

(S. B. 2187)

(No. 195-2011)

(Approved September 13, 2011)

AN ACT

To create the “Homestead Right and Family Home Protection Act,” in order to broaden homestead protection and clarify the exceptions applicable to such protection; to establish the procedure to claim homestead protection; to repeal Act No. 87 of May 13, 1936, as amended, known as the “Right of Homestead Act”; and for other purposes.

STATEMENT OF MOTIVES

In Puerto Rico, there is a keen social interest to protect families and foster the acquisition of adequate and safe housing by each and every family. In fact, as opposed to other jurisdictions, Puerto Ricans prefer to be homeowners. According to data from the U. S. Census, the housing acquisition rate in Puerto Rico is over 70%. This fact is opposite to what typically happens with residents of other states, where the acquisition rate is less than 40%. One of the reasons for this situation is geographical, since our insular borders limit residential mobility. As for the continental states, citizens are forced to move frequently due to family, study, or work reasons, so they do not always consider it beneficial to buy permanent housing. The fact that Puerto Ricans prefer to be homeowners is also due to the fact that home ownership for all individuals or heads of family has been promoted both culturally and socially.

In keeping with the foregoing, the protection of home and family has been a part of our body of laws for a long time. Homestead protection was established for the first time in our jurisdiction through the “Act to Define Homestead and to Exempt it from Forced Sale,” of March 12, 1903. This Act was repealed in its

entirety by Act No. 87 of May 13, 1936, which was recently amended by Act No. 116-2003, among others. The purpose of “homestead” protection is to extend basic protection to every homeowner against a judgment of foreclosure of his/her residence. Due to its importance, homestead protection was incorporated in Section 7, Article II of our Constitution, which provides that “a minimum amount of property and possessions shall be exempt from attachment as provided by law.” However, since 1936, a five hundred-dollar homestead exemption was available in Puerto Rico with approval of Act No. 87 of May 13, 1936. In 2003, such amount was increased to fifteen thousand dollars (\$15,000), which has been the homestead exemption limit until today.

Losing a home is a serious setback for any family. Such loss not only has financial implications, but also the potential of affecting the emotional stability of all members of a family unit. It is thus an essential element for the stability of the most basic institution of our society and for each and every Puerto Rican who, with great sacrifice, has acquired a home. We must bear in mind that, for many Puerto Ricans, their homes constitute almost their entire estate and the only thing they may leave to their heirs. Therefore, a homestead is vitally important for all in Puerto Rico, from young adults who have longed to acquire their first home to retired individuals who have worked hard to keep theirs.

Other United States jurisdictions, such as Florida and Texas, provide broad protection against attachments and judicial foreclosures to their residents’ homes. Such protections have ranked such states among the best places to live, where hundreds of thousands of Puerto Ricans, particularly young professionals, could establish. However, in Puerto Rico, even though the importance of a home for all members of a family unit and the need to provide legal protection thereto have been recognized for decades, such protection is limited to fifteen thousand dollars (\$15,000). Such amount is not in tune with our social and economic reality, and

does not suffice to provide proper and effective protection for the homes of all our residents. We should not overlook that our Homestead statute dates back to 1936, and must, therefore, be adjusted to our time.

In light of the foregoing, this Legislative Assembly deems it convenient to pass a new advanced homestead legislation which provides better protection to the homes or principal residences of all individuals residing in Puerto Rico and their respective families.

The financial protection herein provided is exclusively directed to set forth rules to protect the homestead right against sales promoted by creditors by virtue of a judgment or foreclosure, and in no way limits the homestead right granted to any spouse who, in case of divorce, has been awarded custody of children, as provided in Section 109A of the Civil Code of Puerto Rico, Act No. 184-1997.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Title.-

This Act shall be known as the “Homestead Right and Family Home Protection Act” and be cited hereinafter as the “Homestead Protection Act.”

Section 2.- Public Policy.-

It is the public policy of the Government of Puerto Rico to ensure homestead protection to all individuals or heads of family so that they may own and enjoy their principal residences while having them protected from foreclosure.

Section 3.- Homestead Right.-

Every individual or head of family residing in Puerto Rico shall be entitled to own and enjoy, under the homestead right concept, a parcel and the structure located thereon, or a residence under the regime established in the Condominiums Act, which belongs to him/her or which he/she lawfully owns, and occupied by him/her or his/her family exclusively as a principal residence.

For the purposes of this Act, the term domicile shall be defined as provided in Article 11 of the Political Code of 1902, as amended.

