

15 GCA ESTATES AND PROBATE
CH. 31 DISPOSITION OF ESTATES OF SMALL VALUE

CHAPTER 31
DISPOSITION OF ESTATES OF SMALL VALUE

2014 NOTE: Unless otherwise indicated, this Title includes annotations drafted by the Law Revision Commission from the enactment of Title 15 GCA by P.L. 16-052 (Dec. 17, 1981). The Source notes have been updated to reflect subsequent changes to each provision. The Comments from the Law Revision Commission were retained in past print publications of the GCA, and are included herein as originally published, for historical purposes.

Pursuant to the authority granted by 1 GCA § 1606, “Subchapter” designations altered to “Article” to adhere to the Compiler’s general codification scheme.

- Article 1. Transfer of Personal Property Not Exceeding \$75,000.00 in Value.
- Article 2. Setting Aside Estates Not Exceeding \$75,000.00.

ARTICLE 1
TRANSFER OF PERSONAL PROPERTY NOT
EXCEEDING \$75,000.00 IN VALUE

- § 3101. Estates Under Seventy-Five Thousand Dollars (\$75,000); Summary Administration or Probate; Affidavit.
- § 3101.1 Estates of Deceased COLA Awardees; Summary Administration or Probate; Affidavit.
- § 3102. [Vacant.]
- § 3103. Estates Under Thirty-Five Thousand Dollars (\$35,000); Surviving Spouse's Right to Two Thousand Five Hundred Dollars (\$2,500) from Deposits in Savings Institutions.
- § 3105. Affidavit of Right; Effect of Receipt; Claim Against Estate in Probate; Procedure.
- § 3107. Exclusion of Joint Tenancy, Life Estate or Other Estate Terminable at Death.

§ 3101. Estates Under Seventy-Five Thousand Dollars (\$75,000); Summary Administration or Probate; Affidavit.

When a decedent leaves no real property, nor interest therein nor lien thereon, in the territory of Guam, and the total value of the decedent's property in the territory of Guam, excluding any motor vehicle of which the decedent was the owner or the legal owner, over and above any amounts due to the decedent for services in the armed forces

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of the United States, and over and above the amount of salary not exceeding Six Thousand Dollars (\$6,000), including compensation for unused vacation, owing to the decedent for services from any employment, does not exceed Seventy-Five Thousand Dollars (\$75,000), the surviving spouse, the children, lawful issue of deceased children, a parent, brothers or sisters of the decedent, the lawful issue of a deceased brother or sister, the guardian of the estate of any minor or incompetent person bearing such relationship to the decedent, or the trustee named under a trust agreement executed by the decedent during his lifetime, the primary beneficiaries of which bear such relationship to the decedent, if such person or persons has or have a right to succeed to the property of the decedent, or is the sole beneficiary or are all of the beneficiaries under the last will and testament of the decedent, may without procuring letters testamentary, letters of administration with the will annexed or letters of administration, and without awaiting administration upon the estate of an intestate decedent or the probate of the will of a testate decedent, collect any money due to the decedent, receive the property of the decedent, and have any evidences of interest, indebtedness or right transferred to such person or persons upon furnishing the person, representative, corporation, officer or body owing the money, having custody of such property or acting as registrar or transfer agent of such evidences of interest, indebtedness or right, with an affidavit showing the right or the person or persons to receive the money or property, or to have such evidences transferred.

SOURCE: California Probate Code, § 630 (as amended). Amended by P.L. 33-213:1 (Dec. 15, 2016).

COMMENT: The effect of § 3101 is not markedly different from that of § 630 of the Probate Code of Guam (1970): basically, it allows the people with the right to a decedent's property to receive that property without the decedent's estate going through formal administration. Since its original enactment in California in 1931, however, the statute (which began its life very much like prior § 630 of the Probate Code of Guam (1970),) has been amended a number of times, for two basic reasons: (1) to raise the amount of the decedent's estate, to which the provisions apply; and (2) to increase the class of persons who may take advantage of the Section. Virtually all of the changes made in California are also useful in Guam, and have thus been included in § 3101.

§ 3101.1. Estates of Deceased COLA Awardees; Summary Administration or Probate; Affidavit.

When a COLA awardee as defined by Title 4 GCA § 7101(4) dies before receiving the award and the Director of Administration determines that Title 4 GCA § 7102 does not apply, the Director shall

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pay over the COLA award as defined by Title 4 GCA § 7101 (3) as follows:

(a) If no proceeding regarding the awardee's estate was brought pursuant to Title 15 GCA, a person who has a right to succeed to the awardee's property may, without bringing such a proceeding, submit to the Director the COLA awardee's death certificate and an affidavit showing the name, age and address of every person entitled to the COLA award pursuant to the laws of intestate succession. If the Director determines that the affidavit is correct, he shall distribute the COLA award accordingly.

