

7 GCA CIVIL PROCEDURE
CH. 21 TRIAL & JUDGMENTS

CHAPTER 21
TRIAL AND JUDGMENT IN CIVIL ACTIONS

- Article 1. Judgments in General.
- Article 2. Issues, Mode of Trial and Postponements.
- Article 3. Trial by the Court.
- Article 4. References and Trial by Referees.
- Article 5. Provisions Relating to Trials in General.
- Article 6. Manner of Giving and Entering Judgment.

ARTICLE 1
JUDGMENTS IN GENERAL

2017 NOTE: The source of this Article is Chapter 1 (Judgments in General), of Civil Procedure Code, Title VII; specifically CCP §§ 577-584.

This Article was codified into the GCA after the enactment of P.L. 21-147:2 (Jan. 14, 1993) (Frank G. Lujan Memorial Court Reorganization Act of 1992). During the codification process, CCP provisions were renumbered and incorporated into the GCA; however, not all CCP provisions were included in the GCA, as explained in the following annotation, which followed § 21104 in past print publications of the GCA:

NOTE: CCP §§ 581, *Dismissals of Actions*, has been superseded by GRCP Rule 41.

Guam CCP § 581a has been declared repealed because it has been superseded by GRCP 41(b). *Chan, et al. v. Kim, et al*, Civ. Case No. CV 1562-93, Decision & Order, Weeks, J., Superior Court of Guam, March [31], 1995).

Similarly, Guam CCP §§ 582 and § 583, have been repealed by implication (§ 66 CCP) and have been so held to have been repealed in the case of *Jones and Guerrero, Inc. vs. Torres*, Civil Case No. 187-74, Superior Court of Guam (December 1976) [Not reported]. This issue has not been appealed. In the order the Superior Court declared that dismissals for lack of prosecution were covered by Rule 41, not § 583. *J&G vs. Atco Industries*, Civil Case No. 925-72, Superior Court of Guam (not reported), also ruled in 1975 that matters of dismissal for lack of prosecution at the various stages of the action are covered by the Court rules, not by the Code of Civil Procedure.

The legislature repealed § 583 by P.L. 16-120:13.

Also found in past print publications is a reference to § 21104a, “Dismissal of Action for Failure to Issue Summons”, which appears to be the codification of CCP § 581a. However, it appears this reference to § 21104a was in error, in

**7 GCA CIVIL PROCEDURE
CH. 21 TRIAL & JUDGMENTS**

light of the following holding by Superior Court Judge Janet Healy Weeks: “[P]ursuant to Rule 89, Guam Rules of Civil Procedure, that Guam Code of Civil Procedure Section 581a was repealed by implication by the adoption of the Guam Rules of Civil Procedure.” *Chan v. Kim*, Civ. Case No. CV 1562-93 (Guam Super. Ct. March 31, 1995). Accordingly, the reference to § 21104a, “Dismissal of Action for Failure to Issue Summons” in past print publications of the GCA is deemed manifest clerical error, and will be omitted from future publications of the GCA pursuant to the authority of 1 GCA § 1606.

- § 21101. Judgment Defined.
- § 21102. Judgment May be for or Against One of the Parties.
- § 21103. Judgment May be Against One Party and Action Proceed as to Others.
- § 21104. The Relief to be Awarded to the Plaintiff.
- § 21105. Consent of Attorney General.

§ 21101. Judgment Defined.

A judgment is the final determination of the rights of the parties in an action or proceeding.

SOURCE: CCP § 577.

§ 21102. Judgment May be for or Against One of the Parties.

Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side, as between themselves.

SOURCE: CCP § 578.

§ 21103. Judgment May be Against One Party and Action Proceed as to Others.

In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper.

SOURCE: CCP § 579.

§ 21104. The Relief to be Awarded to the Plaintiff.

The relief granted to the plaintiff, if there be no answer, cannot exceed that to which he shall have demanded in his complaint; but in any other case the court may grant him any relief consistent with the case made by the complaint and embraced within the issues.

7 GCA CIVIL PROCEDURE
CH. 21 TRIAL & JUDGMENTS

SOURCE: CCP § 580.

