

**15 GCA ESTATES AND PROBATE  
CH. 4 REVOCATION OF WILLS**

**CHAPTER 4  
REVOCATION OF WILLS**

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**§ 401. Marriage After Making Will: Will Revoked as to Spouse.**

If a testator marries after making a will, and the spouse of that marriage survives the testator, the will is revoked as to such spouse, unless provision has been made for such spouse by marriage contract, or unless such spouse is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation can be received.

**SOURCE:** Probate Code of Guam (1970), § 70.

**COMMENT:** The purpose of § 401 is to protect the widow or widower of a testator who made his or her will before the marriage; see *In re Poisl's Estate* (1955), 44 C.2d 147, 280 P.2d 789, wherein the court held that the purpose of the similar California statute was to secure a specific moral influence on the testamentary act of having in mind a contingent event as momentous as marriage.

Although perhaps confusing at first reading, § 401 operates as follows: Assume that W makes a will in which her entire estate is bequeathed to X; then W marries H; then W dies. By the operation of § 401, W's will is revoked as to H, so that H takes from W's estate under the law of succession and X takes the balance (if any) under W's will. However, if W and H had entered into a marriage contract by the terms of which H would be provided for in the event of W's death; or if W's will provided some bequest for H; or if W's will showed an intention not to make a provision for H; then § 401 would not apply -- i.e., the will would not be revoked as to H, and its

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provisions would govern. An excellent summary of the various types of will provisions which "...show an intention not to make ... provision..." for the surviving spouse is set forth in the discussion following § 70 of the California Probate Code in West's Annotated California Codes. Also see Comments to §§ 403 and 405, *infra*.

**§ 403. Divorce After Making Will: Will Revoked as to Former Spouse.**

If a married testator makes a will and is subsequently divorced, and the person whose marriage to the testator was dissolved by such divorce survives the testator, the will is revoked as to such former spouse, unless the will shows a specific intent to the contrary; and no other evidence to rebut the presumption of revocation can be received.

**SOURCE:** Guam Law Revision Commission.

**COMMENT:** Section 403 provides the opposite side of the coin from § 401, *supra*. Under the provisions of § 401, if a person makes a will, marries, and then dies without providing for his spouse, the spouse takes some portion of the estate by the law of succession. This seems only fair; as pointed out in the Comment to § 401, that Section exists to protect the surviving spouse, as it inserts into the law a presumption that the testator must have intended to provide for his spouse following the momentous event of marriage, but for some reason did not do so. Similarly, § 403 inserts into the law a presumption that a married testator who is subsequently divorced must have intended to revoke his will insofar as it provided for his former spouse following the momentous event of divorce, but for some reason did not do so. In other words, § 401 protects the spouse, while § 403 protects the testator.

**§ 405. Marriage After Making Will: Will Revoked as to Issue of Marriage.**

If a testator marries after making a will and has issue of such marriage, and any of the issue survives the testator, or is born after the death of the testator, the will is revoked as to such issue, unless provision has been made for such issue by some settlement, or unless such issue are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received.

**SOURCE:** Probate Code of Guam (1970), § 71.

**COMMENT:** The purpose of § 405 is similar to that of § 401: it protects the testator's issue against receiving nothing from their parent's estate by such parent's making a will before the issue's birth, which will fails to include such issue. Also see Comment to § 401, *supra*.

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Section 71 of the Probate Code of Guam (1970) read, in pertinent part, "... or is born after its father's death..." (emphasis added.) Section 405 has been changed to make it sex-neutral, after the model of § 71 of the California Probate Code as amended in 1975, and as required by Public Law 14-28.

**§ 407. Effect of Instrument Altering Interest in Property Which was Previously Disposed of by Will.**

If a testator who has made a testamentary disposition of property subsequently executes an instrument which alters his interest in such property, such instrument operates as a revocation of such testamentary disposition if:

(a) such instrument expresses the testator's intent that it shall be a revocation; or

(b) such instrument contains provisions wholly inconsistent with the terms of such testamentary disposition, unless such inconsistent provisions depend on a condition or contingency by reason of which such inconsistent provisions do not take effect.

