

CHAPTER 11
DISPOSITION OF "QUASI-COMMUNITY" PROPERTY

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§ 1101. Disposition of Property Acquired While Domiciled Outside Guam or In Exchange Therefor.

Upon the death of any married person domiciled in Guam, one-half (1/2) of the following property in such decedent's estate shall belong to the surviving spouse and the other one-half (1/2) of such property is subject to the testamentary disposition of such decedent, and, in the absence thereof, goes to the surviving spouse:

(a) All personal property wherever situated, and all real property situated in Guam, heretofore or hereafter acquired by such decedent while domiciled elsewhere which would have been the community property of such decedent and the surviving spouse if such decedent had been domiciled in Guam at the time of its acquisition;

(b) All personal property wherever situated, and all real property situated in Guam, heretofore or hereafter acquired in exchange for real or personal property, wherever situated, which would have been community property of such decedent and the surviving spouse if such decedent had been domiciled in Guam at the time the property so exchanged was acquired.

All such property is subject to the debts of the decedent and to administration and disposal under the provisions of Division 3 of this Title.

SOURCE: California Probate Code, § 201.5 (as amended).

COMMENT: The purpose of § 1101 is to provide for the disposition of what is generally known as "quasi-community property" -- i.e., property acquired in a non-community property jurisdiction which would be community property had it been acquired in Guam. For example: H and W live in Wisconsin, a non-community property state. H buys a parcel of real property in Guam, taking it in his own name;

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thus in Wisconsin, the parcel would be H's separate property. H and W then become domiciled in Guam; H then dies. Absent § 1101, the argument might be made that the Guam realty had remained H's separate property until he died -- which would have the effect of allowing H to will the property away, leaving W with none of it. This result would be contrary to the basic principle of the community property system: that anything earned by H or W during their marriage belongs to both of them equally -- i.e., to the "community" of H and W -- rather than to one or the other. Under § 1101, on the other hand, the property in question would be treated the same way as community property would be treated under Chapter 10.

Subsection (b) of § 1101 has a similar effect with respect to property which was exchanged for "quasi-community" property. This prevents H, in the example above, from selling the Guam property and buying other Guam property with the proceeds, then willing away such exchanged property as his separate property. Again, the underlying purpose of this part of § 1101 is to support the basic principle of the community property system.

It should be noted that both subsections of § 1101 cover personal property wherever situated, and real property in Guam. This distinction has been made in keeping with the general principle of law that the courts of a particular jurisdiction have no direct control over real property located outside that jurisdiction.

§ 1103. Election of Surviving Spouse to Take Under or Against Will.

Upon the death of any married person not domiciled in Guam who leaves a valid will disposing of real property in Guam which is not the community property of such decedent and the surviving spouse, the surviving spouse has the same right to elect to take a portion of or interest in such property against the will of such decedent as though the property were situated in such decedent's domicile at death. As used in this Section, real property includes leasehold interests in real property.

SOURCE: California Probate Code, § 201.6.

COMMENT: Section 1103 is new to Guam. An identical provision was added to California law in 1957, at the same time that California added § 201.5 to its Probate Code (equivalent to § 1101, *supra*.) No decisional law was reported concerning California § 201.6 as of the end of 1979; it may be discerned, however, that the purpose behind the statute is to clarify which jurisdiction's law is to prevail in the specific factual situation with which the statute deals. Under § 1103, the prevailing law will be that of the jurisdiction in which the decedent was domiciled at the time of his or her death; the apparent necessity for this statute arises from the fact that Guam (and California) law provides for no "widow's election" as to separate property -- under a community property system, no such election is necessary or appropriate. If prior Guam law were to prevail in the factual situation with which § 1103 deals, therefore, it might be that the surviving spouse would be left with no portion of the deceased spouse's property. Again, this would run contrary to the general principles of the community property system; therefore, for this limited

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purpose, the law of the decedent's domiciliary state is allowed to prevail to avoid such an unfortunate result.

§ 1105. Election of Surviving Spouse to Take Under or Against Will, Requasi-Community Property.

Whenever a decedent has made provision by a valid will for his surviving spouse and such surviving spouse also has a right under Section 1103 of this Title to take property of such decedent against the will, such surviving spouse shall be required to elect whether to take under the will or to take against the will unless it appears by the will that the testator intended that such surviving spouse might take both under the will and against it.

SOURCE: California Probate Code, § 201.7.

COMMENT: Section 1105 is new to Guam. An identical provision was added to California law in 1957, at the same time that California added § 201.5 to its Probate Code. (equivalent to § 1101, supra.) No decisional law was reported concerning California § 201.7 as of the end of 1979; however, its purpose and effect seem clear from its face. Under the California (and Guam) law concerning succession to community property, the surviving spouse may be put to an election if the deceased spouse leaves a will: whether to take under the will, or to take the "forced share" that arises under the succession statutes. Section 1105 makes it clear that the same election may be made as to quasi- community property; this merely makes both species of property subject to equivalent treatment.

§ 1107. Restoration to Decedent's Estate of Property in Which Surviving Spouse Had Expectancy.

Whenever any married person dies domiciled in Guam who has made a transfer to a person other than his surviving spouse, without receiving in exchange a consideration of substantial value, of property in which such surviving spouse had an expectancy under Section 1101 of this Title at the time of such transfer, such surviving spouse may require the transferee to restore to such decedent's estate one-half (1/2) of such property, its value, or its proceeds, if such decedent had a substantial quantum of ownership or control of such property at death. If such decedent has provided for such surviving spouse by will, however, such surviving spouse cannot require such restoration unless such surviving spouse has made an irrevocable election to take against the will under Section 1103 of this Title rather than to take under the will. All property restored to such decedent's estate under the provisions of this Section shall go to his surviving spouse pursuant to Section 1101 of this Title as though such transfer had not been made.

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SOURCE: California Probate Code, § 201.8.

COMMENT: Section 1107 is new to Guam. An identical provision was added to California law in 1957, at the same time that California added § 201.5 (equivalent to § 1101, supra.) The purpose of the Section is to prevent a married person from disposing of “quasi-community” property before death, thereby depriving the surviving spouse of such property.
