

1 12. The Estate of the Decedent ADGB received inherited properties from Carmen’s Estate
2 through two distributions in *In re Estate of Carmen DLG Borja*, CNMI Superior Court Civil
3 Action No. 18-0377 (“Estate of Carmen”). These properties were:

- 4 a. \$42,955.41 in cash;¹
- 5 b. 6,755 shares of common stock in Carmen Safeway Enterprises, Inc.;
- 6 c. 800 shares of common stock in Bank of Guam;
- 7 d. 194.78 shares of common stock in Saipan Stevedore Co., Inc.;
- 8 e. 24.7034 shares of common stock in Saipan Shipping Co., Inc.;
- 9 f. 296 shares of common stock in United Micronesia Development Association, Inc.;
- 10 g. 2.2 shares of preferred stock in Mobil Oil Micronesia, Inc.;
- 11 h. 27.499 shares of common stock in Saipan Bus & Transportation Co., Inc.;
- 12 i. 28.2 shares of common stock in Northern Marianas Development Co.
- 13 j. A one-fifth share of the \$187,456.33 account receivable owed by Carmen Safeway
14 Enterprises, Inc. originally to Carmen DLG. Borja;
- 15 k. One-fifth undivided interest in fee simple in Tract No. 21661-1, containing an area of
16 4,069 square meters, more or less, situated in Dandan, Saipan (subject to an existing
17 leasehold);
- 18 l. One-fifth undivided interest in fee simple in Tract No. 21661-2, containing an area of
19 1,153 square meters, more or less, situated in Dandan, Saipan;
- 20 m. One-fifth undivided interest in fee simple in E.A. 883-1, containing an area of 11,422
21 square meters, more or less, situated in Dandan, Saipan;

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24 ¹ The \$42,955.41 total is the sum of three distributions – the June 2020 distribution of \$22,375.41, the January 2021
distribution of \$13,580.00, and the September 2021 distribution of \$7,000.00.

- 1 n. One-fifth undivided interest in fee simple in E.A. 883-R1, containing an area of 15,229
2 square meters, more or less, situated in Dandan, Saipan;
- 3 o. One-fifth undivided interest in fee simple in Lot No. 002 H 41, containing an area of 627
4 square meters, more or less, situated in Susupe, Saipan;
- 5 p. One-fifth undivided interest in fee simple in E.A. 150, containing an area of 30,307 square
6 meters, more or less, situated in As Teo, Saipan;
- 7 q. One-fifth undivided interest in fee simple in Lot No. 019 D 46, containing an area of 720
8 square meters, more or less, situated in Navy Hill, Saipan;
- 9 r. One-fifth undivided interest in fee simple in Lot No. 019 D 47, containing an area of 692
10 square meters, more or less, situated in Navy Hill, Saipan;
- 11 s. One-fifth undivided interest in fee simple in Lot No. 042 D 02 New-1, containing an area
12 of 10,000 square meters, more or less, situated in Fanaganam, Saipan (subject to an
13 existing lease);
- 14 t. One-fifth undivided interest in fee simple in Lot No. 042 D 02 New-R1, containing an
15 area of 6,292 square meters, more or less, situated in Fanaganam, Saipan;
- 16 u. One-fifth undivided interest in fee simple in Lot No. 042 D 02 New-2, containing an area
17 of 2,833 square meters, more or less, situated in Fanaganam, Saipan;
- 18 v. One-fifth undivided interest in fee simple in part of Lot 1601 (TD 507), containing an area
19 of 16,916 square meters, more or less, situated in Gualo Rai, Saipan;
- 20 w. One-fifth undivided interest in fee simple in Tract No. 22867, containing an area of 26,865
21 square meters, more or less, situated in Gualo Rai, Saipan;
- 22 x. One-fifth undivided interest in fee simple in Lot No. 032 L 03, containing an area of
23 11,750 square meters, more or less, situated in Obyan, Saipan (subject to an existing
24 lease);

- 1 y. Fee simple in E.A. 868-2-2-3, as shown on Parcel Survey Plat DLS Check No. 2035/01,
2 Commonwealth Recorder's File No. 01-720, situated in Gualo Rai, Saipan; and
3 z. One-fifth undivided interest in fee simple in Lot No. 127 T 01, containing an area of
4 50,636 square meters, more or less, situated in Marpo, Tinian.

