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**CH. 10 SUCCESSION TO COMMUNITY PROPERTY**

**CHAPTER 10**  
**SUCCESSION TO COMMUNITY PROPERTY**

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- § 1009. Surviving Spouse's Personal Liability for Deceased Spouse's Debts Chargeable Against Community Property; Exception.

**§ 1001. Title of Surviving Spouse to Community Property; Portion Subject to Testamentary Disposition or Succession.**

Upon the death of any married person, one-half (1/2) of the community property belongs to the surviving spouse; the other half (1/2) is subject to the testamentary disposition of the decedent, and in the absence thereof goes to the surviving spouse, subject to the following provisions of this Chapter.

**SOURCE:** Probate Code of Guam (1970), § 201.

**COMMENT:** Chapter 10, which corresponds generally to Division II, Chapter I of the Probate Code of Guam (1970), has been quite heavily revised. Several new Sections have been added, corresponding to certain sections of the California Probate Code added since 1933; and the Sections corresponding to §§ 202 and 203 of the Probate Code of Guam (1970) have undergone extensive revision -- for the most part, to make them sex-neutral under the mandate of Public Law 14-28. The only part of Chapter 10 which has not been extensively revised is § 1001; revision of this Section was felt to be unnecessary, as § 1001 merely sets forth the basic principle of succession to community property, while the Sections which follow refine that basic law to cover more specific situations.

**§ 1003. Dispositions of Community Property to Someone Other Than Surviving Spouse: Law Governing Administration and Disposal.**

When a deceased spouse disposes by will of all or part of his interest in the community property to someone other than the surviving

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spouse, or when the will of a deceased spouse contains a trust, or when the will of a deceased spouse limits the surviving spouse to a qualified ownership in the property, that part of the interest of the deceased spouse in the community property disposed of to someone other than the surviving spouse, disposed of in trust, or limiting the surviving spouse to a qualified ownership in the community property shall be subject to administration under the provisions of Division 3 of this Title. A will that provides for a devise or bequest of community property to the surviving spouse if such spouse survives the deceased spouse by a specified period of time shall not be considered to create such a qualified ownership as to fall under the provisions of this Section, if the specified period of time has expired.

**SOURCE:** California Probate Code, § 204 (as amended).

**§ 1005. Passage of Community Property to Surviving Spouse Without Administration; Surviving Spouse's Election of Administration.**

(a) Except as provided in Section 1003 of this Title, when a married person dies intestate, or dies testate and by valid will leaves all of his interest in the community property to the surviving spouse, such interest passes to the surviving spouse subject to the provisions of Sections 1007 and 1009 of this Title, and no administration thereon shall be necessary.

(b) Notwithstanding the provisions of subsection (a) of this Section, upon the election of the surviving spouse or the personal representative or the guardian of the estate of the surviving spouse, the interest of the deceased spouse in the community property or both the interest of the deceased spouse and the surviving spouse in the community property may be administered under the provisions of Division 3 of this Title. The election provided for herein must be made within four (4) months after the issuance of letters testamentary or of administration, by a writing filed in the proceedings for the administration of the estate of the deceased spouse and prior to the entry of a decree under Section 3037 of this Title.

(c) Notwithstanding the provisions of subsections (a) and (b) of this Section, the surviving spouse or the personal representative or the guardian of the estate of the surviving spouse may file an election and agreement in the proceedings for the administration of the estate of the deceased spouse to have all or part of the interest of the surviving spouse

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in the community property transferred by the surviving spouse to the trustee under the will of the deceased spouse or the trustee of an existing trust identified by the will of the deceased spouse, to be administered and distributed by the trustee. The election and agreement must be filed before the entry of the decree of final distribution in the proceedings.

**SOURCE:** California Probate Code, § 202 (as amended.)

**COMMENT:** Section 202 of the California Probate Code provides for an election by the conservator of the surviving spouse's property, in addition to elections by the personal representative and the guardian of the estate, in subsections (b) and (c); Guam law currently contains no conservatorship provisions, and thus such provisions are currently unnecessary in Guam. If conservatorship provisions are enacted in Guam, § 1005 should be amended to include the words, "...or conservator of the property..." after the words, "...guardian of the estate..." in subsections (b) and (c).

**§ 1007. Surviving Spouse's Ability to Deal With Community Property; Notice of Claim of Another Under Decedent's Will; Such Property Treated as If It Were Surviving Spouse's Separate Property.**

After ninety (90) calendar days from death of a married person, the surviving spouse of such person or the personal representative or guardian of the estate of such surviving spouse shall have full power to sell, lease, mortgage or otherwise deal with and dispose of the community real property, unless a notice is recorded in the Department of Land Management of the Government of Guam to the effect that an interest in the property is claimed by another under the will of the deceased spouse. Such notice must also describe the property in which such interest is claimed, and set forth the name or names of the owner or owners of the record title to the property. There shall be endorsed upon such notice instructions that it shall be indexed by the Department of Land Management of the Government of Guam in the name or names of the owner or owners of the record title to the property, as grantor or grantors, and in the name of the person claiming an interest in the property, as grantee. The right, title and interest of any grantee, purchaser, encumbrancer, or lessee shall be as free of rights of devisees or creditors of the deceased spouse to the same extent as if the property had been owned as the separate property of the surviving spouse.

**SOURCE:** California Probate Code § 203 (as amended); Guam Law Revision Commission.

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**COMMENT:** See Comment to § 1005, supra, as similar considerations apply to § 1007. Note that in the California version of the Section, the time limitation set forth in the first sentence is forty days; this has been expanded to ninety days in the Guam version, as the Commission was of the opinion that a ninety-day period is a more realistic limitation in Guam, but does not impose an unreasonable restraint on alienation of real property.

**§ 1009. Surviving Spouse's Personal Liability for Deceased Spouse's Debts Chargeable Against Community Property; Exception.**

(a) Except as provided for by Section 2729(b) of this Title, upon the death of a married person, the surviving spouse is personally liable for the debts of the deceased spouse chargeable against the community property, unless the interests of both spouses in the community property are administered under the provisions of Division 3 of this Title as provided in Section 1005(b) of this Title. The personal liability shall not exceed the value at the date of death, less the amount of any liens and encumbrances, of the interest which is not exempt from execution of the surviving spouse in the community property immediately prior to death of the deceased spouse, plus the interest of the deceased spouse passing to the surviving spouse without administration.

(b) If proceedings are commenced in Guam for the administration of the estate of the deceased spouse and notice to creditors has been given by the personal representative, any action upon the liability of the surviving spouse pursuant to subsection (a) of this Section shall be barred to the same extent as provided for claims under Section 2521 of this Title, except as to the following:

(1) Creditors who had commenced judicial proceedings for the enforcement of the debts and had served the surviving spouse with process prior to the date of the last publication of the notice to creditors;

(2) Creditors who secure the acknowledgment in writing of the liability of the surviving spouse for the debts;

(3) Creditors who file a timely claim in the proceedings.

(c) Except as provided in subsection (b) of this Section, any debt described in subsection (a) of this Section may be enforced against the surviving spouse in the same manner as it could have been enforced against the deceased spouse if the deceased spouse had not died. In any action based upon such debt, the surviving spouse may assert any

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defenses, counterclaims or setoffs which would have been available to the deceased spouse if the deceased spouse had not died.

**SOURCE:** California Probate Code, § 205.

**COMMENT:** Note that § 2513, *infra*, permits the surviving spouse to make a claim against the deceased spouse's estate for the payment of debts described in § 1009.

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