

18 GCA BUSINESS STRUCTURE & FUNCTION
CH. 66 TRUSTS FOR THE BENEFIT OF THIRD PERSONS

CHAPTER 66
TRUSTS FOR THE BENEFIT OF THIRD PERSONS

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§ 66101. Who are Trustees.

The provisions of this Chapter apply only to express trusts, created for the benefit of another that the trustor, and in which the title to the trust property is vested in the trustees, not including, however, those of executors, administrators, and guardians, as such.

SOURCE: CC § 2250.

§ 66102. Creation of Trust.

The mutual consent of a trustor and trustee creates a trust of which the beneficiary may take advantage at any time prior to its rescission.

SOURCE: CC § 2251.

§ 66103. Trustees Appointed by Court.

When a trustee is appointed by a court or public officer, as such, such court or officer is the trustor, within the meaning of the last section.

SOURCE: CC § 2252.

§ 66104. Declaration of Trust.

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The nature, extent, and object of a trust are expressed in the declaration of trust.

SOURCE: CC § 2253.

§ 66105. What is Included in Declaration.

All declarations of a trustor to his trustees, in relation to the trust, before its acceptance by the trustees, or any of them, are to be deemed part of the declaration of the trust, except that when a declaration of trust is made in writing, all previous declarations by the same trustor are merged therein.

SOURCE: CC § 2254.

NOTE: No 1970 Civil Code §§ 2255-2257 existed.

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§ 66201. Trustee Must Obey Trust.

A trustee must fulfill the purpose of the trust, as declared at its creation, and must follow all the directions of the trustor given at that time, except as modified by the consent of all parties interested, in the same manner, and to the same extent, as an employee.

SOURCE: CC § 2258.

§ 66203. Duty of Trustee as to Appointment of Successor.

If a trustee procures or assents to his discharge from his office, before his trust is fully executed, he must use at least ordinary care and diligence to

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secure the appointment of a trustworthy successor before accepting his own final discharge.

SOURCE: CC § 2260.

§ 66204. Investment of Money.

A trustee must invest money received by him under the trust, as fast as he collects a sufficient amount, in such manner as to afford reasonable security and interest for the same.

SOURCE: CC § 2261.

§ 66205. Interest on Trust Moneys, Omission to Invest.

If a trustee omits to invest the trust moneys according to the last section, he must pay simple interest thereon, if such omission is negligent merely, and compound interest if it is willful.

SOURCE: CC § 2262.

§ 66206. Purchase by Trustee of Claims Against Trust Fund.

A trustee cannot enforce any claim against the trust property which he purchases after or in contemplation of his appointment as trustee; but he may be allowed, by any competent court, to charge to the trust property what he has in good faith paid for the claim, upon discharging the same.

SOURCE: CC § 2253.

NOTE: No 1970 Civil Code §§ 2264-2266 existed.

ARTICLE 3
POWERS OF TRUSTEES

§ 66301. Trustee's Power as Agent.

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§ 66301. Trustee's Power as Agent.

A trustee is a general agent for the trust property. His authority is such as is conferred upon him by the declaration of trust and by this Chapter, and

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none other. His acts, within the scope of his authority, bind the trust property to the same extent as the acts of an agent bind his principal.

SOURCE: CC § 2267.

§ 66302. All must Act.

Where there are several co-trustees, all must unite in any act to bind the trust property, unless the declaration of trust otherwise provides.

SOURCE: CC § 2268.

§ 66303. Discretionary Powers.

A discretionary power conferred upon a trustee is presumed not to be left to his arbitrary discretion, but may be controlled by the proper court if not reasonably exercised, unless an absolute discretion is clearly conferred by the declaration of trust.

SOURCE: CC § 2269.

NOTE: No 1970 Civil Code §§ 2270-2272 existed.

ARTICLE 4
RIGHTS OF TRUSTEES

§ 66401. Indemnification of Trustee.

§ 66402. Compensation of Trustee.

§ 66403. Involuntary Trustee.

§ 66401. Indemnification of Trustee.