5 13. In addition to the above inherited assets from the Estate of Carmen, the Decedent ADGB,
6 prior to his death, had acquired the following parcel of real property from his father's side of
7 the family: 5. Lot 218-11-4 (proposed lot number), containing an area of 4,650.23 square
8 meters, as delineated in a proposed unrecorded subdivision drawing of Lot 218- 11 prepared
9 by Land Tech Surveying Co.

10 14. No one has filed a creditor's claim in this case.

11 15. A probate case was also opened in California for the Decedent ADGB's estate.

12 16. At the evidentiary hearing, Dinah Borja testified that the Administrator never provided a
13 breakdown as to what the \$6,258.50 disbursement for attorneys' fees and costs requested by
14 the Administrator consisted of. This testimony was uncontroverted by the Administrator.
15 Even at the evidentiary hearing, the Administrator presented no evidence concerning what
16 legal work the amount of \$6,258.50 corresponded to or how it was calculated.

17 17. Finally, the Decedent ADGB's estate expects to receive additional cash, but this additional
18 cash was not part of the distribution requested in the Administrator's Petition for Partial
19 Distribution.

20 **III. LEGAL STANDARD**

21 **A. Choice of Law**

22 The Court looks to Commonwealth law to resolve choice of law issues. Restatement (Second)
23 of Conflict of Laws § 6(1) ("A court, subject to constitutional restrictions, will follow a statutory
24 directive of its own state on choice of law.").

1 There are two Commonwealth written laws that are potentially relevant to the issue of which
2 jurisdiction's laws controls in the probate of real and personal property. These two statutes are 7 CMC
3 § 3401 and 8 CMC § 2201(b).

4 7 CMC § 3401 states that "in all proceedings, the rules of the common law, as expressed in
5 the restatements of the law approved by the American Law Institute and [...] shall be the rules of
6 decision in the courts of the Commonwealth, in the absence of written law or local customary law to
7 the contrary." 7 CMC § 3401.

8 The relevant rules of the restatements are Restatement (Second) of Conflict of Laws §§ 236,
9 260. Pursuant to Restatement (Second) of Conflict of Laws § 236, the devolution of real property is
10 governed by the laws of the jurisdiction in which the real property is located. Restatement (Second)
11 of Conflict of Laws § 236(1) ("The devolution of interests in land upon the death of the owner
12 intestate is determined by the law that would be applied by the courts of the situs.")² Pursuant to
13 Restatement (Second) of Conflict of Laws § 260, "the devolution of interests in movables upon
14 intestacy is determined by the law that would be applied by the courts of the state where the decedent
15 was domiciled at the time of his death." Restatement (Second) of Conflict of Laws § 260.

16 However, before the Court can apply the above Restatement rules to this matter, the Court
17 must first find that there are no contrary written laws or customary laws to the contrary. This is
18 because "7 CMC § 3401 makes Restatement provisions applicable only when, and to the extent,
19 'written law' or 'local customary law' is silent." *Tan v. Younis Art Studio, Inc.*, 2007 MP 11 ¶ 14; *see*
20 *also* 7 CMC § 3401 (stating that the Restatement rules apply "in the absence of written law or local
21 customary law to the contrary"). "Written law includes the NMI Constitution and NMI *statutes*, case
22 law, court rules, legislative rules and administrative rules, as well as the Covenant and provisions of
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24 ² "The 'situs' of a tangible thing is the place where the thing is." Restatement (Second) of Conflict of Laws § Scope (2nd 1988).

1 the U.S. Constitution, laws[,] and treaties applicable under the Covenant.” *In re Estate of Pangelinan*,
2 2018 MP 10 ¶ 25 (emphasis added and internal citation omitted). Thus, the Court now turns to 8 CMC
3 § 2201(b).

