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Ch. 18 APPOINTMENT OF ADMINISTRATORS

CHAPTER 18
APPOINTMENT OF ADMINISTRATORS

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§ 1801. Administrators Must Have Same Qualifications as Executors.

(a) No person is competent to serve as an administrator who has not the qualifications required of an executor pursuant to the provisions of Section 1701 of this Title.

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

- (1) ceases to be a resident of the territory of Guam,
- (2) ceases to be physically present in the territory of Guam, or

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(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): Probate Code of Guam (1970), § 420; Guam Law Revision Commission. Subsection (b): Guam Law Revision Commission.

COMMENT: The Commission has added subsection (b), which is substantially the same as § 1701(d) and is intended to indicate that administrators -- like executors and administrators with the will annexed -- 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 as well as at the time of appointment.

§ 1803. Surviving Partner Not to be Administrator If Any Interested Person Objects to Appointment.

The surviving partner of a decedent must not be appointed administrator of the estate if any person interested in the estate objects to such surviving partner's appointment.

SOURCE: Probate Code of Guam (1970), § 421.

§ 1805. Priority of Persons Entitled to Letters of Administration.

(a) Letters of administration of the estate of a person dying intestate must be granted to one or more of the following persons, if competent under the provisions of Section 1801 of this Title, who are entitled to letters of administration, upon proper petition therefor, in the following order:

(1) The surviving spouse, or some person competent under the provisions of Section 1801 of this Title whom the surviving spouse may request to have appointed.

(2) The children, or any of them.

(3) The grandchildren, or any of them.

(4) The parents, or either of them.

(5) The brothers or sisters, or any of them.

(6) The next of kin entitled to share in the estate, or any of them.

(7) The relatives of a previously deceased spouse, or any of them, when such relatives are entitled to succeed to some portion of the estate.

(8) The creditors, or any of them.

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(9) Any person, other than those provided hereinabove, who is competent under the provisions of Section 1801 of this Title, including, but not limited to, the Territorial Ombudsman (Suruhanu) or an attorney at law who indicates his willingness for such appointment. The Superior Court of Guam may establish and maintain a list or roster of attorneys at law who indicate their willingness to accept such appointments under the provisions of this subsection, and may grant letters of administration to an attorney at law whose name appears on such list or roster.

(b) A relative of the decedent who is entitled to priority under the provisions of subsection (a) of this Section is entitled to priority only if either of the following facts exist:

(1) Such relative is entitled to succeed to all or part of the estate; or

(2) The relative is a child, grandchild, parent or grandparent of the decedent and either takes under the will of, or is entitled to succeed to all or part of the estate of, another deceased person who is entitled to succeed to all or part of the estate of the decedent.

(c) Of several persons petitioning for and equally entitled to a grant of letters of administration, relatives of the whole blood shall be preferred to those of the half blood.

(d) When there are several persons petitioning for and equally entitled to a grant of letters of administration, the Superior Court of Guam may, in its discretion, grant letters to one or more of them.

(e) When a creditor petitions for letters of administration, and no qualified person from a class prior in rank to that of the creditor (as provided in subsection (a) of this Section) so petitions, the Superior Court of Guam, at the request of another creditor, may in its discretion grant letters of administration to a qualified person from a class subsequent in rank to that of the creditor.

(f) Letters of administration must be granted to any applicant competent under the provisions of Section 1801 of this Title, when persons having priority fail to petition for letters of administration for themselves.

SOURCE: Subsection (a): Probate Code of Guam (1970), § 422; Guam Law Revision Commission. Subsection (b): California Probate Code, § 422 (as amended). Subsection (c): Probate Code of Guam (1970), § 424. Subsection (d): Probate

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Code of Guam (1970), § 425. Subsection (e): Probate Code of Guam (1970), § 425; Guam Law Revision Commission. Subsection (f): Probate Code of Guam (1970), § 427.

COMMENT: Section 1805 brings together all the provisions which were contained in the Probate Code of Guam (1970) concerning the granting of letters of administration and the priority of applicants for such letters. No substantive changes have been made in subsections (c) through (f). As to subsections (a) and (b), two changes have been made to § 422 of the Probate Code of Guam (1970): (1) the addition of the language commencing with "...including, but not limited to..." in subsection (a)(9); and (2) the addition of subsection (b)(2). The addition to subsection (a)(9) has been made to set guidelines for the Superior Court as to who may be appointed administrator where no person having priority petitions for letters. It is not, however, the Commission's intention that § 1805(a)(9) give the Superior Court the power to appoint an administrator sua sponte where no person has filed a petition for letters. As to the alteration to subsection (b)(2), note that § 422 of the Probate Code of Guam (1970) contained only language like that in § 1805(b)(1); the addition of subsection (b) (2) has the effect of broadening the class of relatives who are entitled to letters of administration on a decedent's estate. Whereas under prior § 422 only relatives who were "...entitled to succeed to the estate or some portion thereof" were entitled to priority, the class of relatives so entitled under subsection (b)(2) now also includes relatives who are entitled to take some portion of the decedent's estate through another decedent who was himself entitled to succeed to some portion of the decedent's estate.

