

15 GCA ESTATES AND PROBATE
CH. 25 PRESENTATION AND PAYMENT OF CLAIMS AGAINST THE ESTATE

CHAPTER 25
PRESENTATION AND PAYMENT OF CLAIMS
AGAINST THE ESTATE

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§ 2501. Definition of Personal Representative.

The term personal representative, as used in this Chapter, shall mean the executor, the administrator with the will annexed, or the administrator, but shall not mean a special administrator unless the special administrator's powers are made general pursuant to the provisions of Section 1911 of this Title.

SOURCE: Guam Law Revision Commission.

COMMENT: The provisions of Chapter 25 are intended to deal with matters occurring during the regular course of administration. Special administrators, having been appointed for particular purposes, should not be subject to the provisions of Chapter 25 because their duties under law are not those of regular personal representatives (unless their powers are made general, as provided in § 1911.) Once a regular personal representative has been appointed, or once a special administrator's powers are made general, that person must then comply with the provisions of Chapter 25.

§ 2503. Notice to Creditors; Personal Representative to Investigate Decedent's Creditors and Mail Notice; Written Notices of Debt, if Timely, Treated as Claims if Subsequently Perfected.

(a) The personal representative, promptly after letters are issued, shall cause to be published in a daily newspaper of general circulation in the territory of Guam a notice to the creditors of the decedent, requiring all persons having claims against the decedent to file them, with the necessary vouchers, in the office of the Clerk of the Superior Court, or to present them, with the necessary vouchers, at the personal representative's residence or place of business, to be specified in the notice, within sixty (60) calendar days after the first publication of the notice.

(b) The personal representative, promptly after letters are issued, shall make a reasonable investigation as to the identities of the decedent's creditors. Such investigation shall be completed not more than thirty (30) calendar days after letters have been issued to the personal representative. The personal representative, promptly after the completion of the investigation provided in this subsection, shall send, by registered mail, a copy of the notice to creditors required by subsection (a) of this Section to each creditor of the decedent whom he discovered during the investigation provided in this subsection, noting thereon the last day upon which claims may be filed or presented as provided in subsection (a) of this Section.

(c)(1) A written statement of an amount due from the decedent to a creditor, or a written notice of a debt due from the decedent to a creditor, if

(A) actually received by the personal representative prior to the last day upon which claims may be filed or presented as provided in subsection (a) of this Section, or

(B) sent in the regular course of mail to the decedent, with proper postage affixed and addressed to the decedent's proper mailing address, postmarked prior to the last day upon which claims may be filed or presented as provided in subsection (a) of this Section, shall be deemed a timely claim against the estate which, if not in proper form for a creditor's claim as provided in this Chapter, shall be subject to perfection as provided hereinbelow.

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(2) If the statement of amount due or notice of debt referred to in subsection (c)(1) of this Section is not in proper form for a creditor's claim as provided in this Chapter, the personal representative, promptly after he receives such statement of amount due or notice of debt, shall send, by registered mail, a copy of the notice to creditors required by subsection (a) of this Section to the creditor, and simultaneously notify the creditor

(A) that he is the personal representative upon the estate of the decedent from whom the amount or debt is alleged to be due,

(B) that he has received the statement of amount due or notice of debt,

(C) that the statement of amount due or notice of debt is not in proper form for a creditor's claim as provided in this Chapter, setting forth the reasons therefor,

(D) that the statement of amount due or notice of debt is deemed a timely claim against the estate, subject to perfection, and

(E) of the manner in which such creditor's claim may be perfected under the provisions of this Chapter.

(3) A creditor referred to in subsection (c)(2) of this Section may perfect his claim by complying with all applicable provisions of this Chapter concerning the filing or presentation of claims, at any time prior to the order for final distribution has been entered.

(4) The provisions of subsection (c) of this Section shall apply only to creditors whose identities were not ascertained by the personal representative during the investigation required by subsection (b) of this Section.

SOURCE: Subsection (a): Probate Code of Guam (1970), § 700; Guam Law Revision Commission. Subsections (b) and (c): Guam Law Revision Commission.

COMMENT: Under the Probate Code of Guam (1970), notice to creditors was either published in a newspaper or posted on various public bulletin boards, depending upon the size of the decedent's estate. Although this bifurcated procedure might have been adequate at the time of the adoption of the Probate Code of Guam in 1953, when the population of Guam was far smaller than it is today, publication of the notice in a newspaper of general circulation is now necessary in all cases to ensure that it will be seen by decedents' creditors.

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As to subsection (b), which has been added by the Commission, the Commission was of the opinion that often a decedent's creditors -- and particularly off-island creditors -- might not be aware of the decedent's death, or that the notice to creditors provided in subsection (a) had been published. The Commission thus felt that the personal representative should be required to investigate the identities of the decedent's creditors, and mail them copies of the notice to creditors, so that they will be able to file or present their claims in a timely manner. This should not be a great burden on the personal representative, in that during the 30-day period during which he is to investigate the identities of the creditors he should be able to determine (e.g., by inquiry with the decedent's surviving family, by investigating the records in the Department of Land Management, by examining billing statements mailed to the decedent, etc.) with some particularity who the decedent's creditors are.

