

**15 GCA ESTATES AND PROBATE
CH. 15 PROBATE OF WILLS**

**CHAPTER 15
PROBATE OF WILLS**

- § 1501. Delivery of Will After Death.
- § 1503. Who May Petition For Probate of Will.
- § 1505. Renouncement of Named Executor's Right to Letters by Failure to Petition.
- § 1507. Contents of Original Petition for Probate of Will; Incorrect Statement of Jurisdictional Facts Not a Bar to Court's Jurisdiction.
- § 1509. Offer to Probate of Foreign Wills.
- § 1511. Procedure for Admission of Foreign Wills to Probate; Notice.
- § 1513. Order to Produce Will; Confinement to Jail for Refusal to Produce; Court Has Power to Enforce Production of Wills.
- § 1515. Notice of Hearing on Petition for Probate of Will and For Letters.
- § 1517. Service of Notice Upon Heirs, Devisees, Legatees and Named Executors.
- § 1519. Proof of Witnessed Will in Uncontested Proceedings.
- § 1521. Proof of Will by Copy When Will is Outside Guam.
- § 1523. Proof of Holographic Will.
- § 1525. Proof of Lost or Destroyed Wills; Restraining Acts of Previously Appointed Administrator Pending Hearing on Petition.
- § 1527. Record of Entry of Admission of Will to Probate; Translation of Wills.
- § 1529. Provisions of Order Admitting Lost or Destroyed Will: Perpetuation of Witnesses' Testimony.
- § 1531. No Contest Permitted as to Foreign Will if Admitted Elsewhere.

§ 1501. Delivery of Will After Death.

(a) If the custodian of a will is some person other than the Clerk of the Superior Court of Guam acting as such, the custodian must, within thirty (30) calendar days after being informed that the maker thereof is dead, deliver the same to the Clerk of the Superior Court of Guam or to the executor named therein.

15 GCA ESTATES AND PROBATE
CH. 15 PROBATE OF WILLS

(b) If the custodian of a will is the Clerk of the Superior Court of Guam acting as such pursuant to the provisions of Section 301 of this Title, delivery of such will shall be as provided in Section 303 of this Title.

SOURCE: Subsection (a): Probate Code of Guam (1970), § 320. Subsection (b): Guam Law Revision Commission.

COMMENT: The Commission has added subsection (b) to cause § 1501 to comport with the provisions of §§ 301 and 303, supra.

§ 1503. Who May Petition For Probate of Will.

Any executor, devisee or legatee named in a will, or any other person interested in the estate, may, at any time after the testator's death, petition the Superior Court of Guam for the probate of the testator's will and that letters testamentary or letters of administration with the will annexed be granted to the petitioner, whether the testator's will be in the petitioner's possession or not, lost or destroyed, or beyond the jurisdiction of the territory of Guam.

SOURCE: Probate Code of Guam (1970), § 323; Guam Law Revision Commission.

COURT DECISIONS: SUPER.CT. 1983 Because the will in question was admitted to probate and opposition to it withheld because of an agreement recited in open court; then the agreement failed, the will is not deemed admitted and, in order for it to do so, the petition for admissions of probate must be filed as if no action had been commenced. *Estate of Sayama*, Pr. #104-82.

COMMENT: The only substantive change to § 323 of the Probate Code of Guam (1970) is the deletion of language concerning nuncupative wills, which is no longer necessary under the provisions of this Title.

§ 1505. Renouncement of Named Executor's Right to Letters by Failure to Petition.

If the person named in a will as executor, for thirty (30) calendar days after he has knowledge of the death of the testator and that he is named as executor, fails to petition the Superior Court of Guam for the probate of the testator's will and that letters testamentary be granted to him, he may be held to have renounced his right to letters, and the Superior Court of Guam may grant letters of administration with the will annexed to another competent person, unless good cause for the delay is shown.

SOURCE: Probate Code of Guam (1970), § 324.

§ 1507. Contents of Original Petition for Probate of Will; Incorrect Statement of Jurisdictional Facts Not a Bar to Court's Jurisdiction.

(a) A petition for the probate of a will and for the grant of letters testamentary, or of letters of administration with the will annexed in the first instance, 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) Whether the person named in the will as executor, if that person's name is known to the petitioner, consents to or renounces his right to letters testamentary;

(3) The names, ages and mailing addresses of the heirs, devisees and legatees of the decedent, so far as known to the petitioner;

(4) The character and estimated value of the property of the estate;

(5) The name, age and mailing address of the person for whom letters testamentary or letters of administration with the will annexed are prayed; and

(6) In the case of a lost or destroyed will, the testamentary words or the substance thereof.

