

CHAPTER 6
COMMUNITY PROPERTY

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NOTE: Chapter III of Division I, Title I, (shown as Title II in P.L. 15-113:2 in an apparent typographical error) *Husband and Wife* (§§ 155-181, Civil Code) was repealed by P.L. 15-113:2 and a new Chapter III, *Community Property*, was enacted in its place as §§ 155-168. These Sections are renumbered by the Compiler as §§ 6101-6114, 19 GCA.

The final version of this Chapter was taken from California law since the prior Guam law also came from California and this amendment was merely to bring the Guam law of Community Property up to date (at the time), not to radically alter that law.

§ 6101. Classes of Property.

(a) *Separate property* means:

- (1) property acquired by either spouse before marriage or after entry of a decree of dissolution of marriage;

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(2) property and earnings of a spouse and the minor children living with, or in the custody of, the spouse, while living separate and apart from the other spouse;

(3) property acquired after entry of a decree entered pursuant to § 8401 of this Title unless the decree provides otherwise;

(4) property or money paid by or on behalf of a married person to his spouse in satisfaction of a judgment for damages for personal injuries to the spouse or pursuant to an agreement for the settlement or compromise of a claim for such damages;

(5) property designated as separate property by a judgment or decree of any court having jurisdiction;

(6) property acquired by either spouse by gift, bequest, devise or descent;

(7) property designated as separate property by a written agreement between the spouses; and

(8) each spouse's undivided interest in property owned in whole or in part by the spouses as co-tenants in joint tenancy or as co-tenants in tenancy in common.

(b) *Community property* means property acquired by either spouse during marriage which is not separate property.

(c) For purposes of dividing property between the spouses in a proceeding for dissolution of marriage, *community property* includes all real or personal property owned by a married person domiciled in Guam, wherever situated and whenever acquired:

(1) by either spouse while domiciled outside of Guam which would have been community property had the spouse acquiring it been domiciled in Guam at the time of acquisition; or

(2) any property acquired in exchange for property which would have been community property if the spouse acquiring it had been domiciled in Guam at the time of acquisition.

(d) For purposes of determining the property rights of a surviving spouse upon the death of the other spouse, *community property* includes all personal property, wherever situated and whenever acquired, and all real property situated in Guam, if acquired:

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(1) by either spouse while domiciled outside of Guam which would have been community property had the spouse acquiring it been domiciled in Guam at the time of acquisition; or

(2) any property acquired in exchange for property which would have been community property if the spouse acquiring it had been domiciled in Guam at the time of acquisition.

(e) *Property* includes the rents, issues and profits thereof.

(f) The right of husband and wife to hold property as joint tenants or as tenants in common and the legal incidents of so holding, including but not limited to the incident of the right of survivorship of joint tenancy, are not altered by this Chapter except as provided in §§ 6103, 6104 and 6106 of this Chapter.

(g) The respective interests of the husband and wife in community property during continuance of the marriage relation are present, existing and equal interests. This subsection shall be construed as defining the respective interests and rights of husband and wife in community property.

(h) Neither husband nor wife has any interest in the separate property of the other, except as provided in § 6105, but neither can be excluded from the other's dwelling except pursuant to a court order. The Superior Court may order the temporary exclusion of either party from the family dwelling or from the dwelling of the other upon a showing that physical or emotional harm might result otherwise or for such other good cause as the court may state in such an order.

SOURCE: CC § 155 enacted by P.L. 15-113:2.

§ 6102. Definition of Separate and Community Debts.

(a) *Separate debt* means:

(1) a debt contracted or incurred by a spouse before marriage or after entry of a decree of dissolution of marriage;

(2) a debt contracted or incurred by a spouse after entry of a decree entered pursuant to § 8401 of this Title unless the decree provides otherwise;

(3) a debt designated as a separate debt of a spouse by a judgment or decree of any court having jurisdiction;

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(4) a debt contracted by a spouse during marriage which is identified by a spouse to the creditor in writing at the time of its creation as the separate debt of the contracting spouse; or

(5) a debt which arises from a tort committed by a spouse before marriage or after entry of a decree of dissolution of marriage, a tort committed by one spouse against the other spouse or a separate tort committed during marriage.