As to subsection (c), the Commission was of the opinion that there might often be creditors of the decedent who send regular statements of account or other notices of debt -- e.g., credit-card companies -- who might remain unaware of the decedent's death for a relatively long time after that death. The Commission could see no reason why such creditors, if acting in good faith, should be penalized for their lack of knowledge, and thus has added subsection (c) to provide that such creditors' statements or notices of debt, if received by the personal representative or mailed to the decedent himself, are to be deemed creditors' claims, subject to perfection by filing or presenting the necessary vouchers, affidavits, etc.

§ 2505. Publication of Notice to Creditors; Penalty for Failure to Give Notice Promptly; Time to Present Claims; Effect of Death, Resignation or Removal of Personal Representative.

The notice to the creditors of the decedent required by Section 2503 of this Title shall be published in not fewer than three (3) consecutive issues of a daily newspaper of general circulation in the territory of Guam. If the personal representative neglects to give notice promptly, the Superior Court of Guam may in its discretion revoke his letters and appoint some other person in his stead. If the personal representative dies, resigns or is removed after the publication has been completed but before the time to file or present claims has expired, the time to file or present claims is not extended. In such case the claimant may file his claim with the Clerk of the Superior Court or present it to the new personal representative, at the latter's residence or place of business, within the time limited in the notice published by the former personal representative.

SOURCE: California Probate Code, § 701; Guam Law Revision Commission.

§ 2507. Affidavit of Publication; Extension of Time for Claims.

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An affidavit showing due publication of the notice to creditors required by Section 2503 of this Title must be filed with the Clerk of the Superior Court not more than thirty (30) calendar days after the completion of the publication. The affidavit shall contain a copy of the notice and shall state the date of its first publication. Final distribution shall not be decreed unless it is shown that notice to creditors has been duly given. If the affidavit required by this Section is not filed until after such thirty (30) day period, the time to file or present claims shall be extended for a period equal to the period of default in such filing, but not to exceed sixty (60) calendar days from the date of such filing.

SOURCE: California Probate Code, § 702; Guam Law Revision Commission.

COMMENT: Under California law, the maximum period that the claims period may be extended is four months. The Commission has reduced it to sixty days.

§ 2509. Claims of Personal Representative; Procedure; Action by Judge; Action on Claim if Rejected.

If the personal representative is a creditor of the decedent, he shall file his claim with the Clerk of the Superior Court, who must present it for allowance or rejection to a judge of the Superior Court. Its allowance by the judge is sufficient evidence of its correctness, and it must be paid as other claims in due course of administration. If the judge rejects the claim, action thereon may be had against the estate by the claimant, and summons must be served upon the judge who rejected the claim, who shall appoint an attorney, at the expense of the estate, to defend the action. If the claimant fails to recover, he must pay all costs, including defendant's reasonable attorney's fees, to be fixed by the Superior Court.

SOURCE: California Probate Code, § 703; Guam Law Revision Commission.

COMMENT: Section 703 of the Probate Code of Guam (1970) did not contain provisions about what was to happen if the court rejected a claim made by the personal representative who is also the decedent's creditor. The Commission has added the second part of § 2509 to remedy that lack, as well as the final provisions -- i.e., those concerning attorney's fees. These provisions are intended to discourage overreaching claims by a personal representative cum creditor.

§ 2511. Claims of a Judge; Procedure.

If a judge of the Superior Court files or presents a claim against the estate of a decedent, the administration of which is pending before him, and the personal representative allows the claim, such judge must designate, in writing, another judge of the Superior Court who, upon the presentation of such claim to him, is vested with the power to approve or

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reject it. In case of its rejection by the personal representative, or by such designated judge, the claimant has the same right to sue for its recovery as other persons whose claims are rejected.

SOURCE: Probate Code of Guam (1970), § 704.

§ 2513. Debts of Deceased Spouse; Claims by Surviving Spouse, Representative, Guardian, etc.; Time; Contents.

A claim may be filed by the surviving spouse, or by the personal representative or guardian of the estate of the surviving spouse, for the payment of the debts of the deceased spouse described in Section 1009 of this Title. Such claim must be filed prior to the filing of a petition for final distribution. It shall set forth the reason why the debts are not barred by subsection (b) of Section 1009 of this Title and a statement whether the debts remain unpaid or have been paid by the surviving spouse. If the surviving spouse is personally liable for the debts, the claim shall also include an inventory of the separate property of the surviving spouse and any community property administered in the estate and a statement of the value of the property less the amount of the liens and encumbrances upon the property as of the date of death of the deceased spouse. The statement may identify any property which is exempt from execution.

SOURCE: California Probate Code, § 704.2.

COMMENT: Section 704.2 was added to the California Probate Code in 1975, as part of the "Community Property Set-Aside Law." Its purpose is to allow the surviving spouse to recover from the deceased spouse's estate any of the deceased spouse's debts which are chargeable against the community property, for which the surviving spouse is personally liable (see § 1009(a).) Note that the California statute permits a claim to be filed by the conservator of the surviving spouse's property. Guam law currently contains no conservatorship provisions; if conservatorship provisions are enacted in Guam, however, § 2513 should be amended accordingly. Also see Comment to § 2515, *infra*.

