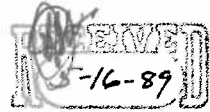




Territory of Guam

Territorial Guam

OFFICE OF THE GOVERNOR
UPSIÑAN I MAGA'LANI
AGANA, GUAM 96910 U.S.A.



April 28, 1989

The Honorable Ted S. Nelson
Acting Speaker
Twentieth Guam Legislature
Post Office Box CB-1
Agana, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 422, which I have signed into law this date as Public Law 20-7.

Sincerely yours,

Joseph F. Ada
JOSEPH F. ADA
Governor

Enclosure

RECEIPT ACKNOWLEDGED

By *B Anderson*

(signature)

B Anderson

(Print Name)

GAB

Date 4/28 time 4:31

TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 422 (COR), "AN ACT TO ADD SUBPARAGRAPH (d) TO §4902 OF TITLE 15, GUAM CODE ANNOTATED, AND TO REPEAL AND REENACT §§4909 AND 4910 OF SAID TITLE, TO LIMIT ATTORNEY'S FEES IN LAND CLAIM AWARDS, TO AUTHORIZE THE PUBLIC DEFENDER TO ASSIST IN THE DISPOSITION OF SUCH AWARDS, AND TO RAISE THE LIMITS ON SUMMARY PROCEEDINGS THEREON," was on the 12th day of April, 1989, duly and regularly passed.



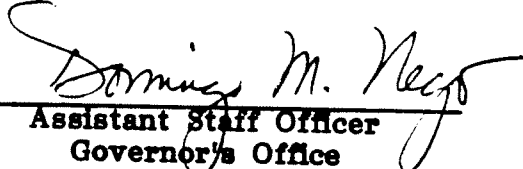
JOE T. SAN AGUSTIN
Speaker

Attested:



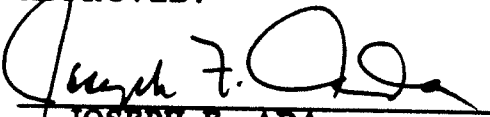
PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 14th day of April, 1989,
at 6:25 o'clock p.m.



Domingo M. Nejo
Assistant Staff Officer
Governor's Office

APPROVED:



JOSEPH F. ADA
Governor of Guam

Date: April 26, 1989

Public Law No. 20-7

TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

Bill No. 422 (COR)
As substituted by the
Committee on Judiciary & Criminal Justice
and further substituted by the
Committee on Rules.

Introduced by:

T. S. Nelson
P. C. Lujan
C. T. C. Gutierrez

E. P. Arriola
M. Z. Bordallo
H. D. Dierking
G. Mailloux
E. D. Reyes
J. T. San Agustin
J. P. Aguon
D. Parkinson
J. G. Bamba
E. R. Duenas
M. C. Ruth
A. R. Unpingco
D. F. Brooks
E. M. Espaldon
M. D. A. Manibusan
F. R. Santos
F. J. A. Quitugua
T. V. C. Tanaka

AN ACT TO ADD SUBPARAGRAPH (d) TO
§4902 OF TITLE 15, GUAM CODE
ANNOTATED, AND TO REPEAL AND
REENACT §§4909 AND 4910 OF SAID TITLE,
TO LIMIT ATTORNEY'S FEES IN LAND CLAIM
AWARDS, TO AUTHORIZE THE PUBLIC
DEFENDER TO ASSIST IN THE DISPOSITION
OF SUCH AWARDS, AND TO RAISE THE
LIMITS ON SUMMARY PROCEEDINGS
THEREON.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:
2 Section 1. Subparagraph (d) is hereby added to §4902 of Title 15,
3 Guam Code Annotated, to read:

4 "(d) In cases arising under this Chapter, the Superior Court
5 shall award reasonable attorney's fees out of the estate in lieu of

1 statutory attorney's fees pursuant to §2811 of this Title, without
2 regard to the size of the award. Such reasonable fees shall be based
3 on verified statements of time and charges filed with the court by the
4 attorney."

5 Section 2. §4909 of Title 15, Guam Code Annotated, is hereby
6 repealed and a new §4909 is hereby enacted to read:

7 "§4909. Summary Distribution of Land Claims Awards Not
8 Exceeding \$100,000. (a) A land claims award not exceeding \$100,000
9 after deduction of costs and attorney's fees awarded or authorized by
10 the District Court of Guam may be set aside to a decedent's heirs at
11 law, provided that no proceedings for administration upon the
12 decedent's estate are then pending.