4 Pursuant to 8 CMC § 2201(b), the Northern Mariana Islands Probate Law applies to “the
5 property of nonresidents located in the Commonwealth of the Northern Mariana Islands, or property
6 coming into the control of a fiduciary who is subject to the laws of the Commonwealth of the Northern
7 Mariana Islands.” The word “property” “includes both real and personal property or any interest
8 therein and means anything that may be the subject of ownership.” 8 CMC § 2107(x). Thus, because
9 8 CMC § 2201(b) states that Commonwealth law applies to real and personal property located in the
10 Commonwealth, even if the decedent resided outside the Commonwealth, 8 CMC § 2201(b)
11 contradicts the rules of the Restatements. Because 8 CMC § 2201(b) is a “written law” of the
12 Commonwealth, it triumphs over the contrary Restatement rules. 7 CMC § 3401.

13 Therefore, pursuant to the written law of the Commonwealth, the Northern Mariana Islands
14 Probate Law applies to both decedent’s real *and* personal property in the Commonwealth.

15 **B. Territorial Application**

16 Furthermore, 8 CMC § 2201(b)’s plain language that the Northern Mariana Islands Probate
17 Law applies to property “located in the Commonwealth” is a limitation on the scope of the Court’s
18 adjudication of probate matters. *See In re Estate of Marcos*, 88 Haw. 148, 154 (1998) (stating that the
19 probate code’s phrase that it applies to “the property of nonresidents located in this State” limits
20 “jurisdiction of the circuit court in probate”). Thus, the Court is limited to dispersing the Estate’s
21 property that is located in the Commonwealth.

22 **C. Corporation Domiciliary**

23 Commonwealth courts apply Commonwealth law to determine a corporation’s domiciliary.
24 Restatement (Second) of Conflict of Laws § 13 (“In applying its rules of Conflict of Laws, the forum

1 determines [domicile] according to its own standards.”). There is no written law on point to determine
2 where a corporation incorporated in the Commonwealth is domiciled. Therefore, the Court will turn
3 to the Restatements. 7 CMC § 3401. Pursuant to the Restatements, a corporation is deemed domiciled
4 in the state in which it is incorporated. Restatement (Second) of Conflict of Laws § 11 cmt. 1 (“When
5 a [domicile] is assigned to a corporation, it is always in the state of incorporation.”).

6 **D. Probate Law**

7 The Northern Mariana Islands Probate Law applies to the probates proceedings of those who
8 died after February 15, 1984. 8 CMC § 2102.

9 Pursuant to the Northern Mariana Islands Probate Law, when a person dies intestate, the
10 decedent’s ancestral property passes to the “surviving spouse [who] obtains a life estate, with the
11 issue obtaining a vested remainder in fee simple by representation.” 8 CMC § 2902(a). “[T]he
12 surviving spouse [also] obtains one-half of all properties, other than those listed in 8 CMC § 2902
13 [and] the issue of the decedent obtain[s] one-half of all properties, other than those listed in 8 CMC
14 § 2902, by representation.” 8 CMC § 2903(a)-(b). The word “property” “includes both real and
15 personal property or any interest therein and means anything that may be the subject of ownership.”
16 8 CMC § 2107(x).

17 **E. Article XII of the NMI Constitution**

18 “The acquisition of permanent and long-term interests in real property within the
19 Commonwealth shall be restricted to persons of Northern Marianas descent.” NMI CONST. art. XII,
20 § 1 [Article XII]. Thus, Article XII is violated if: 1) a person not of Northern Marianas descent, 2)
21 acquires, 3) a long-term interest, 4) in real property, 5) in the Commonwealth. “Any transaction made
22 in violation of [Article XII] shall be void ab initio.” NMI CONST. art. XII, § 6. “This means that if a
23 person sells land to a person who is not of Northern Marianas descent, that transaction never takes
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1 effect and never has any consequences with respect to the title of the land.” Analysis of the
2 Constitution of the Commonwealth of the Northern Mariana Islands 178 (1976).