§ 2515. Debts of Surviving Spouse; Liability of Community Property; Claims; Contents.

If any community property is administered in the estate, the surviving spouse or the personal representative or guardian of the estate of the surviving spouse may file a claim against the estate for the payment of the debts of the surviving spouse for which the community property is liable. Such claim must be filed prior to the filing of a petition for final distribution. It shall include a statement whether the debts remain unpaid or have been paid by the surviving spouse. It shall also include an inventory of the separate property of the surviving spouse and

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any community property not administered in the estate and a statement of the value of the property less the amount of the liens and encumbrances upon the property as of the date of death of the deceased spouse. The statement may identify any property which is exempt from execution.

SOURCE: California Probate Code, § 704.4.

COMMENT: Section 704.4 of the California Probate Code was added in 1975, as part of the "Community Property Set-Aside Law." Its purpose -- analogous to that of § 2513, *supra* -- is to allow the surviving spouse to recover from the deceased spouse's estate any of the surviving spouse's debts for which the community property is liable (see § 1009(a), *supra*.) For a detailed analysis of the "Community Property Set-Aside Law," see "California Probate of Community Property: The Final Picture Emerges," by Arnold D. Kahn and Paul N. Frimmer (1975), 50 So. Bar J. 260. Also see Comment to § 2513, *supra*.

§ 2517. Claims; Affidavits; Contingent Claims; Claims Not Due; Vouchers.

Every claim which is due, when filed or presented, must be supported by the affidavit of the claimant or some one on the claimant's behalf, that the amount is justly due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the affiant. If the claim is not due when filed or presented, or is contingent, the particulars of the claim must be stated. When the affidavit is made by a person other than the claimant, such person must set forth in the affidavit the reason therefor. The personal representative may also require satisfactory vouchers or proof to be produced in support of the claim. If the claimant leaves any original voucher in the hands of the personal representative, or suffers the same to be filed with the Clerk of the Superior Court, the claimant may withdraw the same, when a copy thereof has been already, or is then, attached to his claim.

SOURCE: Probate Code of Guam (1970), § 705.

§ 2519. Claim Founded Upon a Written Instrument; Presentation of Copy; Secured Claims.

If the claim is founded on a written instrument, the original need not be filed or presented, but a copy thereof with all endorsements must be attached to the claim. The original instrument must be exhibited to the personal representative or to the Superior Court, upon demand, unless it is lost or destroyed, in which case its loss or destruction must be stated in the claim. If the claim or any part thereof is secured by a mortgage or

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other lien which has been recorded in the Department of Land Management of the Government of Guam it shall be sufficient to described the mortgage or other lien and refer to the date or volume and page of its record.

SOURCE: Probate Code of Guam (1970), § 706.

§ 2521. Time to File Claims; Claims by Government of Guam and Agencies or Instrumentalities thereof.

(a) Except as provided in subsections (b) and (c) of this Section, the following claims must be filed or presented within the time limited in the notice required by Section 2503 of this Title or as extended by the provisions of Sections 2507 and 2527 of this Title:

- (1) All claims arising upon contract, whether they are due, not due, or contingent;
- (2) All claims for funeral expenses; and
- (3) All claims for damages for injuries against the personal representative of any decedent who in his lifetime has wasted, destroyed, taken or carried away or converted to his own use, the property of another person or committed any trespass on the real property of another person.

Any such claim not so filed or presented is barred forever, unless it is made to appear by the affidavit of the claimant to the satisfaction of the Superior Court that the claimant had not received notice, by reason of being physically absent from the territory of Guam, in which event it may be filed or presented at any time before final distribution has been ordered; provided, that neither the filing nor the presentation of such claim, nor its later establishment, in whole or in part, shall make property distributed pursuant to an order of the Superior Court or any payments properly made before filing or presentation of such claim subject to such claim; and provided further, that the provisions of this paragraph shall not apply to any creditor who was mailed a copy of the notice to creditors by the personal representative, as provided in Section 2503(b) or Section 2503(c) of this Title. The Clerk of the Superior Court must enter in the permanent records of the Superior Court every claim filed, giving the name of the claimant, the amount and character of the claim, the rate of interest, if any, and the date of filing.

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(b) All claims by the Government of Guam or by any agency or instrumentality of the Government of Guam must be filed or presented within the time limited in the notice required by Section 2503 of this Title or as extended by the provisions of Sections 2507 and 2527 of this Title. For the purposes of this subsection, a claim includes, but is not limited to, a claim for the payment of taxes, but this subsection shall not apply to claims for property taxes, special assessments, assessments, gift taxes or inheritance taxes. Nothing in this subsection shall be construed to affect the order of priorities of claims provided for under other provisions of law. This subsection shall not apply to liability for the restitution of amounts illegally acquired through the means of any fraudulent, false, or incorrect claim or representation, or any forged or unauthorized endorsement.