13 (b) A verified petition, together with a prayer that the award
14 be set aside as provided herein, may be presented by any heir at law
15 of the decedent or any heir at law of a deceased heir. The petition
16 shall contain allegations showing that this section is applicable and
17 shall state the names, mailing addresses, relationships and ages of
18 each heir at law of the decedent, as well as each heir at law of any
19 deceased heirs, and their respective fractional interests in the award.
20 The petition shall further state, without qualification, that if the
21 petition be granted the petitioner will distribute the award with due
22 diligence to the persons named in the petition, according to their
23 respective interests.

24 (c) No person to whom an award, or any portion thereof, is set
25 aside pursuant to this section shall be personally liable for the
26 unsecured debts of the decedent or the debts of any deceased heir
27 whose share of the award is paid directly to his heirs at law, unless
28 an action at law or proceeding in equity or in probate to recover such
29 debts is commenced within one (1) year from entry of the decree
30 setting aside the award. Such liability shall not, in any event, exceed
31 the amount received by the person charged the debts as his share of
32 the award. If an action at law or proceeding to collect such debts is
33 commenced within the time allowed, as aforesaid, the person or persons
34 charged may assert any defenses, counterclaims or set-offs that would

1 have been available to the decedent or deceased heir if he had not
2 died.

3 (d) Notice of the hearing on the petition authorized by this
4 section shall be given as provided in §4905 of this Chapter.

5 (e) If, upon hearing the petition authorized in this section, the
6 Superior Court finds that the award, after deduction of all costs and
7 attorney's fees allowed by the District Court of Guam, does not exceed
8 the sum of \$100,000, it shall by appropriate decree assign the award
9 to the petitioner with a directive to pay the same to the persons named
10 in the petition according to their respective interests therein. The
11 decree shall further direct that proof of compliance therewith, by
12 affidavit or declaration under penalty of perjury, be filed by the
13 petitioner within thirty (30) days after entry of said decree.

14 (f) An award set aside pursuant to this section, or any share
15 therein, may be disbursed, in accordance with the Superior Court's
16 decree, to nonresident persons as provided in §4908 of this Chapter.

17 (g) No person shall be liable for nondelivery of any award set
18 aside pursuant to this section, or of a share therein, except for willful
19 misconduct, unless an action at law or proceeding in equity or in
20 probate to recover the same is commenced within three (3) years from
21 entry of the decree setting aside the award.

22 (h) If any award set aside pursuant to this section, or share
23 therein, cannot be paid or delivered in accordance with the Superior
24 Court's decree, for lack of information as to the identity, location or
25 mailing address of the person entitled thereto, the same shall be
26 deposited in the name of such person with the Clerk of the Superior
27 Court; such deposit is a full discharge of the petitioner as to any
28 liability whatsoever in relation to the sum so deposited.

29 (i) No administrator's fees shall be allowed, nor shall any court
30 fees pursuant to Rule 91, Superior Court Rules of Civil Procedure, be
31 assessed, with respect to an award set aside pursuant to this section.
32 If a private attorney has been retained, the Superior Court shall
33 award reasonable attorney's fees out of the estate.

1 (j) The Public Defender is directed to assist the decedent's heirs
2 at law in obtaining distribution of land claim awards pursuant to this
3 section and §4910 of this Title, but nothing shall prevent such heirs
4 from using private attorneys for such purpose.

5 Section 3. §4910 of Title 15, Guam Code Annotated, is hereby
6 repealed and a new §4910 is hereby enacted to read:

7 "§4910. Delivery of Land Claims Awards Not Exceeding \$15,000
8 Without Administration.

9 (a) No probate administration is required upon a land claims
10 award not exceeding \$15,000 after deduction of costs and attorney's
11 fees awarded or authorized by the District Court of Guam (the
12 "Court").

13 (b) Any successor to the decedent entitled to the award or a
14 portion thereof is authorized to collect and distribute the award to the
15 proper heirs or distributees upon filing with the Court a certified copy
16 of the death certificate of the decedent and an affidavit stating that:

17 (1) The award does not exceed \$15,000 after deduction
18 of costs and attorney's fees awarded or distributed by the
19 Court;

20 (2) No probate proceedings or petition to commence
21 such proceedings are pending in Guam;

22 (3) The applicant is a successor-in-interest of the
23 decedent entitled to collect the award or a part thereof and
24 explaining the relationship of the applicant to the decedent;

25 (4) The names and mailing addresses (if known) of the
26 persons entitled to share in the award, their relationship to
27 the decedent, and their respective interests in the award;

28 (5) Not less than thirty (30) days before filing the
29 affidavit with the Court, the applicant will send by pre-paid
30 mail, certified or registered, return receipt requested, a
31 copy of the affidavit to each person entitled to share in the
32 award for whom a mailing address is known, together with
33 notice that if such a person objects to the proposed plan of
34 distribution he shall file a written objection with the Court

1 before the expiration of the thirty-(30-)day period; the
2 applicant shall file with such affidavit sworn proof of such
3 mailing.

