

CHAPTER 9
SUCCESSION TO SEPARATE PROPERTY

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§ 901. Succession to Separate Property Controlled by This Chapter; Effect of Contracts and Other Portions of Title.

The separate property of a person who dies without disposing of it by will is succeeded to and must be distributed as hereinafter provided in this Chapter, subject to the limitation of any applicable marriage or other contract, and to the applicable provisions of Chapter 11 and of Division 3 of this Title.

SOURCE: Probate Code of Guam (1970), § 220.

COMMENT: Section 901 delineates the basic structure for succession to, and distribution of, separate property. Under its terms, Chapter 9 of this Title controls such succession and distribution; however, such succession and distribution are also governed by contracts the decedent might have made, to the provisions of Chapter 11 (which governs disposition of “quasi-community” property,) and to the

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provisions of Division 3, concerning administration of estates. Also see Comment to § 801, supra, for a general comment concerning Chapter 9.

§ 903. Distribution Where Decedent Leaves Surviving Spouse and Issue.

(a) If the decedent leaves a surviving spouse and only one child, or a surviving spouse and the lawful issue of only one deceased child, the decedent's separate estate goes one-half (1/2) to such surviving spouse and one-half (1/2) to such child or issue.

(b) In any of the following circumstances, the decedent's separate estate goes one-third (1/3) to the decedent's surviving spouse and the remainder in equal shares to the decedent's children and to the lawful issue of any deceased child, which issue shall take their portions by right of representation:

(1) If the decedent leaves a surviving spouse and more than one living child;

(2) If the decedent leaves a surviving spouse, one living child, and the lawful issue of one or more deceased children;

(3) If the decedent leaves a surviving spouse, more than one living child, and the lawful issue of one or more deceased children.

(c) If there is no child of the decedent living at the decedent's death, the remainder of the decedent's separate estate goes to all of the decedent's lineal descendants; if all such descendants are in the same degree of kindred to the decedent they share equally, otherwise they take by right of representation.

SOURCE: Probate Code of Guam (1970), § 221; Guam Law Revision Commission.

COMMENT: Section 221 of the Probate Code of Guam (1970), on which § 903 is based, was rather unclear as to its operation. Moreover, it appears to have left one situation unaccounted for: that in which an intestate decedent leaves a surviving spouse and more than one living child, plus the lawful issue of one or more deceased children. The Commission has thus redrafted the Section to cover that situation, and to improve the Section's clarity.

§ 905. Distribution Where Decedent Leaves Issue But No Surviving Spouse.

If the decedent leaves no surviving spouse, but leaves issue, the whole of the decedent's separate estate goes to such issue; and if all of

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the descendants are in the same degree of kindred to the decedent they share equally, otherwise they take by right of representation.

SOURCE: Probate Code of Guam (1970), § 222.

§ 907. Distribution Where Decedent Leaves Surviving Spouse But No Issue.

If the decedent leaves a surviving spouse, but no issue, the decedent's separate estate goes one-half (½) to such surviving spouse and one-half (½) to the decedent's parents in equal shares; or if either is dead to the survivor; or if both are dead to their issue and the issue of either of them, by right of representation.

SOURCE: Probate Code of Guam (1970), § 223.

§ 909. Distribution Where Decedent Leaves Surviving Spouse But No Family.

If the decedent leaves a surviving spouse and neither issue, parent, brother, sister, nor descendant of a deceased brother or sister, the whole of the decedent's separate estate goes to such surviving spouse.

SOURCE: Probate Code of Guam (1970), § 224; California Probate Code, § 224.

§ 911. Distribution Where Decedent Leaves Neither Surviving Spouse Nor Issue.

If the decedent leaves neither issue nor surviving spouse, the decedent's separate estate goes to the decedent's parents in equal shares; or if either is dead, to the survivor; or if both are dead, in equal shares to the decedent's brothers and sisters and to the descendants of the decedent's brothers and sisters by right of representation.

SOURCE: Probate Code of Guam (1970), § 225.

§ 913. Distribution Where Decedent Leaves Neither Surviving Spouse, Issue Nor Immediate Family.

If the decedent leaves neither issue, spouse, parent, brother, sister, nor descendant of a deceased brother or sister, the decedent's separate estate goes to the decedent's next of kin in equal degree, excepting that, when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor to the decedent must be preferred to those claiming through an ancestor more remote from the decedent.

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SOURCE: Probate Code of Guam (1970), § 226.

§ 915. Distribution of Estate of Minor Unmarried Decedent.

(a) If the decedent dies a minor, never having been married, and without issue, all the estate that came to the decedent by succession from either of the decedent's parents goes in equal shares to the other children of such parent and to the issue of any other of such children who are dead, by right of representation; or if all the children of such parent are dead, and any of them has left issue, to such issue; and if all such issue are in the same degree of kindred to the decedent, they share equally, otherwise they take by right of representation.