(b) *Community debt* means a debt contracted or incurred by either or both spouses during marriage which is not a separate debt.

(c) As used in Paragraph (5) of Subsection (a) of this Section, *separate tort* means an act or omission which occurred while the married person was performing an activity not for the benefit of the community.

SOURCE: CC § 156 enacted by P.L. 15-113:2.

§ 6103. Priorities for Satisfaction of Separate Debts.

(a) The separate debt of a spouse shall be satisfied first from the debtor spouse's separate property, excluding that spouse's interest in property in which each of the spouses owns an undivided equal interest as a joint tenant or tenant in common. Should such property be insufficient, then the debt shall be satisfied from the debtor spouse's one-half (1/2) interest in the community property or in which each spouse owns an undivided equal interest as a joint tenant or tenant in common, excluding the residence of the spouses. Should such property be insufficient, then the debt shall be satisfied from the debtor spouse's interest in the residence of the spouses. Neither spouse's interest in community property or separate property shall be liable for the separate debt of the other spouse.

(b) This Section shall apply only while both spouses are living, and shall not apply to the satisfaction of debts after the death of one or both spouses.

SOURCE: CC § 157 enacted by P.L. 15-113:2.

§ 6104. Priorities for Satisfaction of Community Debts.

(a) Community debts shall be satisfied first from all community property and all property in which the spouses own an undivided equal interest as joint tenants or tenants in common, excluding the residence of the spouses. Should such property be insufficient, community debts shall then be

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satisfied from the residence of the spouses. Should such property be insufficient, only the separate property of the spouse who contracted or incurred the debt shall be liable for its satisfaction. If both spouses contracted or incurred the debt, the separate property of both spouses is jointly and severally liable for its satisfaction.

(b) This Section shall apply only while both spouses are living, and shall not apply to the satisfaction of debts after the death of one or both spouses.

SOURCE: CC § 158 enacted by P.L. 15-113:2.

§ 6105. Presumption of Community Property: Presumption of Separate Property Where Property Acquired by a Married Woman Prior to July 1, 1980.

(a) Property acquired during marriage by either husband or wife, or both, is presumed to be community property.

(b) Property or any interest therein acquired during marriage by a woman by an instrument in writing, in her name alone, or in her name and the name of another person not her husband, is presumed to be the separate property of the married woman if the instrument in writing was delivered and accepted prior to July 1, 1980. The date of execution or, in the absence of a date of execution, the date of acknowledgment, is presumed to be the date upon which delivery and acceptance occurred.

(c) The presumptions contained in Subsection (b) of this Section are conclusive in favor of any person dealing in good faith and for valuable consideration with a married woman or her legal representative or successor in interest.

SOURCE: CC § 159 enacted by P.L. 15-113:2.

§ 6106. Transfers, Conveyances, Encumbrances and Leases of Real Property: When Joinder Required.

(a) Except as otherwise provided in this Subsection and § 6109, either spouse has the management and control of the community real property, whether acquired prior to or after July 1, 1980, but both spouses must join in all transfers, conveyances or encumbrances or contracts to transfer, convey or encumber any interest in community real property and separate real property owned by the spouses as co-tenants in joint tenancy or tenancy in common. The spouses must join in all leases of community real property or

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separate real property owned by the spouses as co-tenants in joint tenancy or tenancy in common if the initial term of the lease, together with any option or extension contained therein or provided for contemporaneously, may exceed five (5) years, or if the lease is for an indefinite term. Any transfer, conveyance, encumbrance or lease or contract to transfer, convey, encumber or lease any interest in the community real property or in separate real property owned by the spouses as co-tenants in joint tenancy or tenancy in common, attempted to be made by either spouse alone in violation of the provisions of this Section shall be void and of no effect, except that either spouse may transfer, convey, encumber or lease directly to the other without the other joining therein.