4 (6) Either the Public Defender, an attorney member of
5 the office of the Attorney General, a judge of the Superior
6 Court, or a judge pro tem, appointed by the presiding judge
7 of the Superior Court to assist in such cases, (which
8 representative shall also execute the affidavit) finds the
9 applicant's plan of distribution to be fair and equitable.

10 (7) The applicant will, upon collection of the award,
11 endeavor in good faith and with reasonable diligence to
12 distribute the award to those entitled by the Guam laws of
13 succession to shares therein.

14 If any person entitled to the award or any portion
15 thereof cannot be found (therefore making it impossible to
16 distribute same to him), such award or portion thereof
17 allocable to him shall be deposited in a trust account in the
18 Superior Court of Guam for a period not to exceed five (5)
19 years. At the expiration of five (5) years if the person
20 cannot be found the Clerk of Court shall distribute the
21 award pro rata to those entitled thereto by the laws of
22 succession;

23 (c) No person delivering an award exempt from administration
24 under this section shall be liable for any loss or damage whatsoever to
25 anyone, or be responsible for seeing to the proper distribution of the
26 award, or is required to inquire into the truth of any statement in the
27 affidavit. Any person to whom an award is delivered pursuant to this
28 section is answerable and accountable therefor to any personal
29 representative of the decedent's estate or to any other person having
30 a right to the award or any portion thereof."

31 Section 4. Appropriation to Public Defender. Seventy Five Thousand
32 Dollars (\$75,000) are hereby appropriated from the General Fund to the
33 Office of the Public Defender to permit the Public Defender to carry out the
34 provisions of this Act.

TWENTIETH GUAM LEGISLATURE
 1989 (FIRST) Regular Session

ROLL CALL SHEET

Bill No. 422
 Res. No. _____

Date: 4-12-89

QUESTION: _____

	<u>AYE</u>	<u>NAY</u>	<u>NOT VOTING</u>	<u>ABSENT</u>
AGUON, J. P.	✓			
ARRIOLA, E. P.	✓			
BAMBA, J. G.	✓			
BORDALLO, M. Z.	✓			
BROOKS, D. F.	✓			
DIERKING, H. D.	✓			
DUENAS, E. R.	✓			
ESPALDON, E. M.	✓			
GUTIERREZ, C. T.C.	✓			
LUJAN, P. C.	✓			
MAILLOUX, G.	✓			
MANIBUSAN, M.D.A.	✓			
NELSON, T. S.	✓			
PARKINSON, D.	✓			
QUITUGUA, F. J.A.	✓			
REYES, E. R.	✓			
RUTH, M. C.	✓			
SAN AGUSTIN, J. T.	✓			
SANTOS, F. R.	✓			
TANAKA, T. V.C.	✓			
UNPINGCO, A. R.	✓			

21



PILAR C. LUJAN
SENATOR • LEGISLATIVE SECRETARY
CHAIRMAN — COMMITTEE ON JUDICIARY AND CRIMINAL JUSTICE

April 10, 1989

The Honorable Joe T. San Agustin
Speaker, Twentieth Guam Legislature
163 Chalan Santo Papa
Agana, Guam 96910

VIA: Chairman, Committee on Rules

Dear Mr. Speaker:

The Committee on Judiciary and Criminal Justice, to which was referred
Bill No. 422, wishes to report its findings and recommendation for approval.

The Committee voting record is as follows:

TO PASS:	<u>11</u>
NOT TO PASS:	<u>0</u>
TO REPORT OUT ONLY:	<u>0</u>
TO PLACE IN INACTIVE FILE:	<u>0</u>

A copy of the Committee Report and all pertinent documents are attached for
your information.


PILAR C. LUJAN
Committee Chairman



Twentieth Guam Legislature

163 Chalan Santo Papa Street
Agana, Guam 96910

COMMITTEE ON JUDICIARY AND CRIMINAL JUSTICE

VOTE SHEET ON
SUBSTITUTE
BILL NO. 422

COMMITTEE MEMBER	TO PASS	NOT TO PASS	TO REPORT OUT ONLY	TO PLACE IN INACTIVE FILE
 Senator Pilar C. Lujan Chairman	✓			
 Senator Francisco R. Santos Vice Chairman	✓			
 Senator Elizabeth P. Arriola	✓			
 Senator Madeleine Z. Bordallo	✓			
 Senator Herminia D. Dierking	✓			
 Senator Gordon Mailoux	✓			
 Senator Ted S. Nelson	✓			
 Senator Edward D. Reyes	✓			
 Senator Edward R. Duenas	✓ 9/1/87			
 Senator Martha C. Ruth	✓ 4/10/89			
 Senator Antonio R. Unpingco				

REPORT ON BILL 422

An act to amend Subsection 4910 to Title 15 of
the Guam Code Annotated, relative to probate
administration of land claims awards.