CROSS-REFERENCES: GRCP Rule 4.

§ 21105. Consent of Attorney General.

No action in which the government of Guam is a plaintiff shall be dismissed without the consent of the Attorney General of Guam.

SOURCE: CCP § 584.

ARTICLE 2
ISSUES, MODE OF TRIAL AND POSTPONEMENTS

NOTE: Guam CCP § 585, dealing with defaults, has been repealed by implication (66 CCP) and has been replaced by Rule 55 GRCP.

Guam CCP, §§ 588 through 591 and 594 deal with matters which have been superseded by the Guam Rules of Civil Procedure, Rules 7, 8, 12, 16 and 40.

CCP § 592 has been superseded by Guam Rules of Civil Procedure, Rules 38 and 39 and by Chapter 22 of this Title, relative to jury trials.

CCP §§ 595 and 595 have been superseded by Guam Rules of Civil Procedure, Rule 40.

§ 21201. In Cases of Adjournment -- Testimony of Witnesses.

The party obtaining a postponement of a trial in any court of record must, if required by the adverse party, consent that the testimony of any witness of such adverse party who is not in attendance be taken by deposition before a judge or clerk of the court in which the case is pending or before such person authorized to administer oaths as the court may indicate, which must accordingly be done; and the testimony so taken may be read on the trial with the same effect and subject to the same objection as if the witness were produced.

SOURCE: CCP § 596.

CROSS-REFERENCES: See 6 GCA Chapter 8, Article 3, relative to the perpetuation of testimony in criminal cases.

ARTICLE 3
TRIAL BY THE COURT

- § 21301. Order of Proceeding on Trial.
- § 21302. Time for Filing Decision.
- § 21303. Waiving Findings of Fact.
- § 21304. Agreed Statement of Facts.
- § 21305. Proceedings after Determination of Law.

§ 21301. Order of Proceeding On Trial.

The trial must proceed in the following order, unless the judge, for special reasons, otherwise directs:

(a) The plaintiff, after stating the issue and his case, must produce the evidence on his part;

(b) The defendant may then open his defense, and offer his evidence in support thereof;

(c) The parties may then respectively offer rebutting evidence only, unless the court, for good reason, in furtherance of justice, permits them to offer evidence upon their original case;

(d) When the evidence is concluded, unless the case is submitted to the court on either side or on both sides without argument, the plaintiff must commence and may conclude the argument;

(e) If several defendants, having separate defenses, appear by different counsel, the court must determine their relative order in evidence and argument.

SOURCE: CCP § 631.

2017 NOTE: Subsection designations altered pursuant to the authority of 1 GCA § 1606.

COMMENT: The Compiler has not found any equivalent provisions to this section in the Guam Rules of Civil Procedure.

§ 21302. Time for Filing Decision.

Upon the trial of a question of fact by the court, its decision must be given in writing and filed with the clerk within thirty (30) days after the cause is submitted for decision.

SOURCE: CCP § 632.

**7 GCA CIVIL PROCEDURE
CH. 21 TRIAL & JUDGMENTS**

CROSS-REFERENCES: For Rules governing method by which delay of decision may be raised to the Court, see Rule 5E of the Local Rules of the Superior Court in Appendix B to this Title.

COMMENT: Rule 52 of the GRCP has modified the requirement for written findings of fact, but there is no reference in those rules to any deadlines for making the decision.

NOTE: CCP § 633, *Facts - - - law must be separately stated*, has been superseded by GRCP Rule 52.

§ 21303. Waiving Findings of Fact.

Findings of fact may be waived by several parties to a issue of fact:

- (a) By failing to appear at trial;
- (b) By consent in writing filed with the clerk;
- (c) By oral consent in open court entered in the minutes.

In all cases where the court directs a party to prepare the findings, a copy of said proposed findings shall be served on all parties to the action at least five days before findings shall be signed by the court, and the court shall not sign any findings therein prior to the expiration of such five days.

SOURCE: CCP § 634.

