

CHAPTER 21
REMOVAL AND SUBSTITUTION OF PERSONAL REPRESENTATIVES

- § 2101. Definition.
- § 2103. Resignation of Personal Representative; Procedure; When Effective; Successor; Continuing Liability.
- § 2105. Death or Resignation of One of Several Personal Representatives; Completion of Administration; Amended Letters.
- § 2107. Revocation of Letters of Administration When Person With Prior Right Asserts Such Right; Procedure; Discretion of Court to Refuse Grant of Letters.
- § 2109. Revocation of Letters Due to Subsequent Probate; Appointment of New Personal Representative; Powers of New Appointee.
- § 2111. Revocation of Letters Due to Personal Representative's Commitment to Jail for Contempt or to Prison.
- § 2113. Revocation of Letters for Embezzlement, Waste or Mismanagement Discovered Upon Settlement of Account.
- § 2115. Revocation of Personal Representative's Letters for Cause; Notice; Procedure.
- § 2117. Appointment of New Personal Representative Upon Death, Resignation, Disqualification or Revocation of Letters of All Personal Representatives.
- § 2119. Acts Prior to Revocation Valid.

§ 2101. Definition.

The term *personal representative*, as used in this Chapter, shall mean the executor, the administrator with the will annexed, or the administrator of a decedent's estate, as the case may be.

SOURCE: Guam Law Revision Commission.

COMMENT: See Comment to § 2201, *infra*, which applies with equal effect to Chapter 21.

§ 2103. Resignation of Personal Representative; Procedure; When Effective; Successor; Continuing Liability.

(a) A personal representative may resign his appointment at any time, by a writing filed in the Superior Court of Guam, to take effect upon the settlement of his accounts. If, however, by reason of any delay in such settlement, or for any other cause, the circumstances of the estate

15 GCA ESTATES AND PROBATE
CH. 21 REMOVAL AND SUBSTITUTION OF PERSONAL REPRESENTATIVES

or the rights of those interested in the estate so require, the Superior Court of Guam, at any time after the tendering of such resignation, may revoke the letters of such personal representative and appoint in his stead an administrator, either special or general, or an administrator with the will annexed, in the same manner as is provided in this Title in relation to original letters of administration or original letters of administration with the will annexed.

(b) The liability of a personal representative who resigns as provided in subsection (a) of this Section, or of the sureties on his bond or other form of security, if any, shall not in any manner be discharged, released or affected by such resignation or by the grant of letters of administration with the will annexed or of letters of administration to another person, but shall continue until the personal representative who so resigns has delivered up all the estate to the person whom the Superior Court of Guam shall appoint to receive the same.

SOURCE: Probate Code of Guam (1970), § 520.

§ 2105. Death or Resignation of One of Several Personal Representatives; Completion of Administration; Amended Letters.

If letters have been granted to several personal representatives as co-personal representatives, and one of them dies or resigns, or if the letters of any one of several such co-personal representatives are revoked or annulled, the remaining personal representatives must proceed to complete the execution of the will or to complete the administration. In any such case, the Superior Court of Guam, upon the filing of a verified petition alleging such fact, may order the Clerk of the Superior Court of Guam to issue appropriate amended letters to the remaining personal representatives.

SOURCE: California Probate Code, § 511 (as amended).

§ 2107. Revocation of Letters of Administration When Person With Prior Right Asserts Such Right; Procedure; Discretion of Court to Refuse Grant of Letters.

(a) When letters of administration have been granted to an intestate's child, grandchild, parent, brother or sister, or to any person to whom such letters have been granted under the provisions of Section 1805(a)(9) of this Title, such intestate's surviving spouse may assert his prior right, and be granted letters of administration, and have the letters before granted revoked, in the manner provided in subsection (d) of this Section.

