

(S. B. 961)

**(No. 235-2018)**

(Approved October 23, 2018)

## **AN ACT**

To enact the “Mortgage Moratorium and Modification for Hurricane Maria Victims Act,” in order to assist mortgagees [sic] who obtained a moratorium on their home mortgage loans due to the passing of Hurricane Maria to cure the mortgage default; provide that public documents executed under this Act shall be exempt from taxes and fees; amend Section 85 and 86 of Act No. 210-2015, as amended, known as the “Commonwealth of Puerto Rico Real Property Registry Act.”

### **STATEMENT OF MOTIVES**

The passage of hurricanes Irma and Maria over the Island in September 2017 caused a devastating disaster. As a result, thousands of families lost all or most of their belongings and transportation, communications, water, and electric power infrastructures were damaged.

The collapse of the electric power system paralyzed the economy because countless businesses had to cease operations, thus interrupting the jobs of hundreds of thousands of people who, in turn, were faced with unforeseen expenses as a result of said weather event.

As a result of the damages caused by hurricanes Irma and Maria, thousands of Puerto Rican families that were current in their home mortgage loans as of September 2017 or against which a foreclosure proceeding had not been yet initiated, were compelled to resort to the moratorium programs offered by the finance industry, cooperatives, and private and federal investors, as well as to those provided by mortgage guarantors.

A moratorium on a home mortgage loan consists of granting mortgagors a default period on their home mortgage loans after which mortgagors should be able to cure the default. One of the consequences of a moratorium period on home mortgage loans is the mortgagor's noncompliance with the terms and conditions originally agreed upon. To cure the default, the mortgagor may negotiate a payment plan with the mortgagee. However, a payment plan is not always a mortgagor's best option for curing a mortgage loan default. A second option offered to mortgagors for curing a mortgage default is to modify the original terms and conditions thereof. This requires permanently modifying the mortgage note, when applicable, and the mortgage securing said note, through a mortgage modification agreement, which shall retain the same lien position as the mortgage whose modification is requested. Once the original mortgage is modified, it shall be enforceable with the same effect as the mortgage deed prior to the modification. After the mortgage loan modification is executed, the mortgage default is cured.

As part of the Island's recovery process, the Federal and the State Governments have introduced several bills to assist many families who have lost their belongings, properties, and in some cases, even their jobs. Helping mortgagors who availed themselves of a moratorium to cure a mortgage default, cannot be the exception.

Thus, to help and enable our citizens to cure their mortgage default so that they may continue meeting their financial obligations as they did prior to the onslaught of hurricane Maria, this Legislative Assembly believes that, as part of its public policy, mortgagors should be able to modify their home mortgage loans and cure the default in their loans without incurring costs such as Internal Revenue stamps, Recordation Stamps, Notary Fees, and the electronic recording fee, which are required for recording the loan modification agreement in the Property Registry. Likewise, as an exception, this Legislative Assembly recognizes as a *sine*

*qua non* requirement for mortgagors to cure a mortgage loan default that the mortgage modification agreement retains the same lien position as the mortgage whose modification is agreed upon between the mortgagor and the mortgagee. Therefore, as an exception, instruments executed under this Act shall be exempt from the future mortgagee's approval requirement provided in Sections 85 and 86 of the Commonwealth of Puerto Rico Real Property Registry Act.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1.- Official Title

This Act shall be known as the "Mortgage Moratorium and Modification for Hurricane Maria Victims Act."

Section 2.- Public Policy

It is the public policy of the Government of Puerto Rico to ensure that every mortgagor whose home mortgage loan was current as of September 1, 2017, and who has availed himself of any moratorium program offered by a mortgagee and has fully met the moratorium requirements, may cure the mortgage default by executing a modification agreement without incurring expenses such as internal revenue stamps, recordation stamps, notary fees, electronic recording fee, and that said modification agreement retains the same lien position as the mortgage being modified without requiring the approval of subsequent creditors.

Section 3.- Definitions

For purposes of this Act, the following terms shall have the meaning stated below:

a. "Mortgagee" – means any natural or juridical person, or a lending or financial institution, or a bank or a credit union duly authorized under the Laws of Puerto Rico and/or the laws of the United States of America to grant, or that grants and/or services loans secured by a mortgage on one or more real property.

b. “Mortgagor” – means any person who has made a loan primarily for personal, family, or household purposes, evidenced by a mortgage note, in most cases secured by a mortgage, straight mortgage, note or other evidence of indebtedness agreed on by the parties, on residential real property.

c. “Eligible Mortgage Loan Modification Agreement” – means any public document executed before a notary public to amend, replace, modify, partially cancel, or extend the mortgage of an Eligible Home Mortgage Loan in the Property Registry.

d. “Person” – means any individual, natural or juridical person, including, but not limited to, individuals, partnerships, corporations, trusts, or any other juridical entity.

e. “Mortgage Loan” – means one or more cash advances or its equivalent, made by a lender (commonly known as mortgagee) evidenced by a mortgage note, in most cases secured by a mortgage, straight mortgage, note or other evidence of indebtedness agreed on by the parties, on one or several real property, establishing the terms of the loan and the manner in which it shall be repaid or satisfied.

f. “Home Mortgage Loan” – means any mortgage loan executed primarily for personal, family or household purposes evidenced by a mortgage note, in most cases secured by a mortgage, straight mortgage, note or other evidence of indebtedness agreed upon by the parties, on residential property.

g. “Eligible Home Mortgage Loan” – means any home mortgage loan under which a mortgagor has availed himself of any moratorium or loss mitigation program offered by the mortgagee as a result of hurricanes Irma and Maria.