(c) If a claim for damages for injuries to, or death of, a person, for which no action specified in subsection (a) of this Section was pending at the time of the decedent's death, is not filed within the time limited in the notice required by Section 2503 of this Title or as extended by the provisions of Sections 2507 and 2527 of this Title, the Superior Court, upon application of the claimant made not later than one (1) year after accrual of the claimant's cause of action, and upon such notice and hearing, if any, as the Superior Court may order, shall permit the filing of the claim and, if required, appoint or reappoint a personal representative. Neither the filing of the claim pursuant to this subsection nor its later establishment, in whole or in part, shall make property distributed pursuant to an order of the Superior Court or any payments properly made before notice of such application subject to the claim. The personal representative, distributee or payee shall not be liable on account of such prior distribution or payment. The Superior Court shall impose reasonable conditions upon the filing of the claim in order to avoid unequal treatment between the heirs, devisees, legatees, or creditors of the estate. This subsection shall not be applicable to claims of the Government of Guam or of any agency or instrumentality thereof under subsection (b) of this Section.

SOURCE: Subsection (a): California Probate Code, § 707(a) (as amended through 1971); Guam Law Revision Commission. Subsection (b): California Probate Code, § 707.5, excluding subsection (b) thereof. Subsection (c): California Probate Code, § 720 (as amended).

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COMMENT: The only change that the Commission has made to the California law is the addition, in subsection (a), of reference back to subsections (b) and (c) of § 2503, *supra*.

§ 2523. When Filing of Claims Not Required: Effect of Decedent's Liability Insurance.

(a) (1) Notwithstanding any other provision of law, the presentation or filing of a claim shall not be required and a civil action may be maintained by a claimant to establish, to the limits of the insurance protection only, a liability of the decedent for which the decedent was protected by liability insurance.

(2) The claimant shall file a verified petition in the Superior Court, alleging (a) the nature and amount of his claim, (b) that the decedent was protected, in whole or in part, by liability insurance with respect thereto, (c) that the interests of the estate will not be prejudiced, and (d) that any recovery in such action by the claimant will be limited solely to the decedent's insurance protection. The Superior Court, upon such hearing and notice, if any, as it may order, shall grant leave to the claimant to file such action, unless it finds that the interests of the estate will be prejudiced thereby. However, if it appears that the insurer denies coverage or admits liability only conditionally or with reservation, the Superior Court may deny leave to the claimant to file such action.

(3) The action by the claimant shall name as the defendant "Estate of (name of decedent), Deceased." Summons shall be served upon a person designated in writing by the insurer or, if none, upon the insurer. Further proceedings shall be had in the name of the estate, but otherwise shall be conducted in the same manner and have the same effect as if the action were against the personal representative. For good cause, the Superior Court, upon motion of an interested party or upon its own motion, may order the appointment of a personal representative and his substitution as the defendant.

(4) The insurer may deny or otherwise contest its liability by cross-complaint in the action or by an independent action against the claimant, but the judgment on the cross-complaint

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or in the independent action shall not adjudicate rights of persons who are not parties.

(5) A judgment in favor of claimant in an action pursuant to this subsection shall be enforceable only from the insurance protection and shall not create a lien upon real or other property of the estate.

(6) The remedies of this subsection are cumulative, and may be pursued concurrently with other remedies.

(b) Notwithstanding any other provision of law, the filing and presentation of a claim is not required as a prerequisite to commencing an action against the decedent for damages for injury to or for the death of a person caused by the wrongful act or neglect of the decedent or to recover upon a judgment obtained in such action if (1) the decedent had liability insurance applicable to the cause of action, (2) the amount of damages sought in the action does not exceed the maximum amount of such insurance, or recovery in excess thereof is waived, and (3) the estate of the decedent otherwise qualifies for proceedings under the provisions of Chapter 31 of this Title. If the amount of damages sought in the action exceeds the maximum amount of the insurance, filing and presentation of a claim is required only with respect to the amount sought in excess of the maximum amount of the insurance. The defendant in the action may be designated as "Estate of (name of decedent), Deceased." No action shall be maintained under this subsection unless the insurer has been served with a copy of the complaint.

SOURCE: Subsection (a): California Probate Code, § 721 (as amended).
Subsection (b): California Probate Code, § 707(b).

COMMENT: Section 2523 brings together several provisions concerning instances in which the filing of a claim against a decedent's estate is not required: i.e., where the decedent was covered by liability insurance. The provisions on which § 2523 are based were added to California law in 1971, and have the effect of streamlining the probate procedure in the cases to which they apply. This streamlining results from cases covered by the provisions' being outside the probate procedure entirely; in other words, when the decedent had liability insurance coverage for the types of claims enumerated, the claimant will be able to bring an action against the insurer, rather than against the estate.

§ 2525. Effect of Statute of Limitations.

No claim which is barred by the statute of limitations shall be allowed or approved by the personal representative, or by the Superior Court. When a claim is presented to the Superior Court for allowance or

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approval, the Superior Court of Guam may, in its discretion, examine the claimant and others on oath, and hear any legal evidence touching the validity of the claim. No claim which has been allowed is affected by the statute of limitations, pending the administration of the estate.

SOURCE: Probate Code of Guam (1970), § 708.

COMMENT: See *Blas v Talavera* (1963), 318 F.2d 617.