Section 4.- Waivers and Exemptions.-

The Homestead right shall not be waived and any agreement to the contrary shall be declared null.

However, the homestead right shall be deemed to be waived in the following circumstances:

- a) All cases in which the protected property is pledge for a mortgage.
- b) In case of state and federal tax collection.
- c) In cases of debt owed to contractors for repairs to the protected property.
- d) In cases in which the Federal Bankruptcy Code applies, in which case the provisions of said Code shall apply.
- e) All cases related to loans, mortgages, sharecropping agreements, and promissory notes payable to the order of or secured or executed by the Puerto Rico Production Credit Association, the Small Business Administration, the Puerto Rico Housing Financing Authority, the U.S. Farmers Home Administration, the Federal Housing Administration (FHA), the U.S. Department of Veterans Affairs, and the Department of Economic Development and Commerce of Puerto Rico; and the entities succeeding them, as well as in favor of any other Commonwealth or Federal agency or entity securing mortgage loans that are secured and sold in the secondary market.

Sectaion 5.- Protection against Attachment, Judgment, or Foreclosure.-

This right shall protect properties against attachment, judgment, or foreclosure for the payment of all debts, except for those debts established as exceptions in Section 4 of this Act.

Section 6.- Homestead Protection shall Continue after Death, Abandonment, or Divorce.-

The protection established in the preceding Section shall continue after the death of any of the spouses for the benefit of the surviving spouse, so long as he/she continues to occupy the homestead, and after the death of both spouses for the benefit of their children until the youngest reaches legal age. Should a husband or wife abandon his/her family, the protection shall continue in favor of the spouse occupying the property as a residence; and, in the case of divorce, the court granting it may, in the decree, dispose of the homestead estate according to the equities of the case.

In the case of an unmarried person who is the head of a family, because such family, ascendants, and descendants to the third degree of consanguinity or affinity, is dependent upon such person for support, the protection shall continue after the death of such person for the benefit of his/her named family members, as long as they continue to occupy the protected home, and until the youngest of such dependents reaches legal age.

Section 7.- Homestead Protection in Case of Leasing.-

As long as the protected homestead beneficiary is alive, the temporary lease of the home which, for work or study reasons, military or diplomatic services, or due to the illness of any member of his/her family up to the third degree of consanguinity or affinity that compels the individual or his/her family to temporarily relocate to another residence in or outside Puerto Rico, shall not terminate the estate of homestead, unless another property is acquired and such property becomes the beneficiary's principal residence in Puerto Rico or in another jurisdiction.

Section 8.- Homestead Protection in Case of Sale.-

In such cases in which the protected property constituting a homestead is sold in accordance with the provisions of this Act, the owner shall have a term of nine (9) months, as of the time of the sale, to invest the sale proceeds in another property located in Puerto Rico and for such property to become his/her new homestead. It shall be understood that the sale proceeds shall be protected from creditors during said nine (9)-month term. The financial protection herein provided is exclusively directed toward setting forth rules to protect the homestead right and in no way shall impair the provisions contained in tax laws.

In the event that another property of lesser value is subsequently acquired, the difference in value shall not be protected by the provisions of this Act.

Section 9.- Claim of Homestead Protection in Purchase Deed; Record in the Property Registry and Cancellation of the Homestead Right in the Property Registry.-

Any individual or head of family who acquires a rural or urban parcel to establish and create his/her homestead thereon shall state so in the deed after having been duly advised on this duty by the authorizing notary, who shall attest to such fact; and upon recording the same, the Property Registrar shall enter such statements in the body of the registration indicating that the owner has filed a Declaration of Homestead for such property. This entry shall serve as public notice.

If the parcel has already been registered in the name of such individual or head of family, it shall suffice for the owner or owners of such parcel to execute a Declaration before a Notary Public stating that the parcel is covered by homestead protection for the Property Registrar to make a marginal notation on the appropriate record.

Both documents, that is, the deed and the Declaration, as the case may be, shall state that such property shall be used for residential purposes and that the owner has not declared any other property in or outside Puerto Rico as such. The owner shall also be advised, in both documents, on the potential sanctions to which any person shall be subject if he/she attempts to or unlawfully files a Declaration of Homestead for more than one property or in favor of another person.

If a person already owns another property that has been declared as his/her homestead, the existence of such other property and the fact that such property shall cease to be his/her homestead as of said time shall be acknowledged in the document; additionally, such person shall have the obligation to cancel the declaration of homestead of the former property in the Property Registry, so that the Registrar may record such cancellation in the marginal notation of the appropriate record. Such cancellation may be made through the same deed of the new property which shall be covered by homestead protection or through a Declaration.

