

(S. B. 2551)

(No. 257-2012)

(Approved September 15, 2012)

AN ACT

To amend subsection (d) of Section 4 of Act No. 195-2011, known as the “Homestead Right and Family Home Protection Act,” in order to clarify that this Act, which guarantees that the homestead right cannot be waived, shall also apply in cases in which a petition is filed under the United States Bankruptcy Code, in accordance with and as provided in Section 522(b)(3) of said Code, and that such right shall not be deemed to be waived unless the person who claims it or has previously claimed it under this Act chooses not to claim it, and alternatively claims the exemptions under the Bankruptcy Code in Section 522(b)(2) of said statute.

STATEMENT OF MOTIVES

Act No. 195-2011, known as the “Homestead Right and Family Home Protection Act,” was enacted on September 13, 2011. Its Statement of Motives clearly establishes a keen social interest to protect Puerto Rican families and foster the acquisition of adequate and safe housing by each and every one of them. Homestead right and family protection has been, and still is, a highly important part of our body of laws.

This has also been recognized by and is part of the United States body of laws. For example, the Statement of Motives of Act No. 195-2011 describes the broad protection enjoyed by homeowners in the states of Florida and Texas, among others. Said protection applies even in Federal attachment and execution proceedings when their residents resort to the protection provided under the United States Bankruptcy Code, and claim their homestead right as provided in Section 522(b)(3) of said statute.

However, although our legislative intent was to provide the broadest protection allowable to family homes in all jurisdictions, forums, and competencies, as recently as April 13, 2012, the U. S. Bankruptcy Court for the District of Puerto Rico, in the case of *In Re: Viviana Pérez-Hernández*, No. 11-09608 (ESL), erroneously interpreted the provisions of subsection (d) of Section 4 of the “Homestead Right and Family Home Protection Act.” The court alleged that the intent of the recently created Act was to exclude the application and the option to claim the homestead right under Section 522(b)(3) of the Bankruptcy Code, even though before said Act amended Articles 1851 through 1857 of the Civil Code of Puerto Rico, the debtor had the choice to claim homestead exemption under the Federal Bankruptcy Code.

For the aforementioned reasons, and in view of the imminent threat that losing the homestead exemption poses for our families, whose homes are their most valuable asset, we deem it of utmost importance to amend subsection (d) of Section 4 of Act No. 195-2011 to clarify that the plain, definite, and specific intent of this Legislative Assembly and of the Government of Puerto Rico is to provide the broadest protection to the homes or principal residences of the residents of Puerto Rico and their families, thus complying with our duty of protecting and overseeing their wellbeing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Subsection (d) of Section 4 of Act No. 195-2011, known as the “Homestead Right and Family Home Protection Act,” is hereby amended to read as follows in order to clarify that this Act, which guarantees that the Homestead right cannot be waived, shall also apply in cases in which a petition is filed under the United States Bankruptcy Code in accordance with and as provided in Section 522(b)(3) of said Code, and that said right shall not be deemed to be waived unless the person that claims or has previously claimed it under this Act

chooses not to claim it and alternatively claims the exemptions under the Bankruptcy Code in Section 522(b)(2) of said statute:

“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 waived in the following circumstances:

- a) ...
- b) ...
- c) ...
- d) In cases in which the person who claims or has previously claimed the right recognized under this Act chooses to claim, in a Petition under the Federal Bankruptcy Code, the exemptions provided under Section 522(b)(2) of said Code in lieu of the local and homestead protection exemptions allowed under the Bankruptcy Code under Section 522(b)(3).

e) ...”

Section 2.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 257-2012 (S. B. 2551)** of the **3rd Session of the 16th Legislature** of Puerto Rico:

AN ACT to amend subsection (d) of Section 4 of Act No. 195-2011, known as the “Homestead Right and Family Home Protection Act,” in order to clarify that this Act, which guarantees that the homestead right cannot be waived, shall also apply in cases in which a petition is filed under the United States Bankruptcy Code, in accordance with and as provided in Section 522(b)(3) of said Code, and that such right shall not be deemed to be waived unless the person who claims it or has previously claimed it under this Act chooses not to claim it, and alternatively claims the exemptions under the Bankruptcy Code in Section 522(b)(2) of said statute.

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

In San Juan, Puerto Rico, on the 13th day of December, 2012.

María del Mar Ortiz Rivera