the expenses of administration and the charges against the estate shall be paid in the following order:

1. Expenses of administration;
2. Funeral expenses;
3. Expenses of last illness;
4. Family allowance;
5. Debts to the Government of Guam;

6. Wages, to the extent of nine hundred dollars (\$900.00), of each employee of the decedent, for work done or personal services rendered within ninety (90) calendar days prior to the death of the employer. If there is not sufficient money with which to pay all such labor claims in full, then money available must be distributed among the claimants in accordance with the amount of their respective claims;

7. Mortgages, judgments that are liens, and other liens, in order of their priority, so far as they are paid out of the proceeds of the encumbered property. If such proceeds are insufficient for that purpose, the part of the debt remaining unsatisfied shall be classed with the general demands against the estate;

8. Judgments that are not liens rendered against the decedent in his lifetime and all other demands against the estate, without preference or priority one over another.

SOURCE: California Probate Code, § 950 (as amended); Probate Code of Guam (1970), § 950.

15 GCA ESTATES AND PROBATE
CH. 27 ACCOUNTING AND PAYMENT OF DEBTS

COMMENT: For the most part, § 2727 is based on the amended version of § 950 of the California Probate Code. The only portion which has been taken from § 950 of the Probate Code of Guam (1970) is subsection (5), "...Debts to the Government of Guam," which reads in the California version, "Debts having preference by the laws of the United States..." The Commission is of the opinion that either version is acceptable, but that in this instance the prior Guam version should be carried over into this Title for the sake of clarity.

§ 2729. Time for Payment of Expenses of Administration, Funeral, Last Illness, Family Allowance and Wage Claims; Payment of Other Debts and Legacies on Court Order; Funeral and Last Illness Expenses to be Debts of Decedent's Estate.

(a) As soon as the personal representative has sufficient funds in his hands, after retaining sufficient to pay the expenses of administration, the personal representative must pay the funeral expenses, the expenses of the last illness, the family allowance, and wage claims to the extent of nine hundred dollars (\$900.00) of each employee of the decedent for work done or personal services rendered within ninety (90) days prior to the death of the employer; but the personal representative is not obliged to pay any other debt or any legacy until, as prescribed in this Chapter, the payment has been ordered by the Superior Court.

(b) Funeral expenses and expenses of last illness shall be deemed debts payable out of the estate of the deceased spouse, and shall not be charged to the community share of a surviving spouse, whether or not the surviving spouse is financially able to pay such expenses and whether or not the surviving spouse or any other person is also liable therefor.

SOURCE: Subsection (a): Probate Code of Guam (1970), § 951. Subsection (b): California Probate Code, § 951.1 (as amended).

COMMENT: Subsection (a) of § 2729 has been slightly altered from § 951 of the Probate Code of Guam (1970), to increase the amount of wage claims from \$200.00 to \$900.00; this has been done to cause § 2729 to comport with § 2727. Subsection (b) has been taken from § 951.1 of the California Probate Code, which was added in 1957 and amended in 1970. As with certain other new Sections, the purpose of subsection (b) is to rationalize the operation of the community property system upon the death of one of the members of the community; see Comments to §§ 2513, 2515, and 2535, *supra*.

§ 2731. Order for Payment; Payment by Classes; Proration; Discharge of Personal Representative on Exhaustion of Estate. Upon the settlement of any account of the personal representative after the time to file or present claims has expired, the Superior Court shall order the payment of the debts, as the circumstances of the estate permit. If there

15 GCA ESTATES AND PROBATE
CH. 27 ACCOUNTING AND PAYMENT OF DEBTS

are not sufficient funds to pay all of the debts, the decree shall specify the sum to be paid to each creditor. No creditor of any one class shall receive any payment until all those of a preferred class are fully paid; and if the estate is insufficient to pay all the debts of any one class, each creditor of that class must be paid a dividend in proportion to his claim. If the property of the estate is exhausted by the payment ordered, such account shall constitute a final account, and the personal representative shall be entitled to his discharge on proof that he has complied with the decree.

SOURCE: California Probate Code, § 952 (as amended).

§ 2733. Future, Contingent or Disputed Claims; Payment Into Court; Distribution; Interest Deduction From Claims Not Due; Insolvent Estates.

If there is any claim not due, or any contingent or disputed claim against the estate, the amount thereof, or such part of the same as the holder would be entitled to if the claim were due, established, or absolute, must be paid into the Superior Court, and there remain, to be paid over to the party when he becomes entitled thereto; or, if he fails to establish his claim, to be paid over or distributed as the circumstances of the estate require. If a creditor whose claim has been allowed, but is not yet due, appears and assents to a deduction therefrom of the legal interest from the time the claim has yet to run, he is entitled to be paid accordingly. The payments provided for in this Section are not to be made when the estate is insolvent, unless a pro rata distribution is ordered.

