

CHAPTER 127
MISCELLANEOUS PROVISIONS AFFECTING INVESTORS

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§ 127101. Voting Rights.

(a) Each stockholder shall have one (1) vote for each share of stock held by him, and each shareholder shall have such number of votes as shall bear the same ratio to one (1) as the par value of all shares held by him bears to the par value of one (1) share of stock issued by such association; provided, however, that associations authorized by their articles of incorporation or by-laws to issue both shares and stock, may provide in their articles of incorporation or by-laws that a majority of the board of directors shall be elected by the stockholders; and provided further, that associations authorized to issue shares may provide in their articles of incorporation or by-laws that the holders of installment, accumulative or prepaid shares shall have lesser voting rights than holders of full paid shares, and may provide the extent thereof which may vary according to the value of such installment, accumulative or prepaid shares.

(b) Certificate holders shall have no voting rights, except such voting rights, if any, as shall be expressly provided in the by-laws.

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(c) Borrowing members shall be entitled to voting rights as provided in § 139103.

SOURCE: GC § 41400.

2017 NOTE: Subsection designations added pursuant to the authority of 1 GCA § 1606.

§ 127102. Entrance and Transfer Fees.

Every association shall have power pursuant to its by-laws to charge and collect a transfer fee not exceeding ten cents on each share or investment certificate, all of which fees shall be accounted for by the association like other funds of the association. No other fee, charge or deduction of principal shall ever be made or permitted to be made against any shareholder or certificate holder or against any of his shares or certificates hereafter issued or the dues paid in thereon, for the purpose of creating a fund to be used in the payment of running expense.

SOURCE: GC § 41401.

§ 127103. Minors and Married Women.

(a) Every association, in addition to being entitled to issue shares and investment certificates to adults, firms or corporations, shall also have power to issue one or more shares investment certificates to a minor of any age and receive payments thereon by or for such minor. Such minor shall be entitled to withdraw, transfer or pledge any such shares or certificates owned by him and to receive from such association any and all dividends, interest or other moneys at any time becoming due thereon in the same manner and subject to the same conditions as an adult, and his receipt or acquittance therefor shall constitute a valid release and discharge to the association for the payment of such money.

(b) Every association shall have power to issue shares and investment certificates to or in the name of a married woman and to receive payments thereon by or for such person. Such shares or certificates shall be held by such married woman for the exclusive right and benefit of such person free from the control or lien of all other persons except creditors.

(c) Such shares or certificates may, subject to the provisions this act in respect of withdrawals generally, be withdrawn by and the dividends or interest accruing thereon may be paid to the person in whose name such shares or certificates are issued, notwithstanding coverture, and the receipt or acquittance of such person shall be a valid and sufficient

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release and discharge to the association for such withdrawals or payments, or any part thereof.

SOURCE: GC § 41402.

2017 NOTE: Subsection/subitem designations added pursuant to the authority of 1 GCA § 1606.

§ 127104. Joint Tenants.

(a) When shares or investment certificates are issued in the name of two or more persons, whether minor or adult, as joint tenants or in form to be paid to any of them or the survivor or survivors of them, such shares or certificates and all dues paid on account thereof by either or any of such persons shall become the property of such persons as joint tenants. Such shares or investment certificates, together with all dividends and interest thereon, shall be held for the exclusive use of such joint tenants and may be paid to either or any of them during their lifetime or to the survivor or any one of the survivors of them after the death of one or more of them. By written instructions of all such joint tenants given to the association, they may require the signatures of more than one of such persons during their lifetimes or of more than one of the survivors after the death of any one of them on any notice of withdrawal, request for withdrawal, check endorsement or receipt, in which case the association shall pay withdrawals, dividends and interest only in accordance with such instructions, but no such instructions shall limit the right of the sole survivor or of all of the survivors to receive withdrawal payments, dividends and interest.

