

CHAPTER 13
SIMULTANEOUS DEATH

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§ 1301. Disposition of Property Where Insufficient Evidence of Survivorship, Generally.

Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if such person had survived, except as otherwise provided in this Chapter.

SOURCE: California Probate Code, § 296.

COMMENT: Chapter 13 of this Title consists of the Uniform Simultaneous Death Act (U.S.D.A.), which comprised §§ 296 - 296.8 of the Probate Code of Guam (1970). The U.S.D.A., or some version thereof, has been adopted in virtually every jurisdiction of the United States, as well as in the Virgin Islands, the Panama Canal Zone, and Guam. Its purpose is to "...supplant the former arbitrary and complicated presumption of survivorship with effective, workable and equitable rules applicable to the ever- increasing number of cases where two or more persons have died under such circumstances that there is no sufficient evidence to indicate that they have died otherwise than simultaneously," *In re Schmidt's Estate* (1968), 67 Cal. Rptr. 847, 261 C.A.2d 262. In keeping with the general structure of this Title, the Commission has decided to use the California version of the U.S.D.A.; this was

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also apparently done in the Probate Code of Guam (1970), and only minor changes from prior law have been made in Chapter 13. These changes have been made for three reasons: to make certain Sections easier to read; to make the provisions of the U.S.D.A. read sex-neutrally to the greatest extent practicable (under the general mandate of Public Law 14-28); and to bring Guam's version of the Act into conformity with certain other revisions of this Title, notably in the area of community property -- i.e., §§ 1309 and 1311, *infra*.

§ 1303. Beneficiaries Taking Successively Under Another's Disposition of Property In Simultaneous Death Situation.

Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property, and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

SOURCE: California Probate Code, § 296.1.

COMMENT: Section 1303 is identical with the provisions of § 2 of the Uniform Simultaneous Death Act; see 9A Uniform Laws Annotated.

§ 1305. Disposition of Joint Tenancy Property in Simultaneous Death Situation.

Where there is no sufficient evidence that two joint tenants have died otherwise than simultaneously, the property so held shall be administered upon, distributed, or otherwise dealt with, one-half (1/2) as if one joint tenant had survived and one-half (1/2) as if the other joint tenant had survived. If there are more than two joint tenants and all of them have so died, the property thus administered upon, distributed, or otherwise dealt with, shall be in the proportion that one joint tenant bears to the whole number of joint tenants.

SOURCE: California Probate Code, § 296.2.

COMMENT: Section 1305 is similar to the provisions of § 3 of the Uniform Simultaneous Death Act; see 9A Uniform Laws Annotated.

§ 1307. Proceeds of Insurance Policy in Simultaneous Death Situation.

Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have

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died otherwise than simultaneously, the proceeds of such insurance policy shall be distributed as if the insured had survived the beneficiary.

SOURCE: California Probate Code, § 296.3.

COMMENT: Section 1307 is similar to the provisions of § 4 of the Uniform Simultaneous Death Act; see 9A Uniform Laws Annotated.

§ 1309. Disposition of Community Property in Simultaneous Death Situation.

(a) Where a husband and wife have died, leaving community property, and there is no sufficient evidence that they have died otherwise than simultaneously, one-half (½) of all the community property shall be administered upon, distributed, or otherwise dealt with, as if the husband had survived and as if said one-half (½) were his separate property, and the other one-half (½) thereof shall be administered upon, distributed, or otherwise dealt with, as if the wife had survived and as if said other one-half (½) were her separate property, except as provided in Section 1307 of this Title.

(b) If a portion of the estate which was the community property of a husband and wife would otherwise escheat to the Government of Guam under the provisions of this Section and of Sections 917, 1001 and 1201 of this Title, or if a portion of the estate which was separate property of a previously deceased spouse would otherwise escheat to the Government of Guam under the provisions of Section 919 of this Title, because there is no relative, including next of kin, of one of the spouses to succeed to such portion of the estate, such portion of the estate shall be distributed in equal shares to the children of the other spouse and to their descendants by right of representation, or if such other spouse leaves no children, nor descendants of a deceased child, in equal shares to the parents of such other spouse, or if either is dead to the survivor, or if both are dead, in equal shares to the brothers and sisters of such other spouse and to their descendants by right of representation, or if such other spouse leaves neither parent, brother, sister, nor descendant of a deceased brother or sister, such portion of the estate goes to the next of kin of such other spouse in equal degree, except that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor to such other spouse must be preferred to those claiming through an ancestor more remote.