A trustee is entitled to the repayment, out of the trust property, of all expenses actually and properly incurred by him in the performance of his trust. He is entitled to the repayment of even unlawful expenditures, if they were productive of actual benefit to the estate.

SOURCE: CC § 2273.

§ 66402. Compensation of Trustee.

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Except as provided in 15 GCA §3313, when a declaration of trust is silent upon the subject of compensation the trustee is entitled to the same compensation as an executor. If it specifies the amount of his compensation, he is entitled to the amount thus specified and no more. If it directs that he shall be allowed a compensation, but does not specify the rate or amount, he is entitled to such compensation as may be reasonable under the circumstances. If there are two (2) or more trustees the compensation shall be apportioned among the trustees according to the services rendered by them respectively.

SOURCE: CC § 2274.

NOTE: The former Guam Probate Code contained no §1122. However, the California §1122, to which the section obviously referred, was added to the new Probate law, 15 GCA, as §3313, in its form as California had amended it well after the adoption of this section by either Guam or California. The amended section does relate to compensation of trustees, but the Compiler has no idea of what was contained in the original California §1122.

§ 66403. Involuntary Trustee.

An involuntary trustee, who becomes such through his own fault, has none of the rights mentioned in this Article.

SOURCE: CC § 2275.

NOTE: No 1970 Civil Code §§ 2276-2278 existed.

ARTICLE 5
TERMINATION OF THE TRUST

§ 66502. Not Revocable.

§ 66503. Trustee's Office, How Vacated.

§ 66504. Trustee, How Discharged.

§ 66505. Removal of Trustees by Court.

§ 66502. Not Revocable.

A trust cannot be revoked by the trustor after its acceptance, actual or presumed, by the trustee and beneficiaries, except by the consent of all the

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beneficiaries, unless the declaration of trust reserves a power of revocation to the trustor, and in that case the power must be strictly pursued.

SOURCE: CC § 2280.

§ 66503. Trustee's Office, How Vacated.

The office of a trustee is vacated:

1. By his death; or,
2. By his discharge.

SOURCE: CC § 2281.

§ 66504. Trustee, How Discharged.

A trustee can be discharged from his trust only as follows:

1. By the extinction of the trust;
2. By the completion of his duties under the trust;
3. By such means as may be prescribed by the declaration of trust;
4. By the consent of the beneficiary, if he has capacity to contract;
5. By the judgment of a competent tribunal, in a direct proceeding for that purpose, that he is of unsound mind; or
6. By the court having jurisdiction.

SOURCE: CC § 2282.

§ 66505. Removal of Trustees by Court.

The court having jurisdiction may remove any trustee who has violated or is unfit to execute the trust, or may accept the resignation of a trustee.

SOURCE: CC § 2283.

NOTE: No 1970 Civil Code §§ 2284-2286 existed.

ARTICLE 6
SUCCESSION OR APPOINTMENT OF NEW TRUSTEES

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§ 66601. Appointment by Court to Fill Vacancy.

§ 66602. Survivorship Between Co-trustees.

§ 66603. Court Trustee.

§ 66601. Appointment by Court to Fill Vacancy.

The court having jurisdiction must appoint a trustee whenever there is a vacancy and the declaration of trust does not provide a practical method of appointment. In all cases of appointment of any trustee or trustees by any court, if the beneficiaries, or any one of them are of the age of fourteen (14) years, they, or the one or more of them of the age of fourteen (14) years, may make nomination to the court; and unless such nominee or nominees are incompetent, upon one or more of the grounds of incompetency specified in 15 GCA §1701 [Probate], to discharge the duties of trustee, the court must appoint such nominee, or nominees, as trustee or trustees, as the case may be.

SOURCE: CC § 2287.

§ 66602. Survivorship Between Co-trustees.

On the death, renunciation, or discharge of one of several co-trustees the trust survives to the others.

SOURCE: CC § 2288.

§ 66603. Court Trustee.

When a trust exists without any appointed trustee, or where all the trustees renounce, die, or are discharged, the court having jurisdiction must appoint another trustee and direct the execution of the trust. The court may, in its discretion, appoint the original number, or any less number of trustees.

SOURCE: CC § 2289.

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