(b) Payment as provided in the preceding paragraph and the receipt or acquittance of the person or persons to whom such payment is made shall be a valid and sufficient release and discharge to such association for all payments made on account of such shares or certificates prior to the receipt by such association of notice in writing from any one of them not to make payments in accordance with the terms of such shares or certificates or of such instructions. After receipt of such notice an association may refuse, without liability, to pay withdrawals, dividends or interest pending determination of the rights of the parties. The purchase or acceptance of shares or investment certificates in such form shall, in the absence or fraud or undue influence, be conclusive evidence, in any action or proceeding to which either the association or the surviving share or certificate holder or holders may be a party, of the intention of such, share or certificate holders to vest title to such shares

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or certificate and dues paid on account thereof and dividends and interest thereon in such survivor or survivors.

SOURCE: GC § 41403.

2017 NOTE: Subsection designations added pursuant to the authority of 1 GCA § 1606.

§ 127105. Trustees and Guardians.

(a) Every association shall have power to issue shares and investment certificates to one or more persons or corporations as trustee or guardian for another or for others. The association shall not be liable to beneficiaries or wards for moneys paid to their trustees or guardians on account of such shares or certificates.

(b) Whenever a person holding shares or investment certificates in either such capacity dies and no notice of the terms, revocation or termination of the trust or guardianship shall have been given in writing to the association, the withdrawal or other value of the shares or investment certificates or any part thereof may be paid to the beneficiary or ward; and if no beneficiary or ward has been designated in writing to the association, the withdrawal or other value or any part thereof may be paid to the trustee's or guardian's executor or administrator.

(c) Payment as aforesaid by any association shall be a valid and sufficient release and discharge to such association for such payment, whether or not such payment is made to a minor.

SOURCE: GC § 41404.

2017 NOTE: Subsection designations added pursuant to the authority of 1 GCA § 1606.

§ 127106. Attachment.

(a) In the case of any attachment levied upon any shares or investment certificates of any association or upon any debts owing by any association, the copy of writ and notice must be left, if such association maintains branches, with the manager or any other officer of such association at the office or branch thereof at which such shares or investment certificates were issued or such debt incurred if such office or branch is still being maintained, and otherwise at the principal office of such association; and no attachment not served as aforesaid shall be effective as to any share or investment certificate issued by any such association or as to any debt owing by any such association if such share

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or certificate was issued or such debt incurred at an office or branch thereof not so served.

(b) No attachment or execution shall be issued against any association or its property in any suit, action or proceeding arising out of the claim of any shareholder or certificate holder to withdraw before final judgment that such shareholder or certificate holder is presently entitled to payment of such withdrawal.

SOURCE: GC § 41405.

2017 NOTE: Subsection designations added pursuant to the authority of 1 GCA § 1606.

§ 127107. Notice From Association.

Any notice which an association is required or shall desire to give to any of its investors may be given either by personal service thereof upon such investor or by mailing the same, postage prepaid, addressed to such investor at his last post office address given by such investor to such association for the purpose of mailing of notices, or, if no such address shall have been so given, then at the city or town in which the principal office in this territory of such association is located and any notice given by mail as aforesaid shall be deemed to have been given upon deposit thereof in the mails; provided, however, that in the case of any investor whose address as aforesaid six hundred miles from the place of mailing such as aforesaid, the time within which such investor may exercise any right or remedy following the giving of such notice shall be extended one day for each unit of six hundred miles or fraction of such unit between such address and such place of mailing, not to exceed in any case, however, an extension of ten days.

SOURCE: GC § 41406.

§ 127108. Notice of Transfer or Encumbrance.

(a) No transfer or encumbrance of investment certificates or shares issued by an association shall be effective as to such association until written notice of such transfer or encumbrance shall have been given to the office of the association at which such investment certificates or shares were issued, or at which the account of such association as to such shares or investment certificates is kept, or to the principal office of such association.

(b) Until such notice shall have been so given, such association may conclusively presume that investment certificates and shares have

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not been transferred or encumbered, and may, in the absence of such notice, make any and all payments or issue new investment certificates or shares to or in the name or names of the person or persons in whose name or names its certificates or shares are issued, whether or not such investment certificates or shares are presented at the time of such payment or issuance, and shall have no responsibility to a transferee or lienholder with respect to any investment certificates or shares, or parts thereof, so paid or reissued.