**SOURCE:** Probate Code of Guam (1970), § 73; California Probate Code, § 73; Guam Law Revision Commission.

**§ 409. Effect of Contract for Sale or Transfer of Property Which was Previously Disposed of by Will.**

If a testator who has made a testamentary disposition of property subsequently enters into an agreement for the sale or transfer of such property, such agreement does not revoke such disposition; but such property passes by the will, subject to the same remedies on the testator's agreement, for specific performance or otherwise, against the devisees or legatees of such property, as might be had against the testator's successors, if such property had passed by succession.

**SOURCE:** Probate Code of Guam (1970), § 77.

**§ 411. Effect of Charge or Encumbrance on Property Which was Previously Disposed of by Will.**

If a testator who has made a testamentary disposition of property subsequently places a charge or encumbrance on such property for the purpose of securing the payment of money or the performance of any covenant or agreement, neither such a charge or encumbrance nor a conveyance, settlement or other act of the testator, by which his interest in any such property is altered but not fully divested, is a revocation of

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such testamentary disposition; but such property, subject to such charge or encumbrance, or the testator's remaining interest in such property, passes by the will.

**SOURCE:** Probate Code of Guam (1970), § 78.

**§ 413. Methods of Formal Revocation of Written Will.**

(a) Except as hereinabove provided in this Chapter, no written will, nor any part thereof, can be revoked or altered otherwise than as set forth in subsections (a)(1) or (a)(2) of this Section:

(1) By a subsequent written will or other writing of the testator, executed with the same formalities required for the execution of a will, declaring such revocation or alteration, or containing provisions wholly inconsistent with the terms of the prior will. If, in the latter case, the subsequent will or other writing contains provisions not wholly inconsistent with the terms of the prior will, the prior will remains effectual so far as consistent with the provisions of the subsequent will; but the mere naming of an executor in the prior will need not be given effect by the Superior Court of Guam when the subsequent will is otherwise wholly inconsistent with the terms of the prior will, the intention of the testator in this respect being left to the determination of the Superior Court of Guam.

(2) By being burned, torn, canceled, defaced, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by some person in the testator's presence and by the testator's direction. If the act is done by any person other than the testator, the direction of the testator and the fact of such injury or destruction must be proved by two (2) witnesses.

(b) Notwithstanding the provisions of subsection (a) of this Section, a holographic will may be altered pursuant to the provisions of subsection (c) of Section 207 of this Title.

**SOURCE:** Subsection (a)(1): Probate Code of Guam (1970), §§ 74, 72; California Probate Code, §§ 74, 72. Subsection (a)(2): Probate Code of Guam (1970), § 74; California Probate Code, § 74. Subsection (b): Guam Law Revision Commission.

**COMMENT:** The Commission has subsumed §§ 72 and 74 of the Probate Code of Guam (1970) into subsection (a) of § 413, as it appears that prior § 72 does no more than amplify on the principles set forth in prior § 74(1). This being the case, it seems more logical to have all of the provisions relating to the same general

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subject-matter area in the same Section in order to facilitate finding the law, and to clarify the law in the area. In addition, the Commission has added subsection (b), to cause § 413 to comport with § 207, supra.

**§ 415. Effect of Revocation of Subsequent Will.**

If, after making a will, the testator makes a second will, the destruction or other revocation of such second will does not revive the first will, unless it appears by the terms of such revocation that it was the testator's intention to revive and give effect to the first will, or unless, after the destruction or other revocation of such second will, the first will is duly republished.

**SOURCE:** Probate Code of Guam (1970), § 75.

**§ 417. Effect of Revocation of Duplicate Will.**

A will executed in duplicate is revoked if one of the duplicates is burned, torn, canceled, defaced, obliterated or destroyed under the circumstances mentioned in subsection (a)(2) of Section 413 of this Title.

**SOURCE:** Probate Code of Guam (1970), § 76.

**§ 419. Revocation of Will Revokes its Codicils.**

The revocation of a will revokes all its codicils.

**SOURCE:** Probate Code of Guam (1970), § 79.

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