2017 NOTE: Subsection designations altered pursuant to the authority of 1 GCA § 1606.

COMMENT: The Rules of Civil Procedure discourage the court from ordering the parties to prepare the findings, but do not prohibit it from so ordering.

§ 21304. Agreed Statement of Facts.

The parties may, in any action or special proceedings, agree in writing upon the facts involved in the litigation and require the judgment of the court upon the questions of law arising from such agreed statement of facts. The ruling and judgment of the court upon such agreed statement of facts shall be subject to exception like all other rulings of the court. When an agreed statement of facts is entered into by the parties, no other finding of facts need be made by the court.

SOURCE: CCP § 635.

§ 21305. Proceedings After Determination of Law.

On a judgment for the plaintiff upon an issue of law he may proceed in the manner prescribed by Rule 55 of the Guam Rules of Civil Procedure, upon the failure of the defendant to answer. If the judgment before the

**7 GCA CIVIL PROCEDURE
CH. 21 TRIAL & JUDGMENTS**

defendant upon an issue of law, and the taking of an account, or the proof of any fact, be necessary to enable the court to complete the judgment, a reference may be ordered, as in that Rule provided.

SOURCE: CCP § 636.

COMMENT: Since CCP § 585 has been superseded by GRCP Rule 55, the appropriate reference is changed in this section. Also, GRCP Rule 53 contains most matters relative to references, so the section is changed to reflect this fact.

**ARTICLE 4
REFERENCES AND TRIAL BY REFEREES**

- § 21401. Oath of Referees.
- § 21402. Grounds of Objection to Referee.
- § 21403. Objections, How Disposed of.

NOTE: CCP §§ 638, 639, 640, 640b, 643, 643a, 644, and 645 all have been superseded by Rule 53 of the Guam Rules of Civil Procedure.

§ 21401. Oath of Referees.

Referees, before commencing the performance of their duty, shall be sworn to a faithful and honest performance thereof, and the fact that they have taken such oath shall be certified to on the commission by the authority administering the oath. The oath shall be administered by the clerk of the court or by the judge of the court having jurisdiction.

SOURCE: CCP § 640a.

§ 21402. Grounds of Objection to Referee.

A party may object to the appointment of any person as referee, on one or more of the following grounds:

- (a) Consanguinity or affinity, within the third degree, to either party, or to an officer of a corporation which is a party, or to any judge of the court in which the appointment shall be made;
- (b) Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent, to either party; or being a member of the family of either party; or a partner in business with either party; or security on any bond or obligation for either party;

**7 GCA CIVIL PROCEDURE
CH. 21 TRIAL & JUDGMENTS**

(c) Having been a witness on any trial between the same parties for the same cause of action;

(d) Interest on the part of such person in the event of the action, or in the main question involved in the action;

(e) Having formed or expressed an unqualified opinion or belief as to the merits of the action;

(f) The existence of a state of mind in such person evincing enmity against or bias to either party.

SOURCE: CCP § 641.

2017 NOTE: Subsection designations altered pursuant to the authority of 1 GCA § 1606.

§ 21403. Objections, How Disposed of.

The objections taken to the appointment of any person as referee must be heard and disposed of by the court. Affidavits may be read and witnesses examined as to such objections.

SOURCE: CCP § 642.

**ARTICLE 5
PROVISIONS RELATING TO TRIALS IN GENERAL**

§ 21501. When a New Trial May Be Granted.

§ 21502. New Trial; Time Limits.

§ 21503. Hearing; Setting Time.

NOTE: Much of the material in Chapter 6 of Title 8, Guam CCP §(656-663a) has been included in the Guam Rules of Civil Procedure. Most of the provisions are contained in Rule 59 GRCP. However, that rule, itself, refers to certain sections of the Code of Civil Procedure, indicating that these sections are substantive in character and proper for inclusion within this Chapter. Therefore, the substantive sections will be included within this Chapter and the procedural sections are omitted as being null and void pursuant to law.

Replaced by Rule 59 are §§ 656, 658, 659a, and 662.

§ 21501. When a New Trial May Be Granted.