COMMITTEE ON JUDICIARY AND CRIMINAL JUSTICE

COMMITTEE ON JUDICIARY AND CRIMINAL JUSTICE
REPORT
ON

BILL 422 - An act to amend Subsection 4910 to Title 15 of the Guam Code Annotated, relative to probate administration of land claims awards.

PREFACE

The Judiciary and Criminal Justice Committee convened at 9:00 a.m., Monday March 27, 1989 in the Legislative Session Hall at Agana, Guam to hear testimony on Bill 422. Committee members in attendance, alongside with Chairwoman Pilar C. Lujan were Vice-Chairman Francisco R. Santos, and Senators Madeleine Z. Bordallo and Ted S. Nelson.

OVERVIEW

Bill 422 was introduced by Senator Ted S. Nelson on Valentine's Day, February 14, 1989.

In short, the measure would allow certain land claimants involved in the \$39.5 million land settlement to by-pass probate administration for the purpose of avoiding expenses normally associated in such proceedings. The proposal is limited only to land claimants whose awards are \$2,000 or less.

According to information provided to the Committee, approximately 1,000 awards of \$2,000 or less would be affected by this proposal. Moreover, it is noted that in many instances, the expense of probating such awards would exceed the total award.

Committee Chairwoman Pilar C. Lujan expedited public hearing on the measure at the request of Speaker Joe T. San Agustin. According to the Speaker, a significant number of land claimants contacted him urging action on the measure because it would "tremendously help them in keeping a greater share of their claims if passed into law."

TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

Bill No. 422 (COR)
As Substituted by the
Committee on Judiciary & Criminal Justice

Introduced by:

T. S. Nelson
P. C. Lujan
F. R. Santos

E. P. Arriola
M. Z. Bordallo
H. D. Dierking
G. Mailloux
E. D. Reyes
J. T. San Agustin
E. R. Duenas
M. C. Ruth
A. R. Unpingco

AN ACT TO AMEND SUBSECTION 4910 TO TITLE
15 OF THE GUAM CODE ANNOTATED, RELATIVE
TO PROBATE ADMINISTRATION OF LAND CLAIMS
AWARDS.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 Section 1. Subsection 4910 to Title 15 of the Guam Code Annotated is
3 hereby amended to read:

4 "Subsection 4910. Delivery of Land Claims Awards Not Exceeding
5 \$5,000.00 Without Administration.

6 (a) No probate administration is required upon a land claims award
7 not exceeding \$5,000.00 after deduction of costs and attorney's fees
8 awarded or authorized by the District Court of Guam.

9 (b) Any successor to the decedent entitled to the award or a portion
10 thereof is authorized to collect and distribute the award to the proper
11 heirs or distributees upon filing with the District Court of Guam
12 a certified copy of the death certificate of the decedent and an
13 affidavit stating that:

1 (1) the award does not exceed \$5,000.00 after deduction of
2 costs and attorney's fees awarded or distributed by the District
3 Court of Guam;

4 (2) no probate proceedings or petition to commence such
5 proceedings are pending in this Territory;

6 (3) the applicant is a successor-in-interest of the decedent
7 entitled to collect the award and explaining the relationship
8 of the applicant to the decedent;

9 (4) the names and mailing addresses (if known) of the persons
10 entitled to share in the award, their relationship to the decedent,
11 and their respective interests in the award;

12 (5) the applicant will, upon collection of the award, endeavor
13 in good faith and with reasonable diligence to distribute the
14 award to those entitled by law to shares therein; and

15 (6) before filing the affidavit with the Court, the applicant
16 will mail by first class U.S. mail a copy of the affidavit to each
17 person entitled to share in the award for whom a mailing address
18 is known.

19 (c) No person delivering an award exempt from administration under
20 this Section, shall be liable for any loss or damage, whatsoever, to
21 anyone, or be responsible for seeing to the proper distribution of
22 the award, or is required to inquire into the truth of any statement
23 in the affidavit. Any person to whom an award is delivered pursuant
24 to this Section is answerable and accountable therefor to any personal
25 representative of the decedent's estate or to any other person having
26 a right to the award or any portion thereof."

[Reference: Uniform Probate Code Subsection 560:3-1202; 15 GCA
Subsection 3101.]

TESTIMONY

Bill 422 - An act to amend Subsection 4910 to Title 15 of the Guam Code Annotated, relative to probate administration of land claims awards.