SOURCE: Probate Code of Guam (1970), § 953.

§ 2735. Liability on Allowed Claims; Execution.

When an order is made for the payment of creditors, the personal representative is personally liable to each creditor for his allowed claim, or the dividend thereon, and execution may be issued on such order, as upon a judgment, in favor of each creditor, and the same proceeding may be had under such execution as under execution in civil actions. The personal representative is liable therefor, on his bond or other form of security provided for the faithful performance of his trust, to each creditor.

SOURCE: Probate Code of Guam (1970), § 954.

§ 2737. Claim Omitted From Account; Creditor's Remedies.

15 GCA ESTATES AND PROBATE
CH. 27 ACCOUNTING AND PAYMENT OF DEBTS

When the accounts of the personal representative have been settled, and an order made for the payment of debts and distribution of the estate, no creditor whose claim was not included in the order for payment has any right to call upon the creditors who have been paid, or upon the heirs, devisees or legatees, to contribute to the payment of his claim; but if the personal representative has failed to give the notice to creditors, as prescribed by the provisions of Chapter 25 of this Title, such creditor may recover on the bond of the personal representative, or upon the other form of security provided for the faithful performance of the personal representative's trust, the amount for which his claim would properly have been allowed.

SOURCE: Probate Code of Guam (1970), § 955.

§ 2739. Closing or Continuing Administration After First Order for Payment.

If all of the debts have been paid by the first order for payment, the Superior Court must direct the payment of legacies and the distribution of the estate among the persons entitled, as provided in Chapter 30 of this Title; but if there are debts remaining unpaid, or if, for other reasons, the estate is not in a condition to be closed, the administration may be continued for such time as may be reasonable.

SOURCE: Probate Code of Guam (1970), § 956.

§ 2741. Liability of Estate and Surviving Spouse; Allocation; Petition; Contents; Determination; Order.

(a) Whenever it appears that debts payable by the estate are also payable, in whole or in part, by the surviving spouse, the personal representative or any person interested in the estate may file a petition with the Clerk of the Superior Court for an order to allocate the responsibility for such debts. Such petition may be filed at any time prior to the filing of a petition for final distribution. If any interest in the community property is administered in the estate of a deceased spouse which, under the laws of the territory of Guam, was liable for a debt of the surviving spouse which was not also the debt of the deceased spouse, the owner of the debts shall be deemed to be a person interested in the estate for the purposes of this Section.

(b) The petition referred to in subsection (a) of this Section shall (1) identify all of the debts known to the petitioner that are asserted to be subject to allocation, (2) state the reason why such debts should be

15 GCA ESTATES AND PROBATE
CH. 27 ACCOUNTING AND PAYMENT OF DEBTS

allocated, and (3) set forth the allocation and the basis for allocation asserted by the petitioner.

(c) If it appears from the petition referred to in subsection (a) of this Section that (1) allocation would be affected by the value of the separate property of the surviving spouse and any community property not administered in the estate and (2) an inventory of the property and the value of the property has not been furnished by the surviving spouse, the Superior Court shall issue an order to show cause why the information should not be furnished.

(d) Notice of the hearing of the petition referred to in subsection (a) of this Section and the order to show cause referred to in subsection (c) of this Section shall be given in the manner provided in Section 3401 of this Title and a copy of such petition and such order shall be served not less than ten (10) calendar days prior to the time set for the hearing upon the surviving spouse and, if the petitioner is not the personal representative, upon the personal representative.

(e) The personal representative and the surviving spouse may provide for allocation by agreement, and, upon a determination by the Superior Court that the agreement substantially protects the rights of persons interested in the estate, the allocation provided for in the agreement shall be ordered by the Superior Court. In the absence of such agreement, each debt shall be apportioned to all of the property of the spouses liable for the debt, as determined by the laws of the territory of Guam, in the proportion determined by the value of the property less any liens and encumbrances at the date of death, and the responsibility to pay the debt shall be allocated accordingly.

(f) Upon making the determination as provided in this Section, the Superior Court shall make an order (1) directing the personal representative to charge the amounts allocated to the surviving spouse against any property or interests of the surviving spouse which are in the possession of the personal representative, (2) summarily directing the surviving spouse to make payment of the allocation to the personal representative to the extent that property or interests of the surviving spouse which are in the possession of the personal representative are insufficient to satisfy the allocation, and (3) directing the personal representative to make payment of the amounts allocated to the estate.

SOURCE: California Probate Code, § 980.

15 GCA ESTATES AND PROBATE
CH. 27 ACCOUNTING AND PAYMENT OF DEBTS

COMMENT: Section 2741, like certain other Sections contained in this Title, has been added to rationalize the community property system and to make it sex-neutral. See Comments to §§ 2513, 2515, 2535 and 2729, supra.
