

15 GCA ESTATES AND PROBATE
CH. 17 APPOINTMENT OF EXECUTORS AND OF
ADMINISTRATORS WITH THE WILL ANNEXED

CHAPTER 17
APPOINTMENT OF EXECUTORS AND OF
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§ 1701. Who May be Executors; Who May Not.

(a) Any of the following may be appointed to serve as executors:

- (1) Natural persons;
- (2) Territorial banks which are authorized by their charters to exercise trust powers and which have qualified to act as fiduciaries

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pursuant to the provisions of Part C of Chapter I of Article III of Title XXXI (being Sections 30200 through 30204, inclusive) of the Government Code of Guam;

(3) State or national banks which

(i) have received the approval of the Commissioner of Banking to establish an office in the territory of Guam and to engage in the business of banking in the territory of Guam,

(ii) are conducting a domestic banking business in the territory of Guam,

(iii) are authorized by their charters to exercise trust powers, and

(iv) have qualified to act as fiduciaries pursuant to the provisions of Part C of Chapter I of Article III of Title XXXI (being Sections 30200 through 30204, inclusive) of the Government Code of Guam;

(4) Trust companies which are not banks, which have qualified to act as fiduciaries under the laws of the territory of Guam.

(b) If the sole executor or all the executors named in the will are dead, neither their executors nor any of them shall be appointed to serve as the first testator's executor merely because of their position, or that of any of them, as executors of the first testator's executor.

(c) No natural person is competent to serve as an executor who:

(1) is under the age of majority;

(2) is not a resident of the territory of Guam;

(3) is not physically present in the territory of Guam;

(4) has been convicted of a felony, unless the Superior Court of Guam is satisfied that such person is competent to execute the duties of the trust; or

(5) is adjudged by the Superior Court of Guam incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity.

(d) The letters of any natural person appointed to serve as an executor may, in the discretion of the Superior Court of Guam, be revoked if during the course of the administration such executor

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- (1) ceases to be a resident of the territory of Guam,
- (2) ceases to be physically present in the territory of Guam, or
- (3) is adjudged by the Superior Court of Guam incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity.

SOURCE: Subsection (a): Guam Law Revision Commission. Subsection (b): Probate Code of Guam (1970), § 406; Guam Law Revision Commission. Subsection (c): Probate Code of Guam (1970), § 401; Guam Law Revision Commission. Subsection (d): Guam Law Revision Commission.

COMMENT: The Commission has added subsection (a), which defines precisely who may be appointed to be an executor. This was never specifically delineated in the Probate Code of Guam (1970). The Commission's intention is that natural persons who are competent under the provisions of subsection (c), local banks which are qualified to do trust business, national and state banks which are doing domestic business in Guam, and local trust companies which are not banks (if any), may serve as executors. The Commission has added to subsection (b) the provision that executors of executors, as such, are not entitled to appointment as executors of the first testator's estate. It has also altered subsection (c), to provide that nonresidents of Guam and persons not physically present in Guam are not competent to serve as executors; it has changed the term "an infamous crime" (which appeared in § 401 of the Probate Code of Guam (1970)) to "a felony," and added the language following the comma in subsection (c)(4); and it has deleted the last sentence of prior § 401 in light of Public Law 14-28. Finally, it has added subsection (d), the intention of which is to provide that natural persons appointed as executors must remain residents of Guam, physically present in Guam, and otherwise competent to execute the duties of the trust, during the course of the administration. Note that the qualifications set forth in § 1701 as to executors -- both at the time of appointment and during the course of the administration -- also apply to administrators with the will annexed (see § 1725(d),) and to administrators (see § 1801.) Also see Comment to § 1709, *infra*.

§ 1703. Executor Indicated, But Not Specifically Named, In Will.

When it appears, by the terms of a will, that it was the testator's intention to commit the execution thereof and the administration of the testator's estate to any person as executor, such person, although not named executor in the will, is entitled to a grant of letters testamentary in like manner as if such person had been named executor in the will.

SOURCE: Probate Code of Guam (1970), § 402.

§ 1705. Testator's Ability to Confer Power to Designate Executor, Coexecutor, Successor Executor or Successor Coexecutor.

The testator may, by will, confer to one or more natural persons the power to designate an executor, to designate himself and some other

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natural person coexecutors, or to designate a successor executor or successor coexecutors; and the testator may provide by will that the person or persons so designated may serve without bond or other form of security for the faithful performance of their trust. The designation provided for hereinabove shall be in writing and filed with the Superior Court of Guam. Except as provided in this Section, an executor does not have authority to appoint an executor or coexecutor or successor executor or coexecutor.

