

CHAPTER 19
APPOINTMENT OF SPECIAL ADMINISTRATOR

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§ 1901. Causes for Appointment of Special Administrators.

When there is delay in granting letters testamentary, letters of administration with the will annexed in the first instance, or letters of administration, or when any such letters are granted irregularly, or when no sufficient security is given for the faithful performance of the personal representative as required by the Superior Court of Guam under the provisions of Subchapter B of Chapter 20 of this Title, or when no petition is filed praying for the grant of any such letters, or when an executor, administrator with the will annexed, or administrator dies, or when letters testamentary, letters of administration with the will annexed or letters of administration are suspended or revoked, and the circumstances of the estate require the immediate appointment of a personal representative, the Superior Court of Guam shall appoint a special administrator to take possession of the estate of the decedent and to exercise such other powers as may be necessary for the preservation of the estate.

SOURCE: Probate Code of Guam (1970), § 460.

§ 1903. Notice; Appointment; Preference; Qualifications; Nonappealable Order.

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The appointment of a special administrator may be made at any time, without notice or upon such notice to such of the persons interested in the estate as the Superior Court of Guam may deem reasonable. In making the appointment of a special administrator, preference must ordinarily be given to the person entitled to letters testamentary, letters of administration with the will annexed, or letters of administration. No person is competent to serve as a special administrator who has not the qualifications required of an executor as provided in Section 1701 of this Title. The order appointing a special administrator is not appealable.

SOURCE: All except third sentence: Probate Code of Guam (1970), § 461. Third sentence: Guam Law Revision Commission.

COMMENT: The third sentence, which represents the only alteration to § 461 of the Probate Code of Guam (1970), merely reiterates that special administrators must be legally competent. This was never made clear under prior law. As with other personal representatives, it is the Commission's intention that special administrators must be competent so to serve not only at the time of appointment, but also during the course of their administrations.

§ 1905. Security for Faithful Performance of Special Administrator; Oath; Letters.

Before letters are granted to a person appointed to be a special administrator by the Superior Court of Guam, the appointee must provide such security for the faithful performance of his trust as the Superior Court of Guam may direct; and he must take the usual oath, and have the same endorsed upon his letters. Thereupon the Clerk of the Superior Court of Guam shall issue special letters of administration to him.

SOURCE: Probate Code of Guam (1970), § 462; Guam Law Revision Commission.

COMMENT: Section 462 of the Probate Code of Guam (1970) provided that the person appointed to be special administrator was to give bond. This requirement has been broadened in § 1905; under § 1905 a special administrator must give security for the faithful performance of his trust, much like other personal representatives. It should, however, be noted that the provisions of Subchapter B of Chapter 20, *infra* (which Subchapter governs security for the faithful performance of executors, administrators with the will annexed and administrators,) do not cover special administrators: it is the Commission's intention that the court have absolute discretion to provide for any form of security in special administrators' cases, and it has thus exempted the special administrator situation from the provisions of Subchapter B of Chapter 20 so that the court might have such absolute discretion.

§ 1907. Powers and Duties of Special Administrator.

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The special administrator must take possession of all of the real and personal property of the decedent, and preserve it from damage, waste and injury, and must collect all claims, rents, and other income belonging to the estate; and for any such purposes may commence and maintain or defend suits and other legal proceedings as such special administrator. The special administrator may sell perishable property and exercise such other powers as are conferred upon him by his appointment, but, except when the powers, duties and obligations of an administrator are conferred upon him as provided in Section 1911 of this Title, he is not liable to an action by any creditor on a claim against the decedent. The special administrator may obtain leave to borrow money, or lease or mortgage real property, in the same manner as an administrator.

SOURCE: Probate Code of Guam (1970), § 463.

§ 1909. Special Administrator May Pay Lien Charges on Estate Property in Order to Avoid Foreclosure; Procedure.

If any property of the estate which is in the charge of a special administrator is subject to a mortgage or lien, to secure the payment of money, and there is danger that the holder of the security may enforce or foreclose the same, and the property exceeds in value the amount of the obligation thereon, then, upon petition of the special administrator, or of any person interested in the estate, and upon such notice as the Superior Court of Guam shall deem proper, the Superior Court of Guam may authorize or direct the special administrator to pay the interest due or any part of the amount so secured. The order may also direct that interest not yet accrued be paid as it becomes due, and such order shall remain in effect and cover such future interest unless and until for good cause set aside or modified by the Superior Court of Guam upon petition and notice substantially similar to that hereinabove provided.

SOURCE: Probate Code of Guam (1970), § 464.

§ 1911. When Special Administrator's Powers May be Made General.

(a) When a special administrator is appointed pending determination of a contest of a will instituted prior to the probate thereof, or pending an appeal from an order granting, suspending or revoking letters testamentary, letters of administration with the will annexed or letters of administration, the special administrator shall have the same powers, duties and obligations as an administrator and the letters of

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administration granted to the special administrator shall recite that such special administrator is appointed with the powers of an administrator.