SOURCE: GC § 41407.

2017 NOTE: Subsection designations added pursuant to the authority of 1 GCA § 1606.

§ 127109. Rate of Return on Shares and Investment Certificates.

The rate of return on shares and investment certificates:

(a) Which do not provide for a definite rate of return thereon shall be determined by the Board of Directors of the association during, or within thirty (30) days before the beginning of, or within thirty (30) days after the end of, each quarterly or semi-annual period. On the next business day following any such determination which provides for a change in the rate of return the Board shall mail to the Commissioner a certified copy of its resolution making the determination. The rate of return is subject to the approval of the Commissioner when an association which issues investment certificates or stock, has matured withdrawal claims.

(b) The Commissioner shall approve the rates of return on shares and investment certificates unless he finds them unfair, unjust, or inequitable, having due regard to the earnings of the association, the nature and amount of its assets and liabilities, and the amount of its undivided profits, reserves, surplus, and capital.

(c) If, within ten (10) days after the Commissioner is advised in writing of the rates of return on shares and investment certificates as determined by the Board of Directors of the association, the Commissioner has not notified the association in writing that he disapproves of such rates, the approval of the Commissioner is conclusively presumed.

(d) If within thirty (30) days after the Commissioner is advised in writing of the rates of returns on shares and investment certificates as determined by the Board of Directors of an

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association, the Commissioner and the Board of Directors have not agreed upon such rates or upon other rates, then the Commissioner shall determine the rates. In determining such rates the Commissioner shall take into consideration the earnings, nature and amount of assets and liabilities, the amount of undivided profits, reserves, surplus, and capital of the association.

(e) An association or any of its certificate holders or shareholders aggrieved by the action of the Commissioner in determining the rates of return on shares and investment certificates may at any time within ten (10) days after the determination of the rates apply to the District Court of Guam for a review of the Commissioner's determination. The Commissioner's determination shall not be set aside or modified unless the court finds that the Commissioner in making his determination committed an abuse of discretion.

(f) Profits and losses shall be apportioned at least annually. In computing earnings or dividends on shares, the rate shall be applied to the value of the shares, subject to regulations prescribed by the bylaws or the directors in respect to payments on such shares since the last prior apportionment.

(g) Before declaring dividends the directors shall set aside as a loan reserve any sum required by any applicable provision of this Act.

(h) Every association issuing stock may declare dividends on stock at a rate equal to that declared and paid or credited on installment shares. The association may also set aside out of the net profits at each annual distribution, an amount not exceeding one percent (1%) a year of the average loans in force during such period, or a proportionate amount at each semi-annual, quarterly, or other distribution, from which to declare additional dividends on its stock if at least one-tenth of the amount set aside is carried to stock surplus until such surplus amounts to and is maintained at a value of at least twenty-five percent (25%) of the amount set aside as a fixed and permanent capital of the association pursuant to any provision of this Act.

(i) The directors of any association issuing stock and not issuing installment shares may make, declare, and pay cash dividends, or with the Commissioner's consent, property dividends,

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on the stock of as much of the surplus profits as appears advisable to the directors. Such dividends are subject to all the restrictions of this part on the declaration or payment of dividends.

SOURCE: GC § 41408.

2017 NOTE: Subsection designations altered pursuant to the authority of 1 GCA § 1606.

§ 127110. Issuance of Shares and Investment Certificates Without Provision for Definite Return Thereon.

(a) No association may issue shares or investment certificates with provision for a definite rate of return thereon; provided, however, that nothing contained in this section shall be deemed to forbid any association from (a) issuing shares or certificates providing that the return thereon shall not exceed a maximum figure specified therein; nor (b) issuing installment shares or installment certificates providing for an additional rate of return for the investor in excess of the rate of return paid by such association to its shareholders or certificate holders generally, and conditioned upon the faithful performance of such installment contract by the shareholder or certificate holder.