SOURCE: California Probate Code, § 403 (as amended).

§ 1707. Absentee or Minor Named as Executor; Appointment of Interim Executor or Administrator With the Will Annexed; Effect of Removal of Disability.

(a) When a natural person who is incompetent to serve as an executor pursuant to the provisions of Section 1701(c) of this Title is named in a will as an executor, and there is another executor named in the will who accepts the trust and qualifies, the latter may be granted letters testamentary and administer the estate until the person formerly incompetent to serve as executor pursuant to the provisions of Section 1701(c) of this Title becomes competent so to serve, at which time such person may, upon proper petition therefor and in the discretion of the Superior Court of Guam, be granted letters testamentary as a co-executor.

(b) When a natural person who is incompetent to serve as an executor pursuant to the provisions of Section 1701(c) of this Title is named in a will as an executor, and there is no other executor named in the will, letters of administration with the will annexed must be granted; but the Superior Court of Guam may in its discretion revoke such letters when the person formerly incompetent to serve as an executor pursuant to the provisions of Section 1701(c) of this Title becomes competent so to serve, and grant letters testamentary to such person, upon proper petition therefor.

SOURCE: Probate Code of Guam (1970), § 405; Guam Law Revision Commission.

§ 1709. Executor Who Removes From Guam: Automatic Appointment of Attorney for Service of Process.

(a) Removal from and residence without Guam by an executor who was formerly a resident, is equivalent to and shall constitute an appointment by such executor of his Guam attorney of record to be his

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true and lawful attorney, upon whom may be served all lawful processes and notices of motion in any action or proceeding against such executor with respect to the estate or founded upon or arising out of his acts or omissions as such executor; provided, that if such executor has no Guam attorney of record, the provisions of subsection (b) of this Section shall apply in lieu of the provisions of this subsection.

(b) Removal from and residence without Guam by an executor who was formerly a resident, and who has no Guam attorney of record, is equivalent to and shall constitute an appointment by such executor of the Attorney General of Guam to be his true and lawful attorney, upon whom may be served all lawful processes and notices of motion in any action or proceeding against such executor with respect to the estate or founded upon or arising out of his acts or omissions as such executor.

(c) The appointments referred to in subsections (a) and (b) of this Section shall be irrevocable for so long as such executor resides without Guam, and shall be binding upon the personal representative of such executor.

(d) As used in this Section, "Guam attorney of record" means an attorney at law, duly admitted to the practice of law in Guam, who has entered an appearance on behalf of the executor in the matter of the estate of a decedent or otherwise manifested to the satisfaction of the Superior Court of Guam that he represents the executor in such a matter.

SOURCE: California Probate Code, § 405.1; Guam Law Revision Commission.

COMMENT: Section 1701, *supra*, provides that natural persons must be Guam residents, and physically present in Guam, to be appointed executors. The Commission notes, however, that people move to and from Guam, and is of the opinion that this Title should contain provisions to cover that situation. The Commission has therefore adapted for Guam several provisions which were added to California law in 1963 (California Probate Code §§ 405.1 -405.6); § 1709 is the first of these provisions. The underlying notion is to keep probate cases moving forward expeditiously toward their conclusions. Note that under the provisions of § 1701(d), *supra*, the letters of an executor who removes from Guam may be revoked. Such revocation is not, however, automatic; §§ 1709 through 1715, inclusive, are thus necessary even in light of the provisions of § 1701(d), to cover the situation wherein the letters of an executor who removes from Guam are not revoked. Also note that the provisions of §§ 1709 through 1715, inclusive, also apply to administrators with the will annexed (see § 1725(d),) and to administrators (see § 1819.)

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§ 1711. Executor Who Removes From Guam: Filing of Statement of Permanent Address; Change of Address; Removal for Failure to Comply.

(a) Any executor who removes from and resides without Guam shall file in the proceedings relating to the estate of the decedent an original statement signed and acknowledged by such executor, setting forth his permanent address without Guam; and if such permanent address be changed, such executor shall forthwith file in a like manner an original statement of such change of address.

(b) Failure by an executor to comply with the provisions of subsection (a) of this Section shall be cause for the revocation of his letters.

SOURCE: Subsection (a): California Probate Code, § 405.2. Subsection (b): California Probate Code, § 405.6.