Except as provided above, either spouse may transfer, convey, encumber or lease separate real property without the other's joinder.

(b) Nothing in this Section shall preclude a married person from authorizing his spouse or another person to transfer, convey, encumber or lease, or contract to transfer, convey, encumber or lease, any community real property, or separate real property owned by the spouses as co-tenants in joint tenancy or tenancy in common, pursuant to a validly executed power of attorney.

SOURCE: CC § 160 enacted by P.L. 15-113:2.

§ 6107. Management and Control of Community Personal Property.

(a) Except as provided in Subsections (b), (c), (e) and (f) of this Section, either spouse alone has full power to manage, control, dispose of and encumber the entire community personal property.

(b)(1) If only one spouse is named in a document evidencing ownership of community personal property then only the spouse so named may manage, control, dispose of or encumber such property.

(2) If only one spouse is named or designated in a written agreement between that spouse and a third party as having sole authority to manage, control, dispose of or encumber the community personal property which is described in or which is the subject of the agreement, only the spouse so named may manage, control, dispose of or encumber such property.

(3) This Subsection shall apply whether the agreement was executed prior to or after July 1, 1980.

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(c)(1) If both spouses are named in a document evidencing ownership of community personal property then both spouses must join to dispose of or encumber such property.

(2) If both spouses are named or designated in a written agreement with a third party as having joint authority to dispose of or encumber the community personal property which is described in or the subject of the agreement then both spouses must join to dispose of or encumber such property.

(3) This Subsection shall apply whether the agreement was executed prior to or after July 1, 1980.

(d)(1) In a document evidencing ownership of community personal property where the names of the spouses are joined by the word, *or*, or by the words, *and/or*, either spouse alone may dispose of or encumber such property.

(2) In a document evidencing ownership of community personal property where the names of the spouses are joined by the word, *and*, both spouses must join to dispose of or encumber such property.

(e) A spouse may not make a gift of or dispose of community personal property without a valuable consideration, without the written consent of the other spouse.

(f) A spouse may not sell, convey or encumber the furniture, furnishings or fittings of the home, or the clothing or wearing apparel of the other spouse or minor children which is community personal property, without the written consent of the other spouse.

(g) Each spouse shall act in good faith with respect to the other spouse in the management and control of the community personal property.

SOURCE: CC § 161 enacted by P.L. 15-113:2.

§ 6108. Joinder of Minor Spouse in Conveyances, Mortgages and Leases.

A minor married person may join with his spouse in all transactions for which joinder is required by §§ 6106 and 6107 of this Title and such joinder shall have the same force and effect as if the minor spouse has attained his majority at the time of the execution of the instrument.

SOURCE: CC § 162 enacted by P.L. 15-113:2.

§ 6109. Disposition and Management of Real Property Without Joinder and Management of Community Personal Property Subject to Management of One Spouse Alone Where Spouse Has Disappeared or is Adjudged Incompetent.

(a) If a spouse is adjudged incompetent or disappears and his location is unknown to the other spouse, the other spouse may file a petition setting forth the facts which make it desirable for the petitioning spouse to engage in a transaction for which joinder of both spouses is required by § 6106 of § 6107 of this Title or to manage, control, dispose of or encumber community personal property which the other spouse alone has sole authority to manage, control, dispose of or encumber under § 6107 of this Title.

(b) The petition shall be filed in the Superior Court.

(c) The court shall appoint a guardian ad litem for the incompetent or disappearing spouse and shall allow a reasonable fee for his services.

(d) A notice stating that the petition has been filed and specifying the date of the hearing, accompanied by a copy of the petition shall be issued and served on the guardian ad litem and shall be published once each week for three (3) successive weeks in a newspaper of general circulation. The last such publication shall be made at least ten (10) days before the hearing.