(b) The rate or rates of return on shares or investment certificates, or both, issued pursuant to the provisions of this section without a definite rate of return stated therein shall be fixed and determined in the manner provided in Section 127109 of this act.

SOURCE: GC § 41409.

2017 NOTE: Subsection designations added/altered pursuant to the authority of 1 GCA § 1606.

§ 127111. Security for Faithful Performance.

Investment certificates, if issued by an association which is an *insured institution* as defined in Title IV of the National -Housing Act, shall be acceptable and may be used as security for the faithful performance of any public or private trust or obligation. Shares, if issued by an association issuing no investment certificates and which is an *insured institution* as defined in Title IV of the National Housing Act, shall be acceptable and may be used as security for the faithful performance of any public or private trust or obligation.

SOURCE: GC § 41410.

§ 127112. Authorization to Execute Certificates.

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Certificates evidencing shares or investment certificates shall be manually signed by one or more officers or employees who shall be authorized to execute such certificates by the by-laws or by the board of directors.

SOURCE: GC § 41411.

§ 127113. Adverse Claims.

(a) Notice to any association of an adverse claim (the person making such adverse claim being hereafter in this section called *adverse claimant*) to shares or investment certificates standing on its books the credit of, or to personal property held for the account of, any person may be disregarded until and unless the adverse claimant shall

(1) procure and serve upon the association at the office at which the account is carried or the property held a restraining order, injunction or other appropriate order against the association from a court of competent jurisdiction in an action in which the adverse claimant and all persons in whose name such account stands or for whose account such property is held are parties; or

(2) execute and deliver to the association at the office at which the account is carried or the property held a bond in form and with surety acceptable to it and in an amount fixed by the association, but which amount in no event need be more than twice the value of the shares or investment certificates or more than twice the market value of the property against which the adverse claim is made, indemnifying it and also all persons in whose names such account stands or for whose account such property is held, against all liability, loss, damage, costs and expenses arising out of the refusal to permit withdrawal from such account or to pay dividends or interest thereon or to deliver such property.

(b) Unless such restraining order, injunction or other appropriate order is obtained, or such bond is given, the association, notwithstanding such notice, may honor notices of intention to withdraw and may pay withdrawals, dividends and interest to the person or persons to whose credit the account stands or may deliver such property to or upon the order of the person for whose account such property is, without any liability on the part of the association.

(c) If an adverse claimant delivers to the association at the office at which the account is carried or the property held his affidavit stating that

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of his own knowledge the person to whose credit the account stands or for whose account the property is held is a fiduciary for the adverse claimant and that such fiduciary is about to misappropriate the account or the property and stating the facts upon which the claim of a fiduciary relationship is based, the association may refuse to pay withdrawals, dividends or interest on the account or may refuse to deliver such property until the adverse claim is finally adjudicated or released, without liability on its part and without liability for the sufficiency or truth of the facts alleged in the affidavit.

(d) The provisions of this section shall be applicable even though the name of the person appearing on the association's books to whose credit the account stands or for whose account the property is held is modified by a qualifying or descriptive term such as *agent*, *trustee* or other word or phrase indicating that such person may not be the owner in his own right of the account or property.

SOURCE: GC § 41412.

2017 NOTE: Subsection/subitem designations added/altered pursuant to the authority of 1 GCA § 1606.

This publication corrects a typographical error in subsection (c).

§ 127114. Dormant and Inactive Accounts and Unclaimed Funds.

(a) Shares or Savings Account. In the event there has been no activity of deposits or withdrawals, and no contact has been made by the holder of a share or savings account with the association for five (5) years, the association shall transfer the balance of such account to the Treasurer of Guam.

(b) In the event an account subject to a negotiable order of withdrawal or a check account is inactive for two (2) years and the depositor cannot be located, an association shall transfer the balance of such account to the Treasurer of Guam for the account of the depositor.