(b) Where the necessary jurisdictional facts actually exist but through defect of form or through 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 such defect or error at any time. No such defect or error shall make the order admitting the will to probate, or any subsequent proceeding, void.

SOURCE: All except subsection (a)(6): California Probate Code, § 326 (as amended); Guam Law Revision Commission. Subsection (a)(6): Probate Code of Guam, § 351.

COMMENT: Section 1507 is intended to cover only original petitions for the probate of a will and for the grant of letters testamentary, as opposed to such petitions filed in the context of a personal representative who dies, resigns, whose letters are revoked, etc. The latter situation is covered in Chapter 21, *infra*.

OFFICIAL FORM: See Official Form No. 2, Appendix "A".

§ 1509. Offer to Probate of Foreign Wills.

15 GCA ESTATES AND PROBATE
CH. 15 PROBATE OF WILLS

A will admitted to probate in any State or United States territory, or established or proved in accordance with the laws thereof, may be offered for probate in the Superior Court of Guam if the Superior Court of Guam has jurisdiction under the provisions of Chapter 14 of this Title.

SOURCE: Probate Code of Guam (1970), § 360; Guam Law Revision Commission.

COMMENT: Section 360 of the Probate Code of Guam (1970) also provided that a will admitted to probate in a foreign country could be offered for probate in the Superior Court of Guam. The Commission has deleted this provision, being of the opinion that the difficulties in proving such wills might be so severe as to make the proof of some such wills impossible in the Superior Court. The Commission also notes that under the provisions of this Title, the requirements for the proving of both witnessed and holographic wills have been relaxed; this being the case, the Commission feels that people moving to Guam from foreign countries will not be subjected to great burdens in preparing new wills, and thus there is no longer any reason for permitting the probate of such foreign wills.

§ 1511. Procedure for Admission of Foreign Wills to Probate; Notice.

The executor or administrator with the will annexed, or any person interested in a will admitted to probate in any State or United States territory, or established or proved in accordance with the laws thereof, may file a copy of such will and of the order or decree admitting it to probate, or other evidence of its establishment or proof in accordance with the laws of such State or United States territory, together with such person's petition for letters. Notice shall be given and, except as provided in Section 1531 of this Title, the same proceedings had as in the case of an original petition for the probate of a will.

SOURCE: California Probate Code, § 361 (as amended).

COMMENT: Section 361 of the Probate Code of Guam (1970) also included procedures for the admission to probate of wills made in foreign countries. As noted in the Comment to § 1509, *supra*, such procedures are no longer necessary.

§ 1513. Order to Produce Will; Confinement to Jail for Refusal to Produce; Court Has Power to Enforce Production of Wills and Attendance of Witnesses.

(a) If it is alleged in a petition praying for the admission of a will to probate and for the grant of letters testamentary or for letters of administration with the will annexed that some person has possession of the will, and the Superior Court of Guam is satisfied that such allegation is true, the Superior Court of Guam shall make an order and cause it to

15 GCA ESTATES AND PROBATE
CH. 15 PROBATE OF WILLS

be served upon such person, requiring such person to produce the will at a time named in such order.

(b) If a person having possession of the will neglects or refuses to produce it as required by an order as provided in subsection (a) of this Section, such person may by warrant of the Superior Court of Guam be committed to jail and confined therein until he produces it.

(c) The Superior Court of Guam may at any time make and issue all necessary orders and writs to enforce the production of wills and the attendance of witnesses.

SOURCE: Probate Code of Guam (1970), § 321.

§ 1515. Notice of Hearing on Petition for Probate of Will and for Letters.

When a petition for the probate of a will and for the grant of letters testamentary, or letters of administration with the will annexed, is filed in the first instance, the Clerk of the Superior Court of Guam shall set the same for hearing 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 327 of the Probate Code of Guam (1970) contained very detailed notice provisions, generally providing that notice of the hearings referred to in § 1515 were to be published, and posted in certain specified places, by the Clerk of the Superior Court of Guam. In drafting this Title, the Commission reached the conclusion that the notice provisions contained throughout the Probate Code of Guam (1970) were both archaic -- apparently stemming from a time when no daily newspapers existed in Guam --and largely ineffective. The Commission has thus revised all notice provisions in this Title, including the provisions in § 1515, so that this Title's notice procedures would be workable and efficient without sacrificing effectiveness. Also see Comment to § 3401, *infra*.

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

§ 1517. Service of Notice Upon Heirs, Devisees, Legatees and Named Executors.

