

18 GCA BUSINESS STRUCTURE & FUNCTION
CH. 82 OBLIGATIONS EXTINGUISHED

CHAPTER 82
OBLIGATIONS EXTINGUISHED

- Article 1. Performance.
- Article 2. Offer of Performance.
- Article 3. Prevention of Performance or Offer.
- Article 4. Accord & Satisfactions.
- Article 5. Novation.
- Article 6. Release.

ARTICLE 1
PERFORMANCE

- § 82101. Obligation Extinguished.
- § 82102. Performance by one of Several Joint Debtors.
- § 82103. Performance to one of Joint Creditors.
- § 82104. Effect of Direction by Creditor.
- § 82105. Partial Performance.
- § 82106. What is Payment.
- § 82107. Application of General Performance.

§ 82101. Obligation Extinguished.

Full performance of an obligation by the party whose duty it is to perform it, or by any other person on his behalf and with his assent, if accepted by the creditor, extinguishes it.

SOURCE: CC § 1473.

§ 82102. Performance by one of Several Joint Debtors.

Performance of an obligation, by one of several persons who are jointly liable under it, extinguishes the liability of all.

SOURCE: CC § 1474.

§ 82103. Performance to one of Joint Creditors.

An obligation in favor of several persons is extinguished by performance rendered to any of them, except in the case of a deposit made by owners in common, or in joint ownership, which is regulated by Division 2, Part 3, beginning with Chapter 40 of this Title on Deposit.

SOURCE: CC § 1475.

§ 82104. Effect of Direction by Creditor.

If a creditor, or any one of two or more joint creditors, at any time directs the debtor to perform his obligation in a particular manner, the obligation is extinguished by performance in that manner, even though the creditor does not receive the benefit of such performance.

SOURCE: CC § 1476.

§ 82105. Partial Performance.

Partial performance of an indivisible obligation extinguishes a corresponding proportion thereof, if the benefit of such performance is voluntarily retained by the creditor, but not otherwise. If such partial performance is of such a nature that the creditor cannot avoid retaining it without injuring his own property, his retention thereof is not presumed to be voluntary.

SOURCE: CC § 1477.

§ 82106. What is Payment.

Performance of an obligation for the delivery of money only is called payment.

SOURCE: CC § 1478.

§ 82107. Application of General Performance.

Where a debtor, under several obligations to another, does an act, by way of performance, in whole or in part, which is equally applicable to two or more of such obligations, such performance must be applied as follows:

(1) If, at the time of performance, the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation be manifested to the creditor, it must be so applied.

(2) If no application be then made, the creditor, within a reasonable time after such performance, may apply it toward the extinction of any obligation, performance of which was due to him from the debtor at the time of such performance, except that if similar obligations were due to him both individually and as a trustee he must, unless otherwise directed by the debtor, apply the performance to the extinction of all such obligations in equal proportion; and an applica-

18 GCA BUSINESS STRUCTURE & FUNCTION
CH. 82 OBLIGATIONS EXTINGUISHED

tion once made by the creditor cannot be rescinded without the consent of the debtor.

(3) If neither party makes such application within the time prescribed herein, the performance must be applied to the extinction of obligations in the following order; and if there be more than one obligation of a particular class, ratably:

1. Of interest due at the time of the performance.
2. Of principal due at that time.
3. Of the obligation earliest in date of maturity.
4. Of an obligation not secured by a lien or collateral undertaking.
5. Of an obligation secured by a lien or collateral undertaking.

SOURCE: CC § 1479.

NOTE: No 1970 Civil Code §§ 1480-1484 existed.

ARTICLE 2
OFFER OF PERFORMANCE

- § 82201. Obligation Extinguished by Offer.
- § 82202. Offer of Part Performance.
- § 82203. By whom to be Made.
- § 82204. To whom to be Made.
- § 82205. Where Offer Made.
- § 82206. When Offer must be Made.
- § 82207. Same: When no Fixed Time.
- § 82208. Compensation After Delay.
- § 82209. Offer in Good Faith.
- § 82210. Conditional Offer.
- § 82211. Ability, Willingness Essential.
- § 82212. Production not Necessary.
- § 82213. Thing Offered to be Kept Separate.