(c) In transferring the balance of any account to the Treasurer of Guam as provided in Subsections (a) and (b) of this Section:

(1) An association shall first send written notice to the depositor at the depositor's last known address informing the depositor that the depositor's account is subject to this Section if:

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(A) an association has in its records an address for the depositor which the association's records do not disclose to be inaccurate; and

(B) the account contains Twenty-five Dollars (\$25.00) or more.

(2) The notification required in Subsection (c)(1) of this Section shall be performed before October 1 of each year for accounts that are inactive as of June 30 of the next preceding year.

(3) On November 1 and on December 1, an association shall publish a notice of inactive accounts in a newspaper of general circulation. The published notice shall be entitled, "Notice of Inactive Accounts," and shall contain:

(A) the names, in alphabetical order, and last known address, if any, of depositors of inactive accounts; and

(B) a statement that such funds shall be transferred to the Treasurer of Guam during the month of January of the following year.

(4) During the month of January of the year immediately following the publication required by Subsection (c)(3) of this Section, an association shall transfer to the Treasurer of Guam all balances of accounts as provided in Subsections (a) and (b) of this Section.

(d) In the event an association holds unidentified deposits or other fund for three (3) years, the owner of which cannot be determined by the association, the association shall transfer the balance of such account to the Treasurer of Guam for the account of the depositor, in the event such depositor is determined at a later date.

(e) In the event an association holds unidentified loan payments for three (3) years, the association shall transfer the balances of such accounts to the Treasurer of Guam for the account of the payor, in the event such payor is later determined.

(f) Prior to transferring funds to the Treasurer of Guam pursuant to the provisions of this Section, the transferring association may deduct all reasonable sums or costs due the association, including cost of publication or other notice required by this Section. Receipt by the Treasurer of Guam for such deposits shall be a full discharge to the

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transferring association of all liabilities to the depositor or owner of such funds.

(g) The Treasurer of Guam upon receiving sums of money pursuant to this Section shall furnish the transferring association with a receipt for such sums transferred, and shall deposit such sums in the General Fund of the government of Guam.

(h) The Treasurer of Guam shall maintain accurate records of such sums in accordance with regulations adopted by the Board. Such sums may be claimed at any time by the rightful owner or owners of such sums upon furnishing proof satisfactory to the Treasurer of Guam of their right to such funds. Funds deposited with the Treasurer of Guam pursuant to this Section shall not accrue interest. The Treasurer of Guam shall not be liable for damages or penalties for any payment to a claimant of funds deposited pursuant to this Section.

(i) The Board may adopt such rules and regulations as may be necessary to implement the provisions of this Section.

(j) All funds transferred to the Treasurer of Guam pursuant to the provisions of this Section escheat to the Territory of Guam one (1) year subsequent to the date of such transfer.

(k) All funds transferred to the Treasurer of Guam pursuant to the provisions of this Section shall be transferred during the month of January for those accounts deemed inactive and dormant as of June 30 of the preceding year.

(l) The Treasurer of Guam shall directly deposit all balances of accounts transferred pursuant to this Subsection to a custodial interest bearing account separate and apart from the General Fund. No interest shall be paid by the government of Guam to the depositor from the date of transfer of the balance of account to the Treasurer of Guam.

(m) When an association transfers the balance of any account to the Treasurer of Guam pursuant to this Section, the association shall hold the government of Guam harmless for any liability incurred by the association because of any handling of an account on the part of the association. The government of Guam shall not be liable for any transaction on an account made by any association, including transfer of the balance of the account to the Treasurer of Guam pursuant to this Section.

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(n) shall be no statute of limitations as to claiming dormant accounts. All claims against the government of Guam for balances of accounts which have been transferred as inactive or dormant accounts to the government of Guam by any association must be initiated by a claim against the government of Guam under the Claims Act, within one (1) year of the date of transfer.

SOURCE: Added by P.L. 24-072:2 (Sept. 30, 1997).

2017 NOTE: Subitem designations altered pursuant to the authority of 1 GCA § 1606.

§ 127115. Unclaimed Property.

