

**I MINA 'TRENTA NA LIHESLATURAN GUÁHAN
2009 (First) REGULAR SESSION**

Bill No. B-212-30 (LS)

Introduced by:

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An Act to add a new Chapter 16 to Division 1 of Title 19, Guam Code Annotated, relative to the establishment of Designated Beneficiary Agreements; and citing this Act as the “Designated Beneficiary Agreement Act of 2009”.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Short Title. This Act shall be cited as the “*Designated Beneficiary Agreement Act of 2009*”.

Section 2. Designated Beneficiary Agreements, established. A new Chapter 16 is added to Division 1 of Title 19, Guam Code Annotated to read:

“Chapter 16.

Designated Beneficiary Agreements.

§ 1601. Definitions.

§ 1602. Requirements for a valid designated beneficiary agreement.

§ 1603. Effects and applicability of a designated beneficiary agreement.

§ 1604. Statutory form of a designated beneficiary agreement.

§ 1605. Filing of the form and fees.

§ 1606. Effect on other legal documents.

§ 1607. Affirmation of validity of designated beneficiary agreement.

§ 1608. Reliance-immunity.

§ 1609. Revocation of a designated beneficiary agreement.

§ 1610. Death of a designated beneficiary – effect on designated beneficiary agreement.

§ 1601. Definitions. As used in this Chapter, unless the context otherwise requires:

“*Designated beneficiary*” means a person who has entered into a designated beneficiary agreement pursuant to this Chapter.

“*Designated beneficiary agreement*” means an agreement that is entered into pursuant to this Chapter by two (2) people for the purpose of designating each other as the

1 beneficiary of the other person and for the purpose of ensuring that each person has certain rights
2 and financial protections based upon this designation.

3 “*Superseding legal document*” means a legal document, regardless of the date of
4 execution, that is valid and enforceable and conflicts with all or a portion of a designated beneficiary
5 agreement and, therefore, causes the designated beneficiary agreement in whole or in part to be
6 replaced or set aside. To the extent there is a conflict between a superseding legal document and a
7 designated beneficiary agreement, the superseding legal document controls. A superseding legal
8 document may include, but need not be limited to, any of the following:

- 9 (a) A will;
- 10 (b) A codicil;
- 11 (c) A power of attorney;
- 12 (d) A medical durable power of attorney;
- 13 (e) A trust instrument;
- 14 (f) A beneficiary designation in an insurance policy or policy of health care
15 coverage;
- 16 (g) A beneficiary designation in a retirement or pension plan;
- 17 (h) Declaration as to medical treatment; or
- 18 (i) A marriage license.

19 **§ 1602. Requirements for a valid designated beneficiary agreement.** (A) A designated
20 beneficiary agreement shall be legally recognized if:

21 (1) The parties to the designated beneficiary agreement satisfy all of the following
22 criteria:

- 23 (a) Both are at least eighteen (18) years of age;
- 24 (b) Both are competent to enter into a contract;
- 25 (c) Neither party is married to another person;
- 26 (d) Neither party is a party to another designated beneficiary agreement;
27 and
- 28 (e) Both parties enter into the designated beneficiary agreement without
29 force, fraud, or duress; and

30 (2) The agreement is in substantial compliance with the requirements set forth in this
31 Chapter.

1 **(B)** A designated beneficiary agreement is legally sufficient under this Chapter if:

- 2 (1) The wording of the designated beneficiary agreement complies substantially with
3 the standard form set forth in §1604;
- 4 (2) The designated beneficiary agreement is properly completed and signed;
- 5 (3) The designated beneficiary agreement is acknowledged; and
- 6 (4) The designated beneficiary agreement is filed with the Clerk's Office, Superior
7 Court of Guam, as provided in §1605.

8 **§ 1603. Effects and applicability of a designated beneficiary agreement.** (A) A person
9 named as a designated beneficiary in a designated beneficiary agreement shall be entitled to exercise
10 the rights and protections specified in the agreement by virtue of having been so named.

11 **(B)** A designated beneficiary agreement that is properly executed and filed as provided in
12 §1605 shall be valid and legally enforceable in the absence of a superseding legal document that
13 conflicts with the provisions specified in the designated beneficiary agreement.