COMMENT: See Comment to § 1709, supra.

§ 1713. Executor Who Removes From Guam: Service of Process or Notice of Motion; Proof of Service.

(a) Service of process or a notice of motion upon an executor who has removed from and resides without Guam, in any action or proceeding against such executor with respect to the estate or founded upon or arising out of such executor's acts or omissions as such executor, shall be made by delivering to and leaving with such executor's attorney for the service of process (as provided in Section 1709 of this Title) two copies of the summons and complaint or notice of motion, and a copy of the statement filed by such executor under the provisions of Section 1711 of this Title, or, if no such statement has been filed, a copy of the letters testamentary granted to such executor, together with a written statement signed by the party to the action seeking such service, setting forth an address to which such process shall be sent.

(b) Following receipt of the documents referred to in subsection (a) of this Section, such executor's attorney for the service of process (as provided in Section 1709 of this Title) shall forthwith send, by registered mail, one copy of said summons and complaint or notice of motion to such executor at the address as shown in such statement delivered to such executor's attorney for the service of process.

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(c) Personal service of such process or notice of motion upon such executor, wherever found without Guam, shall be the equivalent of service as provided hereinabove.

(d) Proof of service of process or of a notice of motion upon an executor who has removed from and resides without Guam shall, in the event of service by registered mail, be made by certificate of such executor's attorney for the service of process (as provided in Section 1709 of this title), showing such mailing, and filed with the Superior Court of Guam. In the event of personal service without Guam, such compliance may be proved by the return of any duly constituted public officer, qualified to serve like process or notice of motion of and in the jurisdiction where such executor is found, showing such service to have been made. Such return shall be appended to the original summons or notice of motion, which shall be filed as set forth hereinabove in this subsection.

SOURCE: Subsections (a) - (c): California Probate Code, § 405.3 (as amended).
Subsection (d): California Probate Code, § 405.4 (as amended.)

COMMENT: See Comment to § 1709, *supra*; and see § 717 of Title 1 for further provisions concerning what constitutes "registered mail."

§ 1715. Executor Who Removes From Guam: Effect of Service; Time to Answer.

Service made under the provisions of Section 1713 of this Title upon an executor who has removed from and resides without Guam shall have the same legal force and validity as if service had been made personally within Guam; provided, however, that when a summons and complaint are thusly served upon such executor, he may appear and answer the complaint within thirty (30) calendar days from the date of service; and provided further, that such notice of motion must be served upon such executor at least thirty (30) calendar days in advance of the date of the hearing on the motion, and that no such hearing shall go forward unless it is proved to the satisfaction of the Superior Court of Guam that due notice of the hearing has been given.

SOURCE: California Probate Code, § 405.5 (as amended).

COMMENT: See Comment to § 1709, *supra*.

§ 1717. Failure to Grant Letters to All Named Executors: Powers of Those to Whom Letters Are Granted.

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When letters testamentary are not granted by the Superior Court of Guam to all executors named in a will, those to whom such letters are granted have the same authority to act in every respect as effectually as all would have if letters had been granted to all.

SOURCE: Probate Code of Guam (1970), § 408.

§ 1719. Powers of Named Executor Before Grant of Letters Testamentary.

No person has any power as an executor before he qualifies, except that before letters testamentary are granted, the person or persons named in the testator's will as executor or executors may pay the charges for the testator's funeral and take necessary measures for the preservation of the estate.

SOURCE: Probate Code of Guam (1970), § 400.

§ 1721. Letters Testamentary to be Granted in Absence of Objection.

If no person files an objection to the granting of letters testamentary as provided in Section 1723(a) of this Title, the Superior Court of Guam when admitting a will to probate must grant letters testamentary thereon to the person or persons named therein as executor or executors who are qualified and competent under the provisions of Section 1701 of this Title to discharge the trust, unless they or any of them have renounced their right.

SOURCE: Probate Code of Guam (1970), § 407; Guam Law Revision Commission.

§ 1723. Objections to Granting Letters Testamentary and Petition for Letters of Administration With the Will Annexed; Circumstances for Appointment of Administrator With Will Annexed.

(a) Any person interested in the estate may, at any time prior to the hearing provided in Section 1515 of this Title, file objections in writing to the granting of letters testamentary to the persons named in the will as executors, or any of them, and such objections must be heard and determined by the Superior Court of Guam at the hearing provided in Section 1515 of this Title. Such person may at the same time file a petition praying that letters of administration with the will annexed be granted to him in the first instance, in lieu of a grant of letters testamentary to the petitioner therefor. Such petition must comply with the provisions of Section 1507 of this Title, and shall also be heard at the hearing provided in Section 1515 of this Title.

