

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*”.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

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

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

6 “Chapter 16.

7 Designated Beneficiary Agreements.

8 § 1601. Definitions.

9 § 1602. Requirements for a valid designated beneficiary agreement.

10 § 1603. Effects and applicability of a designated beneficiary agreement.

11 § 1604. Statutory form of a designated beneficiary agreement.

12 § 1605. Filing of the form and fees.

13 § 1606. Effect on other legal documents.

14 § 1607. Affirmation of validity of designated beneficiary agreement.

15 § 1608. Reliance-immunity.

16 § 1609. Revocation of a designated beneficiary agreement.

17 § 1610. Death of a designated beneficiary – effect on designated beneficiary agreement.

18 § 1601. Definitions. As used in this Chapter, unless the context otherwise requires:

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

21 “*Designated beneficiary agreement*” means an agreement that is entered into  
22 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 BENIFICIARIES 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.



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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*.