§ 2527. Claim in Action Pending Against Decedent at Time of Death; Effect of Insurance Coverage In Actions for Damages; Continuance of Pending Action.

(a) (1) If an action is pending against the decedent at the time of his death, the plaintiff must in like manner file his claim with the Clerk of the Superior Court or present it to the personal representative for allowance or rejection, authenticated as required in other cases; and no recovery shall be had against the decedent's estate in the action unless proof is made of such filing or presentation, except as provided in subsections (a)(2) and (a)(3) of this Section.

(2) If the action which is pending is an action for damages and the decedent was insured therefor and the insurer has accepted the defense of the cause and an appearance has been made in such action on behalf of the decedent, no claim shall be required except for amounts in excess of or not covered by such insurance.

(3) (A) If any action is pending against the decedent at the time of his death and a claim based on such action is not filed or presented within the time limited in the notice required by Section 2503 of this title or as extended by the provisions of Section 2507 of this Title, the Superior Court may thereafter allow filing of said claim on such terms as may be just and equitable, upon the filing of the claimant's verified petition and notice of hearing given in the manner provided in Section 3401 of this Title, if the Superior Court finds that the claim was not filed or presented previously because neither the claimant nor the claimant's attorney had actual knowledge of the decedent's death at least fifteen (15) calendar days

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prior to the expiration of the time limited in the notice required by Section 2503 of this Title or as extended by the provisions of Section 2507 of this Title; but any property distributed pursuant to an order of the Superior Court or any payment properly made before notice of such petition shall not be subject to the claim. No relief shall be granted unless the petition is filed within a reasonable time after discovery of decedent's death and in any event within one (1) year after the expiration if the time limited in the notice required by Section 2503 of this Title or as extended by the provisions of Section 2507 or this Title, and before petition for final distribution has been granted.

(B) If, at the time of filing the petition under subsection (a)(3)(A) of this Section, assets of the estate have been paid to general creditors or some thereof or have been distributed by decree of preliminary distribution to heirs, devisees or legatees (in either case after expiration of the prescribed period for claims), and it appears that the filing and later establishment of the claim, in the circumstances, would cause or tend to cause unequal treatment between heirs, devisees, legatees or creditors, then permission to file the claim shall be denied.

(b) Notwithstanding any other provisions of law, the Superior Court may permit an action such as described in subsection (a) of this Section to be continued against the defendant in the name of "Estate of (name of decedent), Deceased", upon petition of the plaintiff, pursuant to the same procedure, and upon the same terms and conditions, as are provided in Section 2523(a) of this Title for claims which were not the subject of a pending action at the decedent's death. The procedure of this subsection is cumulative and does not supersede the procedure provided in Section 385 of the Code of Civil Procedure.

SOURCE: Subsection (a): California Probate Code, § 709 (as amended).
Subsection (b): California Probate Code, § 709.1.

§ 2529. Claims Filed With Clerk; Procedure.

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When a claim is filed with the Clerk of the Superior Court of Guam before being presented to the personal representative, it shall be filed in duplicate. The Clerk of the Superior Court of Guam shall immediately deliver personally or send, by registered mail, to the personal representative, if one has been appointed, or to the personal representative's attorney, if any, one of the duplicates of the claim. If no personal representative has been appointed at the time a claim is filed with the Clerk of the Superior Court, the Clerk of the Superior Court shall retain both duplicates of the claim until such time as a personal representative is appointed, at which time the Clerk of the Superior Court shall immediately deliver personally or send, by registered mail, to the personal representative or to the personal representative's attorney, if any, one of the duplicates of the claim. The personal representative must allow or reject the claim, and his allowance or rejection must be in writing and filed with the Clerk of the Superior Court. If the personal representative allows the claim, the Clerk of the Superior Court, immediately after the filing of the allowance, must present the claim and the allowance to a judge of the Superior Court, and at the same time endorse on the claim the date of such presentation. The judge must endorse upon the claim his allowance or rejection, with the date thereof.

SOURCE: California Probate Code, § 710 (as amended); Guam Law Revision Commission.

COMMENT: The Commission has added to § 710 of the California Probate Code (as amended) the provision concerning the Clerk's duties if no personal representative has been appointed at the time a claim is presented, in the belief that this situation will arise with some frequency in Guam and that it should therefore be covered specifically by law. Also see § 701 of Title 1 for further provision concerning what constitutes "registered mail."

§ 2531. Claims Presented to Personal Representative: Procedure.

When a claim is presented to the personal representative before filing, the personal representative must endorse thereon his allowance or rejection, with the date thereof. If the personal representative allows the claim, it must be presented to a judge of the Superior Court for approval, who must in the manner provided in Section 2529 of this Title endorse upon it his approval or rejection and, if approved, it must be filed with the Clerk of the Superior Court within thirty (30) calendar days thereafter.

SOURCE: Probate Code of Guam (1970), § 711.

§ 2533. Failure to Act on Claims; Treatment as Rejection; Claims by Notaries; Action On Timely Claim After Time.