At least ten (10) calendar days before the hearing on a petition for the probate of a will and for the grant of letters testamentary, or for letters of administration with the will annexed, filed in the first instance, a copy of the notice of such hearing must be served upon each heir of the testator, upon each devisee and legatee named in the will, and upon each

15 GCA ESTATES AND PROBATE
CH. 15 PROBATE OF WILLS

person named in the will as an executor who is not petitioning, 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 person's place of residence if known to the petitioner, and if not then to general delivery at the post office serving such person's municipality (if such person resides in Guam) or to general delivery at the post office serving such person's last known place of residence (if such person 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: Section 1517 defines with more particularity than did § 328 of the Probate Code of Guam (1970) the acceptable methods of service of the notice of hearing of an original petition for probate of a will. See § 717 of Title 1 for further provisions concerning what constitutes "registered mail."

§ 1519. Proof of Witnessed Will in Uncontested Proceedings.

(a) If no one appears to contest the probate at the hearing provided in Section 1515 of this Title, and upon proof that due notice of the hearing has been given pursuant to the provisions of Sections 1517 and 3401 of this Title, the Superior Court of Guam may admit a witnessed will to probate and grant letters testamentary or letters of administration with the will annexed upon the evidence of one of the subscribing witnesses only, if the evidence shows that the will was executed in all particulars as required by law.

(b) If no one appears at the hearing to contest the probate, the evidence of subscribing witnesses may be received as follows:

(1) By the sworn testimony of one or more subscribing witnesses in open court;

(2) By the affidavit of one or more subscribing witnesses, to each of which there is attached a photographic copy of the will; or

15 GCA ESTATES AND PROBATE
CH. 15 PROBATE OF WILLS

(3) By the deposition of one or more subscribing witnesses, taken elsewhere than in Guam; provided, that each such subscribing witness shall be presented upon his examination with a photographic copy of the will, and may be asked the same questions with respect to it and the handwriting of himself, the testator, and the other subscribing witnesses, as would be relevant and competent if the original will were present.

(c) Notwithstanding the provisions of subsection (a) of this Section, if no one appears at the hearing to contest the probate, and if the Superior Court of Guam is satisfied that the evidence of no subscribing witness can be procured after reasonable search or inquiry, and upon proof that due notice of the hearing has been given pursuant to the provisions of Sections 1517 and 3401 of this Title, the Superior Court of Guam may, if the will on its face conforms to all requirements of law, admit the will to probate and grant letters testamentary or letters of administration with the will annexed as follows:

(1) Upon proof of the handwriting of the testator and any one of the subscribing witnesses; or

(2) Upon proof of the handwriting of the testator and receipt in evidence either of a writing at the end of the document offered as a will bearing the purported signatures of all subscribing witnesses, or an affidavit of a person with personal knowledge of the circumstances of execution, which writing or affidavit recites facts showing the due execution of the will.

(d) If the subscribing witnesses are competent at the time of attesting the execution, their subsequent incompetency, from whatever cause, will not prevent the probate of the will and the grant of letters testamentary or of letters of administration with the will annexed, if the will is otherwise satisfactorily proved under the provisions of this Section.

SOURCE: California Probate Code, § 329 (as amended).

§ 1521. Proof of Will by Copy When Will is Outside Guam.

If the will of a person who at the time of death was a resident of Guam is detained beyond the jurisdiction of Guam, in a court of any State or United States territory, and cannot be produced for probate in Guam, a photographic copy of the will duly authenticated may be admitted to probate in Guam in lieu of, and have the same force and effect as,

15 GCA ESTATES AND PROBATE
CH. 15 PROBATE OF WILLS

the original will. The same proof shall be required as would be required if the original will were produced.

SOURCE: Probate Code of Guam (1970), § 330.

COMMENT: See Comment to § 1509, *supra*, concerning the deletion from § 330 of the Probate Code of Guam (1970) references to wills made in foreign countries.

§ 1523. Proof of Holographic Will.

A holographic will may be proved in the same manner as other private writings.

SOURCE: Probate Code of Guam (1970), § 331.

OFFICIAL FORM: See Official Form No. 5, Appendix "A".

§ 1525. Proof of Lost or Destroyed Wills; Restraining Acts of Previously Appointed Administrator Pending Hearing on Petition.

(a) No will shall be proved as a lost or destroyed will unless:

(1) Such will is proved to have been in physical existence at the time of the testator's death; or

(2) Such will is proved to have been destroyed by public calamity or destroyed fraudulently during the testator's life, without the testator's knowledge.

(b) Notwithstanding the provisions of Section 1519 of this Title, no will shall be proved as a lost or destroyed will unless its provisions are clearly and distinctly proved by the sworn testimony of at least two (2) credible witnesses in open court.

(c) If, before the filing or pending the hearing of a petition to prove a lost or destroyed will, letters of administration are granted on the estate of the purported testator, or letters testamentary or letters of administration with the will annexed upon any previous will of the purported testator are granted, the Superior Court of Guam may upon the motion of the petitioner restrain the personal representatives so appointed from any acts or proceedings which would be injurious to the devisees or legatees claiming under the lost or destroyed will.