Mr. Joseph Borja represented Land Claims Class Counsel (Law Firm of Damon, Key, Char, Bocken, Leung, and Cupshack) at the hearing and testified in favor of Bill 422. (see attached)

Additionally, Committee Chairwoman noted receipt of a letter from the Class Counsel requesting modification to Public Law governing probate of land claims awards. (see attached)

Mr. Borja noted that the current probate code "has proven to be unworkable" in awards of \$2,000 or less because requirements would result in expenses to claimants in some cases larger than awards to be received.

Committee Vice-Chairman Francisco R. Santos queried Mr. Borja on average attorney costs in probate proceedings and was informed that claimants paid approximately \$750.00. It was noted that this does not include publication fees.

The Committee has been informed that the current statute governing probate procedure "requires the federal court to approve an affidavit of the person responsible to distribute the award. This provision has proven to be unworkable. The court cannot approve the affidavit without notice to all affected heirs and a hearing. Notification requires publication; a hearing requires attorneys. The result is that the award would go to the newspaper and the attorneys instead of the land claimants."

The Committee Vice-Chairman inquired about the possibility of amending the amount from \$2,000 to \$5,000 for probate exemption and asked if there were any objections. In response, Mr. Borja pointed out that the \$2,000 figure affected the greatest number of lots in the land claims settlements. Moreover, Mr. Borja noted the \$2,000 figure "is normally enacted by the states under the Uniform Probate Code as being an acceptable."

Upon inquiry from the Bill's author---Senator Ted S. Nelson---Mr. Borja testified that 189 checks are ready to be distributed as soon as the Bill passes and proper documentation is filed with the District Court.

Senator Nelson followed up on Vice-Chairman Santos' proposal to increase figure up to \$5,000 and was informed by Mr. Borja that such modification would be beneficial to land claimants.

COMMITTEE FINDINGS

The Committee finds that land claimants have waited patiently for decades to receive just compensation for the taking of their family lands.

Additionally, while a great number of the awards may not be extraordinary in value, the Committee has found that claimants should be able to keep as much of the award without having to shoulder expenses normally associated in such probate proceedings. For example, the Committee has been informed that some claimants are to be awarded \$100.00 for a particular lot and would have to spend approximately \$750.00 to \$1,000.00 in attorney fees and publication costs to get such award. "It makes no sense to spend more than one would receive," Committee Chairwoman Pilar C. Lujan pointed out.

According to figures provided the Committee, 189 awards of less than \$2,000.00 have been approved and are presently ready to be distributed to land claimants. However, the claimants would have to absorb expenses associated with probate proceedings if Section 4910 of Public law 19-34 is not modified.

The Committee has found that Bill 422 would exempt land claimants with awards \$2,000.00 or less from having to make such expenditure currently required by law.

Public Law 19-34 is a fine law which was passed to help land claimants with a simplified probate of awards. Unfortunately, Section 4910 requires the Court to approve affidavits only unless notification to all heirs are given through publication and a legal hearing. Consequently, expenses for such procedures would have to be paid by claimants.

The Committee has found that sufficient safeguards are contained within Bill 422 to ensure that appropriate heirs and landowners are properly identified and awarded.

Bill 422 would eliminate the requirement of court approval but still require affidavits to be filed with the Court. "This will make a public record and ensure that the heir distributing the award will be clearly known," according to Class Counsel.

The Committee has found that nearly 75% of all land claims awards requiring probate number anywhere from 5,000 to 7,500.

Lastly, the Committee found no objections with a request to modify Bill 422 ceiling upwards from \$2,000.00 to \$5,000.00 as suggested by Vice-Chairman Francisco R. Santos and Senator Ted S. Nelson.

The Committee recommends Bill 242 be modified with the following:

Section 1. Subsection 4910 to Title 15 of the Guam Code Annotated is hereby amended to read:

"Subsection 4910. Delivery of Land Claims Awards not exceeding \$5,000 without administration.

(a) No probate administration is required upon a land claims award not exceeding [\$2,000.00] \$5,000.00 after deduction of costs and attorneys fees awarded or authorized by the District Court of Guam.

(b) Any successor to the decedent entitled to the award or a portion thereof is authorized to collect and distribute the award to the proper heirs or distributees upon filing with the District Court of Guam a certified copy of the death certificate of the decedent and an affidavit stating that:

(1) the award does not exceed [\$2,000.00] \$5,000.00 after deduction of costs and attorney's fees or authorized by the District Court of Guam;

RECOMMENDATIONS

In the survey and assessment of Bill 242, the Judiciary and Criminal Justice Committee concludes the following:

- (1) THAT land claimants have waited for decades to be justly compensated for the taking of their family properties; and, further,
- (2) THAT previous legislative action on land claims must be technically amended to ensure that claimants retain as much of the award issued to them; and, further,
- (3) THAT Bill 242 be modified to exempt land claimants with awards of \$5,000.00 or less from the probate currently fixed by law; and, further,
- (4) THAT Substitute Bill 242 be passed immediately into law to enable land claimants to receive awards as soon as possible without having to shoulder expenses normally associated with the probate process.