SOURCE: California Probate Code, § 296.4 (as amended.)

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COMMENT: The purpose of subsection (b) of § 1309 is, essentially, to prevent escheat to the greatest extent practicable by bringing § 1309 into conformity with § 917. Absent subsection (b), in other words, it might happen in a simultaneous death situation involving husband and wife that their community property would escheat, while if they did not die simultaneously their property would pass to collateral kindred as provided for in § 917. Such an anomalous situation is removed by subsection (b), which was added to the California Probate Code shortly after § 228 (similar to § 917, *supra*) was added to the California Probate Code.

Note that § 1309 does not appear in the Uniform Simultaneous Death Act, 9A Uniform Laws Annotated; this is so because the U.S.D.A. contains no provisions concerning community property, and thus such provisions were drafted as additions to the U.S.D.A. in California (and, presumably, in the other community property jurisdictions of the United States.) Guam, being a community property jurisdiction, needs such provisions to fill the gaps that would be left in the U.S.D.A. in their absence.

§ 1311. Proceeding to Determine Simultaneous Death: Petition; Notice of Hearing; Service.

(a) Filing of petition. When it is claimed that, in accordance with the provisions of this Chapter, any persons have died under circumstances where there is no sufficient evidence that they have died otherwise than simultaneously, the personal representative of any such deceased person, or any other person interested in the estate of any such deceased person, may file a petition, in the estate proceeding in which such personal representative received his appointment or in which such other person claims an interest, seeking to have it determined that such deceased persons died under circumstances wherein there is no sufficient evidence that such deceased persons died otherwise that simultaneously.

(b) Hearing; notice. The Clerk of the Superior Court of Guam shall set the petition referred to in subsection (a) of this Section for hearing by the Superior Court of Guam, and notice thereof shall be given in the manner required by Section 3401 of this Title. In addition, the notice provided for herein shall be personally served at least ten (10) calendar days before the date of the hearing upon the personal representative of each other person claimed to have so died. If the personal representative of any such other person is also the petitioner as set forth in subsection (a) of this Section, then in lieu of personal service upon such personal representative, such notice shall be given to the heirs and devisees of such other person, so far as they are known to the petitioner, by registered mail, at least ten (10) calendar days before the date of the hearing.

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SOURCE: California Probate Code, § 296.41.

COMMENT: See § 717 of Title 1 for further provisions concerning what constitutes “registered mail.”

§ 1313. Proceeding to Determine Simultaneous Death: Hearing; Determination of Order of Death; Jurisdiction.

At the time appointed pursuant to the provisions of Section 1311 of this Title, the Superior Court of Guam, upon proof that due notice of the hearing has been given pursuant to the provisions of Section 1311 of this Title, shall proceed to hear the petition and any objections thereto that may have been filed or presented; and if, after a full hearing, the Superior Court of Guam is satisfied that the named persons are dead and that there is no sufficient evidence that they died other than simultaneously, it shall make an order to that effect. If the Superior Court of Guam is satisfied that the named persons are dead and that they did not die simultaneously, then the Superior Court of Guam shall make an order setting forth the order in which such persons died. Such order when it becomes final shall be a binding determination of the facts therein set forth and conclusive as against the personal representatives of the deceased persons named in such order and against all persons claiming by, through or under any such deceased persons. The Superior Court of Guam shall have exclusive jurisdiction to determine, by its order, that there is no sufficient evidence that the named persons died otherwise than simultaneously or to determine the order in which the named persons died.

SOURCE: California Probate Code, § 296.42.

§ 1315. Prospective Effect of This Chapter.

The provisions of this Chapter shall not apply to the distribution of the property of a person who has died before the effective date of this Chapter.

SOURCE: Probate Code of Guam (1970), § 296.5.

§ 1317. When This Chapter is Inapplicable.

This Chapter shall not apply in the case of wills, living trusts, deeds, or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this Chapter.

SOURCE: Probate Code of Guam (1970), § 296.6.

§ 1319. This Chapter to be Construed to Effect Uniformity.

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This Chapter shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those States, United States territories, and other jurisdictions which enact it.

SOURCE: Probate Code of Guam (1970), § 296.7.

§ 1321. Short Title.

This Chapter may be cited as the *Guam Uniform Simultaneous Death Act*.

SOURCE: Probate Code of Guam (1970), § 296.8.