3 “A person of Northern Marianas descent is a person who is a citizen or national of the United
4 States and who has at least some degree of Northern Marianas Chamorro or Northern Marianas
5 Carolinian blood or a combination thereof.” NMI Const. art. XII, § 4. “For purposes of determining
6 Northern Marianas descent, a person shall be considered to be a full-blooded Northern Marianas
7 Chamorro or Northern Marianas Carolinian if that person was born or domiciled in the Northern
8 Mariana Islands by 1950 and was a citizen of the Trust Territory of the Pacific Islands before the
9 termination of the Trusteeship with respect to the Commonwealth.” *Id.*

10 “The term acquisition used in Section 1 includes acquisition by sale, lease, gift, inheritance
11 or other means.” NMI CONST. art. XII, § 2. In the original constitution signed by the framers on
12 December 5, 1976 (“1976 Framers”), the term ‘acquisition’ did not include “a transfer to a spouse by
13 inheritance.” NMI CONST. art. XII, § 2 (1976) (“A transfer to a spouse by inheritance is not an
14 acquisition under this section.”). However, at the second constitutional convention in 1985, the
15 framers of the 1985 convention (“1985 Framers”) took out the above language and replaced it with
16 the following sentence: “A transfer to a spouse by inheritance is not an acquisition under this section
17 if the owner dies without issue or with issue not eligible to own land in the Northern Mariana Islands.”
18 NMI CONST. art. XII, § 2; *see also Tudela v. Tudela (In re Estate of Tudela)*, 2009 MP 9 ¶ 19 (stating
19 that “surviving spouses taking through intestacy when there [is] no issue who may own land [are]
20 able to take [the deceased spouse’s land] in fee simple [absolute].”). At least some of the 1985
21 Framers were cognizant that the new language could pose a number of problems. It was noted that:

22 [the new provision] discriminates against a non-Northern Mariana Islands descent
23 spouse who has been married 10, 20, 30, or even forty years, raised a family, helped
24 with the spouse’s career and worked to build up the family assets in favor of a possibly
an opportunist spouse who never had any children and may have been married only a
few years prior to death[....] [T]his provision could actually work to separate children

1 from the mother or father at this time when they are deprived of one parent by death.
2 The spouse could be deprived of a means of support[.]

3 Second Constitutional Convention Journal – 33rd Day, at 685-686.

4 Nonetheless, in spite of above concerns, an attempt to recall the new language for
5 reconsideration was defeated by a vote fourteen (14) to zero on the thirty-fourth (34th) day of the
6 Convention. Second Constitutional Convention Journal – 34th Day, at 757. The new language was
7 ultimately adopted by the voters of the Commonwealth. NMI CONST. art. XII, § 2. The framers of the
8 third constitutional convention in 1995 (“1995 Framers”) attempted to remove the language added
9 by 1985 Framers and allow for non-NMD surviving spouses to take whatever the Commonwealth
10 Legislature permits them to take pursuant to general probate laws. Analysis of the Constitution of the
11 Northern Mariana Islands 74 (1995). However, this attempt was defeated by the voters of the
12 Commonwealth and did not become law.

13 “The term permanent and long-term interests in real property used in Section 1 includes
14 freehold interests and leasehold interests of more than fifty-five years including renewal rights[.]”
15 NMI CONST. art. XII, § 3. According to the common law, the term “‘freehold estates’ are estates in
16 fee simple absolute (defined in § 15), estates in fee simple defeasible (defined in § 16), estates in fee
17 simple conditional (see § 17 and §§ 68-77), estates in fee tail (see § 17 and §§ 78-87) and estates for
18 life (defined in § 18).” Restatement (First) of Property § Scope. Also pursuant to the common law,
19 an estate for years is a non-freehold interest. Restatement (First) of Property § Scope (“There are
20 estates which are non-freeholds. In the United States these are the estate for years (defined in §
21 19)[.]”). However, for the purposes of Article XII, the term “freehold interests” is broader than its
22 common law definition. The term “freehold interests” in the context of Article XII “includes all types
23 of ownership or title granted by all types of deeds, wills, or by intestate.” Analysis of the Constitution
24

1 of the Commonwealth of the Northern Mariana Islands 169 (1976) (emphasis added). Thus, ‘freehold
2 interests’ for the purposes of Article XII includes an estate for years.

