

CHAPTER 33
PROOF AND ACKNOWLEDGMENTS OF INSTRUMENTS

- § 33101. Parties Qualified to Take Acknowledgment.
- § 33102. Same, Individual parties Generally. Governor's Certificate.
- § 33103. Taken Outside of Territory.
- § 33104. Proof, Foreign Countries.
- § 33105. Deputies Authorized.
- § 33106. Acknowledgments Generally.
- § 33107. Married Woman's Conveyance.
- § 33108. Certificate Endorsed.
- § 33109. Form For Out of Guam.
- § 33110. Form, Corporation.
- § 33111. Form, Attorney-In-Fact.
- § 33112. Signatures of Officers.
- § 33113. Justices' Authority, Certain Cases.
- § 33114. Proof Execution.
- § 33115. Witness Personally Known.
- § 33116. Evidence, Witness.
- § 33117. Handwriting Generally.
- § 33118. Proving Handwriting.
- § 33119. Certificate.
- § 33120. Officers Generally.
- § 33121. Improper Certificate, Correction.
- § 33122. Instruments, How Proved.
- § 33123. Judgment.
- § 33124. Conveyances Governed, How.
- § 33125. Recording, Existing Laws.

CROSS-REFERENCE: For the latest law on Notaries Public and their power to take acknowledgments, see 5 GCA Chapter 33.S

§ 33101. Parties Qualified to Take Acknowledgment.

The proof or acknowledgment of an instrument may be made at any place within Guam, before the Judge of the District Court, or a judge of the Superior Court.

SOURCE: CC §1180. "Island" Court changed to *Superior* Court and reference to Police Court deleted pursuant to P.L. 12-85.

§ 33102. Same, Individual Parties Generally. Governor's Certificate.

The proof or acknowledgment of an instrument may also be made in Guam before either:

- (a) The Director of Land Management or the Director of Administration.
- (b) The clerk of any court.
- (c) Notary Public.
- (d) Any other person authorized by the Governor of Guam.

Provided, that the acknowledgments of deeds or other instruments affecting land situated in the District of Columbia, or any territory of the United States, may be acknowledged in Guam before any Notary Public or judge appointed therein by proper authority or by any officer therein who has ex officio the powers of a Notary Public; provided, that the certificate of said Notary shall be accompanied by the certificate of the Governor or acting Governor to the effect that the Notary taking such acknowledgment was in fact the officer he purported to be.

SOURCE: CC §1181.

CROSS-REFERENCES: The law relating to Notaries Public is found in 5 GCA Chapter 33.

§ 33103. Taken Outside of Territory.

The proof or acknowledgment of an instrument may be made outside of the Territory of Guam, but within the United States, and within the jurisdiction of the officer, before either:

- (a) A justice, judge, or clerk of any court of record of the United States; or,
- (b) A justice, judge, or clerk of any court of record of any state; or,
- (c) A Notary Public; or,
- (d) Any other officer of the state where the acknowledgment is made authorized by its laws to take such proof or acknowledgment.

SOURCE: CC §1182.

§ 33104. Proof, Foreign Countries.

The proof or acknowledgment of an instrument may be made without the United States, before either:

21 GCA REAL PROPERTY
CH. 33 PROOF AND ACKNOWLEDGEMENT OF INSTRUMENTS

(a) A minister, commissioner, or charge d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made; or,

(b) A consul, vice consul, or consular agent of the United States, resident in the country where the proof or acknowledgment is made; or,

(c) A judge of a court of record of the country where the proof or acknowledgment is made; or,

(d) Commissioners appointed for such purposes by the Governor of Guam, pursuant to special statutes; or,

(e) A Notary Public.

SOURCE: CC §1183.

§ 33105. Deputies Authorized.

When any of the officers mentioned in the four preceding sections are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy, in the name of his principal.

SOURCE: CC §1184.

§ 33106. Acknowledgments Generally.