§ 1807. Letters of Administration May Be Granted to Nominee of One Entitled; Priority of Nominees; Procedure for Nomination.

Letters of administration may be granted to one or more competent persons, although not otherwise entitled to the same, at the written request of the person entitled or of a child, grandchild, parent, brother or sister of the decedent who would be entitled but for his nonresidence in Guam, filed in the Superior Court of Guam. If the person making the request referred to hereinabove is a child, grandchild, parent, brother or sister of the decedent, the nominee shall have priority next after those in the class of the person making the request; otherwise the Superior Court of Guam, in its discretion, may grant letters of administration either to such nominee or to a person of a class subsequent in rank to that of the person making the request, but other persons of the class of the person making the request shall have priority over such nominee.

SOURCE: California Probate Code, § 423 (as amended).

COMMENT: The only substantive alteration to § 423 of the Probate Code of Guam (1970) is the addition of the language "...or of a child, grandchild, parent, brother or sister of the decedent who would be entitled but for his nonresidence in Guam...." As nonresidents are not entitled to letters of administration (see §§ 1801, 1701), the addition of this language is necessary to ensure that nonresident relatives

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have the same power to nominate a person to administer the estate as do resident relatives.

§ 1809. Discretion of Court to Grant Letters of Administration to Guardian of Minor or Incompetent, or to Other Person.

If a person otherwise entitled to a grant of letters of administration is a minor or an incompetent person, letters of administration may be granted to his guardian, or to any other person entitled to a grant of letters of administration, in the discretion of the Superior Court of Guam.

SOURCE: Probate Code of Guam (1970), § 426.

COMMENT: The amended version of § 426 of the California Probate Code adds provisions concerning conservatees and conservators. Guam currently has no conservatorship provisions in its law, and thus no such provisions are necessary in § 1809. If conservatorship provisions are added to Guam law, however, then § 1809 should be amended to include provisions similar to the above-mentioned California provisions.

§ 1811. Essential Contents of Petition for Letters of Administration; Incorrect Statement of Jurisdictional Facts No Bar to Jurisdiction.

(a) A petition for letters of administration must be in writing, signed by the petitioner or the petitioner's counsel, and filed with the Clerk of the Superior Court of Guam, and must state:

- (1) The jurisdictional facts;
- (2) The names, ages and mailing addresses of the heirs of the decedent, so far as known to the petitioner; and
- (3) The character and estimated value of the property of the estate.

(b) Where the necessary jurisdictional facts actually exist but, through defect of form or error, they or any of them are incorrectly stated in any petition or pleading, the Superior Court of Guam has and retains jurisdiction to correct the defect or error at any time. No such defect or error shall make an order granting letters of administration, or any subsequent proceeding, void.

SOURCE: California Probate Code, § 440 (as amended).

NOTE: See Official Form No. 2, Appendix "A".

§ 1813. Notice of Hearing on Petition for Letters of Administration.

When a petition for letters of administration is filed, the Clerk of the Superior Court of Guam shall set the same for hearing by the Superior

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Court of Guam upon some day not fewer than twenty (20) and not more than thirty (30) calendar days after the date of filing, and notice thereof shall be given in the manner provided in Section 3401 of this Title.

SOURCE: Guam Law Revision Commission.

COMMENT: Section 441 of the Probate Code of Guam (1970), which covered procedure before hearing of a petition for letters of administration, was considerably different from § 327 of the Probate Code of Guam (1970), which covered pre-hearing procedure in the case of petitions for the probate of wills. The Commission can see no reason why pre-hearing procedure should be different as between the two different kinds of petitions, as both procedures are initiated in the same manner (i.e., by the filing of a petition), both require a hearing, and in both cases the purpose and format of the hearing are approximately the same. The Commission has therefore extensively revised § 1813, in order to make it congruent with § 1515, *supra* (§ 1515 being the revised provision concerning pre-hearing procedures in the case of a petition for the probate of a will.) Also see Comment to § 1515, *supra*.