SENATOR HERMINIA D. DIERKING
CHAIRPERSON, COMMITTEE ON RULES

TWENTIETH GUAM LEGISLATURE

163 Chalan Santo Papa

Agana, Guam 96910

(671) 472-3438/39

February 21, 1989

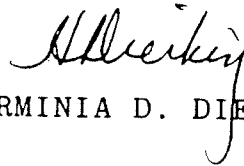
MEMORANDUM

TO: Chairperson, Committee on Judiciary and Criminal
Justice

FROM: Chairperson, Committee on Rules

SUBJECT: Referral of Bill Nos. 319, 320, 321, 322, 323, 325, 340,
352, 360, 368, 406, 410, 411, **422**, 449

The above subject bills are referred to your Committee.
Please note that the bills are subject to ratification by
the Committee on Rules at its next meeting.



HERMINIA D. DIERKING

Enclosures

OFFICE OF THE LEGISLATIVE SECRETARY
ACQUISITION RECEIPT
R. L
TR. 11/26/88 ADJ
DATE 2/27/89 200310

Introduced

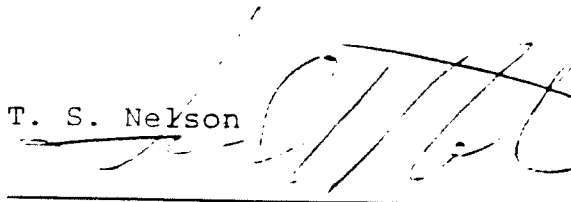
FEB 14 '89

TWENTIETH GUAM LEGISLATURE
1989 (FIRST) REGULAR SESSION

Bill No. 2122(CCR)

Introduced by:

T. S. Nelson



AN ACT TO AMEND SUBSECTION 4910 TO TITLE 15 OF
THE GUAM CODE ANNOTATED, RELATIVE TO PROBATE
ADMINISTRATION OF LAND CLAIMS AWARDS.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. Subsection 4910 to Title 15 of the Guam Code Annotated is hereby amended to read:

Subsection 4910. Delivery of Land Claims Awards Not Exceeding \$2,000.00 Without Administration.

- (a) No probate administration is required upon a land claims award not exceeding \$2,000.00 after deduction of costs and attorney's fees awarded or authorized by the District Court of Guam.
- (b) Any successor to the decedent entitled to the award or a portion thereof is authorized to collect and distribute the award to the proper heirs or distributees upon filing with the District Court of Guam a certified copy of the death certificate of the decedent and an affidavit stating that:

(1) the award does not exceed \$2,000.00 after deduction of costs and attorney's fees awarded or authorized by the District Court of Guam;

(2) no probate proceedings or petition to commence such proceedings are pending in this Territory;

(3) the applicant is a successor-in-interest of the decedent entitled to collect the award and explaining the relationship of the applicant to the decedent;

(4) the names and mailing addresses (if known) of the persons entitled to share in the award, their relationship to the decedent, and their respective interests in the award;

(5) the applicant will, upon collection of the award, endeavor in good faith and with reasonable diligence to distribute the award to those entitled by law to shares therein; and

(6) before filing the affidavit with the Court, the applicant will mail by first class U.S. mail a copy of the affidavit to each person entitled to share in the award for whom a mailing address is known.

(c) No person delivering an award exempt from administration under this Section, shall be liable for any loss or damage, whatsoever, to anyone, or be responsible for seeing to the

proper distribution of the award, or is required to inquire into the truth of any statement in the affidavit. Any person to whom an award is delivered pursuant to this Section is answerable and accountable therefor to any personal representative of the decedent's estate or to any other person having a right to the award or any portion thereof.

[Reference: Uniform Probate Code Subsection 560:3-1202; 15

GCA Subsection 3101.]

**Damon
Key Char
& Bocken**
A LAW CORPORATION

Class Counsel - Guam Land Claims
Guam Office:
404 Bank of Hawaii Building
134 Soledad Avenue
Agana, Guam 96910
Telephone: (671) 477-8805/6/7
Facsimile: (671) 477-8808
(Practice Limited to Guam Land Cases,
U.S.D.C. No. 77-00072 MF)

Attorneys at Law
Hawaii Office:
1600 Pauahi Tower
1001 Bishop Street
Honolulu, Hawaii 96813
Telephone: (808) 531-8031
Telex: 634307 DKCB
Facsimile: (808) 533-2242
Cable address: "Advocates"

Senator Pilar Lujan
20th Guam Legislature
163 Chalan Santo Papa St.
Agana, Guam 96910

March 02, 1989

RE: Guam Land Claims
(Technical Amendment to Subsection 4910,
Title 15, Guam Code Annotated Re Probate)

Dear Senator Lujan:

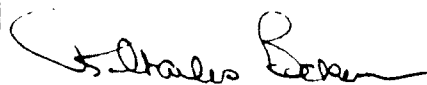
Public Law 19-34 added a new chapter to the Guam Probate Code to simplify and expedite Land claims awards paid pursuant to 48 U.S.C. 1424 C.