The acknowledgment of an instrument must not be taken, unless the officer taking it knows or has satisfactory evidence, on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is the president or secretary of such corporation, or other person who executed it on its behalf.

SOURCE: CC §1185.

§ 33107. Married Woman's Conveyance.

A conveyance by a married woman has the same effect as if she were unmarried, and may be acknowledged in the same manner.

SOURCE: CC §1186.

§ 33108. Certificate Endorsed.

An officer taking the acknowledgment of an instrument must endorse thereon or attach thereto a certificate substantially in the forms hereinafter prescribed.

21 GCA REAL PROPERTY
CH. 33 PROOF AND ACKNOWLEDGEMENT OF INSTRUMENTS

SOURCE: CC §1188.

§ 33109. Form For Out of Guam.

The certificate of acknowledgment, unless it is otherwise in this Article provided, must be substantially in the following form:

Territory of Guam

On this _____ day of _____, in the year _____, before me (here insert name and quality of the officer), personally appeared _____, known to me (or proved to me on the oath of _____) to be the person whose name is subscribed to the within instrument, and acknowledged that he (she or they) executed the same; provided, however, that any acknowledgment taken without this territory in accordance with the laws of the place where the acknowledgment is made, shall be sufficient in Guam.

SOURCE: CC §1189 as amended by P.L. 10-184.

§ 33110. Form, Corporation.

The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

Territory of Guam

On this _____ day of _____, in the year _____, before me (here insert the name and quality of the officer), personally appeared _____, known to me (or proved to me on the oath of _____) to be the president or the secretary of the corporation that executed the within instrument (where, however, the instrument is executed on behalf of the corporation by some one other than the president or secretary insert: known to me or proved to me on the oath of _____) to be the person who executed the within instrument on behalf of the corporation therein named and acknowledged to me that such corporation executed the same.

SOURCE: CC §1190.

§ 33111. Form, Attorney-in-Fact.

The certificate of acknowledgment by an attorney-in-fact, must be substantially in the following form:

Territory of Guam

21 GCA REAL PROPERTY
CH. 33 PROOF AND ACKNOWLEDGEMENT OF INSTRUMENTS

On this _____ day of _____, in the year _____, before me (here insert the name and quality of the officer), personally appeared _____, known to me (or proved to me on the oath of _____) to be the person whose name is subscribed to the within instrument as the attorney in fact of _____, and acknowledged to me that he subscribed the name of _____ thereto as principal, and his own name as attorney-in-fact.

SOURCE: CC §1191.

§ 33112. Signatures of Officers.

Officers taking and certifying acknowledgments, or proof of instruments for record, must authenticate their certificates by affixing thereto their signatures, followed by the names of their offices; also, their seals of office, if by the laws of Guam they are required to have official seals.

SOURCE: CC §1193.

§ 33113. Justices' Authority, Certain Cases.

The certificate of proof or acknowledgment, if made before a justice of any state of the United States, must be accompanied by a certificate under the hand and seal of the clerk of the county in which the justice resides, setting forth that such justice, at the time of taking such proof or acknowledgment, was authorized to take the same, and that the clerk is acquainted with his handwriting, and believes that the signature to the original certificate is genuine.

SOURCE: CC §1194.

§ 33114. Proof Execution. Proof of the execution of an instrument, when not acknowledged, may be made either:

- (a) By the parties executing it, or either of them; or,
- (b) By a subscribing witness; or,
- (c) By other witnesses in cases mentioned in § 33117.

SOURCE: CC §1195.

§ 33115. Witness Personally Known.

If by a subscribing witness, such witness must be personally known to the officer taking the proof to be the person whose name is subscribed to the

21 GCA REAL PROPERTY
CH. 33 PROOF AND ACKNOWLEDGEMENT OF INSTRUMENTS

instrument as a witness, or must be proved to be such by the oath of a credible witness.

SOURCE: CC §1196.

§ 33116. Evidence, Witness.