3 The purpose of Article XII is to benefit and protect NMDs. Marianas Political Status
4 Commission, Section by Section Analysis of the Covenant to Establish a Commonwealth of the
5 Northern Mariana Islands 116-17 (1975) (stating that the land restriction requirements of the
6 Covenant “expressly recognizes the importance of the ownership of land for the culture and traditions
7 of the people of the Northern Mariana Islands and the desirability of protecting them against
8 exploitation and promoting their economic advancement and self-sufficiency” and cannot be changed
9 without the express consent of the Commonwealth Government and the Government of the United
10 States). “Although the population [of the CNMI] may grow in the future, the available land cannot
11 increase.” Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands 165
12 (1976). “Land is one of the principal sources of social stability.” *Id.* “Land is the basis of family
13 organization in the islands.” *Id.* “Restrictions on land alienation are necessary to preserve the
14 character and strength of the communities that make up the Commonwealth.” *Id.* at 166. Thus, the
15 restrictions of “Article XII should be strictly enforced.” *Manglona v. Kaipat*, 3 NMI 322, 335 (1992);
16 *see also Aldan-Pierce v. Mafnas*, 2 NMI 122, 144 (1991) (“The absence of any language excluding
17 such interests from the restriction in Article XII leads us to conclude that they are within the
18 restriction.”).³

22 ³ The Court is cognizant of the significance of Article XII’s protections in regards to the history of the United States.
23 Article XII ensures that those of Northern Marianas descent will have a “homeland” to call their own. Historically, the
24 United States Government has either not bestowed upon or not respected such protections to other minority groups – such
as Native Hawaiians, Alaska Natives, and American Indians. As a result, these native and indigenous groups have had
the land called “home” for thousands of years either diminished in size or stripped away from them entirely.

1 **F. Constitutional Construction**

2 “In general, when presented with a question of constitutional interpretation [the Court is] duty-
3 bound to give effect to the intention of the framers of the NMI Constitution.” *Elameto v.*
4 *Commonwealth*, 2018 MP 15 ¶ 15 (citation and internal quotation omitted). The Analysis of The
5 Constitution of The Commonwealth of The Northern Mariana Islands “is extremely persuasive
6 authority when one is called upon to discern the intent of the framers when the language of the
7 Constitution presents an ambiguity.” *Rayphand v. Tenorio*, 2003 MP 12 ¶ 71.

8 **G. Statutory Construction**

9 “A court should avoid interpretations of a statutory provision which would defy common
10 sense or lead to absurd results.” *Commonwealth Ports Auth. v. Hakubotan Saipan Enters.*, 2 NMI
11 212, 224 (1991) (internal citation and punctuation omitted).

12 **H. Hierarchy of Laws**

13 The NMI Constitution is a higher source of law than a Commonwealth statute. *See Cody v. N.*
14 *Mar. I. Ret. Fund*, 2011 MP 16 ¶ 25. Statutes will be invalid in certain contexts if the statute as applied
15 would be unconstitutional in that context. *See Commonwealth v. Sablan*, 2016 MP 12 ¶ 13 (“To
16 invalidate a statute as applied, a court must rule that the application of the statute would be
17 unconstitutional in a particular context in which a person has acted.”). When a statute is invalid, it
18 lacks “binding force or legal efficacy.” *Commonwealth Of the N. Mar. I. v. Nethon*, 1 NMI 458, 462
19 (1990).

20 Statutes are a higher source of law than the restatements of the law as approved by the
21 American Law Institute. *See In re Buckingham*, 2012 MP 15 ¶ 12 (stating that “if there is no
22 controlling written law or local customary law, the restatements of the law approved by the American
23 Law Institute control” (internal citation omitted)).