18 GCA BUSINESS STRUCTURE & FUNCTION
CH. 82 OBLIGATIONS EXTINGUISHED

- § 82214. Performance of Condition Precedent.
- § 82215. Written Receipts.
- § 82216. Extinction of Pecuniary Obligation.
- § 82217. Objection to Mode.
- § 82218. Title to thing Offered.
- § 82219. Custody of thing Offered.
- § 82220. Affect on Offer of Accessories of Obligation.
- § 82221. Creditor's Retention of thing he Refuses to Accept.

§ 82201. Obligation Extinguished by Offer.

An obligation is extinguished by an offer of performance, made in conformity to the rules herein prescribed, with the intent to extinguish the obligation.

SOURCE: CC § 1485.

§ 82202. Offer of Part Performance.

An offer of partial performance is of no effect.

SOURCE: CC § 1486.

§ 82203. By whom to be Made.

An offer of performance must be made by the debtor, or by some person on his behalf and with his assent.

SOURCE: CC § 1487.

§ 82204. To whom to be Made.

An offer of performance must be made to the creditor, or to any one of two or more joint creditors, or to a person authorized by one or more of them to receive or collect what is due under the obligation, if such creditor or authorized person is present at the place where the offer may be made, and if not, wherever the creditor may be found.

SOURCE: CC § 1488.

§ 82205. Where Offer Made.

In the absence of ex-press provision to the contrary, an offer of performance may be made, at the option of the debtor:

1. At any place appointed by the creditor; or,

18 GCA BUSINESS STRUCTURE & FUNCTION
CH. 82 OBLIGATIONS EXTINGUISHED

2. Wherever the person to whom the offer ought to be made can be found; or,

3. If such person cannot, with reasonable diligence, be found within the Territory of Guam, and within a reasonable distance from his residence or place of business, or if he evades the debtor, then at his residence or place of business, if the same can, with reasonable diligence, be found within the Territory of Guam; or,

4. If this cannot be done, then at any place within Guam.

SOURCE: CC § 1489.

§ 82206. When Offer must be Made.

Where an obligation fixes a time for its performance, an offer of performance must be made at that time, within reasonable hours and not before nor afterwards.

SOURCE: CC § 1490.

§ 82207. Same: When no Fixed Time.

When an obligation does not fix the time for its performance, an offer of performance may be made at any time before the debtor, upon a reasonable demand, has refused to perform.

SOURCE: CC § 1491.

§ 82208. Compensation after Delay.

Where delay in performance is capable of exact and entire compensation, and time has not been expressly declared to be of the essence of the obligation, an offer of performance, accompanied with an offer of such compensation, may be made at any time after it is due, but without prejudice to any rights acquired by the creditor, or by any other person, in the meantime.

SOURCE: CC § 1492.

§ 82209. Offer in Good Faith.

An offer of performance must be made in good faith, and in such manner as is most likely, under the circumstances, to benefit the creditor.

SOURCE: CC § 1493.

§ 82210. Conditional Offer.

18 GCA BUSINESS STRUCTURE & FUNCTION
CH. 82 OBLIGATIONS EXTINGUISHED

An offer of performance must be free from any conditions which the creditor is not bound, on his part, to perform.

SOURCE: CC § 1494.

§ 82211. Ability, Willingness Essential.

An offer of performance is of no effect if the person making it is not able and willing to perform according to the offer.

SOURCE: CC § 1495.

§ 82212. Production not Necessary.

The thing to be delivered, if any, need not in any case be actually produced, upon an offer of performance, unless the offer is accepted.

SOURCE: CC § 1496.

§ 82213. Thing Offered to be Kept Separate.

A thing, when offered by way of performance, must not be mixed with other things from which it cannot be separated immediately and without difficulty.

SOURCE: CC § 1497.

§ 82214. Performance of Condition Precedent.

When a debtor is entitled to the performance of a condition precedent to, or concurrent with, performance on his part, he may make his offer to depend upon the due performance of such condition.

SOURCE: CC § 1498.

§ 82215. Written Receipts.

A debtor has a right to require from his creditor a written receipt for any property delivered in performance of his obligation.

SOURCE: CC § 1499.

§ 82216. Extinction of Pecuniary Obligation.

An obligation for the payment of money is extinguished by a due offer of payment, if the amount is immediately deposited in the name of the creditor, with any bank licensed to do business in Guam and notice thereof is given to the creditor.

SOURCE: CC § 1500.

§ 82217. Objection to Mode.