SOURCE: Subsections (a) and (b): California Probate Code § 350 (as amended); Guam Law Revision Commission. Subsection (c): Probate Code of Guam (1970), § 352.

COMMENT: Following California's lead, the second sentence of § 350 of the Probate Code of Guam (1970) has been deleted. That sentence read: "Knowledge of the destruction of his will by public calamity shall not be imputed to an insane

15 GCA ESTATES AND PROBATE
CH. 15 PROBATE OF WILLS

person who has been committed to a hospital for the insane and never restored to competency.” The Commission is of the opinion that this sentence is not in keeping with current knowledge about people who were once uniformly called “insane.” The Commission has also added, in subsection (b), the requirement that lost or destroyed wills be proved by live testimony in open court, believing that the judge should be able to see the witnesses in such cases in order better to be able to determine their credibility. Finally, a revised version of § 352 of the Probate Code of Guam (1970) has been incorporated as subsection (c) in order to cause Chapter 15 to flow coherently. Substantively, however, subsection (c) is unchanged from prior § 352.

§ 1527. Record of Entry of Admission of Will to Probate; Translation of Wills.

(a) When the Superior Court of Guam admits a will to probate the will shall be recorded in the permanent records of the Superior Court of Guam by the Clerk of the Superior Court of Guam, with the notation: “Admitted to probate (giving date);” provided, that the provisions of Section 1529 of this Title shall apply to lost or destroyed wills in lieu of the foregoing provisions of this subsection.

(b) If the will is in English, the Superior Court of Guam may in its discretion certify to a correct translation thereof into Chamorro, or vice-versa, and both the original will and the translation thereof shall be recorded as provided in subsection (a) of this Section.

(c) If the will is in a foreign language, the Superior Court of Guam shall certify to a correct translation thereof into either English or Chamorro, or both, in the discretion of the Superior Court of Guam, and such certified translation or translations shall be recorded in lieu of the original.

SOURCE: Subsection (a): Probate Code of Guam (1970), § 332; Guam Law Revision Commission. Subsections (b) and (c): Guam Law Revision Commission.

COMMENT: Under § 332 of the Probate Code of Guam (1970), the will was to be recorded “...in the minutes....” The Commission has changed this, in subsection (a), to “...in the permanent records of the Superior Court of Guam,” as it is not clear that the Superior Court of Guam keeps a central record known as “the minutes.” The only other substantive difference between § 1527 and § 332 of the Probate Code of Guam (1970) is the inclusion of the Chamorro language. The Commission believes that this inclusion is necessary, in that both English and Chamorro are the official languages of Guam. This being the case, Chamorro is not a “foreign language” such as is referred to in subsection (c) of § 1527 and thus subsection (b) is also necessary.

§ 1529. Provisions of Order Admitting Lost or Destroyed Will: Perpetuation of Witnesses' Testimony.

15 GCA ESTATES AND PROBATE
CH. 15 PROBATE OF WILLS

If a lost or destroyed will is established, the provisions thereof shall be set forth in the order admitting the will to probate, and the order shall be entered at length in the permanent records of the Superior Court of Guam. The testimony of each witness shall be reduced to writing, signed by such witness, and filed in the permanent records of the Superior Court of Guam, and shall be admissible in evidence in any contest of such will if the witness has died or has permanently removed from Guam.

SOURCE: Probate Code of Guam (1970), § 351; Guam Law Revision Commission.

COMMENT: See Comment to § 1527, supra, concerning the change from “the minutes” to “the permanent records of the Superior Court of Guam.”

§ 1531. No Contest Permitted as to Foreign Will if Admitted Elsewhere.

Notwithstanding any other provision of law, if it appears from the order or decree referred to in Section 1511 of this Title, or if it be otherwise proved in cases in which there is no such order or decree, that a will has been admitted to probate in a State or another United States territory, or established or proved in accordance with the laws thereof, in a proceeding in which all interested parties were given notice and an opportunity for contest and in which the determination has become final, is not subject to revocation, and is based upon a finding that the decedent was domiciled at death in that State or United States territory, and that it was valid according to the law of Guam, no contest shall be permitted either before or after admission to probate and such will shall be admitted to probate and have the same force and effect as a will first admitted to probate in Guam, and letters testamentary or of administration with the will annexed shall be granted thereon to the petitioner.

SOURCE: California Probate Code, § 362 (as amended); Guam Law Revision Commission.

COMMENT: References to foreign countries have been deleted from § 362 of the California Probate Code. No such references are required in Guam in light of the provisions of § 113, supra. Also see Comment to § 1509, supra.