(e) After the hearing, and upon determination of the fact of disappearance by one spouse or the spouse's incompetence, the court may allow the petitioning spouse alone to engage in the transaction for which joinder of both spouses is required by § 6106 or § 6107 of this Title or to manage, control, dispose of or encumber community personal property which the other spouse alone has authority to manage, control, dispose of or encumber under § 6107 of this Title.

(f) Any transfer, conveyance, encumbrance or lease authorized by the court pursuant to Subsection (e) of this Section shall be confirmed by order of the court and that order may be recorded in the Department of Land Management.

SOURCE: CC § 163 enacted by P.L. 15-113:2.

§ 6110. Judgment to be Recorded.

All court orders authorizing the transfer, conveyance, encumbrance or lease of community real property or other real property owned by the

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spouses as co-tenants in joint tenancy or tenancy in common may be recorded in the Department of Land Management.

SOURCE: CC § 164 enacted by P.L. 15-113:2.

§ 6111. Property Relations.

(a) Either husband or wife may enter into any engagement or transaction with the other, respecting property subject, in transaction between themselves, to the general rules which control the actions of persons occupying confidential relations with each other.

(b) The provisions of an agreement for support of either party *shall* be deemed to be separate and severable from the provisions of the agreement relating to property. An order for support of either party based on the agreement *shall* be law-imposed and *shall* be made under the power of the court to order spousal support.

(c) The mutual consent of the parties is a sufficient consideration for such an agreement.

(d) (1) *Except* as provided in Subsections (2) and (3), the provisions of an agreement for the support of either party are subject to subsequent modification or termination by court order.

(2) An agreement may *not* be modified or terminated as to an amount that accrued before the date of the filing of the notice of motion or order to show cause to modify or terminate.

(3) An agreement for spousal support may *not* be modified or revoked to the extent that a written agreement, or, if there is no written agreement, an oral agreement entered into in open court between the parties, specifically provides that the spousal support is *not* subject to modification or termination.

(e) If an obligation under an agreement for settlement of property to a spouse or for support of a spouse is discharged in bankruptcy, the court may make all proper orders for the support of the spouse, as the court determines are just, having regard for the circumstances of the parties and the amount of the obligations under the agreement that are discharged.

(f) Section 6111(b), as amended, and § 6111(d) are effective *only* with respect to a property settlement agreement entered into after May 15, 2015,

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and *do not* affect an agreement entered into before May 15, 2015, as to which the § 6111(b) in effect on May 14, 2015 shall apply.

SOURCE: CC § 165 enacted by P.L. 15-113:2. Subsection (b) amended by P.L. 33-026:2 (May 7, 2015). Subsections (d), (e) and (f) added by P.L. 33-026:3 (May 7, 2015).

§ 6112. Written Contracts Between Spouses.

(a) All contracts between husband and wife of which the subject matter is their separate or community property must be in writing and executed and acknowledged or approved in like manner as a grant of land is required to be executed and acknowledged or approved.

(b) A minor married person may enter a contract with his spouse with the same force and effect as if the minor spouse had attained his majority at the time of execution of the contract.

(c) The recording or non-recording of such contract has a like effect as the recording or non-recording of a grant of real property.

SOURCE: CC § 166 enacted by P.L. 15-113:2.

§ 6113. Inventory of Separate Personal Property.

(a) A full and complete inventory of the separate personal property of either spouse may be made out and signed by such spouse, acknowledged in the manner required by law for the acknowledgment of a grant of real property and recorded in the Department of Land Management.

(b) The filing of the inventory in the Department of Land Management is notice and prima facie evidence of the title of the party filing such inventory.

SOURCE: CC § 167 enacted by P.L. 15-113:2.

§ 6114. Tenant by Curtesy or Dower on Death of Spouse.

No estate is allowed the husband as tenant by curtesy upon the death of his wife, nor is any estate in dower allowed to the wife upon the death of her husband.