OFFICIAL FORM: See Official Form No. 3, Appendix "A".

§ 1815. Service of Notice of Petition for Letters of Administration Upon Heirs; Manner of Service; Service by Mail.

At least ten (10) calendar days before the hearing on a petition for letters of administration, a copy of the notice of such hearing shall be served upon each heir of the decedent named in the petition, as follows:

(a) Personally, such personal service to be effected by the Office of the Marshal of the Superior Court of Guam; or

(b) By registered mail, sent by the petitioner, postage prepaid, addressed to such heir's mailing address as set forth in the petition; or if any heir's mailing address is not known to the petitioner, addressed to general delivery at the post office serving such heir's municipality (if such heir resides in Guam) or to general delivery at the post office serving such heir's last known place of residence (if such heir resides outside Guam).

As used in this Section, "post office" includes subpost office, substation, or other like facility regularly maintained by the United States Postal Service, or under the authority of any foreign government.

SOURCE: Probate Code of Guam (1970), § 328; California Probate Code, § 328 (as amended); Guam Law Revision Commission.

COMMENT: As with § 1813, there appears to be no reason why the provisions for service of notice in the case of a petition for letters of administration should be treated differently from those in the case of a petition for the probate of a will.

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Therefore, the Commission has revised § 1815 to bring it into conformity with § 1519, supra. Also see § 717 of Title 1 for further provisions concerning what constitutes "registered mail."

OFFICIAL FORM: See Official Form No. 3, Appendix "A".

§ 1817. Facts to be Proved at Hearing on Petition for Letters of Administration; Compelling Witnesses' Attendance; Contest of Petition; Grounds Counterpetition; Notice; Combined Hearings.

(a) Before letters of administration are granted in the first instance, the fact of death and that the decedent died intestate, and that due notice of the hearing has been given pursuant to the provisions of Sections 1815 and 3401 of this Title, must be proved by the evidence of the petitioner or others; and the Superior Court of Guam may also examine any other person concerning the time, place and manner of death, the place of decedent's residence at the time of death, the character and value of the decedent's property, and whether or not the decedent left any will; and the Superior Court of Guam may compel any person to attend as a witness for those purposes.

(b) Any person interested in the estate may, at any time prior to the hearing provided in Section 1813 of this Title, oppose a petition for the grant of letters of administration by filing in the Superior Court of Guam written grounds of opposition thereto, challenging the competency of the petitioner or the petitioner's right to letters of administration, or such person may assert his own right to letters of administration. In the latter case, he must file a petition and the notice required for an original petition (as provided in Sections 1815 and 3401 of this Title) must be given, and the Superior Court of Guam must hear the two petitions together.

SOURCE: Subsection (a): Probate Code of Guam (1970), § 443. Subsection (b): California Probate Code, § 442 (as amended); Guam Law Revision Commission.

COMMENT: Section 1817 brings together provisions concerning what must be proved at the hearing on a petition for letters of administration in the first instance - - i.e., where no administrator has yet been appointed -- (subsection (a),) and provisions concerning contests of such petitions when such contests are filed in cases wherein no administrator has yet been appointed (subsection (b).) No change has been made to § 443 of the Probate Code of Guam (1970), which constitutes subsection (a). As to subsection (b) -- which is based on California, and not Guam, law -- the only change from prior Guam law is that the grounds for a contest have been altered somewhat to conform with the California law as it was amended in 1941.

OFFICIAL FORM: See Official Forms Nos. 2 and 3, Appendix "A".

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§ 1819. Provisions of Sections 1709 through 1715 Applicable to Administrators.

The provisions of Sections 1709, 1711, 1713 and 1715 of this Title shall apply to administrators with the same force and effect as those provisions apply to executors.

SOURCE: Guam Law Revision Commission.

COMMENT: It is the Commission's intention that the same procedural requirements which apply to executors also apply to administrators with the will annexed (see § 1725(d), supra) and to administrators. Section 1819 effectuates that intention.

§ 1821. Provisions of This Chapter Do Not Provide Exclusive Manner of Appointment of Administrator.

Notwithstanding any provision of this Chapter, the Superior Court of Guam may also grant letters of administration pursuant to the applicable provisions of Chapter 21 of this Title.

SOURCE: Guam Law Revision Commission.

COMMENT: The Commission has added § 1821 to make it clear that a new administrator may be appointed if the original personal representative dies, resigns or becomes incompetent during the course of the administration and his letters are revoked, all as provided for in Chapter 21, infra.