If, when a claim has been filed without presentation, the personal representative refuses or neglects to file his allowance or rejection for ten (10) calendar days after the claim has been filed, or if, when a claim has been presented before filing, the personal representative refuses or neglects to endorse his allowance or rejection for ten (10) calendar days after the claim has been presented to him, or if the judge of the Superior Court refuses or neglects to endorse his approval or rejection for ten (10) calendar days after the claim has been presented to him, such refusal or neglect may, at the option of the claimant, be deemed equivalent to a rejection on the tenth calendar day. If the claim is presented by a notary, the certificate of the notary, under seal, shall be prima facie evidence of such presentation and the date thereof. If the claim is filed with the Clerk of the Superior Court or presented to the personal representative before the expiration of the time limited for the filing or presentation of claims, the same is filed or presented in time, though acted upon by the personal representative, and the judge of the Superior Court, after the expiration of such time.

SOURCE: Probate Code of Guam (1970), § 712.

§ 2535. Allowed Claims; Status; Contest of Validity; Duties of Clerk; Claim of Surviving Spouse; Allowance; Discharge.

(a) Every claim allowed by the personal representative and approved by the Superior Court shall be ranked among the acknowledged debts of the estate, to be paid in due course of administration; but the validity thereof may be contested by any person in interest, at any time prior to the settlement of the account of the personal representative in which it is first reported as an allowed and approved claim, unless established by a judgment against the personal representative. The date of allowance of each claim, together with the amount allowed, must be entered in the record or register by the Clerk of the Superior Court after the allowance or approval thereof by the judge of the Superior Court.

(b) A claim of the surviving spouse filed pursuant to the provisions of Section 2513 or Section 2515 of this Title shall be allowed in that proportion allocated to the estate by Section 2741 of this Title and may be discharged by (1) payment to the surviving spouse, (2) payment to the creditors of the surviving spouse or deceased spouse as identified in the

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claim, or (3) a credit allowed the spouse in the order allocating debts pursuant to the provisions of Section 2741 of this Title.

SOURCE: Subsection (a): Probate Code of Guam (1970), § 713. Subsection (b): California Probate Code, § 713.5.

COMMENT: Section 713.5 was added to the California Probate Code in 1975, as part of the "Community Property Set-Aside Law." That law is part of California's continuing efforts to rationalize its community property laws in all respects. Also see Comments to §§ 2513 and 2515, *supra*.

§ 2537. Notice of Rejection of Claim; Action on Claim; Limitation Period; Lis Pendens; Service.

When a claim is rejected either by the personal representative or by the Superior Court, written notice of such rejection shall be given by the personal representative to the holder of the claim or to the person filing or presenting it, and the holder must bring suit in the proper court against the personal representative, within three (3) months after the date of service of such notice if the claim is then due, or if not, within two (2) months after it becomes due; otherwise the claim shall be forever barred. Within ten (10) calendar days after the filing of such complaint the plaintiff shall file or cause to be filed in the estate proceedings, with the Clerk of the Superior Court, a notice of the pendency of such action. If such notice is not filed within said period, the personal representative shall incur no liability whatsoever by reason of any distribution of the estate. Personal service of a copy of the summons and complaint upon the personal representative within such period is equivalent to the filing of such notice. If it appears to the satisfaction of the Superior Court of Guam that the residence of the claimant is not known, and that he cannot be found, the Superior Court shall order the notice of rejection referred to hereinabove to be served on the claimant by filing it with the Clerk of the Superior Court.

SOURCE: California Probate Code, § 714 (as amended).

§ 2539. Vacancy in Administration as Affecting Time Limitations.

The time during which there is a vacancy in the administration is not included in any limitation prescribed in Section 2537 of this Title for bringing suit upon a rejected claim.

SOURCE: California Probate Code, § 715 (as amended).

§ 2541. Filing or Presenting as Prerequisite to Action; Effect of Mortgage or Lien.

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No holder of a claim against an estate shall maintain an action thereon, unless the claim is first filed with the Clerk of the Superior Court or presented to the personal representative, except in the following case: an action may be brought by the holder of a mortgage or lien to enforce the same against the property of the estate subject thereto, where all recourse against any other property of the estate is expressly waived in the complaint; but no attorney's fees shall be recovered in such action unless the claim was filed or presented as aforesaid.

SOURCE: Probate Code of Guam (1970), § 716.

§ 2543. Partial Allowance of Claim; Costs on Subsequent Action.

The personal representative or the judge of the Superior Court of Guam may allow or approve a claim in part, in which case the personal representative or judge must state in his allowance or approval the amount for which it is allowed or approved. If the creditor refuses to accept the amount allowed in satisfaction of his claim, he shall recover no costs in any action therefor brought against the personal representative, unless he recovers a greater amount than that allowed.

SOURCE: California Probate Code, § 717.

§ 2545. Referee; Hearing and Report; Powers and Compensation of Referee; Powers of Court; Effect.