15 GCA ESTATES AND PROBATE
CH. 21 REMOVAL AND SUBSTITUTION OF PERSONAL REPRESENTATIVES

(b) When letters of administration have been granted to an intestate's child, grandchild, parent, brother or sister, or to any person to whom such letters have been granted under the provisions of Section 1805(a)(9) of this Title, any of such intestate's children, grandchildren, parents, brothers or sisters may assert his prior right, and be granted letters of administration, and have the letters before granted revoked, in the manner provided in subsection (d) of this Section.

(c) When letters of administration have been granted to any person other than an intestate's surviving spouse, child, grandchild, parent, brother or sister, any one of them who is competent and had a prior right to letters of administration, or any competent person at the written request of any one of them who is competent and had such prior right, may assert such prior right, and be granted letters of administration, and have the letters before granted revoked, in the manner provided in subsection (d) of this Section.

(d) Any person who may assert a prior right to letters of administration pursuant to the provisions of subsections (a), (b) or (c) of this Section may do so by filing in the Superior Court of Guam a petition praying the revocation of the letters before granted, and that letters of administration be granted to him. When such petition is filed, the Clerk of the Superior Court of Guam shall set the matter for hearing, and notice shall be given in the manner provided in Section 3401 of this Title, and the Clerk of the Superior Court of Guam shall issue a citation to the administrator to appear and answer the petition at the time appointed for the hearing. At the hearing, upon proof that the citation has been duly served and notice given as above required, the Superior Court of Guam shall take evidence upon the petition, and if the right of the applicant is established, and the applicant is competent, letters of administration shall be granted to the applicant and the letters of the former administrator revoked.

(e) The Superior Court of Guam, in its discretion, may refuse to grant letters of administration as provided hereinabove in this Section to any person, or to the nominee of any person, who had actual notice of the first petition for letters of administration and an opportunity to contest the same.

SOURCE: Subsections (a) and (b): California Probate Code, § 452, (as amended). Subsection (c): Probate Code of Guam (1970), § 450. Subsection (d): Probate Code of Guam (1970), § 451. Subsection (e): Probate Code of Guam (1970), § 453.

15 GCA ESTATES AND PROBATE
CH. 21 REMOVAL AND SUBSTITUTION OF PERSONAL REPRESENTATIVES

OFFICIAL FORM: See Official Form No. 2, Appendix "A".

§ 2109. Revocation of Letters Due to Subsequent Probate; Appointment of New Personal Representative; Powers of New Appointee.

(a) Upon the admission to probate of a will after a grant of letters of administration on the ground of intestacy, or upon the admission to probate of a later will than the one before admitted to probate, the pre-existing grant of letters testamentary, letters of administration with the will annexed, or letters of administration shall be revoked. In such case the personal representative whose grant of authority is thus terminated shall render an account of his administration within such time as the Superior Court of Guam may direct.

(b) The newly appointed personal representative is entitled to demand, sue for, recover and collect all the property of the decedent remaining unadministered, and may prosecute to final judgment any suit commenced by the previous personal representative before the revocation of his letters.

SOURCE: Probate Code of Guam (1970), § 510.

§ 2111. Revocation of Letters Due to Personal Representative's Commitment to Jail for Contempt, or to Prison.

Whenever a personal representative is committed to jail for contempt in disobeying an order of any court in the territory of Guam, and has remained in custody for thirty (30) calendar days without obeying such order or otherwise purging himself of the contempt, or whenever a personal representative is convicted of any crime and sentenced to a term of imprisonment in any penal institution, the execution of which sentence of imprisonment is not suspended, the Superior Court of Guam may, by order reciting the facts, and without further showing or notice, revoke his letters and grant letters to some other competent person entitled thereto as personal representative in his stead.

SOURCE: Probate Code of Guam (1970), § 526; Guam Law Revision Commission.

COMMENT: Under § 526 of the Probate Code of Guam (1970), the only grounds for revocation was the personal representative's commitment to jail for contempt of court. The Commission has added the provision concerning revocation of letters for the personal representative's confinement in prison for the conviction of any crime.

§ 2113. Revocation of Letters for Embezzlement, Waste or Mismanagement Discovered Upon Settlement of Account.

