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**CHAPTER 12
ESCHEAT**

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§ 1201. Grounds for Escheat; Charges and Trusts on Escheated Property.

(a) If a decedent, whether or not domiciled in Guam at the time of death, leaves no one to take his estate or any portion thereof by testate succession, and no one other than a government, governmental subdivision or government agency to take his estate or any portion thereof by intestate succession, under the laws of Guam or of any other jurisdiction, such property escheats at the time of such decedent's death in accordance with the provisions of this Chapter.

(b) Property passing to the Government of Guam under the provisions of this Chapter, whether held by the Government of Guam or its officers, is subject to the same charges and trusts to which it would have been subject if passed by succession, and is also subject to the applicable provisions of the law of Guam relating to escheated estates.

SOURCE: California Probate Code, § 231(a) and (b) (as amended).

COMMENT: Escheat was covered under § 231 of the Probate Code of Guam (1970). Section 231 was very terse, and in the opinion of the Commission was not sufficient adequately to cover the field of escheat. Therefore, the Commission has extensively rewritten the law of escheat, basically following the model of §§ 231 - 236 of the California Probate Code. The Commission is indebted to the California Law Revision Commission for some of the Comments which follow the various Sections in this Chapter.

Section 1201 (prior § 231) has been revised to conform with the succeeding provisions of Chapter 12, which have been added to provide concrete rules for

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determining whether a decedent's property escheats to the Government of Guam. In subsection (a) of § 1201, the words “whether or not domiciled in Guam at the time of death” have been included to make it clear that Chapter 12 governs escheat of property belonging to nondomiciliary decedents as well as to domiciliaries. Under the law of some jurisdictions, property does not escheat in the sense that it does under Guam law and most other Anglo-American jurisdictions. Instead, the government inherits the property when there is no collateral kindred of the decedent within a specified degree of kinship. The language of subsection (a) of § 1201 makes it clear that the claim of such a jurisdiction will not preclude an escheat that would otherwise occur under Guam law.

Subsection (b) of § 1201, although its language has been revised in conformity with the California statute for the sake of clarity, essentially carries over the provisions of prior § 231 into this Title.

§ 1203. Money Held in Certain Trust Funds Not to Escheat.

Notwithstanding any other provision of law, a benefit consisting of moneys or other property distributable from a trust established under a plan providing health and welfare, pension, vacation, severance, retirement benefit, death benefit, unemployment insurance or similar benefits shall not pass or escheat to the Government of Guam, but shall go to the trust or fund from which distributable. If, however, such plan has terminated and the trust or fund has been distributed to the beneficiaries thereof prior to distribution of such benefit from the decedent's estate, such benefit shall pass and escheat to the Government of Guam as provided in Section 1201 of this Title.

SOURCE: California Probate Code, § 231(c), as amended.

COMMENT: Section 1203 exempts from the general law of escheat certain property rights belonging to the decedent. The distribution scheme set forth in § 1203 seems fair and reasonable, as it means that the beneficiaries of the decedent's property held in certain trust funds will be others similarly situated -- i.e., other contributors to such plans -- rather than the government. The only time that this distribution will not occur is set forth in the second sentence of § 1203: such property will escheat if the trust fund in question no longer exists. Under such circumstances, there will be no one who has even a remote interest in the decedent's property; this being the case, escheat is appropriate.

§ 1205. Escheat of Real Property.

Real property in Guam escheats to the Government of Guam in accordance with the provisions of Section 1201 of this Title.

SOURCE: California Probate Code, § 233.

§ 1207. Escheat of Tangible Personal Property, Wherever Located.

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All tangible personal property owned by the decedent, wherever located at the decedent's death, that was customarily kept in Guam prior to the decedent's death, escheats to the Government of Guam in accordance with the provisions of Section 1201 of this Title.

SOURCE: California Probate Code, § 233.

COMMENT: The property described in § 1207 escheats to the government even though it might have been temporarily removed from Guam at the time of the decedent's death. Some examples of the kind of property referred to are: property usually kept at his residence by a resident of Guam; property usually kept at a vacation home in Guam by a nonresident of Guam; and property used in connection with a business located in Guam. Section 1207 does not cover tangible personal property brought to Guam temporarily. However, the length of time that the property was in Guam prior to the decedent's death is not necessarily determinative of its customary location. If a decedent had recently moved to Guam and established a permanent residence here, the personal property usually kept at such residence would be "customarily kept in Guam" even though it had been so kept only for a brief period of time.

§ 1209. Escheat of Decedent's Tangible Personal Property Which is Subject to Administration; Claim of Another Jurisdiction.