(a) Definitions. As used in this Section, unless the context otherwise requires:

(1) *Apparent owner* means the person who appears from the records of the holder to be entitled to property held by the holder.

(2) *Banking organization* means any national or state bank, trust company, banking company, land bank, savings bank, safe-deposit company, private banker, or any similar organization.

(3) *Business association* means any private corporation, joint stock company, business trust, partnership, or any association for business purposes of two (2) or more individuals, whether or not for profit, including, but not by way of limitation, a banking organization, financial organization, life insurance corporation, and utility.

(4) *Holder* means any person in possession of property subject to this Section belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this Section.

(5) *Owner* means a depositor in case of a deposit, a beneficiary in case of a trust, or creditor, claimant, or payee in case of other choices in action, or any person having a legal or equitable interest in property subject to this Section, or his or her legal representative.

(6) *Person* means any individual, business association, government or governmental subdivision or agency, two (2) or more persons having a joint or common interest, or any other legal or

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commercial entity, whether that person is acting in his or her own right or in a representative or fiduciary capacity.

(b) Any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to its shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, where there has been no owner-generated activity on the account or property or written communication from the owner of the property, within three (3) years after the date prescribed for payment or delivery, *shall* transfer to the Treasurer of Guam.

(c) Any intangible interest in a business association, as evidenced by the stock records or membership records of the association, shall transfer to the Treasurer of Guam if:

(1) the interest in the association is owned by a person who for more than three (3) years has neither claimed a dividend or other sum referred to in Subsection (b) nor corresponded in writing with the association or otherwise indicated an interest as evidenced by a memorandum or other record on file with the association; and

(2) the association does not know the location of the owner at the end of the three (3)-year period. With respect to the interest, the business association *shall* be deemed the holder.

(d) Any dividends or other distributions held for or owing to a person at the time the stock or other security to which they attach *shall* transfer to the Treasurer of Guam and *shall* escheat to the Treasurer of Guam at the same time.

(e) If the business association has in its records an address for the apparent owner, which the business association's records do not disclose to be inaccurate, with respect to any interest that may transfer pursuant to Subsection (b), the business association *shall* make reasonable efforts to notify the owner by mail or, if the owner has consented to electronic notice, electronically, that the owner's interest in the business association will transfer and escheat to the Treasurer of Guam.

(1) The notice *shall* be given not less than six (6) or more than twelve (12) months before the time the interest in the business association becomes reportable to the Department of Administration in accordance with this Section.

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(2) The notice required by this Section *shall* specify the time that the interest will transfer and escheat, and the effects of transfer and escheat, including the necessity for filing a claim for the return of the interest.

(3) The notice required by this Section *shall*:

(A) specify that since the date of last activity, or for the last three (3) years, there has been no owner activity on the deposit, account, shares, or other interest;

(B) identify the deposit, account, shares, or other interest by number or identifier, which need not exceed four (4) digits;

(C) indicate that the deposit, account, shares, or other interest is in danger of transferring and escheating to the Treasurer of Guam; and

(D) specify that the Unclaimed Property Law requires business associations to transfer funds of a deposit, account, shares, or other interest if it has been inactive for three (3) years.

(4) It shall also include a form, as prescribed by the Department of Administration, by which the owner may confirm the owner's current address. If that form is filled out, signed by the owner, and returned to the holder, it shall be deemed that the business association knows the location of the owner. In lieu of returning the form, the business association may provide a telephone number or other electronic means to enable the owner to contact the association. With that contact, as evidenced by a memorandum or other record on file with the business association, the business association shall be deemed to know the location of the owner.

(5) The business association may impose a service charge on the deposit, account, shares, or other interest for this notice and form in an amount not to exceed the administrative cost of mailing or electronically sending the notice and form, and in no case to exceed Two Dollars (\$2.00).

(f) In addition to the notice required pursuant to Subsection (e), the holder may give additional notice at any time between the dates of last activity by, or communication with, the owner and the date the

holder transfers the deposit, shares, or other interest to the Treasurer of Guam.