Notwithstanding the provisions of Section 2115 of this Title, if it appears to the Superior Court of Guam upon the settlement of any account of a personal representative that he has embezzled, wasted or mismanaged the estate, his letters shall be revoked, and the Superior Court of Guam shall grant letters to some other competent person entitled thereto as personal representative in his stead.

SOURCE: Probate Code of Guam (1970), § 524; Guam Law Revision Commission.

COMMENT: The only changes from § 524 of the Probate Code of Guam (1970) are the addition of the last clause, which appears to be necessary for the orderly administration of estates if a personal representative's letters are revoked for the reasons set forth in the first clause; and the addition of the language, "Notwithstanding... Section 2105 of this Title," which is intended to indicate that the provisions of §§ 2113 and 2115 are not mutually exclusive.

§ 2115. Revocation of Personal Representative's Letters for Cause; Notice; Procedure.

(a) Whenever the Superior Court of Guam has reason to believe, whether from its own knowledge or from credible information received, that the personal representative or all co-personal representatives

(1) have become incompetent to execute the duties of the trust by reason of ceasing to be residents of the territory of Guam, or

(2) have become incompetent to execute the duties of the trust by reason of ceasing to be physically present in the territory of Guam, or

(3) have become incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want or understanding or integrity, or

(4) have wasted, embezzled or mismanaged the property of the estate committed to their charge, or

(5) are about to waste or embezzle the property of the estate committed to their charge, or

(6) have wrongfully neglected the estate, or

(7) have for a period of one (1) year neglected to perform any act as such personal representatives, the Superior Court shall direct

15 GCA ESTATES AND PROBATE
CH. 21 REMOVAL AND SUBSTITUTION OF PERSONAL REPRESENTATIVES

the Clerk of the Superior Court to set the time and place of a hearing thereon, which hearing shall be held not more than thirty (30) days thereafter, and the Superior Court of Guam shall cite such personal representative, or all such co-personal representatives, then and there to appear and show cause why their letters should not be revoked.

(b) Personal service of the citation provided in subsection (a) of this Section shall be made upon such personal representative, or upon all such co-personal representatives, by the Office of the Marshal of the Superior Court of Guam; provided, that if after due diligence by the Office of the Marshal of the Superior Court of Guam such personal representative or all such co-personal representatives cannot be found, or if they conceal themselves, or if they have absconded, or if they are not physically present in the territory of Guam, notice of the pendency of the proceedings may be given to those upon whom such personal service cannot be effected by publication, in such manner as the Superior Court of Guam may direct, and the Superior Court of Guam may proceed upon such notice as if such citation had been personally served. Notice of the hearing provided in subsection (a) of this Section shall also be given in the manner provided in Section 3401 of this Title.

(c) The Superior Court of Guam may suspend the powers of such personal representative, or of all such co-personal representatives, pending the hearing provided in subsection (a) of this Section; provided, that if such personal representative or all such co-personal representatives cannot be found after due diligence by the Office of the Marshal of the Superior Court of Guam, or if they conceal themselves, or if they have absconded, or if they are not physically present in the territory of Guam, the Superior Court of Guam shall suspend their powers pending the hearing provided in subsection (a) of this Section.

(d) (1) Any person interested in the estate may appear at the hearing provided in subsection (a) of this Section and file allegations in writing, showing that the letters of such personal representative or of all such co-personal representatives should be revoked. Such personal representative, or all such co-personal representatives, shall answer any such allegations, and the issues shall be heard and determined by the Superior Court.

(2) Any person interested in the estate may, at any time prior to the hearing provided in subsection (a) of this

15 GCA ESTATES AND PROBATE
CH. 21 REMOVAL AND SUBSTITUTION OF PERSONAL REPRESENTATIVES

Section, file in the Superior Court a petition praying that letters of administration with the will annexed or letters of administration be granted to the petitioner. Such petition shall allege why the letters of the existing personal representative, or of all existing co-personal representatives, should be revoked, and shall show that the petitioner is competent to serve as an administrator with the will annexed or as an administrator (as the case may be) pursuant to the provisions of Section 1701 or of Section 1801 of this Title. The existing personal representative, or all existing co-personal representatives, shall at the hearing provided in subsection (a) of this Section answer any allegations contained in such petition which touch upon the reasons for the revocation of their letters, and the issues shall be heard and determined by the Superior Court.