If the personal representative doubts the correctness of any claim filed or presented, or if the claim has been rejected in whole or in part, or if the claim may at the option of the claimant be deemed rejected as provided in Section 2533 of this Title, the personal representative may enter into an agreement in writing with the claimant to refer the matter in controversy to some disinterested person, to be approved by the Superior Court of Guam, which agreement and approval shall be filed with the Clerk of the Superior Court, who shall thereupon enter an order referring the matter in controversy to the person so selected; or, if the parties consent, a reference may be had in the Superior Court. The referee shall hear and determine the matter, and make a report thereon to the Superior Court. The same proceedings shall be had in all respects, and the referee shall have the same powers, and be entitled to the same compensation and subject to the same control, as in other cases of reference. The Superior Court of Guam may remove the referee, appoint another in his place, set aside or confirm his report, and adjudge cases, as in actions against personal representatives. The judgment of the Superior Court of

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Guam thereon shall be as valid and effectual, in all respects, as if the same had been rendered in a suit commenced by ordinary process. However, if confirmed, the report of the referee merely establishes or rejects the claim, the same as if it had been allowed or rejected by the personal representative and the Superior Court.

SOURCE: California Probate Code, § 718 (as amended through 1968, without subsection (2).)

COMMENT: Section 718 of the California Probate Code has been twice amended, in 1968 and 1969. The 1968 amendment was a major amendment, whereas the 1969 amendment merely made two minor changes in language. Section 2545 reflects one of the two major changes made to the California version in 1968: the addition, in the introductory sentence, of the words, "...or if the claim has been rejected in whole or in part, or if the claim may at the option of the claimant be deemed rejected as provided in Section [2533 of this Title]...." The effect of this addition is to allow more cases to come to reference, at the personal representative's option. The 1968 amendment to § 718 of the California Probate Code also added a new subsection, which allows the personal representative to refer the same classes of matters to a commissioner or referee "...who is regularly attached to the court," or to a judge pro tempore. In that Guam has neither such officer attached to its court system, such an alteration to Guam's statute is unnecessary, although similar provisions should be added if either such officer comes into existence in Guam.

§ 2547. Compromise and Settlement of Claims; Procedure; Effect.

After the lapse of sixty (60) calendar days from the issuance of letters, the personal representative, with the approval of the Superior Court, may compromise, compound or settle any claim or demand by or against the estate or any suit brought by or against the personal representative as such, by the transfer of specific assets of the estate or otherwise. To obtain such approval, the personal representative shall file a verified petition with the Clerk of the Superior Court showing the advantage of the compromise, composition or settlement. The Clerk of the Superior Court shall set the petition for hearing, and notice thereof shall be give in the manner provided in Section 3401 of this Title. If under this Section the Superior Court authorizes the transfer of real property of the estate, conveyances shall be executed by the personal representative in the same manner as provided in Section 2351 of this Title and such conveyances shall have the same force and effect as conveyances executed pursuant to that Section, and a certified copy of the order authorizing the transfer must be recorded in the Department of Land Management of the Government of Guam.

SOURCE: California Probate Code, § 718.5 (as amended).

§ 2549. Acceptance of Deed in Lieu of Foreclosure; Approval.

If it shall appear to be to the advantage of the estate for the personal representative to accept a deed of property which is subject to a mortgage or other lien, in lieu of foreclosure of such mortgage or other lien, the Superior Court may authorize, upon such terms and conditions as may be imposed by the Superior Court, the acceptance of such deed, conveying such property to the heirs or devisees of the decedent, subject to administration, upon the petition of the personal representative or of any person interested in the estate, after notice of the hearing given in the manner provided in Section 3401 of this Title.

SOURCE: California Probate Code, § 718.6.

§ 2551. Grants of Partial Satisfaction or Partial Reconveyance; Petition; Notice; Authorization.

If it shall appear to be to the advantage of the estate for the personal representative to give a partial satisfaction of a mortgage or other lien, the Superior Court may authorize such partial satisfaction upon such terms and conditions as may be imposed by the Superior Court upon the petition of the personal representative or of any person interested in the estate, after notice of the hearing given in the manner provided in Section 3401 of this Title, but no such authorization shall be necessary if such partial satisfaction is executed pursuant to the terms of the mortgage or other lien held by the estate.

SOURCE: California Probate Code, § 718.7.

§ 2553. Costs in Action Against Personal Representative.

When a judgment is recovered, with costs, against a personal representative, the personal representative shall be individually liable for such costs, but they must be allowed to the personal representative in his administration accounts, unless it appears that the suit or proceeding in which the costs were taxed was prosecuted or defended without just cause.

SOURCE: Probate Code of Guam (1970), § 719.

§ 2555. Status of Judgments Against Estates.

A judgment against a personal representative, upon any claim for money, against the estate of the personal representative's decedent, when it becomes final, conclusively establishes the validity of the claim for the amount of the judgment; and the judgment must be that the personal

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representative pay, in due course of administration, the amount ascertained to be due. A certified transcript of the original docket of the judgment, if there is one, otherwise an abstract of the judgment must be filed in the administration proceedings. No execution shall issue upon the judgment, nor shall it create any lien upon the property of the estate, or give the judgment creditor any priority of payment.

SOURCE: California Probate Code, § 730 (as amended).

§ 2557. Death of Judgment Debtor After Trial: Effect.

A judgment against a person who dies after trial and submission of his case to a judge sitting without a jury for decision or after a verdict is not a lien on the real property of the decedent, but is payable in due course of administration.

SOURCE: California Probate Code, § 731 (as amended).