7 GCA CIVIL PROCEDURE
CH. 21 TRIAL & JUDGMENTS

(a) The finding may be vacated and any other decision may be modified or vacated; in whole or in part; and a new or further trial granted on all or part of the issues, on the application of the party aggrieved, for any of the following causes, materially affecting the substantial rights of such parties:

(1) Irregularity in the proceedings of the court, or any order of the court or abuse of discretion by which either party was prevented from having a fair trial;

(2) Accident or surprise, which ordinary prudence could not have guarded against;

(3) Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence have discovered and produced at the trial;

(4) Excessive damages appearing to have been given under the influence of passion or prejudice;

(5) Insufficiency of the evidence to justify the finding or other decision, and that it is against law;

(6) Error in law, occurring at the trial, and excepted to by the party making the exception.

(b) When a new trial is granted on all or part of the issues upon the ground of the insufficiency of the evidence to sustain the finding, the order shall so specify; otherwise, on appeal from such order it will be presumed that the order was not based upon that ground.

SOURCE: CCP § 657.

2017 NOTE: Subsection/subitem designations added/alterd pursuant to the authority of 1 GCA § 1606.

CROSS-REFERENCES: Rule 59, GRCP.

COMMENT: Again, § 657 excludes all references to jury trials. Note that the Guam Rules of Civil Procedure have abolished the need for exceptions. However, the issue of juries is covered in the Rules of Civil Procedure.

§ 21502. New Trial; Time Limits.

The party intending to move for a new trial must, either before the entry of judgment or within five days after receiving written notice of the entry of the judgment, file with the clerk and serve upon the adverse party a notice of his intention to move for a new trial, designating the grounds upon which the

7 GCA CIVIL PROCEDURE
CH. 21 TRIAL & JUDGMENTS

motion will be made and whether the same will be made upon affidavits or the minutes of the court or both. Said notice shall be deemed to be a motion for a new trial on all the grounds stated in the notice. The time above shall not be extended by order or stipulation.

SOURCE: CCP § 659.

§ 21503. Hearing; Setting Time.

The motion for a new trial shall be heard and determined by the judge who presided at the trial. Upon expiration of the time to file counter-affidavits, the clerk shall forthwith call the motion to the attention of the judge who presided at the trial, or the judge acting in his place as the case may be, and such judge thereupon shall designate the time for oral argument, if any, to be had on said motion. Five days' notice shall be given of such oral argument, if any, by the clerk to the respective parties. Such motion, if heard by a judge other than the trial judge, shall be argued orally or shall be submitted without oral argument as the judge may direct, not later than ten days before the expiration of the time within which the court has power to pass on the same.

**ARTICLE 6
MANNER OF GIVING AND ENTERING JUDGMENT**

- § 21601. In Replevin, Judgment to be in the Alternative and With Damages.
- § 21602. When a Party Dies After Finding.
- § 21603. Judgment Roll of Superior Court, Contents.
- § 21604. Entries in Docket.
- § 21605. Clerk's Docket.
- § 21606. Docket to be Opened for Inspection without Charge.
- § 21607. Judgment a Lien Upon Recording of Abstract.
- § 21608. Satisfaction of a Judgment.
- § 21609. Undertaking in Actions to Set Aside transfer of Property.
- § 21610. Conditions of Undertaking.
- § 21611. Filing and Serving Undertaking.
- § 21612. Exceptions to Sureties.
- § 21613. Justification of Sureties.
- § 21614. New Undertaking.

7 GCA CIVIL PROCEDURE
CH. 21 TRIAL & JUDGMENTS

§ 21615. When Undertaking Becomes Effective.

§ 21616. Judgment Against Sureties.

NOTE: Guam CCP §§ 664 and 668 were repealed by P.L. 13-156. Old Rule 79 GRCP was repealed by P.L. 13-157.

No CCP § 665 exists.

CCP § 666, *When Counterclaim Established exceeds Plaintiff's demand*, has been superseded by GRCP Rule 54.

§ 21601. In Replevin, Judgment to be in the Alternative and With Damages.