Insofar as the property has been declared a homestead, the Property Registrar shall be required to make a notation stating that the property was so declared by its owner.

Such declarations or notations shall only constitute prima facie evidence of the homestead right of such property; no person may claim more than one property as a protected homestead.

Section 10.- Penalty for Unlawful Record.-

Any person who attempts to or files a Declaration of Homestead with the Property Registry for more than one parcel belonging to him/her, or who attempts to or files a Declaration of Homestead in favor of another person who is not

entitled to such right shall incur a fourth degree felony. In addition, should the person be found guilty of such offense, he/she shall not be entitled to claim the homestead protection for any of the properties involved in the unlawful act.

Section 11.- Registration of a Parcel and Filing of a Declaration of Homestead with the Registry.-

The fact that a parcel has not been registered in the Property Registry, or that the Declaration of Homestead has not been filed with or entered in the Property Registry, shall in no way impair the owner's homestead right thereon, provided that such right has been timely claimed as provided in Section 12 of this Act.

Section 12.- Claiming the Homestead Right in a Sale Resulting from Judgment or Foreclosure.-

Homestead right shall be claimed through a motion filed with the court within thirty (30) days as of the date in which foreclosure against the properties belonging to the defendant has been petitioned in order to comply with a ruling of a competent court; or from the time in which a pre-judgment attachment or garnishment or any other pre-judgment remedy is requested against the property of the defendant to guarantee compliance with said ruling.

Such motion shall be sworn by the owner or owners, including a description of the property being protected as entered in the Registry and a statement to the fact that the owner or owners thereof used such property as a principal residence before the service of process of foreclosure was perfected and that they have not declared any other property as their homestead.

The party requesting foreclosure shall have ten (10) days to answer the claim of homestead right and, should a controversy arise, the Court shall hold an evidentiary hearing in which the parties shall present their arguments and the appropriate evidence supporting their allegations. The Court shall issue its determination within fifteen (15) days after the evidence has been presented. Once

the Court's ruling is issued, the aggrieved party may appeal such ruling within a jurisdictional term of fifteen (15) days. In the event that the Court determines that homestead protection does not apply, the judicial sale of such property shall not be carried out until such determination becomes final and binding.

No rural or urban parcel shall be sold by virtue of judgment or foreclosure if it has been claimed to be or held as homestead, whether or not it has been registered as such in the Property Registry, unless any of the exemptions provided in Section 4 of this Act applies.

However, a rural or urban parcel may be sold by virtue of a judgment or foreclosure if, after having been served, the person acquires a property of higher value and it becomes his/her principal residence. If such situation occurs, the homestead protection shall be extended up to the value of the protected property at the time of the service of process. Likewise, if the money was protected as provided in Section 7 of this Act at the time the service of process was perfected, the protection shall be extended up to the limit of such amount.

Section 13.- Recording and Cancellation Fees.-

The filing with and recording in the Property Registry of a Declaration of Homestead shall be exempted in its entirety from the payment of any applicable fees, including stamps and vouchers.

Section 14.- Office of Notarial Inspection.-

The Office of Notarial Inspection (ODIN, Spanish acronym) shall be required to notify notaries on the provisions of this Act and to inform the legal community about the scope and implications thereof.

Section 15.- Severability.-

The provisions of this Act shall be independent and severable; if any of its provisions were ruled unconstitutional by a competent court with jurisdiction, such ruling shall not affect any other provisions of this Act, and the Act thus modified by such court ruling shall continue in full force and effect.

Section 16.- Repeal.-

Act No. 87 of May 13, 1936, as amended, known as the “Right of Homestead Act” is hereby repealed.

Section 17.- Effectiveness.-

This Act shall take effect immediately after its approval, and the protection herein provided shall apply prospectively. Cases filed with the Court prior to the effective date of this Act, whenever applicable, shall be entitled to claim homestead protection under the provisions of Act No. 87 of May 13, 1936, as amended.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 195-2011 (S. B. 2187)** of the **6th Session of the 16th Legislature** of Puerto Rico:

AN ACT to create the “Homestead Right and Family Home Protection Act,” in order to broaden homestead protection and clarify the exceptions applicable to such protection; to establish the procedure to claim homestead protection; to repeal Act No. 87 of May 13, 1936, as amended, known as the “Right of Homestead Act”; and for other purposes.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on the 30th day of April, 2012.

María del Mar Ortiz Rivera