(b) If a proceeding regarding the COLA awardee's estate pursuant to Title 15 GCA is pending, the court in said proceeding shall order the Director to pay over the award to the decedent's personal representative.

(c) If a proceeding regarding the COLA awardee's estate was brought pursuant to Title 15 GCA but is closed, the personal representative or an heir of the COLA awardee may request payment of the COLA award and present the Director of Administration with a certified copy of the Final Decree of Distribution. The Director shall pay over the COLA award according to said Decree in the appropriate amounts to the heirs named therein or to their personal representatives or successors in interest.

The Director shall develop form affidavits to assist applicants for COLA awards.

SOURCE: Added by P.L. 28-151:7 (Oct. 31, 2006).

NOTE: This section was added by P.L. 28-151 in relation to the authorization of the Governor to make COLA payments pursuant to *Rios v. Camacho*, Superior Court Case No. SP0206-93. Pursuant to P.L. 28-151, this section "shall be repealed and cease to be of any further force and effect upon the Superior Court's determination in SP0206-93 that all COLA awards have been paid over."

§ 3102. [Vacant.]

2017 NOTE: During the codification process from the Probate Code of Guam to Title 15 of the Guam Code Annotated, the Law Revision Commission did not include a provision for § 3102; it was left vacant.

§ 3103. Estates Under Thirty-Five Thousand Dollars (\$35,000); Surviving Spouse's Right to Two Thousand Five Hundred Dollars (\$2,500) From Deposits in Savings Institutions.

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Whether a person dies testate or intestate, and irrespective of the character of his property, if the value of the estate does not exceed Thirty-Five Thousand Dollars (\$35,000), the decedent's surviving spouse, if entitled by succession or by the last will and testament of the decedent to any money of the decedent on deposit in any bank, savings and loan association, credit union or other savings institution licensed to do business in the territory of Guam, may collect such money, not to exceed the total sum of Two Thousand Five Hundred Dollars (\$2,500), without procuring letters testamentary, letters of administration with the will annexed or letters of administration, and without awaiting administration upon the estate of an intestate decedent or the probate of the will of a testate decedent, upon furnishing the bank, savings and loan association, credit union or other savings institution with an affidavit showing the right of the affiant to receive such money.

SOURCE: Probate Code of Guam (1970), § 630a; Guam Law Revision Commission. Amended by P.L. 33-213:2 (Dec. 15, 2016).

COMMENT: The purpose of § 3103 is to provide the surviving spouse with enough money to live on pending the award of a family allowance once administration commences. Under § 630a of the Probate Code of Guam (1970), the most the surviving spouse could receive was \$100.00, if the estate did not exceed \$1,000.00. The Commission is of the opinion that those amounts are far too low, given present economic reality and the declining value of money, and has thus raised the amount from \$100.00 to \$1,000.00, if the estate does not exceed \$10,000.00.

§ 3105. Affidavit of Right; Effect of Receipt; Claim Against Estate in Probate; Procedure.

(a) The receipt of the affiant or affiants referred to in Sections 3101 and 3103 of this Title shall constitute sufficient acquittance for the payment of money or delivery of property made pursuant to the provisions of Section 3101 and 3103 of this Title and shall fully discharge such person, representative, corporation, officer or body from any further liability with respect thereto, without the necessity of inquiring into the truth of any of the facts stated in the affidavit. But such payment or transfer shall not preclude administration upon the decedent's estate when necessary to enforce payment of the decedent's debts.

(b) When the money or property claimed under the provisions of Section 3101 or Section 3103 of this Title is that of a deceased heir or legatee of a person whose estate is in probate, the personal representative of the person whose estate is in probate shall first present the affidavit referred to in Section 3101 or Section 3103 of this Title to the Superior

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Court and the Superior Court shall direct such personal representative to pay the money or deliver the property to the affiant or affiants to the extent that the decree of distribution shall determine that such heir or legatee was entitled thereto under the will or the laws of succession.

SOURCE: Subsection (a): California Probate Code, § 631 (as amended).
Subsection (b): California Probate Code, § 631.1.

§ 3107. Exclusion of Joint Tenancy, Life Estate or Other Estate Terminable at Death.

For the purposes of this Article, any property or interest therein or lien thereon which, at the time of the decedent's death, was held by the decedent as joint tenant, or in which the decedent had a life estate or other estate terminable upon the decedent's death, shall be excluded in determining the property or estate of the decedent or its value.

SOURCE: California Probate Code, § 632.