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(b) The Superior Court of Guam shall grant letters of administration with the will annexed in the first instance, in lieu of letters testamentary, under any of the circumstances set forth in Section 1725(a) of this Title; provided, that no letters of administration with the will annexed shall be granted in the first instance, except on proper petition therefor.

SOURCE: Subsection (a): Probate Code of Guam (1970), § 407; Guam Law Revision Commission. Subsection (b): Probate Code of Guam (1970), § 406; Guam Law Revision Commission.

COMMENT: The Commission has amended the last sentence of subsection (a) to include certain procedural requirements which were not included in § 407 of the Probate Code of Guam (1970). It has also revised the language of subsection (b) to comport with the provisions of § 1725, *infra*.

§ 1725. Appointment of Administrators With the Will Annexed in the First Instance; Circumstances for and Priority of Appointment; Powers; Security for Faithful Performance of Trust.

(a) The Superior Court of Guam shall appoint an administrator with the will annexed in the first instance, and shall grant to such appointee letters of administration with the will annexed upon proper petition therefor, when a decedent's will has been duly proved and:

- (1) No executor is named in the will; or
- (2) The sole executor or all the executors named in the will are dead; or
- (3) The sole executor or all the executors named in the will are incompetent to execute the trust under the provisions of Section 1701 of this Title; or
- (4) The sole executor or all the executors named in the will fail to apply for letters testamentary; or
- (5) The sole executor or all the executors named in the will fail to appear and qualify at the hearing provided in Section 1515 of this Title; or
- (6) The Superior Court of Guam determines, following the hearing referred to in Section 1723(a) of this Title, that letters testamentary shall not be granted to the persons named in the will as executors, or to any of them.

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(b) Persons are entitled to appointment as administrators with the will annexed in the same order of priority as in the appointment of administrators; provided, that one who takes under the will has priority over one who does not, and need not be entitled to succeed to the estate or some portion thereof under the law of succession; and provided further, that notwithstanding any other provisions of this subsection, letters of administration with the will annexed may be granted to one or more competent persons who are not otherwise entitled to appointment as a matter of priority, upon the written request filed with the Superior Court of Guam by a resident of Guam who takes more than fifty percent (50%) of the value of the estate under the will.

(c) Administrators with the will annexed have the same authority over estates which executors named in the will would have had, and their acts are as effectual for all purposes; but if a power or authority conferred upon an executor is discretionary, and is not conferred by law, it shall not be deemed to be conferred upon an administrator with the will annexed.

(d) The provisions of Sections 1701, 1709, 1711, 1713 and 1715 shall apply to administrators with the will annexed with the same force and effect as those provisions apply to executors.

(e) Notwithstanding the provisions of subsection (a) of this Section, the Superior Court of Guam may also grant letters of administration with the will annexed pursuant to the applicable provisions of Chapter 21 of this Title.

SOURCE: Subsection (a): Guam Law Revision Commission. Subsections (b) and (c): California Probate Code, § 409 (as amended). Subsections (d) and (e): Guam Law Revision Commission.

COMMENT: Subsections (a), (d) and (e) are new. Subsection (a) defines precisely when an administrator with the will annexed may be appointed in the first instance, a point never made specific under the Probate Code of Guam (1970). Subsections (b) and (c) are substantively the same as § 409 of the Probate Code of Guam (1970), except that the last portion of subsection (b) is based on similar provisions of California law (§ 409) rather than the Probate Code of Guam (1970). Subsection (d) makes it clear that an administrator with the will annexed must meet the same qualifications, and be subject to the same requirements if he removes from Guam, as an executor; it is the Commission's intention that the letters of an administrator with the will annexed, like those of an executor, be subject to revocation if the administrator with the will annexed ceases to be a resident of Guam, ceases to be physically present in Guam, or otherwise becomes incompetent to execute the duties of his trust during the course of the administration. Finally, subsection (e) is intended to make it clear that a new administrator with the will annexed may be appointed if the original executor or administrator with the will annexed dies,

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resigns or becomes incompetent during the course of the administration and his letters are revoked, all as provided for in Chapter 21, *infra*.

NOTE: See Official Forms Nos. 2, 3 and 4, Appendix "A".