#### Section 4.- Mortgage Loan Modifications

Every mortgagor who holds an eligible home mortgage loan and to whom the mortgagee has granted a moratorium may be able to modify his mortgage note, mortgage deed, or other evidence of indebtedness under this Act. The mortgagee and the mortgagor shall appear before a notary public to execute an Eligible Mortgage Loan Modification Agreement amending the terms and conditions of the note and/or the original mortgage in order to conform said agreement to the moratorium granted to the mortgagor. In order for a mortgage loan modification agreement to be eligible for the benefits of this Act, it must state that it is executed in accordance with this Act, that a public record of the moratorium granted to the mortgagor by the mortgagee has been made, that it is not the result of an extension of credit granted to the mortgagor, and that the reasons for granting such moratorium to the mortgagor are the passing of Hurricane Irma and/or the passing of Hurricane Maria over the jurisdiction of Puerto Rico.

#### Section 5.- Exemption from Public Document Fees and Taxes

Every original deed, certified copy, filing and recording in the Property Registry of an eligible mortgage loan modification agreement shall be fully exempt from any applicable duties, including stamps, vouchers, notary fees, and electronic recording fee and the eligible mortgage loan modification agreement shall be recorded in the Property Registry and retain the same lien position as the mortgage being modified without obtaining the approval of subsequent creditors.

Section 6.- Section 85 of Act No. 210-2015, as amended, is hereby amended to add a second paragraph to read as follows:

“SECTION 85.- Modification of Obligation; Absent Recordation and Effect

...

As an exception, an eligible mortgage loan modification agreement executed in accordance with the ‘Mortgage Moratorium and Modification’ for Hurricane Maria Victims Act shall not be considered as a modification and/or cancellation of a previous obligation, therefore, it shall not be considered a new recordation. The Property Registrar shall record the eligible mortgage loan modification agreement on the margin of the mortgage deed being modified by the eligible mortgage loan modification agreement without requiring the appearance, notification, approval, consent, and/or permission of subsequent creditors.”

Section 7.- Section 86 of Act No. 210-2015, as amended, is hereby amended to add a second paragraph to read as follows:

“SECTION 86.- Novation; New Recordation or Marginal Note.

...

As an exception, an eligible mortgage loan modification agreement executed in accordance with the Mortgage Moratorium and Modification for Hurricane Maria Victims Act shall not be considered as a full and/or partial novation of the recorded contract causing a new recordation and requiring the cancellation of the preceding one. The Property Registrar shall record the eligible mortgage loan modification agreement on the margin of the mortgage deed being modified by the eligible mortgage loan modification without requiring the appearance, notification, approval, consent, and/or permission of subsequent creditors.”

Section 8.- Severability.

If any clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act were held to be null or unconstitutional, the ruling, holding, or judgment to such effect shall not affect, impair, or invalidate the remainder of this Act. The effect of said holding shall be limited to the clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter,

subchapter, heading, or part of this Act thus held to be null or unconstitutional. If the application to a person or a circumstance of any clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act were held to be null or unconstitutional, the ruling, holding, or judgment to such effect shall not affect or invalidate the application of the remainder of this Act to such persons or circumstances where it may be validly applied. It is the express and unequivocal will of this Legislative Assembly that the courts enforce the provisions and application thereof to the greatest extent possible, even if it renders ineffective, nullifies, invalidates, impairs, or holds to be unconstitutional any part thereof, or even if it renders ineffective, invalidates, or holds to be unconstitutional the application thereof to any person or circumstance.

#### Section 9.- Construction of Provisions of Law.

This chapter shall be liberally construed in favor of the mortgagor, so that the mortgagor may, upon the execution of the mortgage loan modification agreement under the terms and conditions approved by the mortgagee, record said agreement in the Property Registry, which shall retain the same lien position as the mortgage whose modification was agreed upon. In addition, this chapter shall be liberally construed so that, after its modification, the mortgage loan modification agreement has the same legal effect that it had prior to such modification. If the provisions of this Act are in conflict with the provisions of any other Act, the provisions of this chapter shall prevail.

#### Section 10.- Effectiveness.

This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 235-2018 (S. B. 961)** of the **4<sup>th</sup> Regular Session** of the **18<sup>th</sup> Legislative Assembly of Puerto Rico**:

**AN ACT** to enact the “Mortgage Moratorium and Modification for Hurricane Maria Victims Act,” in order to assist mortgagees [sic] who obtained a moratorium on their home mortgage loans due to the passing of Hurricane Maria to cure the mortgage default; provide that public documents executed under this Act shall be exempt from taxes and fees; amend Section 85 and 86 of Act No. 210-2015, as amended, known as the “Commonwealth of Puerto Rico Real Property Registry Act.”

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

In San Juan, Puerto Rico, on this 12<sup>th</sup> day of June, 2019.

Orlando Pagán-Ramírez  
Director