ARTICLE 2

SETTING ASIDE ESTATES NOT EXCEEDING \$75,000.00

- § 3109. Setting Aside Estates Under Seventy-Five Thousand Dollars (\$75,000); Authority to Set Aside.
- § 3111. Setting Aside Estates Under Seventy-Five Thousand Dollars (\$75,000): Petition; Allegations; Time; Verification; Contents.
- § 3113. Setting Aside Estates Under Seventy-Five Thousand Dollars (\$75,000): Notice of Hearing; Proceedings Included in Petition for Letters.
- § 3115. Setting Aside Estates Under Seventy-Five Thousand Dollars (\$75,000): Notice of Hearing; Proceedings Under Separate Petition.
- § 3117. Setting Aside Estate Under Seventy-Five Thousand Dollars (\$75,000): Inventory and Appraisal; Filing.
- § 3119. Setting Aside Estates Under Seventy-Five Thousand Dollars (\$75,000): Decree Assigning Estate to Surviving Spouse, Child or Children; Title to Property; Restriction on Right.
- § 3121. Setting Aside Estates Under Seventy-Five Thousand Dollars (\$75,000): Personal Liability for Unsecured Debts of Decedent; Duration.

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- § 3123. Setting Aside Estates Under Seventy-Five Thousand Dollars (\$75,000): Denial of Assignment; Grounds; Effect.
- § 3125. Setting Aside Estates Under Seventy-Five Thousand Dollars (\$75,000): Exclusion of Joint Tenancy, Life Estate, or Other Estate Terminable at Death.

§ 3109. Setting Aside Estates Under Seventy-Five Thousand Dollars (\$75,000); Authority to Set Aside.

If the decedent leaves a surviving spouse or minor child or minor children, and the net value of the whole estate, over and above all liens and encumbrances at the date of death and over and above the value of any homestead interest set apart out of the decedent's estate under the provisions of Section 2401 or Section 2409 of this Title, does not exceed the sum of Seventy-Five Thousand Dollars (\$75,000), the same may be set aside to the surviving spouse, if there be one, and if there be none, then to the minor child or minor children of the decedent.

SOURCE: California Probate Code, § 640 (as amended). Amended by P.L. 33-213:3 (Dec. 15, 2016).

COMMENT: Section 3109, and the remaining Sections in this subchapter, replace §§ 640 - 649 of the Probate Code of Guam (1970). The California versions of the corresponding statutes have been extensively reworked since their original adoption in 1931, and they now provide a far more workable -- and much fairer -- scheme than that included in the Probate Code of Guam (1970).

§ 3111. Setting Aside Estates Under Seventy-Five Thousand Dollars (\$75,000): Petition; Allegations; Time; Verification; Contents.

Allegations showing that this Article is applicable, together with a prayer that the estate be set aside as provided in this Article, may be presented without filing a petition for letters testamentary, letters of administration with the will annexed or letters of administration, by petition of the person named in the will as the executor or of the surviving spouse or of the guardian of the minor child or children of the decedent. Such allegations and prayer may also be included alternatively in the petition for letters testamentary, letters of administration with the will annexed or letter of administration, or such allegations and prayer may be presented by separate petition filed by the personal representative of the decedent, or by the surviving spouse, or by the guardian of the minor child or children, filed at any time before the hearing on the petition for letters testamentary, letters of administration with the will annexed or letters of administration or after the filing of the inventory. In

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all cases the petition shall be verified. The allegations shall include a specific description and an estimate of the value of all of the decedent's property, a list of all liens and encumbrances at the date of death, and a designation of any property as to which a homestead is set apart out of the decedent's estate under the provisions of Section 2401 or Section 2409 of this Title.

SOURCE: California Probate Code, § 641 (as amended). Amended by P.L. 33-213:4 (Dec. 15, 2016).

COMMENT: See Comment to § 3109, supra.

§ 3113. Setting Aside Estates Under Seventy-Five Thousand Dollars (\$75,000): Notice of Hearing; Proceedings Included in Petition for Letters.

If the allegations and prayer as provided in Section 3111 of this Title are included in the petition for letters testamentary, letters of administration with the will annexed or letters of administration, the notice of hearing shall include a statement that a prayer for setting aside the estate to the surviving spouse or minor child or minor children, as the case may be, is included in the petition.

SOURCE: California Probate Code, § 642 (as amended). Amended by P.L. 33-213:5 (Dec. 15, 2016).

COMMENT: See Comment to § 3109, supra.

§ 3115. Setting Aside Estates Under Seventy-Five Thousand Dollars (\$75,000): Notice of Hearing; Proceedings Under Separate Petition.

(a) If a separate petition is filed under the provisions of Section 3111 of this Title without there having been any other petition filed, there shall be no notice of any type other than as prescribed in this subsection. In such cases, the Clerk of the Superior Court shall set the petition for hearing, and notice of the hearing shall be given in the manner provided in Section 3401 of this Title.