The subscribing witness must prove that the person whose name is subscribed to the instrument as a party is the person described in it, and that such person executed it, and that the witness subscribed his name thereto as a witness.

SOURCE: CC §1197.

§ 33117. Handwriting Generally.

The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

- (a) When the parties and all the subscribing witnesses are dead; or,
- (b) When the parties and all the subscribing witnesses are nonresidents of Guam; or,
- (c) When the place of their residence is unknown to the party desiring the proof, and cannot be ascertained by the exercise of due diligence; or,
- (d) When the subscribing witness conceals himself, or cannot be found by the officer by the exercise of due diligence in attempting to serve the subpoena or attachment; or,
- (e) In case of the continued failure or refusal of the witness to testify, for the space of one hour, after his appearance.

SOURCE: CC §1198.

§ 33118. Proving Handwriting.

The evidence taken under the preceding section must satisfactorily prove to the officer the following facts:

- (a) The existence of one or more of the conditions mentioned therein; and,
- (b) That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature, and that it is genuine; and,

21 GCA REAL PROPERTY
CH. 33 PROOF AND ACKNOWLEDGEMENT OF INSTRUMENTS

(c) That the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature, and that it is genuine; and,

(d) The place of residence of the witness.

SOURCE: CC §1199.

§ 33119. Certificate.

An officer taking proof of the execution of any instrument must, in his certificate endorsed thereon or attached thereto, set forth all the matters required by law to be done or known by him, or proved before him on the proceeding, together with the names of all the witnesses examined before him, their places of residence respectively, and the substance of their testimony.

SOURCE: CC §1200.

§ 33120. Officers Generally.

Judicial officers authorized to take the proof of instruments are authorized in such proceedings:

(a) To administer oaths or affirmations, as prescribed in 6 GCA § 3203;

(b) To employ and swear interpreters;

(c) To issue subpoenas, as prescribed in 6 GCA §7201;

(d) To punish for contempt, as prescribed in 6 GCA §7204, §7206, and §7207.

The civil damages and forfeitures to the party aggrieved are prescribed in 6 GCA §7203.

SOURCE: CC §1201.

§ 33121. Improper Certificate, Correction.

When the acknowledgment or proof of the execution of an instrument is properly made, but defectively certified, any party interested may have an action in the Superior Court to obtain a judgment correcting the certificate.

SOURCE: CC §1202. "Island" changed to *Superior* Court pursuant to P.L. 12-85.

§ 33122. Instruments, How Proved.

21 GCA REAL PROPERTY
CH. 33 PROOF AND ACKNOWLEDGEMENT OF INSTRUMENTS

Any person interested under an instrument entitled to be proved for record, may institute an action in the Superior Court against the proper parties to obtain a judgment proving such instrument.

SOURCE: CC §1203. "District" changed to *Superior* Court pursuant to P.L. 12-85.

§ 33123. Judgment.

A certified copy of the judgment in a proceeding instituted under either of the two preceding sections, showing the proof of the instrument, and attached thereto, entitles such instrument to record, with like effect as if acknowledged.

SOURCE: CC §1204.

§ 33124. Conveyances Governed, How.

The legality of the execution, acknowledgment, proof, form, or record of any conveyance or other instrument made before this Code goes into effect, executed, acknowledged, proved or recorded is not affected by anything contained in this Chapter, but depends for its validity and legality upon the laws in force when the act was performed.

SOURCE: CC §1205.

§ 33125. Recording, Existing Laws.

All conveyances of real property made before this Code goes into effect, and acknowledged, or proved according to the laws in force to the time of such making and acknowledgment or proof, have the same force as evidence, and may be recorded in the same manner and with the like effect, as conveyances executed and acknowledged in pursuance of this Chapter.

SOURCE: CC §1206.

COMMENT: *Code*, as used in this Section, refers to the original enactment of the Civil Code of Guam, which occurred under the Organic Act in 1952 and earlier under the Naval Government of Guam