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1 **I. Chamorro Custom: Ancestors' Land**

2 Pursuant to the Northern Mariana Islands Probate Law, when a Chamorro individual dies
3 intestate, the individual's ancestral land passes in intestacy to the surviving spouse, who obtains a life
4 estate, with the issue obtaining a vested remainder in fee simple by representation. 8 CMC § 2902(a).

5 **J. Chamorro Custom: Other Properties**

6 Pursuant to the Northern Mariana Islands Probate Law, when a Chamorro individual dies
7 intestate, the surviving spouse obtains one-half of all non-ancestral properties and the issue of the
8 decedent obtain the remaining half by representation. 8 CMC § 2903(a)-(b). The word "property"
9 "includes both real and personal property or any interest therein and means anything that may be the
10 subject of ownership." 8 CMC § 2107(x).

11 **K. Standard Governing Legal Fees in Probate Actions**

12 In establishing reasonable attorney's fees in a probate action, "the personal representative and
13 the court shall account for the services rendered during probate, the time and skill required to perform
14 them, the date the services were performed, the benefit to the estate, and the customary charge and
15 rate for such services within the Commonwealth." 8 CMC § 2926(c).

16 The burden is on the attorney requesting attorney's fees to prove that the request fee is
17 justified. *See In re Krueger Estate*, 176 Mich. App. 241, 249 (1989).

18 **IV. DISCUSSION**

19 **A. Distribution of Personal Property**

20 Here, because Decedent ADGB died after February 15, 1984, Northern Mariana Islands
21 Probate Law applies. 8 CMC § 2102.

22 As stated above, the Court is limited to adjudicating the personal property that is located in
23 the Commonwealth. 8 CMC § 2201(b); *see also In re Estate of Marcos*, 88 Haw. 148, 154 (1998).
24 The disposition of Decedent ADGB's personal property that is located in the California will be

1 adjudicated by the California court in the California probate. As for Decedent ADGB’s personal
2 property located in the Commonwealth, because Decedent ADGB was a Chamorro individual and
3 died intestate, Decedent ADGB’s personal property that is located within the Commonwealth passes
4 according to 8 CMC § 2903(a)-(b). Thus, Dinah is entitled to one-half of all of Decedent Alexander’s
5 personal property in the Commonwealth.

6 **B. Distribution of Real Property**

7 As discussed above, Dinah, as ADGB’s surviving spouse, argues that she is entitled a life
8 estate not exceeding fifty-five years of ADGB’s real properties. As explained below Dinah is
9 incorrect.

10 Decedent ADGB’s estate owns real properties in the Commonwealth located in Saipan and
11 Tinian. Commonwealth law applies to their distribution. 8 CMC § 2201(b). Here, it is undisputed that
12 the real property at issue is ancestral land. However, because Dinah Borja is a non-NMD surviving
13 spouse, the Court must first determine whether her inheriting Decedent ADGB’s real property is
14 constitutionally permissible in these circumstances. *See Sablan*, 2016 MP 12 ¶ 13 (stating that statutes
15 will be invalid in certain contexts if the statute as applied would be unconstitutional in that context);
16 NMI CONST. art. XII, § 1 (“The acquisition of permanent and long-term interests in real property
17 within the Commonwealth shall be restricted to persons of Northern Marianas descent.”). To do this,
18 the Court turns to the language of the Constitution and the intent of the Framers.

19 As stated above, Article XII is violated if: 1) a person not of Northern Marianas descent, 2)
20 acquires, 3) a long-term interest, 4) in real property, 5) in the Commonwealth.

21 It is not disputed that Dinah is non-NMD and that the property at issue is real property. Thus,
22 the Court will turn its attention to the other three factors.