In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession or the value thereof, in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff, and the defendant claims a return thereof, judgment for the defendant may be for a return of the property or the value thereof, in case a return cannot be had, and damages for taking and withholding the same. In an action on a contract or obligation in writing, for the direct payment of money, made payable in a specified kind of money or currency, judgment for the plaintiff, whether it be by default or after verdict, may follow the contract or obligation, and be made payable in the kind of money or currency specified therein; and in all actions for the recovery of money, if the plaintiff alleges in his complaint that the same was understood and agreed by the respective parties to be payable in a specified kind or money or currency, and this fact is admitted by the default of the defendant or established by evidence, the judgment for the plaintiff must be made payable in the kind of money or currency so alleged in the complaint; and in an action against any person for the recovery of money received by such person in a fiduciary capacity, or to the use of another, judgment for the plaintiff must be made payable in the kind of money or currency so received by such person.

SOURCE: CCP § 667.

NOTE: CCP § 668 was repealed by P.L. 13-156:1.

§ 21602. When a Party Dies After Finding.

If a party dies after a finding or decision upon any issue of fact, and before judgment, the Court may nevertheless render judgment thereon. Such judgment is not a lien on the real property of the deceased party, but is payable in the course of administration of his estate.

SOURCE: CCP § 669.

§ 21603. Judgment Roll of Superior Court, Contents.

In the Superior Court the following papers, without being attached together, shall constitute the judgment roll:

(1) In case the complaint is not answered by any defendant the summons, with the affidavit or proof of service, the complaint, the request for entry of default with a memorandum endorsed thereon that the default of the defendant in not answering was entered and a copy of the judgments, and in case the service so made is by publication, the affidavit for publication of summons, and the order directing the publication of summons;

(2) In all other cases, the pleadings, all orders striking out any pleading in whole or in part, a copy of the verdict of the jury or finding of the Court or referee, and a copy of any order made relating to a change of parties and a copy of the judgment; if there are two (2) or more defendants in the action and any one of the has allowed judgments to pass against him by default, the summons, with proof of its service on such defendant and if the service on such defaulting defendants be by publication, then the affidavit for publication and the order directing the publication of the summons.

SOURCE: CCP § 670 as amended by P.L. 13-156.

COMMENT: P.L. 13-156 uses the word *master* to refer to the same officer who is called *referee* in the Guam Rules of Civil Procedure.

The purpose of amending this Section was to conform the law to the existing practice of the Superior Court. There had arisen a number of questions as to exactly what was the judgment roll and when a judgment was final and official. Several cases were reversed by the appellate division of the District Court because they failed to conform with the requirements of law. That court did not consider this section to be a matter of procedure. To correct matters, the Legislature adopted P.L. 13-156 and P.L. 13-157 to conform law to existing practice, which the Legislature deemed to be suitable.

§ 21604. Entries in Docket.

Immediately after filing the judgment roll the clerk must make the proper entries of the judgment under appropriate heads in the docket kept by him.

COMMENT: CCP § 671.

§ 21605. Clerk's Docket.

7 GCA CIVIL PROCEDURE
CH. 21 TRIAL & JUDGMENTS

The docket mentioned in the last section is a book which the clerk keeps in his office, with each page divided into nine (9) columns, and headed as follows:

Date of Entry and Docket; Judgment Debtors; Judgment Creditors; Judgment; Time of Entry; Where Entered in Judgment Book; Appeals, When Taken; Judgment of Appellate Court; Satisfaction of Judgment, When Entered.

If the judgment is for the recovery of money, the amount must be stated in the docket under the head of Judgment. If the judgment is for any other relief, a memorandum of the general character of the relief granted must be stated. The names of the judgment debtors must be entered in alphabetical order.

SOURCE: CCP § 672.

COMMENT: Former Rule 79 of the Guam Rules of Civil Procedure defined the clerk's docket. However, this rule has been specifically repealed by P.L. 13-157, indicating that it is the Legislature's intent to retain the provisions of this Section.

§ 21606. Docket to be Opened for Inspection Without Charge.

The docket kept by the clerk is open at all times, during office hours, for the inspection of the public, without charge. The clerk must arrange the several dockets kept by him in such a manner as to facilitate their inspection.

SOURCE: CCP § 673.