14 **(C)** A designated beneficiary agreement shall entitle the parties to exercise the following
15 rights and enjoy the following protections, unless specifically excluded from the designated
16 beneficiary agreement:

17 (1) The right to acquire, hold title to, own jointly, or transfer inter vivos or at
18 death real or personal property as joint tenants with right of survivorship as tenants in
19 common;

20 (2) The right to be designated as a beneficiary, payee, or owner as a trustee named
21 in an inter vivos or testamentary trust for the purposes of a nonprobate transfer on death;

22 (3) The right to be designated as a beneficiary and recognized as a dependent for
23 the purposes of the following benefits:

24 (a) Government of Guam Employees' Retirement Plans pursuant to
25 Chapter 8 of Title 4, Guam Code Annotated, or to other pension plans;

26 (b) Life Insurance coverage;

27 (c) Health insurance policies or coverage, if the employer of the
28 designated beneficiary elects to provide coverage for the other
29 designated beneficiaries as dependents;

30 (4) The right to petition for and have priority for appointment as a conservator,
31 guardian, or personal representative for the other designated beneficiary;

1 (5) The right to visitation by the other designated beneficiary in a hospital or in a
2 nursing home;

3 (6) The right to act as a proxy decision-maker or surrogate decision-maker to
4 make medical treatment decisions for the other designated beneficiary;

5 (7) The right to receive notice of the withholding, or withdrawal of life-sustaining
6 procedures for the other designated beneficiary and the right to challenge the validity of a
7 declaration as to medical or surgical treatment of the other designated beneficiary;

8 (8) The right, with respect to the other designated beneficiary, to act as an agent
9 and to make, revoke, or object to anatomical gifts pursuant to the “Uniform Anatomical Gift
10 Act”, Chapter 83 of Title 10, Guam Code Annotated;

11 (9) The right to inherit real or personal property from the other designated
12 beneficiary through intestate succession;

13 (10) The right to have standing to receive benefits pursuant to the “Worker’s
14 Compensation Law” for Guam, made on behalf of the other designated beneficiary;

15 (11) The right to have standing to sue for wrongful death on behalf of the other
16 designated beneficiary; and

17 (12) The right to direct the disposition of the other designated beneficiary’s last
18 remains;

19 (D) This Chapter shall not be construed to create any rights, protections, or
20 responsibilities for designated beneficiaries that are not specifically enumerated in the designated
21 beneficiary agreement as authorized in this Chapter.

22 (E) Nothing in this Chapter shall be construed to create evidence of a party’s intent to
23 form a common law marriage.

24 (F) Execution of a designated beneficiary agreement shall in no way impede the ability of
25 individuals to make specific determinations as to any or all of the matters specified in this Chapter
26 by acting through superseding legal documents.

27 (G) In the event that a superseding legal document is found to be invalid or
28 unenforceable, the designated beneficiary agreement shall control, despite the attempt to supersede
29 its provisions.

30 **§ 1604. Statutory form of a designated beneficiary agreement. (A)** The following
31 statutory form shall be the standard form for a designated beneficiary agreement:

1 **DESIGNATED BENEFICIARY AGREEMENT**

2 We, _____, (insert full name and address) referred to as Party A, and
3 _____, (insert full name and address) referred to as Party B, hereby
4 designate each other as the other's designated beneficiary with the following rights and protections,
5 granted or withheld, as indicated by our initials:

6 TO GRANT ONE OR MORE OF THE RIGHTS OR
7 PROTECTIONS SPECIFIED IN THIS FORM, INITIAL THE LINE
8 TO THE LEFT OF EACH RIGHT OR PROTECTION YOU ARE
9 GRANTING. TO WITHHOLD A RIGHT OR PROTECTION,
10 INITIAL THE LINE TO THE RIGHT OF EACH RIGHT OR
11 PROTECTION YOU ARE WITHHOLDING.