23 In regards as to whether Dinah’s proposed inheritance of the real property would be an
24 “acquisition,” the Court finds that, because the term “acquisition” in Article XII includes

1 “inheritances,” the property distribution Dinah requests would be an acquisition under Article XII
2 unless there is an applicable exception. NMI CONST. art. XII, § 2. As stated above, the original
3 Commonwealth Constitution as drafted by the 1976 Framers excluded land transfers to surviving
4 spouses by inheritance from Article XII’s definition of “acquisition.” NMI CONST. art. XII, § 2
5 (1976) (“A transfer to a spouse by inheritance is not an acquisition under this section.”). However,
6 1985 Framers amended the Original Constitution to narrow the exception to only include transfers to
7 surviving spouses by inheritance when the NMD decedent died without having NMD issue. NMI
8 CONST. art. XII, § 2 (“A transfer to a spouse by inheritance is not an acquisition under this section if
9 the owner dies without issue or with issue not eligible to own land in the Northern Mariana Islands.”).
10 As stated above, Decedent ADGB died leaving behind NMD-issue. This means that Dinah is not
11 eligible for the surviving spouse exception as it currently exists.⁴ Thus, Dinah’s proposed property
12 distribution would result in her “acquiring” real property in the Commonwealth.

13 As to whether the proposed inheritance would be an acquisition of a “long-term interest,”
14 Dinah claims that her request is not one for a “long-term interest” in real property because she is only
15 seeking to inherit a “life estate” capped by fifty-five years. In essence, Dinah is asking to receive the
16 real property for fifty-years should she live that long. In common law jargon, this would be referred
17 to as an “estate for years subject to a special limitation.”⁵ Dinah argues that such an inheritance would
18 be constitutional because an estate for years is not “freehold interest” under the common law and thus
19 acquiring one would not necessary be a “long-term” interest under Article XII. Restatement (First)

20 _____
21 ⁴ This case is therefore unlike *Estate of Tudela*, 2009 MP 9, in which an inheritance of land by a non-NMD surviving
22 spouse was held not to be an “acquisition” of that land, because the NMD decedent had died without issue.

23 ⁵ “An estate for years is an estate, the duration of which is fixed in units of a year or multiples or divisions thereof.”
24 Restatement (First) of Property § 19. “An estate for years can be created subject to a special limitation[.]” Restatement
25 (First) of Property § 19 cmt. c. A special limitation is “language of a conveyance which causes the created interest
26 automatically to expire upon the occurrence of a stated event[.]” Restatement (First) of Property § 23. For example, a will
27 that states from Person A “to [Person] B for ten years if [Person] B so long lives” creates an estate for years subject to a
28 special limitation and Person A has a reversion. Restatement (First) of Property § 23 illus. 6. At common law, an estate
29 for years is a non-freehold estate. Restatement (First) of Property § Scope (“There are estates which are non-freeholds.
30 In the United States these [include] the estate for years (defined in § 19)[.]”).

1 of Property § Scope. However, as stated above, an estate for years is a freehold estate for the purposes
2 of Article XII. This is because the Analysis of The Constitution of The Commonwealth of The
3 Northern Mariana Islands states that for the purposes for Article XII, the term “freehold interest”
4 includes “all types of ownership or title granted by [...] intestate succession,” and not just the
5 common law categories. Analysis of the Constitution of the Commonwealth of the Northern Mariana
6 Islands 169 (1976).⁶ Because “freehold interests” are “long-term interests” for the purposes of Article
7 XII, Dinah’s attempt to “acquire” Decedent ADGB’s real property through inheritance is an attempt
8 to “acquire” a “long-term interest” in real property and thus violates Article XII and is void ab initio.
9 NMI CONST. art. XII, § 3.

