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CH. 21 FORCIBLE ENTRY AND DETAINER

CHAPTER 21
FORCIBLE ENTRY AND DETAINER

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§ 21101. Forcible Entry Defined.

Every person is guilty of a forcible entry who either:

(a) By breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstances of terror enters upon or into any real property; or,

(b) Who, after entering peaceably upon real property, turns out by force, threats, or menacing conduct, the party in possession.

SOURCE: CCP §1159.

§ 21102. Forcible Detainer Defined.

Every person is guilty of a forcible detainer who either:

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(a) By force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or

(b) Who, in the nighttime, or during the absence of the occupants of any land, unlawfully enters upon real property, and who, after demand made for the surrender thereof, for the period of five (5) days, refuses to surrender the same to such former occupant.

The occupant of real property, within the meaning of this subdivision, is one who, within five (5) days preceding such unlawful entry, was in the peaceable and undisturbed possession of such lands.

SOURCE: CCP §1160.

§ 21103. Unlawful Detainer Defined.

A tenant of real property, for a term less than life, is guilty of unlawful detainer:

(a) When he continues in possession, in person or by subtenant, of the property, or any part thereof, after the expiration of the term for which it is let to him, without the permission of his landlord, or the successor in estate of his landlord, if any there be; including a case where the person to be removed became the occupant of the premises as a servant or employee, and the relation of master and servant or employer and employee has been lawfully terminated, or the time fixed for such occupancy by the agreement between the parties has expired; but nothing in this subdivision contained shall be construed as preventing the removal of such occupant in any other lawful manner; but in case of a tenancy at will, it must first be terminated by notice, as prescribed in this Code.

(b) When he continues in possession, in person or by subtenant, without the permission of his landlord, or the successor in estate of his landlord, if any there be, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and five (5) days' notice in writing, requiring its payment, stating the amount which is due, or possession of the property, shall have been served upon him, and if there is a subtenant in actual occupation of the premises, also upon such subtenant.

Such notice may be served at any time within one (1) year after the rent becomes due. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than sixty (60) days after the expiration of the term, without any demand of possession or notice

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to quit by the landlord, or the successor in estate of his landlord, if any there be, he shall be deemed to be holding by permission of the landlord, or the successor in estate of his landlord, if any there be, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during said year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of a tenant to hold for another year.

(c) When he continues in possession, in person or by subtenant, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet than the one for the payment of rent, and three (3) days' notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him, and if there is a subtenant in actual occupation of the premises, also upon such subtenant. Within three (3) days after the service of the notice, the tenant, or any subtenant, in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture: *provided*, if the conditions and covenants of the lease violated by the lessee cannot afterward be performed, then no notice, as last prescribed herein, need be given to said lessee or his subtenant, demanding the performance of the violated conditions or covenants of the lease.

A tenant may take proceedings, similar to those prescribed in this Chapter, to obtain possession of the premises let to a subtenant in case of his unlawful detention of the premises underlet to him.

(d) Any tenant or subtenant assigning or subletting or committing waste upon the demised premises, contrary to the conditions or covenants of his lease, thereby terminates the lease, and the landlord, or his successor in estate, shall upon service of five (5) days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of such demised premises under the provision of this Chapter.

SOURCE: CCP §1161.

§ 21104. When Person Holding Over Must Vacate Property.

In either of the following cases, a person who holds over and continues in the possession of real property, after a three (3) day written notice to quit the same shall have been served upon him, or if there is a subtenant in

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actual occupation of the premises, also upon such subtenant as prescribed in § 21105 of this Chapter, may be removed therefrom as prescribed in this Chapter.

(a) Where the property has been duly sold by virtue of an execution against him, or a person under whom he claims, and the title under the sale has been duly perfected.

(b) Where the property has been duly sold upon the foreclosure, by proceedings taken as prescribed in the Code of Civil Procedure, of a mortgage, and the title under the foreclosure has been duly perfected.

SOURCE: CCP §1161a.

§ 21105. Service of Notice.

The notices required by the preceding section may be served,

(a) By delivering a copy to the tenant personally; or,

(b) If he be absent from his place of residence, and from his usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant at his place of residence; or,

(c) If such a place of residence and business cannot be ascertained, or a person of suitable age or discretion there cannot be found, then by affixing a copy in a conspicuous place on the property, and also delivering a copy to a person there residing, if such person can be found; and also sending a copy through the mail addressed to the tenant at the place where the property is situated. Service upon a subtenant may be made in the same manner.

SOURCE: CCP 1162.

§ 21106. In Unlawful Detainer, Tenant Alone May be Made Defendant.

No person, other than the tenant of the premises and subtenant, if there be one, in actual occupation of the premises when the complaint is filed need be made party defendant in the proceeding, nor shall any proceeding abate, nor the plaintiff be nonsuited for the nonjoinder of any person who might have been made party defendant, but when it appears that any of the parties served with process, or appearing in the proceeding, is guilty of the offense charged, judgment must be rendered against him. In case a defendant has become a subtenant of the premises in controversy, after the service of the notice provided for by subsection (b) of § 21103 of this Chapter upon the tenant of the premises, the fact that such notice was not

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served on such subtenant shall constitute no defense to the action. In case a married woman be a tenant, or a subtenant, her coverture shall constitute no defense; but in case her husband be not joined, or unless she be doing business as a sole trader, an execution issued upon a personal judgment against her can only be enforced against property on the premises at the commencement of the action. All persons who enter the premises under the tenant, after the commencement of the suit, shall be bound by the judgment, the same as if he or they had been made party to the action.