(g) All funds transferred to the Treasurer of Guam pursuant to the provisions of this Section shall escheat to the government of Guam one (1) year subsequent to the date such transfers occurred.

(h) The Treasurer of Guam, upon receiving sums of money pursuant to this Section, shall furnish the transferring association with a receipt for such sums transferred, and sums of money shall be deposited in the Housing Trust Fund established in Article 10 of Chapter 4, Title 12, Guam Code Annotated. Such funds shall be used in accordance with the provisions of the Guam Housing Corporation's establishment of a pilot Housing First program.

SOURCE: Added by P.L. 33-231:3 (Jan. 9, 2017).

2017 NOTE: Subitem designations altered pursuant to the authority of 1 GCA § 1606.

§ 127116. Unclaimed Property Held in Fiduciary Capacity.

(a) Definitions. For the purpose of this Section, terms as defined in § 127115 of this Chapter shall apply to this Section.

(b) All tangible and intangible personal property held in a fiduciary capacity for the benefit of another person, including tangible personal property subject to § 127115 of this Chapter, all intangible personal property maintained in a deposit or account, and the income or increment on such tangible or intangible property, shall transfer to the Treasurer of Guam if, for more than three (3) years after it becomes payable or distributable, the owner has not done any of the following:

- (1) increased or decreased the principal;
- (2) accepted payment of principal or income;
- (3) corresponded in writing concerning the property; or
- (4) otherwise indicated an interest in the property as evidenced by a memorandum or other record on file with the fiduciary.

(c) Notwithstanding Subsection (b), tangible or intangible property, and the income or increment on the tangible or intangible property, held in a fiduciary capacity for another person, shall not transfer to the Treasurer of Guam if the following are satisfied:

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(1) During the previous three (3) years, the fiduciary took one (1) of the following actions:

(A) held another deposit or account for the benefit of the same owner;

(B) maintained a deposit or account on behalf of the same owner in an individual retirement account; or

(C) held funds or other property for the same owner under a retirement plan for a self-employed individual, or similar account or plan, established pursuant to the internal revenue laws of the United States or the laws of Guam.

(2) During the previous three (3) years, the owner has done any of the acts described in Subsections (b)(1), (b)(2), (b)(3), or (b)(4) with respect to the deposit, account, or plan described in Subsection (c)(1), and the fiduciary has communicated electronically or in writing with the owner at the address to which communications regarding that deposit, account, or plan are regularly sent, with regard to the deposit, account, or plan that would otherwise transfer under this Section. "Communications," for purposes of this Section, includes account statements or statements required under the internal revenue laws of the United States.

(d) Funds in an individual retirement account or a retirement plan for self-employed individuals or similar account or plan established pursuant to the internal revenue laws of the United States or Guam are not payable or distributable within the meaning of Subsection (b) unless either of the following is true:

(1) under the terms of the account or plan, distribution of all or part of the funds would then be mandatory; or

(2) for an account or plan not subject to mandatory distribution requirement under the internal revenue laws of the United States or Guam, the owner has attained seventy and a half (70½) years of age.

(e) For the purpose of this Section, when a person holds property as an agent for a business association, he or she is deemed to hold the property in a fiduciary capacity for the business association alone, unless the agreement between him or her and the business association clearly provides the contrary. For the purposes of this Section, if a person holds

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property in a fiduciary capacity for a business association alone, he or she is the holder of the property only insofar as the interest of the business association in the property is concerned and the association is deemed to be the holder of the property insofar as the interest of any other person in the property is concerned.

(f) All funds transferred to the Treasurer of Guam pursuant to the provisions of this Section shall escheat to the government of Guam one (1) year subsequent to the date such transfers occurred.

(g) The Treasurer of Guam, upon receiving sums of money pursuant to this Section, shall furnish the transferring association with a receipt for such sums transferred, and sums of money shall be used in accordance with the provisions of the pilot Housing First program developed by the Guam Housing Corporation.

SOURCE: Added by P.L. 33-231:4 (Jan. 9, 2017).