10 Therefore, because Dinah, a non-NMD, is seeking to inherit property in a manner that would
11 constitute an acquisition of a long-term interest in real property in the Commonwealth, Dinah’s
12 proposed inheritance would violate Article XII. Furthermore, because Dinah’s inheritance of real
13 property in this situation would be an “acquisition,” and the term “freehold interest” includes “all
14 types of ownership or title granted by [...] intestate succession,” the Court finds that Dinah cannot
15 inherit *any* legal interest in Decedent ADGB’s real properties. Analysis of the Constitution of the
16 Commonwealth of the Northern Mariana Islands 169 (1976).⁷ The Court is cognizant that this Order
17 has harsh results for Dinah. However, an Order in the alternative could result in Decedent ADGB’s
18 children waiting fifty-five years, almost a lifetime, to inherit the full share of their father’s land.
19 Furthermore, the people of the Northern Mariana Islands voted to keep the narrower version of the
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21 ⁶ See *Rayphand v. Tenorio*, 2003 MP 12 ¶ 71 (stating that the Analysis “is extremely persuasive authority when one is
called upon to discern the intent of the framers when the language of the Constitution presents an ambiguity”).

22 ⁷ Because the Court finds that Dinah is constitutionally barred from inheriting any real property, 8 CMC § 2411 does not
23 apply here. 8 CMC § 2411 states that “whenever a person not of Northern Marianas descent takes title to real property
under [the Northern Mariana Islands Probate Law], he or she shall take the maximum allowable legal interest in the real
24 property[.]” However, the Court found that Dinah is not entitled to *any* legal interest in real property here. Thus, 8 CMC
§ 2411 is inapplicable. See also *Estate of Pedro Mangloña Atalig*, Civ. No. 05-0064 (NMI Super. Ct. Apr. 07 2022)
(Order Denying a Non-Northern Marianas Descent Surviving Spouse from Inheriting Land Because There Are Children
of Northern Marianas Descent Who Can Inherit the Land Pursuant to Article XII, Section 2 Of the NMI Constitution).

1 surviving spouse exception drafted by the 1985 Framers and rejected the broader version of the
2 exception by the 1995 Framers. The Court gives this vote to keep the narrower 1985 version by the
3 People of the Commonwealth great deference. *See Manglona*, 3 NMI at 335 (“Article XII should be
4 strictly enforced.”).⁸

5 **V. CONCLUSION⁹**

6 For the reasons stated above, the claim of Dinah Borja, a non-Northern Marianas descent
7 surviving spouse, is entitled to one-half of all of Decedent Alexander Deleon Guerrero Borja’s
8 personal property in the Commonwealth and none of Decedent Alexander Deleon Guerrero Borja’s
9 real properties in the Commonwealth because non-Northern Marianas descent surviving spouses are
10 not eligible to inherit land when there are Northern Marianas descent children who can inherit the
11 land pursuant to the CNMI Constitution, Article XII, Section 2.

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13 **IT IS SO ORDERED** this 6th day of June, 2022.

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15 /s/
JOSEPH N. CAMACHO, Associate Judge

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⁸ The court notes that its holding is analogous with Chamorro and Carolinian customary law. In both Chamorro and
19 Carolinian customary law, the spouses of the landowners do not inherit property from their deceased partner. *See In re*
20 *Estate of Ogumoro*, 4 NMI at 128 (interpreting Carolinian customary law); *Palacios v. Coleman*, (Civil Action No. 78-
21 49, Dist. Court, Northern Mariana Islands, February 15, 1980) (interpreting Chamorro customary law). However, the
22 customary practices of the Chamorros and Carolinians state that the surviving spouse is to be provided for post the death
23 of their spouse. *See In re Estate of Ogumoro*, 4 NMI at 128; *In re Estate of Rangamar*, 4 NMI at 75 (stating the Carolinian
24 land is used for the benefit of family members). The inheritance exception in Section 2 of Article XII allows for those not
Chamorro or Carolinian who marry a Chamorro or Carolinian to have a safety net once their land-owning spouse dies
and there are no children who can assume ownership of the property for the benefit of the surviving spouse.

⁹ More Administration of the Estate is Needed: The Court recognizes that there are other issues still outstanding that were
not resolved by this Order. One of these issues in the matter of attorney’s fees. As stated above, the burden of proof for
attorney’s fees is on the party seeking the attorney’s fees. However, evidence has yet to be presented to show why the
attorney’s fees are justified. 8 CMC § 2926(c). Thus, the Court will issue a separate order setting a status conference to
set a deadline for the adjudication of the remaining issues.