12 TO GRANT A RIGHT
13 OR PROTECTION

TO WITHHOLD A RIGHT
OR PROTECTION

14 INITIAL

INITIAL

15 Party A

Party B

Party A

Party B

16 _____ _____ The right to acquire, hold title to, own jointly, or _____ _____

17 transfer inter vivos or at death real or personal

18 property as a joint tenant with me with right of

19 survivorship or as a tenant in common with me;

20 _____ _____ The right to be designated by me as a beneficiary, _____ _____

21 payee, or owner as a trustee named in an inter

22 vivos or testamentary trust for the purposes of

23 a nonprobate transfer on death;

24 _____ _____ The right to be designated by me as a bene- _____ _____

25 ficiary and recognized as a dependent in an

26 Insurance policy for life insurance;

27 _____ _____ The right to be designated by me as a benefi- _____ _____

28 ciary and recognized as a dependent in a

29 health insurance policy if my employer elects

30 to provide health insurance coverage for design-

31 nated beneficiaries;

1 _____ The right to be designated by me as a benefi- _____
2 ciary in a government of Guam retirement plan pursuant to §8104, Title 4,
3 Guam Code Annotated, or as a beneficiary in a private pension plan;
4 _____ The right to petition for and have priority for _____
5 appointment as a conservator, guardian, or
6 personal representative for me pursuant to
7 Chapter 17, Division 3, Title 15, Guam Code
8 Annotated;
9 _____ The right to visit me in a hospital or in a nur- _____
10 sing home;
11 _____ The right to act as a proxy decision-maker _____
12 or surrogate decision-maker to make medi-
13 cal care decisions for me pursuant to Chapter
14 91, Title 10, Guam Code Annotated;
15 _____ The right to notice of the withholding or _____
16 withdrawal of life-sustaining procedures
17 for me pursuant to Chapter 91, Title 10, Guam
18 Code Annotated;
19 _____ The right to challenge the validity of a decl- _____
20 aration as to medical or surgical treatment
21 of me;
22 _____ The right to act as my agent to make, revoke, _____
23 or object to anatomical gifts involving my
24 person pursuant to §83102(b) of Chapter 83,
25 Title 10, Guam Code Annotated;
26 _____ The right to inherit real or personal property _____
27 From me through intestate succession;
28 _____ The right to have standing to receive benefits _____
29 in the event of my injury or death on the job
30 pursuant to §9103(u), Title 22, Guam Code
31 Annotated;

1 _____ The right to have standing to sue for wrongful _____
2 death in the event of my death pursuant to _____
3 §161.10(i), Title 8, Guam Code Annotated;
4 and _____
5 _____ The right to direct the disposition of my last _____
6 Remains pursuant to §4502 of Chapter 4(A) _____
7 Title 10, Guam Code Annotated.

8 THIS DESIGNATED BENEFICIARY AGREEMENT IS EFFECTIVE UPON FILING WITH THE
9 CLERK'S OFFICE , SUPERIOR COURT OF GUAM, IN WHICH ONE OF THE DESIGNATED
10 BENEFICIARIES RESIDES. THIS DESIGNATED BENEFICIARY AGREEMENT WILL
11 CONTINUE IN EFFECT UNTIL ONE OF THE DESIGNATED BENEFICIARIES REVOKES
12 THIS AGREEMENT BY FILING A REVOCATION OF DESIGNATED BENEFICIARY FORM
13 WITH THE CLERK'S OFFICE, SUPERIOR COURT OF GUAM IN WHICH THIS
14 AGREEMENT WAS FILED OR UNTIL THIS AGREEMENT IS SUPERSEDED IN PART OR IN
15 WHOLE BY A SUPERSEDING LEGAL DOCUMENT.

16 _____
17 Signature of designated beneficiary Signature of designated beneficiary

18 TERRITORY OF GUAM

19 This document was subscribed, sworn to, and acknowledged before me on _____ date

20 By
21 _____

22 My commission expires _____

23 [SEAL]

24 _____
25 NOTARY PUBLIC

26 **(B)** A designated beneficiary agreement shall be presumed to extend all of the rights and
27 protections listed in the statutory form unless the parties to the agreement explicitly exclude a right
28 or protection.

29 **(C)** A party to a designated beneficiary agreement may limit the scope of a designated
30 beneficiary agreement by the terms of the agreement or by executing a superseding legal document
31 that controls and supersedes part or all of the designated beneficiary agreement.

1 **§ 1605. Filing of the form and fees. (A)** A signed and acknowledged designated beneficiary
2 agreement shall be filed with the Clerk's Office, Superior Court of Guam. The designated
3 beneficiary agreement shall be effective as of the date and time of the filing of the designated
4 beneficiary agreement with the Clerk's Office, Superior Court of Guam. A fee of Fifty Dollars
5 (\$50.00) shall be assessed for the recording of each designated beneficiary agreement and issuing
6 two (2) certified copies of the designated beneficiary agreement that indicate the date and time of
7 filing with the Clerk's Office, Superior Court of Guam. All fees collected by the Clerk's Office shall
8 be deposited in the Judicial Building Fund.