SOURCE: CCP §1164.

§ 21107. Parties Generally.

Except as provided in the preceding section, the provisions of 7 GCA Part 2, beginning with Chapter 10, relating to parties to civil actions, are applicable to this proceeding.

SOURCE: CCP §1165.

§ 21108. Complaint Must be Verified.

The plaintiff, in his complaint, which shall be verified, must set forth the facts on which he seeks to recover, describe the premises with reasonable certainty, and may set forth therein any circumstances of fraud, force, or violence which may have accompanied the alleged forcible entry, or forcible or unlawful detainer, and claim damages therefor. In case the unlawful detainer charged is after default in the payment of rent, the complaint must state the amount of such rent. Upon filing the complaint, a summons must be issued thereon.

SOURCE: CCP §1166.

§ 21109. Summons, Form and Service of.

The summons must require the defendant to appear and answer within five (5) days after the service of the summons upon him, and must notify him that if he fails to so appear and answer, the plaintiff will apply to the court for the relief demanded in the complaint. In all other respects, the summons, or any alias summons in such proceedings, must be issued, served, and returned in the same manner as summons in a civil action.

SOURCE: CCP §1167.

§ 21110. Arrest.

If the complaint presented establishes, to the satisfaction of the judge or justice, fraud, force, or violence in the entry or detainer, and that the

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possession held is unlawful, he may make an order for the arrest of the defendant.

SOURCE: CCP §1168.

§ 21111. Judgment by Default.

If, at the time appointed, the defendant does not appear and defend, the court must enter his default and must not render judgment in favor of the plaintiff, as prayed for in the complaint, without first hearing the proofs of the plaintiff.

SOURCE: CCP §1169.

§ 21112. Defendant May Appear, etc.

On or before the day fixed for his appearance, the defendant may appear and answer or demur.

SOURCE: CCP §1170.

§ 21113. Showing Required of Plaintiff in Forcible Entry or Detainer.

Of Defendant. On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry, or was entitled to the possession at the time of the forcible detainer. The defendant may show in his defense that he or his ancestors, or those whose interest in such premises he claims, have been in the quiet possession thereof for the space of one (1) whole year together next before the commencement of the proceedings, and that his interest therein is not then ended or determined; and such showing is a bar to the proceedings.

SOURCE: CCP §1172.

§ 21114. Complaint in Forcible Entry May be Amended.

When, upon the trial of any proceeding under this Chapter, it appears from the evidence that the defendant has been guilty of either a forcible entry or a forcible or unlawful detainer, and other than the offense charged in the complaint, the judge must order that such complaint be forthwith amended to conform to such proofs; such amendment must be made without any imposition of terms. No continuance shall be permitted upon account of such amendment unless the defendant, by affidavit filed, shows to the satisfaction of the court good cause therefor.

SOURCE: CCP §1173.

§ 21115. Judgment, What it Shall Declare.

If, upon the trial, the findings of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceedings be for an unlawful detainer after neglect, or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement, if the notice required by §1161 of this Chapter states the election of the landlord to declare the forfeiture thereof, but if such notice does not so state such election, the lease or agreement shall not be forfeited.

The court shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent. Judgment against the defendant guilty of the forcible entry, or forcible or unlawful detainer may be entered in the discretion of the court either for the amount of the damages and rent found due, or for three (3) times the amount so found.

SOURCE: CCP §1174.

NOTE: No CCP §1175 existed.

§ 21116. Effect of an Appeal Upon the Judgment.

An appeal taken by the defendant shall not stay proceedings upon the judgment unless the judge or justice before whom the same was rendered so directs.

SOURCE: CCP §1176.

§ 21117. Rules of Practice.

Except as otherwise provided in this Chapter, the provisions of Part 2 of Title 7, Guam Code Annotated are applicable to and constitute the rules of practice in the proceedings mentioned in this Chapter.

SOURCE: CCP §1177.

§ 21118. Appeals, How Taken, Etc.

The provisions of 7 GCA Part 2 commencing with Chapter 10, relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this Chapter, apply to the proceedings mentioned in this Chapter.

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SOURCE: CCP §1178.

§ 21119. Forfeiture, Relief Against.

The court may relieve a tenant against a forfeiture of a lease, and restore him to his former estate, in case of hardship, where application for such relief is made within thirty (30) days after the forfeiture is declared by the judgment of the court, as provided in § 21115. The application may be made by a tenant or subtenant, or a mortgagee of the term, or any person interested in the continuance of the term. It must be made upon petition, setting forth the facts upon which the relief is sought, and be verified by the applicant. Notice of the application, with a copy of the petition, must be served on the plaintiff in the judgment, who may appear and contest the application. In no case shall the application be granted except on condition that full payment of rent due, or full performance of conditions or covenants stipulated, so far as the same is practicable, be made.

SOURCE: CCP §1179.

§ 21120. Priority of Proceedings for Recovery of Possession.

In all proceedings brought to recover the possession of real property pursuant to the provisions of this Chapter, all courts, wherein such actions are or may hereafter be pending, shall give such actions precedence over all other civil actions therein, except actions to which special precedence is given by law, in the matter of the setting the same for hearing or trial, and in hearing the same, to the end that all such actions shall be quickly heard and determined.

SOURCE: CCP §1179a.