(b) When a special administrator has been appointed, and thereafter a proceeding to contest a will prior to the probate thereof is instituted, the Superior Court of Guam shall make an order providing that such special administrator shall thereafter have the additional powers, duties and obligations of an administrator, and requiring that the special administrator give such additional security for the faithful performance of his trust as the Superior Court of Guam deems proper pursuant to the provisions of Chapter 20 of this Title. Such order is not appealable, and from the time of the giving of any such additional security as may be required, the special administrator shall have the powers, duties and obligations of an administrator.

(c) When a will is admitted to probate and thereafter a contest thereof is instituted and the probate revoked, and an appeal is taken from the order of revocation, the Superior Court of Guam may, upon such notice to such of the persons interested in the estate as the Superior Court of Guam deems reasonable, appoint a special administrator with or without the powers, duties and obligations of an administrator.

SOURCE: California Probate Code, § 465 (as amended.)

§ 1913. Special Administrator's Powers to Cease Upon Grant of Letters Testamentary, Letters of Administration With Will Annexed or Letters of Administration.

When letters testamentary, letters of administration with the will annexed or letters of administration on the estate of the decedent are issued, the powers of the special administrator of such estate cease, and he must forthwith deliver all of the property of the decedent in his hands to the executor, administrator with the will annexed or administrator, who may thereafter prosecute to final judgment any suit commenced by the special administrator.

SOURCE: Probate Code of Guam (1970), § 466.

§ 1915. Accounts and Commissions of Special Administrators; Attorney's Fees; Division of Commissions and Fees; Procedure for Early Payment of Extraordinary Attorney's Fees.

(a) The special administrator must render a verified account of his proceedings in like manner as administrators are required to do pursuant to the provisions of Chapter 27 of this Title. The commissions of the

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special administrator, and the fees of the special administrator's attorney, shall be fixed by the Superior Court of Guam; but the total commissions paid and extra allowances made to the special administrator and the executor, or to the special administrator and the administrator with the will annexed, or to the special administrator and the administrator, must not, together, exceed the sums provided in Chapter 28 of this Title as commissions and extra allowances for executors, administrators with the will annexed or administrators; and the total fees paid to the attorneys both of the special administrator and the executor, or of the special administrator and the administrator with the will annexed, or of the special administrator and the administrator, must not, together, exceed the sums provided in Chapter 28 of this Title for the ordinary and extraordinary services of attorneys for executors, administrators with the will annexed, or administrators.

(b) When the same person does not act as both special administrator and executor, or as special administrator and administrator with the will annexed, or as special administrator and administrator, the commissions and allowances referred to in subsection (a) of this Section shall be divided between the special administrator and the executor, or between the special administrator and the administrator with the will annexed, or between the special administrator and the administrator, in such proportions as the Superior Court of Guam shall deem just; and when the same attorney does not act for both the special administrator and the executor, or for both the special administrator and the administrator with the will annexed, or for both the special administrator and the administrator, the fees referred to in subsection (a) of this Section shall be divided between the attorneys in such proportion as the Superior Court of Guam shall deem just.

(c) At any time after six (6) months from the grant of special letters of administration, or upon the earlier settlement of the final account of the special administrator, and upon such notice to the special administrator and to the persons interested in the estate as the Superior Court of Guam shall require, any attorney who has rendered extraordinary services to the special administrator may apply to the Superior Court of Guam for compensation for such extraordinary services; and on the hearing, upon proof that due notice of the hearing has been given, the Superior Court of Guam shall make an order requiring the special administrator to pay such attorney out of the estate

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such compensation as the Superior Court of Guam shall deem proper, and such payment shall be made forthwith.

SOURCE: Subsection (a): Probate Code of Guam (1970), § 467. Subsection (b): Probate Code of Guam (1970), § 468. Subsection (c): California Probate Code, § 469; Guam Law Revision Commission.

COMMENT: Section 1915 brings together all the provisions contained in the Probate Code of Guam (1970) concerning the special administrator's account, commissions and fees, and concerning the special administrator's attorney's fees. In addition, subsection (c) adds to § 1915 a provision that was added to the California Probate Code in 1941, which allows early payment of extraordinary fees incurred by a special administrator's attorney. This provision was apparently added to the California law in response to *In re Cazaurang's Estate* (1938), 28 C.A.2d 505, 82 P.2d 951, wherein the court held that such extraordinary attorney's fees could not be allowed prior to the appointment of an executor or general administrator; this would obviously leave such an attorney in a poor cash-flow position, and might have the effect of causing attorneys to refuse to act for special administrators because they might fear that they would have to render many extraordinary services and then wait years before receiving compensation therefor. The only alteration made to the California law in subsection (c) is the inclusion of the language, "...upon proof that due notice of the hearing has been given...."