§ 2559. Death After Entry of Judgment; Execution; Procedure; Redemption.

When a judgment has been entered against the decedent, no execution shall issue thereon after the decedent's death, except as provided in the Code of Civil Procedure. A judgment against the decedent for the recovery of money must be filed or presented in the same manner as other claims. If execution is actually levied upon the property of the decedent before the decedent's death, the same may be sold for the satisfaction thereof; and the officer making the sale must account to the personal representative for any surplus in his hands. A judgment creditor having a judgment which was rendered against the decedent in the decedent's lifetime may redeem any real property of the decedent from any sale under foreclosure or execution, in like manner and with like effect as if the judgment debtor were still living.

SOURCE: Probate Code of Guam (1970), § 732.

§ 2561. Interest on Claims and Debts.

No greater rate of interest shall be paid upon any claim, after its allowance by the personal representative and its approval by the Superior Court of Guam, than is allowed upon judgments; and if the estate is insolvent, no greater rate of interest shall be paid upon any debt, from the time of the first publication of the notice to creditors required by Section 2503 of this Title, than is allowed upon judgments. If any debt of the decedent bears interest, whether filed or presented or not, the personal

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representative, by order of the Superior Court of Guam, may pay the amount then accumulated and unpaid, or any part thereof, at any time when there are sufficient funds properly applicable thereto, whether the claim be then due or not; and interest shall thereupon cease to accrue upon the amount so paid.

SOURCE: Probate Code of Guam (1970), § 733.

§ 2563. Payment in Specie.

If a claim is payable in a particular kind of money or currency, it shall, if allowed, be payable only in such money or currency.

SOURCE: Probate Code of Guam (1970), § 734.

§ 2565. Liens or Encumbrances on Homestead.

If there are subsisting liens or encumbrances on the homestead, and the funds of the estate are adequate to pay all claims against the estate, the claims secured by such liens and encumbrances, whether filed or presented or not, if known or made known to the personal representative, must be paid out of such funds. If the funds of the estate are not sufficient for that purpose, the claims so secured shall be paid proportionately with other claims allowed and the liens or encumbrances on the homestead shall only be enforced against the homestead for any deficiency remaining after such payment.

SOURCE: Probate Code of Guam (1970), § 735.

§ 2567. Land Subject to Mortgage.

When a testator devises land subject to a mortgage or other lien, other property specifically devised or bequeathed shall not be sold for the purpose of exonerating the encumbered property, unless a contrary intention can be gathered from the terms of the will, read in the light of the circumstances surrounding its execution. A mere direction that all the testator's debts be paid is not sufficient evidence of such contrary intention.

SOURCE: Probate Code of Guam (1970), § 736.

§ 2569. Statute of Frauds; Personal Representative's Promise to Answer in Damages or Pay Debts of Decedent.

No personal representative is chargeable upon any special promise to answer in damages or to pay the debts of the decedent out of the personal representative's own estate, unless the agreement for that

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purpose, or some memorandum or note thereof, is in writing signed by such personal representative, or by some other person by such personal representative thereunto specifically authorized in writing.

SOURCE: Probate Code of Guam (1970), § 737.

COMMENT: In the Probate Code of Guam (1970), the last word but five in § 737 is “thereunder.” In § 737 of the California Probate Code, that word is “thereunto.” The Commission is of the opinion that “thereunto” is correct, and that the use of “thereunder” in the Probate Code of Guam (1970) was an inadvertent mistake.

§ 2571. When Claimant Cannot be Found; Deposit in Bank Upon Order of Court; Payment to Treasurer of Guam; Escheat.

(a) Whenever an estate is in all other respects ready to be closed, and it is made to appear to the satisfaction of the Superior Court, by affidavit or by evidence taken in open court, that an allowed and approved claim has not and cannot be paid because the claimant cannot be found, the Superior Court shall make an order fixing the amount of the claim, with interest, if any, and directing the personal representative to deposit that amount with any bank duly licensed to do business in Guam, which shall give a receipt for the same. Thereupon the personal representative shall make the deposit and shall forthwith proceed to settle and close the estate. The receipt of the bank shall be received as a proper voucher for the payment of the claim.

(b) When money deposited pursuant to the provisions of subsection (a) of this Section is not claimed within five (5) years after the date of its deposit, the Superior Court of Guam, upon such showing by the affidavit of an officer if the bank in which such money is deposited, must direct the same to be deposited in the Treasury of Guam for the benefit of the Government of Guam, whereupon the same devolves and escheats to the Government of Guam.

SOURCE: Subsection (a): Probate Code of Guam (1970), § 738. Subsection (b): Probate Code of Guam (1970), § 739; Guam Law Revision Commission.

COMMENT: Section 739 of the Probate Code of Guam (1970) also contained a provision concerning what was to happen to money deposited in a bank after five years, if it went unclaimed for that period; however, the provision was so poorly drafted as to be incomprehensible. The Commission is of the opinion that a five-year period is ample time for a claimant -- who, it should be remembered, initiated the claim himself -- to claim from the bank the amount of his claim. The Commission has thus redrafted § 739, such that if money so deposited in a bank is not claimed within a five-year period, it will forthwith escheat to the Government of Guam.

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