(b) If the hearing of the original petition for letters testamentary, letters of administration with the will annexed, or letters of administration is set for a day more than ten (10) calendar days after the filing of a separate petition filed with respect the same estate, the latter shall be set for hearing at the same time as the former and notice thereof shall be given in the manner provided in Section 3401 of this Title; if not, the separate petition shall be set for hearing at least ten (10) calendar days after the date on which it is filed, and if the original petition has not

already been heard it shall be continued until such date and heard at the same time.

SOURCE: California Probate Code, § 643 (as amended). Amended by P.L. 33-213:6 (Dec. 15, 2016).

COMMENT: See Comment to § 3109, supra.

§ 3117. Setting Aside Estate Under Seventy-Five Thousand Dollars (\$75,000): Inventory and Appraisal; Filing.

Upon the filing of any petition provided for in this Article, the personal representative shall, within such time as the Superior Court shall allow, cause an inventory and appraisal of the decedent's estate to be made and filed in the manner prescribed by law.

SOURCE: California Probate Code, § 644 (as amended). Amended by P.L. 33-213:7 (Dec. 15, 2016).

COMMENT: See Comment to § 3109, supra.

§ 3119. Setting Aside Estates Under Seventy-Five Thousand Dollars (\$75,000): Decree Assigning Estate to Surviving Spouse, Child or Children; Title to Property; Restriction on Right.

If, upon the hearing of any petition provided for in this Article, the Superior Court finds that the net value of the estate over and above all liens and encumbrances at the death of the decedent and over and above the value of any homestead interest set apart out of the decedent's estate under the provisions of Section 2401 or Section 2409 of this Title does not exceed the sum of Seventy-Five Thousand Dollars (\$75,000), as of the date of such death, and that the expenses of the last illness, funeral charges and expenses of administration have been paid, it shall, by decree for that purpose, assign to the surviving spouse of the decedent, if there be a surviving spouse, provided said surviving spouse shall not have theretofore remarried, or, if there be no surviving spouse, then to such child or children of the decedent as may then be minors, if any, the whole of the estate, subject to whatever mortgages, liens or encumbrances there may be upon said estate at the time of the death of the decedent. The title thereto shall vest absolutely in such surviving spouse, or if there be no such surviving spouse, in the minor child or children, subject to whatever mortgages, liens and encumbrances there may be upon said estate at the time of the death of the decedent, and there must be no further proceedings in the administration, unless further estate be discovered.

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SOURCE: California Probate Code, § 645 (as amended). Amended by P.L. 33-213:8 (Dec. 15, 2016).

COMMENT: See Comment to § 3109, supra.

§ 3121. Setting Aside Estates Under Seventy-Five Thousand Dollars (\$75,000): Personal Liability for Unsecured Debts of Decedent; Duration.

A surviving spouse or a minor child or children in whom title has vested pursuant to the provisions of Section 3119 of this Title shall be personally liable for the unsecured debts of the decedent. The personal liability shall not exceed the value of the estate at the date of the decedent's death, less the amount of any liens and encumbrances and any homestead and other property set apart pursuant to the provisions of Section 2401 or Section 2409 of this Title. Such personal liability shall cease one (1) year after title to the estate vests, except with respect to any actions or proceedings then pending in court. In any action based upon such an unsecured debt, the surviving spouse, or the minor child or children, or the guardian of such minor child or children, may assert any defenses, counterclaims or set offs which would have been available to the decedent if the decedent had not died.

SOURCE: California Probate Code, § 646 (as amended). Amended by P.L. 33-213:9 (Dec. 15, 2016).

COMMENT: See Comment to § 3109, supra.

§ 3123. Setting Aside Estates Under Seventy-Five Thousand Dollars (\$75,000): Denial of Assignment; Grounds; Effect.

If the Superior Court finds that the net value of the estate exceeds Seventy-Five Thousand Dollars (\$75,000), or that there is neither a surviving spouse nor a minor child, it shall act upon the petition for letters testamentary, letters of administration with the will annexed or letters of administration in the same manner as though no petition to set aside the estate had been included, and the estate shall then be administered in the usual manner.

SOURCE: California Probate Code, § 646 (as amended). Amended by P.L. 33-213:10 (Dec. 15, 2016).

COMMENT: See Comment to § 3109, supra.

§ 3125. Setting Aside Estates Under Seventy-Five Thousand Dollars (\$75,000): Exclusion of Joint Tenancy, Life Estate, or Other Estate Terminable at Death.

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For the purposes of this Article, any property or interest therein or lien thereon which, at the time of the decedent's death, was held by the decedent as joint tenant, or in which the decedent had a life estate or other estate terminable upon the decedent's death, shall be excluded in determining the property or estate of the decedent or its value.

SOURCE: California Probate Code, § 647. Amended by P.L. 33-213:11 (Dec. 15, 2016).

COMMENT: See Comment to § 3109, supra.