9 **(B)** The Clerk's Office, Superior Court of Guam shall have the following duties:

10 **(1)** To make available, upon request, copies of the statutory forms as prescribed in
11 §1604(A) and §1609(d).;

12 **(2)** To indicate on the designated beneficiary agreement or revocation of a designated
13 beneficiary agreement the date and time that it is filed with the Clerk's Office,
14 Superior Court of Guam;

15 **(3)** To issue two (2) certified copies of the filed designated beneficiary agreement
16 that indicate the date and time of the filing;

17 **(4)** To issue replacement certified copies of a designated beneficiary agreement or a
18 revocation of a designated beneficiary agreement upon replacement of a
19 replacement fee.

20 **(5)** Designated beneficiary agreements and revocations of designated beneficiary
21 agreements shall be considered open records.

22 **§ 1606. Effect on other legal documents.** Execution of a designated beneficiary agreement
23 shall not constitute evidence of an intent to revoke a prior will or codicil nor shall it affect any
24 transfer or request contained in any other legal document.

25 **§ 1607. Affirmation of validity of designated beneficiary agreement.** A person exercising
26 rights or protections pursuant to a designated beneficiary agreement shall affirm the validity of a
27 designated beneficiary agreement and disclose any knowledge of any superseding legal documents.

28 **§ 1608. Reliance-immunity.** A third party who acts in good faith reliance on the affirmation
29 of the existence of a valid designated beneficiary agreement shall not be subject to civil liability or
30 administrative discipline for such reliance.

§ 1609. Revocation of a designated beneficiary agreement. (A) A designated beneficiary agreement that has been filed with the Clerk's Office, Superior Court of Guam may be unilaterally revoked by either party to the agreement by filing a revocation with the Clerk's Office, Superior Court of Guam. A revocation shall be dated, signed, and acknowledged. The revocation shall be effective on the date and time of the filing of the revocation. The Clerk's Office shall issue a certified copy to the party filing and shall mail a certified copy of the revocation to the last-known address of the other party to the designated beneficiary agreement.

(B) The Clerk's Office shall assess a Fifty Dollar (\$50.00) fee for filing a revocation agreement and issuing two (2) certified copies of the revocation agreement. The fees collected by the Clerk's Office shall be deposited in the Judicial Building Fund.

(C) A designated beneficiary agreement shall be deemed revoked upon the marriage of either party.

(D) The following statutory form shall be the standard form for a revocation of a designated beneficiary agreement:

REVOCATION

OF DESIGNATED BENEFICIARY AGREEMENT

I _____ (insert your full name), reside at _____ (insert your current address) and I entered into a designated beneficiary agreement on ____ (insert the date) with the following person _____ (insert the other person's name) whose last known address is _____ in which I designated such person as a designated beneficiary. This designated beneficiary agreement was filed on _____ (insert the date). I hereby revoke that designated beneficiary agreement , effective on the date and time of the filing of this revocation with the Clerk's Office, Superior Court of Guam.

_____	_____
Name	Date

Territory of Guam

This document was subscribed, sworn to, and acknowledged before me on the _____ date

By _____

My commission expires _____

[SEAL]

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Notary public

§ 1610. Death of a designated beneficiary – effect on designated beneficiary agreement.

(A) A designated beneficiary agreement is terminated upon the death of either of the parties to the designated beneficiary agreement; however, a right or power which a designated beneficiary agreement conferred upon a designated beneficiary survives the death of the other designated beneficiary.

(B) A party to a designated beneficiary agreement who survives a designated beneficiary may enter into a designated beneficiary agreement with a different person so long as it meets the requirements of this Chapter.”

Section 3. Adding a new sub-item (w) to §8104 of Title 4, Guam Code Annotated. A new sub-item (w) is added to §8104 of Title 4, Guam Code Annotated to read:

“(w) *Designate Beneficiary Agreement* means an agreement that designates a beneficiary to receive the same rights accorded to a surviving spouse as applicable to the receipt of a survivor annuity and benefits.”