(a) Subject to the provisions of subsection (b) of this Section, all tangible personal property owned by the decedent that is subject to the control of the Superior Court of Guam for purposes of administration and disposition under Division 3 of this Title escheats to the Government of Guam in accordance with the provisions of Section 1201 of this Title.

(b) The property described in subsection (a) of this Section does not escheat to the Government of Guam but goes to another jurisdiction if such jurisdiction claims such property and establishes that:

(1) Such other jurisdiction is entitled to such property under its laws;

(2) The decedent customarily kept such property in such jurisdiction prior to the decedent's death; and

(3) The Government of Guam has the right to escheat and take tangible personal property being administered as part of a decedent's estate in such jurisdiction if such decedent customarily kept such property in Guam prior to such decedent's death.

SOURCE: California Probate Code, § 234.

COMMENT: Subsection (a) of § 1209 covers all tangible personal property, whether or not it was temporarily located in Guam. It may also apply to tangible

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personal property that was brought to Guam after the decedent's death. Subsection (a), however, is made subject to subsection (b), to permit a State or other jurisdiction where the property was usually kept by the decedent to claim the property if it wishes to do so. Note, however, that the conditions of subsection (b) make it clear that Guam will not surrender any property to the State or other jurisdiction in which it was usually kept unless that State or jurisdiction would recognize Guam's claim under § 1207 to property found within that State or jurisdiction.

Subsection (b) of § 1209 requires the State or other jurisdiction claiming the property to establish the matters listed under subsections (b)(1), (2) and (3). Thus, the State or other jurisdiction must be able to demonstrate that, under the statutory or decisional law of that State or other jurisdiction, Guam has a reciprocal right to escheat property located in that State or other jurisdiction. If the State or other jurisdiction cannot show that Guam has such a reciprocal right -- if its law is inconclusive -- it has not established the matters required by subsections (b) (1), (2) and (3), and the property thus escheats to the Government of Guam under subsection (a) of § 1209.

§ 1211. Escheat of Intangible Personal Property of Decedent Who was Domiciled in Guam.

All intangible property owned by the decedent escheats to the Government of Guam in accordance with the provisions of Section 1201 of this Title if the decedent was domiciled in Guam at the time of the decedent's death.

SOURCE: California Probate Code, § 235.

COMMENT: The property referred to in § 1211 includes, for example, debts owed to the decedent, bank accounts, promissory notes, shares of corporate stock, dividends, wage claims, and beneficial interests in trusts. Section 1211 neither contains nor recognizes any limitation on the intangible property that escheats under its provisions. If the property was owned by a Guam domiciliary, it escheats to the Government of Guam wherever the obligor may be located and wherever the obligation might have been incurred.

§ 1213. Escheat of Decedent's Intangible Personal Property Which is Subject to Administration; Claim of Another Jurisdiction.

(a) Subject to the provisions of subsection (b) of this Section, all intangible property owned by the decedent that is subject to the control of the Superior Court of Guam for purposes of administration and disposition under Division 3 of this Title escheats to the Government of Guam in accordance with the provisions of Section 1201 of this Title whether or not the decedent was domiciled in Guam at the time of the decedent's death.

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(b) The property described in subsection (a) of this Section does not escheat to the Government of Guam but goes to another jurisdiction if the other jurisdiction claims such property and establishes that:

(1) Such other jurisdiction is entitled to such property under its laws;

(2) The decedent was domiciled in such jurisdiction at the time of the decedent's death; and

(3) The Government of Guam has the right to escheat and take intangible property being administered as part of a decedent's estate in such jurisdiction if such decedent were domiciled in Guam at the time of such decedent's death.

SOURCE: California Probate Code, § 236.

COMMENT: Under subsection (a) of § 1213, for example, even if the decedent were domiciled in another State or jurisdiction, the decedent's Guam bank account escheats to the Government of Guam. Subsection (a), however, is subject to the provisions of subsection (b), which permits the State or other jurisdiction of the decedent's domicile to claim the property if it wishes to do so. However, the conditions of subsection (b) make it clear that Guam will not relinquish such property to the State or other jurisdiction of domicile unless that State or other jurisdiction would recognize Guam's claim under § 1211 to escheat intangibles subject to that State's or jurisdiction's jurisdiction.

Subsection (b) of § 1213 requires the State or other jurisdiction claiming the property to establish the matters listed in subsections (b)(1), (2) and (3). Thus, the State or other jurisdiction must be able to demonstrate that, under its statutory or decisional law, Guam has a reciprocal right to escheat intangibles subject to the jurisdiction of that State or other jurisdiction. If the State or other jurisdiction cannot show that Guam has such a reciprocal right -- if its law is inconclusive -- it has not established the matters required by subsection (b) and the property escheats to Guam under subsection (a).