§ 21607. Judgment a Lien Upon Recording of Abstract.

An abstract of the judgment or decree of any court of record of Guam, or of the United States, the enforcement of which has not been stayed on appeal, certified by the clerk of the Court where such judgment or decree was rendered, may be filed with the Director of Land Management and from such filing the judgment or decree becomes a lien upon all the real property of the judgment debtor, not exempt from execution, owned by him at the time, or which he may afterwards and before the lien expires acquire. Such lien continues for five (5) years from the date of entry of the judgment or decree, unless the enforcement of the judgment or decree is stayed on appeal by the execution of a sufficient undertaking as provided in this Title, or by statutes of the United States, in which case the lien of the judgment or decree, or any lien or liability now existing or hereafter created by virtue of an attachment that has been issued and levied in the action, unless otherwise by statutes of the United States provided, ceases, or upon an undertaking on

7 GCA CIVIL PROCEDURE
CH. 21 TRIAL & JUDGMENTS

release of attachment, or unless the judgment or decree is previously satisfied, or the lien otherwise is discharged. The abstract above-mentioned shall contain the following:

Title of the Court and cause and number of the action;

Date of entry of the judgment or decree;

Names of the judgment debtor and of the judgment creditor;

Amount of the judgment or decree;

and where entered in judgment roll.

SOURCE: CCP § 674.

COMMENT: Persons having liens against registered property should make sure that the instrument creating the lien complies with the Land Title Registration Act, which contains additional provisions for registered land. See 21 GCA §§ 29192, 31101 and 31102; § 29159 and § 29160.

§ 21608. Satisfaction of a Judgment.

Satisfaction of a judgment may be entered in the clerk's docket upon an execution returned satisfied, or upon an acknowledgment of satisfaction filed with the clerk, which may recite payment of the judgment in full or the acceptance by the judgment creditor of any lesser sum in full satisfaction thereof, made in the manner of acknowledgment of conveyance of real property, by the judgment creditor, or by his endorsement on the face or on the margin of the record of the judgment, or by the attorney, unless a revocation of his authority is filed. Whenever a judgment is satisfied in fact, otherwise than upon an execution, the party or attorney must give such acknowledgment, or make such endorsement and, upon motion, the court may compel it, or may order the entry of satisfaction to be made without it.

SOURCE: CCP § 675.

NOTE: CCP § 675a, *Satisfaction of mortgage recorded*, was repealed by P.L. 5-54.

§ 21609. Undertaking in Actions to Set Aside Transfer of Property.

When an action is commenced to set aside a transfer or conveyance of property on the grounds that such transfer or conveyance was made to hinder, delay or defraud a creditor or creditors, the transferee or grantee to whom it is alleged the property was transferred or conveyed or the successors or assigns of such transferee or grantee, may give an undertaking as herein provided, and when such undertaking is given as herein provided, the transferee or grantee to whom it is alleged the property was so transferred

or conveyed to hinder, delay, or defraud creditors, or the successors and assigns of such transferee or grantee, may sell, encumber, transfer, convey, mortgage, pledge or otherwise dispose of the property, or any part thereof, which is alleged to have been so transferred or conveyed to hinder, delay, or defraud creditors, so that the purchaser, encumbrancer, transferee, mortgagee or pledgee of such property, will take, own, hold or possess such property unaffected by such action and suit, or the judgment which may be rendered therein.

SOURCE: CCP § 676.

§ 21610. Conditions of Undertaking.

Such undertaking with two sureties shall be executed by the transferee or grantee to whom it is alleged the property was so transferred or conveyed to whom it is alleged the property was transferred or conveyed to hinder, delay or defraud creditors, or the successor or assign of such transferee or grantee, in double the estimated value of the property so alleged to have been transferred or conveyed; provided in no case need such undertaking be for a greater sum than double the amount of the debt or liability alleged to be due and owing to the plaintiff in such action, commenced to set aside said transfer and conveyance; and where such estimated value of the property so alleged so to have been conveyed is less than the such alleged to be due and owing to the plaintiff in the action, such estimated value shall be stated in the undertaking; and said undertaking shall be conditioned, that if it be adjudged in said action that the transfer or conveyance was made to hinder, delay or defraud a creditor or creditors, then that the transferee or grantee or the said successors or assigns of such transferee or grantee giving such undertaking, will pay to the plaintiff in said action a sum equal to the value, as the same is estimated in said undertaking, of said property alleged to have been transferred or conveyed to hinder, delay or defraud creditors, or the sum adjudged to be due and owing to the plaintiff in the action.