All objections to the mode of an offer of performance, which the creditor has an opportunity to state at the time to the person making the offer, and which could be then obviated by him are waived by the creditor, if not then stated.

SOURCE: CC § 1501.

§ 82218. Title to thing Offered.

The title to a thing duly offered in performance of an obligation passes to the creditor, if the debtor at the time signifies his intention to that effect.

SOURCE: CC § 1502.

§ 82219. Custody of thing Offered.

The person offering a thing other than money, by way of performance, must, if he means to treat it as belonging to the creditor, retain it as a depositary for hire, until the creditor accepts it, or until he has given reasonable notice to the creditor that he will retain it no longer, and, if with reasonable diligence he can find a suitable depositary therefor, until he has deposited it with such person.

SOURCE: CC § 1503.

§ 82220. Affect on Offer of Accessories of Obligation.

An offer of payment or other performance, duly made, though the title to the thing offered be not transferred to the creditor, stops the running of interest on the obligation, and has the same effect upon all its incidents as a performance thereof.

SOURCE: CC § 1504.

§ 82221. Creditor's Retention of thing he Refuses to Accept.

If anything is given to a creditor by way of performance, which he refuses to accept as such, he is not bound to return it without demand, but if he retains it, he is a gratuitous depositary thereof.

SOURCE: CC § 1505.

CROSS-REFERENCES: Division 2, Part 3, beginning with Chapter 40, governs the rights and duties of depositaries.

NOTE: No 1970 Civil Code §§ 1506-1510 existed.

ARTICLE 3

PREVENTION OF PERFORMANCE OF OFFER

- § 82301. What Excuses Performance.
- § 82302. Effect of Prevention of Performance.
- § 82303. Prevention by Other Cause.
- § 82304. Effect of Refusal to Accept Before Offer.

§ 82301. What Excuses Performance.

The want of performance of an obligation, or an offer of performance, in whole or in part, or any delay therein, is excused by the following causes, to the extent to which they operate:

1. When such performance or offer is prevented or delayed by the act of the creditor, or by the operation of law, even though there may have been a stipulation that this shall not be an excuse;
2. When it is prevented or delayed by an irresistible, superhuman cause, or by the act of public enemies of the United States, unless the parties have expressly agreed to the contrary; or
3. When the debtor is induced not to make it, by any act of the creditor intended or naturally tending to have that effect, done at or before the time at which such performance or offer may be made and not rescinded before that time.

SOURCE: CC § 1511.

§ 82302. Effect of Prevention of Performance.

If the performance of an obligation be prevented by the creditor, the debtor is entitled to all the benefits which he would have obtained if it had been performed by both parties.

SOURCE: CC § 1512.

NOTE: No 1970 Civil Code §1513 existed.

§ 82303. Prevention by other Cause.

If performance of an obligation is prevented by any cause excusing performance, other than the act of the creditor, the debtor is entitled to a ratable proportion of the consideration to which he would have been entitled upon full performance, according to the benefit which the creditor receives from the actual performance.

18 GCA BUSINESS STRUCTURE & FUNCTION
CH. 82 OBLIGATIONS EXTINGUISHED

SOURCE: CC § 1514.

§ 82304. Effect of Refusal to Accept Before Offer.

A refusal by a creditor to accept performance, made before an offer thereof, is equivalent to an offer and refusal, unless, before performance is actually due, he gives notice to the debtor of his willingness to accept it.

SOURCE: CC § 1515.

NOTE: No 1970 Civil Code §§ 1516-1520 existed.

ARTICLE 4
ACCORD & SATISFACTION

§ 82401. What are Accords.

§ 82402. Effect of Accord.

§ 82403. What is Satisfaction.

§ 82404. Part Performance.

§ 82401. What are Accords.

An *accord* is an agreement to accept, in extinction of an obligation, something different from or less than that to which the person agreeing to accept is entitled.

SOURCE: CC § 1521.

§ 82402. Effect of Accord.

Though the parties to an accord are bound to execute it, yet it does not extinguish the obligation until it is duly executed.

SOURCE: CC § 1522.

§ 82403. What is Satisfaction.

Acceptance, by the creditor, of the consideration of an accord extinguishes the obligation, and is called satisfaction.

SOURCE: CC § 1523.

§ 82404. Part Performance.