(e) If the personal representative fails to appear in obedience to the citation provided in subsection (a) of this Section, or if he appears and the Superior Court is satisfied from the evidence that cause exists for his removal, his letters shall be revoked. The Superior Court may compel his attendance by attachment, and compel him to answer questions, on oath, touching his administration, and, upon his refusal to do so, may commit him to jail until he obeys, or may revoke his letters, or both. If the petition provided in subsection (d)(2) of this Section has been filed, and the Superior Court finds at the hearing provided in subsection (a) of this Section that the petitioner is qualified to serve as personal representative pursuant to the provisions of Section 1701 or of Section 1801 of this Title, as the case may be, the Superior Court shall grant letters of administration with the will annexed or letters of administration, as the case may be, to the petitioner.

CROSS-REFERENCES: Subsections (a), (b) and (c): Probate Code of Guam (1970), § 521; Guam Law Revision Commission. Subsection (d)(1): Probate Code of Guam (1970), § 522. Subsection (d)(2): Guam Law Revision Commission. Subsection (e): Probate Code of Guam (1970), § 523; Guam Law Revision Commission.

COMMENT: Section 2105 brings together all necessary provisions concerning suspension of personal representatives' powers, and concerning revocation of personal representatives' letters, for cause. The changes from prior law are: in subsection (a), the delineation of a one-year period for which personal representatives do nothing, as grounds for removal. Previously, no specific time was set forth in the statute. However, in that there is no occasion in which a one-year period can pass, under this Title, without any action whatever on the part of the personal representative, it seems reasonable to allow the Superior Court to

15 GCA ESTATES AND PROBATE
CH. 21 REMOVAL AND SUBSTITUTION OF PERSONAL REPRESENTATIVES

monitor the actions of personal representatives, and to bring inactive personal representatives into court after such a one-year period of inactivity to determine what the status of the estate is. More detailed service provisions than those contained in prior law are included in subsection (b). The language contained therein reflects the language of other service of process provisions in this Title, which was not the case under § 521 of the Probate Code of Guam (1970). The language contained in subsection (c) concerning permissive suspension of personal representatives' powers pending hearing has been taken from § 522 of the Probate Code of Guam (1970); the language concerning mandatory suspension of those powers has been added by the Commission, in keeping with the principle that personal representatives must be competent so to serve both at the time of appointment and during the course of the administration, and thus the powers of personal representatives who cannot be found for the hearing provided in subsection (a) should be automatically suspended. The Commission has also added subsection (d)(2), the intention of which is to provide that a petition for letters may be filed by a person interested in the estate, and heard simultaneously with an action for the revocation of the existing personal representative's letters; the underlying notion is to provide a workable procedure for the replacement of incompetent (or otherwise disqualified) personal representatives. The last portion of subsection (e), which has also been added by the Commission, is intended to serve the same purpose.

NOTE: See Official Form No. 2, Appendix "A".

§ 2117. Appointment of New Personal Representative Upon Death, Resignation, Disqualification or Revocation of Letters of All Personal Representatives.

If all the personal representatives die or become disqualified or incapable, or if the letters of all of them are revoked, or if they all resign, the Superior Court of Guam shall grant letters of administration with the will annexed, or letters of administration, either special or general, to the person or persons next entitled thereto, in the same order and manner as provided in this Title in relation to original letters.

SOURCE: California Probate Code, § 512 (as amended).

§ 2119. Acts Prior to Revocation Valid.

All acts of a personal representative, as such, before his death or the revocation of his letters, are as valid, to all extent and purposes, as if he had continued lawfully to execute the duties of his trust.

SOURCE: Probate Code of Guam (1970), § 525.