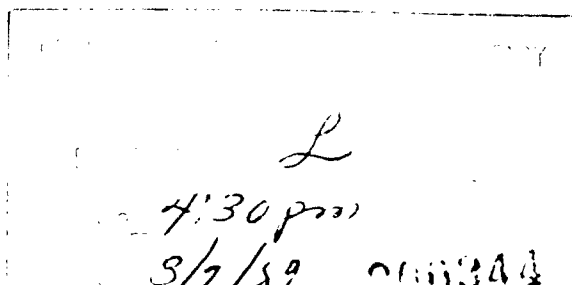
Unfortunately, the part addressing awards under \$2,000.00 included a requirement that the United States District Court of Guam approve affidavits filed by a successor-in-interest of the deceased landowner entitled to the award. The United States District Court has no jurisdiction to exercise probate authority in approving or disapproving such affidavits. Accordingly, a technical amendment is needed to correct the error. A copy of the form of amendment is enclosed.

Your Assistance in the passage of this much needed amendment will be appreciated by the recipients of smaller awards. Not to pass the amendment will continue to cause delays and excessive costs to claimants and make it uneconomic for them to qualify to receive awards.

Thank you for you past cooperation in adding Section 4910 to the Probate Code. Please contact either Michael Yoshii or myself if you need further information.

Very truly yours,


R. Charles Bocken



TWENTIETH GUAM LEGISLATURE
1989 (FIRST) REGULAR SESSION

Bill No. _____

Introduced by:

AN ACT TO AMEND SUBSECTION 4910 TO TITLE 15 OF
THE GUAM CODE ANNOTATED, RELATIVE TO PROBATE
ADMINISTRATION OF LAND CLAIMS AWARDS.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. Subsection 4910 to Title 15 of the Guam Code
Annotated is hereby amended to read:

Subsection 4910. Delivery of Land Claims Awards Not Exceeding
\$2,000.00 Without Administration.

- (a) No probate administration is required upon a land claims award not exceeding \$2,000.00 after deduction of costs and attorney's fees awarded or authorized by the District Court of Guam.
- (b) Any successor to the decedent entitled to the award or a portion thereof is authorized to collect and distribute the award to the proper heirs or distributees upon filing with the District Court of Guam a certified copy of the death certificate of the decedent and an affidavit stating that:

- (1) the award does not exceed \$2,000.00 after deduction of costs and attorney's fees awarded or authorized by the District Court of Guam;
 - (2) no probate proceedings or petition to commence such proceedings are pending in this Territory;
 - (3) the applicant is a successor-in-interest of the decedent entitled to collect the award and explaining the relationship of the applicant to the decedent;
 - (4) the names and mailing addresses (if known) of the persons entitled to share in the award, their relationship to the decedent, and their respective interests in the award;
 - (5) the applicant will, upon collection of the award, endeavor in good faith and with reasonable diligence to distribute the award to those entitled by law to shares therein; and
 - (6) before filing the affidavit with the Court, the applicant will mail by first class U.S. mail a copy of the affidavit to each person entitled to share in the award for whom a mailing address is known.
- (c) No person delivering an award exempt from administration under this Section, shall be liable for any loss or damage, whatsoever, to anyone, or be responsible for seeing to the

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proper distribution of the award, or is required to inquire into the truth of any statement in the affidavit. Any person to whom an award is delivered pursuant to this Section is answerable and accountable therefor to any personal representative of the decedent's estate or to any other person having a right to the award or any portion thereof.

[Reference: Uniform Probate Code Subsection 560:3-1202; 15 GCA Subsection 3101.]

COMMENTS RE AMENDMENT OF
§4910 OF THE GUAM LAND CLAIMS PROBATE CHAPTER

Public law 19-34 included a new chapter of the Guam Probate Code to simplify and expedite probate of land claims awards paid pursuant to 48 U.S.C. §1424c. In its original form, Section 4910 required the United States District Court for the Territory of Guam to approve affidavits filed by heirs of deceased land owners receiving awards less than \$2,000.00. Since the Act was passed, it has been determined that this provision is unworkable. Problems have arisen concerning the federal court's jurisdiction, and procedures necessary to obtain court approval of the affidavits.