Section 4. A new sub-item (5) is added to §1701(a) of Chapter 17, Title 15, Guam Code Annotated. A new sub-item (5) is added to §1701(a) of Chapter 17, Title 15, Guam Code Annotated to read:

“(5) A person who is designated by the decedent in a designated beneficiary agreement pursuant to Chapter 16 of Division 1, Title 19, Guam Code Annotated.”

Section 5. Amendment to §91102(g) of Chapter 91, Title 10, Guam Code Annotated. §91102(g) of Chapter 91, Title 10, Guam Code Annotated is amended to read:

“(g) *Person* means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, designated beneficiary agreement, government, governmental subdivision or agency, or any other legal or commercial entity.

Section 6. §83102(b) of Title 10, Guam Code Annotated is amended to read:

“(b) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by the member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in §83103:

- 1 (1) The spouse;
- 2 (2) A person who is designated by the decedent as a designated beneficiary in a
- 3 designated beneficiary agreement pursuant to Chapter 16 of Division 1, Title 19,
- 4 Guam Code Annotated, with the right to be an agent to make, revoke, or object to
- 5 anatomical gifts of the decedent;
- 6 ~~(2)~~(3) An adult son or daughter;
- 7 ~~(3)~~(4) Either parent;
- 8 ~~(4)~~(5) An adult brother or sister;
- 9 ~~(5)~~(6) A guardian of the person of the decedent at the time of his death; and
- 10 ~~(6)~~(7) Any other person authorized or under obligation to dispose of the body.”

11 **Section 7. A new sub-item (u) is added to §9103 of Title 22, Guam Code Annotated**

12 **to read:**

13 “(u) A person who is designated in a designated beneficiary agreement to receive

14 worker’s compensation benefits in accordance with Chapter 16 of Division 1, Title 19, Guam

15 Code Annotated, unless it is shown that the designated beneficiary was voluntarily separated

16 and living apart from the other designated beneficiary at the time of the injury or death, or

17 was not dependent in whole or in part on the deceased for support.”

18 **Section 8. A new item (i) is added to §161.10 of Title 8, Guam Code Annotated to**

19 **read:**

20 “(i) If there is no spouse, by the designated beneficiary, if there is one designated

21 pursuant to Chapter 16 of Division 1, Title 19, Guam Code Annotated, with the right to bring

22 an action pursuant to this Section, and if there is no designated beneficiary, by the heir or

23 heirs of the deceased.”

24 **Section 9. Amendment to §4502 of Chapter 4A, Title 10, Guam Code Annotated.**

25 §4502 of Chapter 4A, Title 10, Guam Code Annotated is amended to read:

26 “§ 4502. **Right and Duty to Dispose of Dead Human Bodies.** The right to control the

27 disposition of a dead human body, and the duty of burial or other disposition, and the liability for the

28 reasonable cost thereof, devolves upon the following in the order named:

- 29 (a) The surviving spouse of the decedent,

1 (b) A person who is designated by the decedent as a designated beneficiary in a designated
2 beneficiary agreement pursuant to Chapter 16 of Division 1, Title 19, Guam Code Annotated,
3 as having the right to direct the disposition of the decedent's last remains;

4 ~~(b)~~ (c) The surviving child or children of the decedent,

5 ~~(e)~~ (d) The surviving parent or parents of the decedent,

6 ~~(d)~~ (e) The person or persons, respectively, in the next degrees of kindred, in the order named
7 by laws of Guam, as entitled to succeed to the estate of the decedent; provided, that the
8 liability for the cost of burial or other disposition shall be primarily upon the estate of the
9 decedent.

10 **Section 10. Compiler of Laws authorized to insert language in the Guam Code**

11 **Annotated.** In order to extend the rights and protections listed in §1603(C) of Chapter 16, Division 1
12 of Title 19, Guam Code Annotated, to parties who desire to enter into a designated beneficiary
13 agreement, all pertinent sections of the Guam Code Annotated that contain language addressing these
14 rights and protections not specifically listed within the Act, the Compiler of Laws is authorized to
15 insert in the appropriate code section the following language: “A *person* who is designated in a
16 *designated beneficiary agreement* to specific rights and protections listed in the agreement, shall be
17 considered an *eligible person* by definition and shall be accorded the same right or protection sought
18 as all other eligible persons.” The Compiler shall provide a listing of the code sections so amended to
19 *I Maga’lahen Guahan* and to *I Mina Trenta na Liheslaturan Guahan*.