18 GCA BUSINESS STRUCTURE & FUNCTION
CH. 82 OBLIGATIONS EXTINGUISHED

Part performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in writing, in satisfaction, or rendered in pursuance of an agreement in writing for that purpose, though without any new consideration, extinguishes the obligation.

SOURCE: CC § 1524.

NOTE: No 1970 Civil Code §§ 1525-1529 existed.

ARTICLE 5
NOVATION

§ 82501. What is Novation.

§ 82502. Modes of Novation.

§ 82503. Novation is a Contract.

§ 82504. Rescission of Novation.

§ 82501. What is Novation.

Novation is the substitution of a new obligation for an existing one.

SOURCE: CC § 1530.

§ 82502. Modes of Novation.

Novation is made:

1. By the substitution of a new obligation between the same parties, with intent to extinguish the old obligation;

2. By the substitution of a new debtor in place of the old one, with intent to release the latter; or

3. By the substitution of a new creditor in place of the old one, with intent to transfer the rights of the latter to the former.

SOURCE: CC § 1531.

§ 82503. Novation is Contract.

Novation is made by contract, and is subject to all the rules concerning contracts in general.

SOURCE: CC § 1532.

18 GCA BUSINESS STRUCTURE & FUNCTION
CH. 82 OBLIGATIONS EXTINGUISHED

§ 82504. Rescission of Novation.

When the obligation of a third person, or an order upon such person, is accepted in satisfaction, the creditor may rescind such acceptance if the debtor prevents such person from complying with the order, or from fulfilling the obligation, or if, at the time the obligation or order is received, such person is insolvent, and this fact is unknown to the creditor, or if, before the creditor can with reasonable diligence present the order to the person upon whom it is given, he becomes insolvent.

SOURCE: CC § 1533.

NOTE: No 1970 Civil Code §§ 1534-1540 existed.

ARTICLE 6
RELEASE

- § 82601. Obligation Extinguished by Release.
- § 82602. Certain Claims Unaffected by General Release.
- § 82603. Of one or Several Joint Debtors.
- § 82604. Release in Personal Injury.

§ 82601. Obligation Extinguished by Release.

An obligation is extinguished by a release therefrom given to the debtor by the creditor, upon a new consideration, or in writing, with or without new consideration.

SOURCE: CC § 1541.

CROSS-REFERENCES: For regulation of release in the case of joint tortfeasors, see 7 GCA §24605.

§ 82602. Certain Claims Unaffected by General Release.

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

SOURCE: CC § 1542.

§ 82603. Of one or Several Joint Debtors.

A release of one or two or more joint debtors does not extinguish the obligations of any of the others, unless they are mere guarantors; nor does it affect their right to contribution from him.

SOURCE: CC § 1543.

CROSS-REFERENCES: The law respecting Guarantors is found in Division 2, Part 1 of this Title, commencing with Chapter 30.

The law respecting the Joint Contribution among Tortfeasors is found in the Code of Civil Procedure (to be Title 7 of this Code) beginning at §830, enacted by P.L. 19-05:128 (8/21/87).

§ 82604. Release in Personal Injury.

Any agreement entered into on or after the effective date of this Section by any person within 15 days after he incurs a personal injury, which is related to his right to be compensated for such injury, including but not limited to agreements relating to waivers of procedural or other rights, may be disavowed in writing by such injured person or, in the case of a minor, also by his parent or guardian, within one year after the making of the agreement. No agreement disavowed may be introduced as evidence in any judicial or administrative proceeding. In order to be effective, any such disavowal shall be sent by registered mail to the person by whom it was obtained or on whose behalf it was obtained, or to the attorney of the defendant against whom action is brought for such personal injury, at the last known address of such person or attorney, and no disavowal shall be ineffective because unaccompanied by an offer to return any consideration accepted on account of the agreement. In lieu of making a disavowal by registered mail as provided herein, such disavowal may be made by a pleading in an appropriate action or proceeding provided that such pleading is filed within one year after the making of the agreement disavowed.

In the event of the death, incompetence or disability of the injured person, his executor, administrator, guardian or other personal representative may make the disavowal in the manner and within the time period provided in this section.

SOURCE: CC § 1544 added by P.L. 9-196 (7/1/68).

NOTE: No 1970 Civil Code §§ 1545-1548 existed.

18 GCA BUSINESS STRUCTURE & FUNCTION
CH. 82 OBLIGATIONS EXTINGUISHED