As a result, heirs of deceased landowners have been unable to collect land claims awards under \$2,000.00. Over one hundred awards authorized to date remain unpaid. It is likely that unless the statute is amended between five hundred and one thousand awards may not be paid.

Accordingly, the statute has been amended to eliminate the requirement that the District Court of Guam approve the affidavits filed by ^{successors in interest to deceased landowners.} decedents. Instead, affidavits will be filed with the federal court. This will be sufficient to create a public record and protect the bank issuing the land claims award checks from any liability for payment of the award to the affiant.

REASONS FOR AMENDMENT

1. Original Public Law 19-34 contained a new Chapter of the Guam Probate Code to simplify probate of land claims awards paid to estates. Approximately 75% of all land claims awards will be paid to the estates of deceased landowners. We estimate total awards requiring probate may number 5,000 to 7,500.
2. Section 4910 of the original Act set up a special procedure for awards under \$2,000. The expense of probating awards below \$2,000 would exceed, in many cases, the total award. For example, some awards are just \$100. Publication costs, attorneys fees and court costs would be at least \$1,000, ten times the amount of the award.
3. To remedy this problem, section 4910 establishes a procedure whereby a responsible member of the family can obtain and distribute the award by submitting an affidavit to the federal court. A certified copy of the death certificate of the deceased landowner must be attached. The affiant must also list all the heirs, their addresses and their interests in the award. A copy of the affidavit must be sent to each heir, so they will have notice of the distribution.
4. In its original form, section 4910 required the federal court to approve an affidavit of the person responsible to distribute the award. This provision has proven to be unworkable. The court cannot approve the affidavit without notice to all affected heirs and a hearing. Notification requires publication; a hearing requires attorneys. The result is that the award would go to the newspaper and the attorneys instead of the land claimants.
5. Class counsel has drafted an amendment that will eliminate the requirement of court approval, but still require the affidavit to be filed with the federal court. This will make a public record and ensure that the heir distributing the award will be clearly known.
6. At present, approximately 189 awards below \$2,000 have been approved by the federal court, but cannot be paid until the amendment is passed. Unless the amendment is passed, approximately 1,000 awards will never be paid.



Introduced

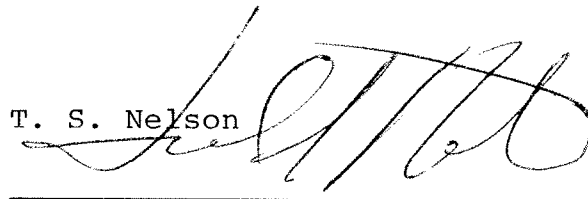
TWENTIETH GUAM LEGISLATURE
1989 (FIRST) REGULAR SESSION

FEB 14 '89

Bill No. 422 (COR)

Introduced by:

T. S. Nelson



AN ACT TO AMEND SUBSECTION 4910 TO TITLE 15 OF
THE GUAM CODE ANNOTATED, RELATIVE TO PROBATE
ADMINISTRATION OF LAND CLAIMS AWARDS.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. Subsection 4910 to Title 15 of the Guam Code Annotated is hereby amended to read:

Subsection 4910. Delivery of Land Claims Awards Not Exceeding \$2,000.00 Without Administration.

(a) No probate administration is required upon a land claims award not exceeding \$2,000.00 after deduction of costs and attorney's fees awarded or authorized by the District Court of Guam.

(b) Any successor to the decedent entitled to the award or a portion thereof is authorized to collect and distribute the award to the proper heirs or distributees upon filing with the District Court of Guam a certified copy of the death certificate of the decedent and an affidavit stating that:

(1) the award does not exceed \$2,000.00 after deduction of costs and attorney's fees awarded or authorized by the District Court of Guam;

(2) no probate proceedings or petition to commence such proceedings are pending in this Territory;

(3) the applicant is a successor-in-interest of the decedent entitled to collect the award and explaining the relationship of the applicant to the decedent;

(4) the names and mailing addresses (if known) of the persons entitled to share in the award, their relationship to the decedent, and their respective interests in the award;

(5) the applicant will, upon collection of the award, endeavor in good faith and with reasonable diligence to distribute the award to those entitled by law to shares therein; and

(6) before filing the affidavit with the Court, the applicant will mail by first class U.S. mail a copy of the affidavit to each person entitled to share in the award for whom a mailing address is known.

(c) No person delivering an award exempt from administration under this Section, shall be liable for any loss or damage, whatsoever, to anyone, or be responsible for seeing to the

proper distribution of the award, or is required to inquire into the truth of any statement in the affidavit. Any person to whom an award is delivered pursuant to this Section is answerable and accountable therefor to any personal representative of the decedent's estate or to any other person having a right to the award or any portion thereof.

[Reference: Uniform Probate Code Subsection 560:3-1202; 15 GCA Subsection 3101.]