SOURCE: CCP § 677.

§ 21611. Filing and Serving Undertaking.

Said undertaking shall be filed in the action in which said execution issued and a copy thereof served upon the plaintiff or his attorney in said action.

SOURCE: CCP § 677a.

§ 21612. Exceptions to Sureties.

Within ten days after service of the copy of undertaking the plaintiff may object to such undertaking on the ground of inability of the sureties, or either of them, to pay the sum for which they became bound in said undertaking, and upon the ground that the estimated value of the property therein is less than the market value of such property. Such objection to the undertaking shall be made in writing, specifying the ground or grounds of objection, and if the objection is made to the undertaking that the estimated value therein is less than the market value of the property, such objection shall specify the plaintiff's estimate of the market value of the property. Such written objections shall be served upon said transferee or grantee, or the successors or assigns of such transferee or grantee giving such undertaking.

SOURCE: CCP § 678.

§ 21613. Justification of Sureties.

When the sureties or either of them are objected to, the surety or sureties so objected to shall justify before the Court in which the action is commenced, upon ten days notice of the time when they will so justify being given to the plaintiff, or plaintiff's attorney. Upon the hearing and examination into the sufficiency of a surety, witnesses may be required to attend and evidence may be procured and introduced in the same manner as in trial of civil cases. Upon such hearing and examination, the Court shall make its order in writing, approving or disapproving the sufficiency of the surety or sureties on such undertaking. In case the court disapproves of the surety or sureties on any undertaking, a new undertaking may be filed and served, and to any undertaking given under the provisions of this Article the same objection to the sureties may be made and the same proceedings had as in the case of the first undertaking filed and served.

SOURCE: CCP § 678a.

§ 21614. New Undertaking.

When objection is made to the undertaking upon the ground that the estimated value of the property, as stated in the undertaking, is less than the market value of the property, the transferee or grantee giving the undertaking may accept the estimated value stated by the plaintiff in said objection, and a new undertaking may at once be filed, with the plaintiff's estimate stated therein as the estimated value, and no objection shall thereafter be made upon that ground; if the plaintiff's estimate of the market value is not accepted, the transferee or grantee giving such undertaking, upon ten days notice to the plaintiff, shall move the court in which the action is pending to

estimate the market value of the property, and upon the hearing of such motion, witnesses may be required to attend and testify, and evidence may be produced in the same manner as in the trial of civil actions. Upon the hearing of the motion the court shall estimate the market value of the property, and if the estimated value of the property as made by the Court exceeds the estimated value as stated in the undertaking, a new undertaking shall be filed and served with the market value determined by the stated value therein as the estimated value of the property.

SOURCE: CCP § 679.

§ 21615. When Undertaking Becomes Effective.

The undertaking shall become effective for the purpose stated in § 21609 of this Article ten days after service of a copy thereof on the plaintiff, unless objection to such undertaking is made as in this Article provided, and in case objection is so made to the undertaking filed and served, the same shall become effective for such purpose when an order is made by such court approving the sureties, when the surety or sureties are objected to, or affirming the estimate of the value of property when objection is made thereto, or in the case any objection to the undertaking is sustained by the court when a new undertaking is filed and served as required by this Article, to which no objection if made, or is made, is not sustained by the court.

SOURCE: CCP § 680.

§ 21615. Judgment Against Sureties.

If judgment be rendered in said action that the alleged transfer of conveyance was made to hinder, delay or defraud a creditor, then judgment shall be rendered in such action without further proceeding in favor of plaintiff and against the principal and sureties on said undertaking for the sum for which said undertaking was executed according to the conditions thereof.

SOURCE: CCP § 680a.