(b) If the decedent dies a minor, never having been married, but leaving issue, the decedent's estate shall be distributed pursuant to the provisions of Section 905 of this Title.

SOURCE: Subsection (a): Probate Code of Guam (1970), § 227. Subsection (b): Guam Law Revision Commission.

COMMENT: Section 227 of the Probate Code of Guam (1970) consisted of subsection (a) of § 915, except that it did not contain the words "...and without issue" in the first sentence. This appears to have been intended to be an exception to the general rules of succession, designed to cover a very narrow situation. As such, it was adequate. However, the Commission recognizes the reality that there are in Guam a certain number of unmarried minors with children; if § 227 of the Probate Code of Guam (1970) were merely carried over into the revised Probate Code, such minor decedents' estates would be distributed without regard for their children. Although the Commission does not condone illegitimacy, illegitimate children nonetheless exist; and to deny them succession to their parents' estates would perhaps work an additional hardship on them. Such hardship is alleviated by the inclusion of subsection (b).

§ 917. Distribution of Community Property Acquired From Decedent's Predeceased Spouse Where Decedent Leaves Neither Spouse Nor Issue.

(a) If the decedent leaves neither spouse nor issue, and the decedent's estate or any portion thereof was the community property of the decedent and a previously deceased spouse of the decedent, and belonged to or went to the decedent by virtue of its community character on the death of such previously deceased spouse, or came to the decedent from such previously deceased spouse by gift, descent, devise or bequest, or became vested in the decedent on the death of such previously deceased spouse by right of survivorship in a homestead, or in a joint tenancy between such previously deceased spouse and the decedent, or

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was set aside as a probate homestead, such property goes in equal shares to the children of such previously deceased spouse and their descendants by right of representation, and if none, then one-half (½) of such property goes to the parents of the decedent in equal shares, or if either is dead to the survivor, or if both are dead in equal shares to the brothers and sisters of the decedent and their descendants by right of representation, and the other half goes to the parents of such previously deceased spouse in equal shares, or if either is dead to the survivor, or if both are dead, in equal shares to the brothers and sisters of such deceased spouse and to their descendants by right of representation.

(b) If any of the property subject to the provisions of subsection (a) of this Section would otherwise escheat to the territory of Guam because there is no relative, including next of kin, of one of the spouses to succeed to such portion of the estate, such property shall be distributed in accordance with the provisions of Section 1309 of this Title.

SOURCE: California Probate Code, § 228 (as amended).

COMMENT: Section 917 operates as an exception to the general rules governing succession to separate property. It provides that a decedent's separate property which was once community property of the decedent and the decedent's previously deceased spouse goes to individuals other than those set forth in § 911, supra: in essence, such property returns to the family of the previously deceased spouse. Such a distribution scheme seems only fair, in that it has the effect of keeping such "former community property" in the family of the person who originally owned that community property, rather than allowing the deceased spouse's share to go to people who might be total strangers to such deceased spouse.

§ 919. Distribution of Former Separate Property of Decedent's Previously Deceased Spouse.

(a) If the decedent leaves neither spouse nor issue, and the decedent's estate or any portion thereof was the separate property of a previously deceased spouse of the decedent, and came to the decedent from such previously deceased spouse by gift, descent, devise or bequest, or became vested in the decedent on the death of such previously deceased spouse by right of survivorship in a homestead or in a joint tenancy between such previously deceased spouse and the decedent, such property goes in equal shares to the children of the deceased spouse and to their descendants by right of representation, and if none, then to the parents of such previously deceased spouse, in equal shares, or if either is dead to the survivor, or if both are dead, in equal shares to the brothers

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and sisters of the deceased spouse and to their descendants by right of representation.

(b) If the decedent leaves neither spouse nor issue, that portion of the decedent's estate created by gift, descent, devise or bequest from the separate property of the decedent's parent or grandparent shall go to the parent or grandparent who made such gift, devise or bequest or from whom the property descended, or if such parent or grandparent is dead, such property shall go in equal shares to the heirs of such deceased parent or grandparent.

(c) If any of the property subject to the provisions of subsections (a) or (b) of this Section would otherwise escheat to the territory of Guam because there is no relative, including next of kin, of one of the spouses to succeed to such portion of the estate, such property shall be distributed in accordance with the provisions of Section 1309 of this Title.

SOURCE: California Probate Code, § 229.

COMMENT: See Comment to § 917, supra, which is generally applicable to § 919 as well; the only essential difference is that § 919 covers separate property which the decedent received from a previously deceased spouse, while § 917 covers former community property. The rationales underlying both Sections, however, are essentially the same: to keep such property in the family of the original owner.

§ 921. When Property Received From Previously Deceased Spouse is Distributed to Next of Kin.

If there is no one to succeed to any portion of the portion of the property in any of the contingencies provided for in Sections 917 and 919 of this Title, according to the provisions of those Sections, such portion goes to the next of kin of the decedent in the manner provided for in Section 913 of this Title.

SOURCE: Probate Code of Guam (1970), § 230.
